

## **2019 AMENDED AND RESTATED LEASE AND AGREEMENT FOR THE PROVISION OF GOLF COURSE OPERATIONS AT RIVERSIDE MUNICIPAL GOLF COURSE**

THIS LEASE AND AGREEMENT (Agreement), made and entered into this \_\_\_\_ day of \_\_\_\_\_ (the "Effective Date") and between the CITY OF FRESNO, California a municipal corporation, (City) and EBIT GOLF INC., a California corporation, (Lessee).

### **WITNESSETH**

WHEREAS, City owns Riverside Municipal Golf Course; and

WHEREAS, the City and Lessee entered into a Lease and Agreement on September 17, 2009 (Agreement), to manage golf course operations at Riverside Municipal Golf Course; and

WHEREAS, the parties have negotiated an extension of the term and a modified rent structure, including base rent and percentage rent; and

WHEREAS, with entry into this Amendment, the Lessee agrees it has no claim, demand, or dispute against the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

### **1 LEASED PREMISES**

- 1.1 City leases to Lessee and Lessee leases from City that certain parcel of real property, improved with an 18-hole golf course, pro shop, coffee shop, and various structures and non-building improvements, commonly known as Riverside Municipal Golf Course (Leased Premises) which parcel is more particularly described on Exhibit A entitled Riverside Municipal Golf Course Legal Description attached hereto and by this reference made a part hereof.
- 1.2 The Leased Premises shall be used for the purpose of conducting a public golf course thereon together with a pro shop, driving range, coffee shop, and such businesses which the City determines are reasonably related thereto.
- 1.3 Lessee acknowledges personal inspection of the Leased Premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the golf course operation. Lessee accepts the Leased Premises in its "as is" present physical condition and agrees to make no demands upon City for any improvements or alteration thereof.
- 1.4 Lessee hereby acknowledges the title of City, and/or any other public agencies having jurisdiction thereover, in and to the Leased Premises and the improvements located thereon, and covenants and agrees never to assail, contest, or resist said title.
- 1.5 Ownership of all structures, buildings, or improvements constructed by Lessee upon the Leased Premises and all alterations, additions, or betterments thereto,

shall vest in City, without compensation being paid therefor, and such structures, buildings and improvements shall be surrendered with the Leased Premises, unless demand for the removal thereof shall be given by the City at least ninety (90) calendar days prior to the date of termination of this Agreement. Should Lessee fail to remove said structures, buildings and improvements, the same may be sold, removed or demolished, and Lessee shall reimburse City for any reasonable cost or expense incurred by City in connection therewith, less any value received by the City as part of such sale, removal or demolition.

## **2 TERM**

- 2.1 The term of this Agreement shall be from the Effective Date for a period of ten years commencing unless terminated earlier in the manner and under conditions herein provided.
- 2.2 In the event Lessee holds over beyond the term herein provided with the consent, express, or implied of City, such holding over shall be from month to month only, subject to the conditions of this Agreement; shall not be a renewal thereof; and shall be at the monthly rent provided herein.
- 2.3 The City and the Lessee shall commence exclusive negotiation of all terms and conditions for purposes of extending this Agreement during the first ninety (90) calendar days of the tenth year of this Agreement. The parties, on or before the end of the ninety (90) day period, shall report to the City Council of the progress made between the City staff and the Lessee in obtaining agreeable terms and conditions to have Lessee continue to operate said golf course and related operations. In the event that the City and the Lessee are unable to arrive at a mutual agreement, it is understood by the parties to this Agreement that the City will solicit proposals to lease or manage the Leased Premises. Lessee may submit a proposal therefore. City shall evaluate and consider any such proposal on its merits and on the same basis as any other proposal. It is the City's intent to provide not less than one hundred eighty (180) calendar days' notice to Lessee so that Lessee may make such arrangements as may be necessary to dispose of personal property, sell unneeded equipment, and arrange for the successful proposer to assume tenancy. During the Request For Proposal process, Lessee shall cooperate with City by providing access to facilities for inspection by other parties as arranged for by the City. Should Lessee not become successor tenant, Lessee shall assist and provide successor tenant with fixed equipment operating manuals and all other materials and services necessary to effectuate a smooth transition as determined by City.

## **3 LESSEE'S BASIC SERVICE OBLIGATIONS**

### **3.1 Golf Professional Services**

- 3.1.1 Use Granted: Lessee is hereby authorized and required to sell and/or rent golf equipment; sell golf related clothing and supplies; provide instructional services

in the playing of golf; rent golf mobiles and golf carts; and operate a driving range.

- 3.1.2 Sale of Golf Equipment and Supplies: Lessee shall obtain and maintain for sale an inventory of Twenty Thousand Dollars minimum of (\$20,000) of golf equipment and supplies including, but not limited to, golf bags, clubs, balls, tees, and hand-pulled carts.
- 3.1.3 Prices charged for new equipment shall not be greater than fair trade or manufacturer's suggested prices for new equipment and shall be competitive with prices charged for golf equipment and supplies of comparable quality sold at other public golf courses in Fresno County.
- 3.1.4 Rental of Golf Equipment: Lessee shall obtain for rental use on the Leased Premises an adequate stock of golf clubs, golf bags, and golf carts, both hand-pulled and motorized, in good condition and available to the public at all times during normal business hours. The rental charges for these various articles of golf equipment shall be no higher than the average rental charges of similar equipment rented at other comparable public golf courses in Fresno County.
- 3.1.5 Golf Lessons: Lessee shall continually promote and provide golf lessons during reasonable business hours or by appointment to any member of the public who pays the prescribed instruction fee. Any person employed by the Lessee to give such lessons or instruction shall be under the direct supervision of a PGA designated Class "A" professional. Charges for golf lessons and instructions shall be comparable to and competitive with charges for like services at other comparable public golf courses and golf ranges in Fresno County.
- 3.1.6 Practice Driving Range: Lessee shall during reasonable business hours supervise, operate, and manage the practice driving range in an efficient, orderly, and business-like manner. Lessee shall furnish, at Lessee's own expense, practice balls in good condition to persons who pay the prescribed driving range fee and shall provide, manage, and operate the necessary golf ball retrieving equipment. Charges for use of the driving range shall be comparable to and competitive with charges for range use at other comparable public golf courses and golf ranges in Fresno County.
- 3.1.7 Practice Putting Green: Lessee shall supervise all activities and putting conducted on the practice green in order that the practice green shall not be damaged through improper or excessive use and that practice putting conducted thereon will be in an orderly and peaceful manner. Lessee may reasonably limit the number of persons using said putting green at any one time and shall prohibit the use of the green when necessary to prevent excessive wear, tear, and damage.

## **3.2 Food and Beverage Services**

- 3.2.1 Use Granted: Lessee shall sell food and beverages, soft drinks, beer, wine, and liquor. City grants to Lessee the exclusive right to provide food and beverage services on the Leased Premises.

- 3.2.2 Lessee's Staff: Lessee shall file and maintain current with the City a certificate for each member of its food and beverage staff showing that within the last 12 calendar months such person has ServSafe certification as applicable.
- 3.2.3 Days and Hours of Operation: Lessee shall open the coffee shop for business each and every day of the year, except Christmas, unless the City prescribes otherwise. Lessee shall keep the coffee shop open each day at all reasonable times. Lessee shall endeavor to open before scheduled play commences in the morning and until scheduled play ends in the evening.
- 3.2.4 Coffee Shop Manager: Lessee shall, during reasonable business hours, retain in the coffee shop a qualified, competent, and experienced manager to supervise the coffee shop operations. The coffee shop manager shall be authorized to represent and act for Lessee in matters pertaining to the day-to-day operation of the coffee shop. During any temporary periods of absence by said manager, an assistant manager or designated representative of Lessee with like authorization must be present in such area.
- 3.2.5 Permits and Licenses: The operation by Lessee of a food and beverage concession on the Leased Premises is contingent upon Lessee's obtaining and maintaining the necessary licenses and permits allowing the sale of food and beverage in the concession area. Lessee shall, at Lessee's own cost and expense, proceed in accordance with applicable statutes, ordinances, codes, regulations and rules to obtain the issuance of such licenses and permits. If any license or permit is denied or revoked, or is unable to be procured Lessee shall have a reasonable time not to exceed thirty (30) calendar days to obtain said licenses and permits. If Lessee cannot obtain said licenses or permits, all rights of Lessee shall terminate and City shall be relieved from any and all obligations under this Agreement.
- 3.2.6 Food and Beverage Products: Lessee shall provide and maintain the necessary inventory of food and beverage products required to satisfy the public demand. Therefore, all such products sold or kept for sale by Lessee shall be of the highest quality, wholesome and pure, and shall conform to the Federal, State, and County food laws, statutes, ordinances, codes, rules, and regulations in all respects. No adulterated, misbranded, or impure articles shall be sold or kept for sale by Lessee and all food and beverage products kept on hand by Lessee shall be stored and handled with due regard for sanitation. In the event that Lessee's food and beverage products are deemed by the City to be less than the highest quality, the City shall have the right to order the improvement of the quality of any such product kept or offered for sale.

### **3.3 Golf Course Starter Services**

- 3.3.1 Use Granted: Lessee shall render and provide golf course starter services. Said services are to include, but not be limited to, opening and closing the golf course; collecting green fees; collecting golf tournament fees; recording reservations from the telephone and from patrons at the course and recording same on starter sheets; placing golfer's names on a call sheet as necessary; sending golfers to the tee and starting them off at proper intervals; receiving requests from groups

for tournaments, booking tournaments and collecting appropriate fees; taking all actions as necessary to speed play on course; entering all golfers' names on the starter's sheet and issuing a cash register receipt to each golfer as he or she pays the green fee; totaling golf starter sheets at end of each day's play and reconciling them with fee category totals on the cash register detail tape; and recording in the daily log book the number of rounds of play and total amount of cash collected by fee category. Lessee shall accept starting time reservations on a "first-come, first-serve" basis from persons desiring to play golf on the Leased Premises, shall register such persons before allowing their play on the course, shall coordinate the starting of play by such persons, and shall supervise the play and activities of all players and persons on said golf course.

- 3.3.2 Lessee acknowledges that major tournaments are currently and customarily held on the Leased Premises and agrees to accommodate and encourage such tournaments and favorably consider suggestions for additional events intended to accommodate the public, increase golf play at the Leased Premises, and otherwise mutually benefit the parties hereto.
- 3.3.3 Recordkeeping: Lessee shall keep complete records of account with regard to all monies collected hereunder. Lessee shall also be responsible for and shall keep neat, readable starting sheets. Lessee shall handle and account for all monies collected hereunder in a manner acceptable to the City, and all accounting records and starting sheets shall at all times be completely available for examination by the City.
- 3.3.4 Marshaling: Lessee shall implement a well-planned and effective marshaling program to ensure that slow play does not occur. The marshals shall be trained to assist as well as monitor golfers and to expedite play on the course at all times.
  - 3.3.4.1 Marshals: Marshals may be paid employees of Lessee or volunteers. Marshals will work with the golf starter and be part of the golf shop team.
  - 3.3.4.2 Training: All marshals shall be trained in the rules of golf courtesy and Riverside Municipal Golf Course local rules and conditions.
  - 3.3.4.3 Identification: All marshals shall wear name tags and carry identification cards.
- 3.3.5 Days and Hours of Operation: Lessee shall keep the starter's office open every day, including Saturdays, Sundays, and holidays, except Christmas. The golf course shall be open from sunrise to sunset on weekdays, weekends, and holidays, except Christmas. Any changes in the days and hours for operation heretofore prescribed shall be subject to prior approval by the City.
- 3.3.6 Starter Service Supplies/Equipment: Lessee shall provide an adequate number of golf scorecards to be used by the public.

#### **3.4 Building and Equipment Maintenance Services**

- 3.4.1 Lessee shall, at Lessee's expense, keep and maintain the Leased Premises and all buildings, structures, improvements, fixtures, trade fixtures, equipment, and utility systems which may now or hereafter exist thereon in good, operable, usable, and sanitary order and repair and maintenance in a good, safe condition

throughout the term of this Agreement, providing for such repairs, replacements, rebuilding, and restoration as may be required by the City to comply with the requirements hereof. All such repairs and/or any modifications or additions to the facilities shall have the approval by the City prior to their implementation by Lessee.

- 3.4.2 Should Lessee fail after ten (10) calendar days' notice from City of the need thereof to perform Lessee's obligations required under this Section 3.4, City, in addition to all other available remedies may, but shall not be obligated to, exercise City's Right of Entry as provided hereinafter in Section 21, enter upon the Leased Premises and perform Lessee's failed obligations, using any equipment or materials on the Leased Premises suitable for such purposes. Lessee shall forthwith on demand reimburse City for City's costs so incurred including direct and indirect overhead costs as determined by the City.
- 3.4.3 It is hereby understood and agreed by Lessee that City does not have any duty nor shall City be called upon to make any improvements, replacements, or repairs whatsoever to the Leased Premises and any structures, improvements, fixtures, trade fixtures, equipment, and utilities during the term of this Agreement.

### **3.5 Grounds Maintenance Services**

- 3.5.1 Lessee shall provide grounds maintenance services including, but not limited to, the obligation to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, topdress, raise divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder, as well as provide weed, disease, and pest control; tree maintenance; maintenance of irrigation systems including mainlines, pumps, boosters, and controllers; keep swales in good repair; and to provide the necessary maintenance of any structures and equipment, and other duties as set forth in Exhibit B entitled Specific Maintenance Standards and Requirements for Riverside Municipal Golf Course, attached hereto and by this reference made a part hereof.
- 3.5.2 In regard to the level of maintenance, all work shall be performed in accordance with Exhibit B so as to maintain the aesthetic level and proper playing condition of the golf course. Standards and frequencies may be modified from time to time as deemed reasonably necessary by the City for the proper maintenance of this course.
  - 3.5.2.1 Regularly scheduled inspections of the Leased Premises and of Lessee's operations authorized herein shall be made by the City. The report of such inspections shall be recorded, retained for reference, and forwarded to Lessee for corrective action if necessary.
  - 3.5.2.2 Lessee shall provide and maintain in its employ a golf course superintendent and maintenance crew at the Leased Premises daily during reasonable business hours. All of the Lessee's maintenance personnel shall be supervised by a Class "A" golf course greens superintendent. Lessee must employ sufficient maintenance personnel to perform all work as scheduled and required by the City. All maintenance personnel shall be reasonably clean and neat at all times in consideration of their job responsibilities.

- 3.5.2.3 Whenever play must be temporarily suspended on the golf course facility due to inclement weather conditions or other unsafe conditions, the decision on when to allow play to resume and when to allow golf carts to go out on the course will be made by Lessee.
- 3.5.2.4 The Lessee, at Lessee's sole cost and expense, shall furnish all necessary equipment, supplies, and materials of good quality and in sufficient quantity to fulfill the maintenance requirements of this Agreement and to accomplish an acceptable and, to the extent economically feasible, professional level of maintenance.
- 3.6 The Lessee shall also be required to do the following:
  - 3.6.1 Maintain a Professional Golf Association (PGA) Class "A" Pro on the course or available at all reasonable business hours.
  - 3.6.2 Retain a golf course greens superintendent who shall be a Class "A" member of a Golf Course Superintendents Association at all reasonable business hours.
  - 3.6.3 Completely equip and maintain the Pro Shop portion of the concession facility and maintain a minimum inventory of Twenty Thousand Dollars (\$20,000) at Lessee's expense.
  - 3.6.4 Completely equip and maintain the Coffee Shop portion of the concession facility at his or her expense.

#### **4 RENT**

- 4.1 Base Rent: \$200,000 per year; Base Rent shall increase annually by 3%

##### Percentage Rent:

Golf:	20% of revenues between \$1.5 million to \$1.7 million 30% of revenues over \$1.7 million
Merchandise:	3% of revenues over \$200,000
Food and Beverage	5% of revenues over \$300,000

Percentage Rent thresholds shall increase annually according to the 12 month percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Area). The annual CPI adjustment may not decrease the Percentage Rent below the thresholds above. Golf Revenue shall include green fees, cart fees, membership, range, and miscellaneous revenue.

- 4.2 Payments to the City: Base Rent shall be paid in arrears on the twentieth (20th) calendar day of each month. Percentage Rent shall be due along with the Annual Report of Gross Receipts due yearly in February.
- 4.3 Late Payment Charge: A late payment charge of two percent (2%) per month shall be added to any late payment that is received after the last day of the calendar month in which payment is due. However, the late payment charge herein provided may be waived whenever the City finds late payments excusable by reasons beyond the Lessee's control. City shall not be obligated at any time

during the term in this Agreement, or any extension or holdover period thereof, to notify the Lessee of the accumulation of late payment charges .Payment shall be made by check or draft issued and payable to the City and mailed or otherwise delivered to the below address or such other place as may hereafter be designated in writing to the Lessee by City:

City of Fresno Parks, After-school, Recreation and Community Services  
Department, Administration Division  
1515 E. Divisadero Street  
Fresno, California 93721

- 4.4 Definition of "Gross Receipts": "Gross Receipts" shall include the total of amounts actually received from sales and the total of amounts actually received for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, so long as such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise for, or at Riverside Municipal Golf Course. Included in "Gross Receipts" shall be all receipts, cash, and/or credits, of any kind or nature without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses, or other expense whatsoever, excluded from "Gross Receipts" shall be the following:
  - 4.4.1 Any tax collected from the consumer or purchaser and which is separately stated and recorded at time of sale; and
  - 4.4.2 Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded; and
  - 4.4.3 Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business.
  - 4.4.4 Fees collected for golf lessons.

## **5 FINANCIAL REPORTING**

- 5.1 Monthly & Annual Reporting
  - 5.1.1 Monthly Reports: Lessee shall, in a timely manner, prepare a "Monthly Report of Gross Receipts", using such a form(s) acceptable to City, with such receipts broken down into such categories and subcategories as shall be required so as to clearly evidence Lessee's Gross Receipts (as defined in 4.4) and the source(s) thereof (for the calendar month immediately preceding the month during which the particular Monthly Report of Gross Receipts is prepared and submitted), and shall be submitted with the monthly Base Rent payment on or before the twentieth (20th) calendar day of the month during which the report is prepared.
  - 5.1.2 Annual Reports: Annually, throughout the life of the Agreement, Lessee shall, in a timely manner, prepare a "Annual Report of Gross Receipts", for the preceding year, in a format acceptable to City, which shall clearly evidence Lessee's Gross Receipts. Such statement shall be completed by an independent licensed California Certified Public Accountant or accounting firm. Lessee shall deliver such annual report to City in the month of February following each calendar year.



This subsection shall survive expiration or termination of the agreement.

- 5.2 Sales Records: All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. Said cash register shall in all cases have locked-in sales totals and transactions counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted including time of sale. Beginning and ending cash register readings shall be made a matter of daily record and shall be provided to the City upon request. In the event of a technical or electrical failure of the cash register, Lessee shall record by hand all collections and issue a sequentially pre-numbered customer's receipt in like manner.
- 5.3 Accounting Standard: Lessee shall be required to maintain a method of accounting, to the satisfaction of the City, which correctly and accurately reflects the gross receipts, disbursements, constructions, and construction financing of the Lessee in connection with the entire operation of the Leased Premises. The method of accounting, including bank accounts established for the operation of the Leased Premises, shall be separate from the accounting system used for any other business operated by Lessee or for recording Lessee's personal financial affairs. Such method shall include the keeping of the following documents :
  - 5.3.1 Regular books of accounting such as general ledgers.
  - 5.3.2 Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
  - 5.3.3 State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown.
  - 5.3.4 Any other reporting records that the City deems necessary for proper reporting of receipts.
- 5.4 City Inspection of Financial Records: All documents, books, and accounting records shall be open for inspection and reinspection by the City at any reasonable time during the term of this Agreement and for four (4) years thereafter. In addition, the City reserves the right to perform financial and compliance audits of the Lessee and Lessee's operations. These audits will be conducted to confirm the accuracy of the above mentioned records. The results of any audits conducted by the City shall be made available to Lessee for Lessee's inspection.

This Section shall survive expiration or termination of the Agreement.

## **6 CAPITAL IMPROVEMENTS**

- 6.1 Lessee and City agree to meet at least annually to update a rolling five-year capital improvement plan (CIP) for the facility. Using the CIP, Lessee shall make written recommendations regarding capital improvements to the Leased Premises. Lessee shall submit such written recommendations to City for

approval. The City shall at its option use any and all means available to it to evaluate the recommendations and formulate a decision. The City shall have thirty (30) calendar days to render such decision in writing to Lessee, approval not to be unreasonably withheld. The City's decision in this matter shall be final. For purposes of this Agreement, capital improvements shall be defined as improvements which shall become a permanent part of the real property requiring a minimum investment of Two Thousand Five Hundred Dollars (\$2,500) with a minimum expected life of seven (7) years. In addition, tree replanting, root pruning, tree trimming and tree removal regardless of cost shall also constitute a capital improvement for purposes of this Agreement.

- 6.2 Upon expiration or earlier termination of this Agreement all improvements constructed shall become the property of the City.

## **7 OPERATING RESPONSIBILITIES**

- 7.1 Compliance with Laws: Lessee shall conform to and abide by all laws, ordinances, statutes, codes, rules and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the golf course operation hereunder and/or any construction authorized herein, the same must first be obtained from the regulatory agency having jurisdiction thereover.
- 7.2 Disorderly Persons: Lessee shall exercise every reasonable effort not to allow any loud, boisterous, or disorderly persons to loiter about the Leased Premises.
- 7.3 Illegal Activities: Lessee shall not knowingly permit any illegal activities to be conducted upon the Leased Premises.
- 7.4 Signs:
- 7.4.1 Golf Course/Company/Business Identification Signs:
- 7.4.2 Lessee may install a maximum of two (2) Golf Course Identification Signs on the Leased Premises. Such signs shall be for identification purposes only, and any material of an advertising or promotional nature shall be approved by the City in writing, said approval not to be unreasonably withheld or delayed. Signs shall not be painted on any buildings or other structures unless they are part of the architectural treatment of the building/structure design. Roof-mounted signs shall not be installed anywhere on the Leased Premises. Any and all signs must be professionally designed, manufactured, installed and maintained so as to present, at all times throughout the life of the Agreement, an architecturally attractive appearance and be harmonious with the architectural features of other improvements on the Leased Premises and surrounding properties. The size, construction, materials, location, content and general appearance of any and all signs must be reviewed, and approved by City in writing, said approval not to be unreasonably withheld or delayed, prior to installation/placement/posting on the Leased Premises and any and all such signs conforming to any and all applicable statutes, laws, ordinances, and rules and regulations pertaining to such sign's size, type location, construction, installations, placement operation, maintenance, content and/or appearance.
- 7.4.3 Commercial Advertising Signs: Lessee may install or permit to be installed upon or maintained on the Leased Premises, or on the outside of any improvements

- located thereon, billboards or commercial advertising signs upon written approval of the City, said approval not to be unreasonably withheld or delayed
- 7.5 Public Use: Lessee shall use its best efforts to maximize the public use of Riverside Municipal Golf Course and the facilities thereon.
- 7.6 Lessee's Staff
- 7.6.1 Lessee and Lessee's staff shall at all times maintain a high standard of services to the public without rudeness but rather with dignity and courtesy.
- 7.6.2 Lessee shall maintain a staff of adequate number and sufficient training. The City may at any time give Lessee written notice to the effect that the conduct or action of a designated employee of Lessee is, in the reasonable belief of the City, detrimental to the interest of the public patronizing the Leased Premises. Following City's written notice, Lessee shall, meet with representatives of the City to consider the appropriate course of action with respect to such matter and Lessee shall take reasonable measures under the circumstances to assure the City that the conduct and activities of Lessee's employee will not be detrimental to the interest of the public patronizing the Leased Premises.
- 7.6.3 Lessee shall establish an identification system for personnel assigned to the golf course starter service which clearly indicates to golf course patrons the name of the person(s) on duty and responsible for collecting green fees. The identification system shall be furnished at the Lessee's expense and shall include appropriate attire, name badges and/or name plates.
- 7.7 Utilities: Lessee shall provide and pay for any necessary utilities at the golf course. All existing telephone numbers that identify Riverside Municipal Golf Course to the public shall be placed in the name of the Lessee and shall not be changed or be transferable to any other location. Lessee waives any and all claims against City for compensation for loss or damage caused by a defect, deficiency, or impairment of any utilities system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the Leased Premises.
- 7.8 Sanitation: No offensive matter or refuse or substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health shall be permitted to remain on the Leased Premises, and Lessee shall prevent any accumulation thereof from occurring.
- 7.9 Toxic Material/Hazardous Substances: Lessee agrees to indemnify, defend and hold City harmless from and against any and all liabilities, including but not limited to, losses, claims, actions, damages, penalties, fines, attorneys' fees, expert fees, court costs, remediation costs, investigation costs or other expenses, whether administrative or judicial, arising from or in any way related to hazardous substances contamination caused by, or alleged to be caused by, Lessee, its principles, officers, employees, agents, persons under the supervision of Lessee, vendors, suppliers, invitees, consultants, sub-consultants, contractors, subcontractors, or anyone employed directly or indirectly by any of them during the occupancy and use of the Premises. The term "Hazardous Substances," as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or

reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum byproducts, or substances defined as hazardous substances, hazardous materials, toxic substances, pollutants, or contaminants under the Clean Water Act (33 USC SS 12-1387), the Comprehensive Environmental Response, Compensation and Liability Act of 1990 (42 USC SS6921-6987), the California Porter-Cologne Water Quality Control Act (Cal. Water Code SS 1300014076), those substances defined as hazardous under the California Health and Safety Code (or any successor statutes thereto), all regulations promulgated pursuant to the above statutes, or any substance the presence of which causes or threatens to cause a nuisance upon the adjacent property or the health and safety of persons on or about the Leased Premises or in the general vicinity. If at any time during the term of this Lease, Hazardous Substances are discovered by either party to be on the Leased Premises, said party shall immediately notify the other party in writing of such occurrence. City and Lessee each further agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Substances or the violation of any law or regulation that related to such substances. Lessee shall not use, handle, store, transport, generate, release, or dispose of any Hazardous Substances on, under, or about the Leased Premises. In the event of any release of Hazardous Substances caused or permitted by Lessee on the Leased Premises during the term of this Lease, City shall have the right to cause Lessee to immediately take all reasonable steps City deems necessary or appropriate, at Lessee's sole cost and expense, to remediate such release and prevent any similar release to the satisfaction of any applicable federal, state, or local regulatory agency. Upon discovery of Hazardous Substances on the Leased Premises (i) within fifteen (15) days from such discovery, the City and Lessee shall meet and confer and City shall provide to the Lessee time estimates for City to remove the Hazardous Substances or otherwise to make the Leased Premises safe and lawful under this Lease: (ii) if City is unable at the meeting required under (iii) to assure removal of the Hazardous. Substances within sixty (60) days thereof, then Lessee may, at its sole discretion, terminate this Lease within ten (10) days after said meeting upon prior written notice to City. Said termination shall be subject to Section 18 of this Agreement. Lessee shall not be responsible for any and all losses, liabilities or costs that may occur from Hazardous Substances, if any, known by City to exist on said premises at the inception of the original lease between Lessee and City, executed August 30, 1989.

This section shall survive any termination or expiration of this Lease.

- 7.10 Security Device: Lessee may provide any reasonable, safe and legally permissible devices, mechanisms, or equipment designed for the purpose of protecting the Leased Premises from theft, burglary or vandalism. All purchases and installation thereof shall be at Lessee's expense. During the last thirty (30) calendar days preceding the termination of this Agreement, Lessee shall remove

same from the Leased Premises other than those items which cannot be accomplished without damage to the realty as determined by the City.

7.11 Safety: Subject to Section 7.9, Lessee shall immediately correct any unsafe condition or practice noted by Lessee and/or reported thereto by City, city's officers, agents, or employees, or any other person whomsoever; and Lessee shall:

7.11.1 Obtain emergency medical assistance for any member of the public in need thereof because of illness or injury occurring anywhere on the Leased Premises;

7.11.2 Report any instance of serious injury or death occurring on the Leased Premises to City, in writing, within twenty-four (24) hours after any such occurrence; and

7.11.3 Upon request by City, cooperate fully with City or any authorized officer/employee/representative/agent thereof, in the investigation of any injury or death occurring on the Leased Premises during the life of the Agreement.

7.12 Days and Hours of Operation: Lessee shall keep the Leased Premises open every day, including Saturdays, Sundays and holidays, except Christmas. The minimum hours of operation shall be the same as for the golf course starter office on each day said operation is required to be open. Any changes in the days and hours of operation heretofore prescribed shall be subject to prior approval by the City.

7.13 Prices:

7.13.1 Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods and services, or combinations thereof, supplied to the public on or from the Leased Premises. Said prices shall be fair and reasonable based upon the following considerations: that said operation is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied at comparable public golf courses in the Fresno County area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this Agreement. In the event the City notifies Lessee that the prices being charged are not fair and reasonable, Lessee shall have the right to confer with the City to justify the prices. Following reasonable conference and consultation, Lessee shall make such price adjustments as may reasonably be ordered by the City.

7.13.2 City hereby reserves the right to establish the green fees schedule, surcharges and other fees for patrons using the golf course.

7.13.3 Green Fee Adjustment: Effective each and every year of this Agreement, green fees may be adjusted in an amount not to exceed the 12 month percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Area), for the most current month that data is available (the "CPI Increase"). The CPI Increase shall be calculated by adding the total sum of CPI increases from all green fee categories. The CPI Increase may be applied in part or in its entirety to individual rate categories so long as the sum of the combined green fee increases does not exceed the total CPI Increase. Lessee may also recommend a different increase to green fee categories than the annual percentage change in the CPI allows, however all fee change requests are

subject to review by the City before submitting to City Council for approval. Lessee will provide a copy of the fee change request computation to the City within thirty (30) calendar days following the completion thereof, and City shall then amend City's Master Fee Schedule during the annual Citywide fee update process, so as to cause the new green fees to go into effect on a date deemed mutually acceptable by City and Lessee of the year during which said computation shall be completed. Lessee shall not assess any increases in green fees during the term of this lease without the prior approval by the City Council.

- 7.14 **Quality of Goods and Services:** Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to City and is considered a part of the consideration for this Agreement. Therefore, Lessee agrees to operate and manage, during the entire term of this Agreement, the golf course services and facilities in a manner comparable to other golf courses providing similar facilities and services. Where such facilities are provided, Lessee shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of other comparable establishments in Fresno County and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Lessee, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the City based on findings that the provision of such goods or services are harmful to the public welfare .
- 7.15 **Use of Facilities: Restrictions:** Lessee shall obtain City's prior written approval of (1) any events or activities not otherwise specifically provided for and authorized herein, or (2) any events or activities requiring the exclusive use of the Leased Premises or any portion thereof, including, but not limited to, shotgun starts.
- 7.16 **Reporting:** The Lessee or his representative shall meet with the City at least quarterly to review Lessee's performance under this Agreement and to discuss any problems or matters as determined by the City. For the first three operational years of this Agreement, the City and Lessee will specifically review the projections under the revised rent structure and discuss adjustments as mutually agreed upon by the City and Lessee. In the case adjustments are necessary, City and Lessee will enter into an Amendment to this Agreement subject to City Council approval.
- 7.17 **Trade Fixtures:** Lessee, at Lessee's own expense, shall provide and install all appliances, furniture, fixtures, equipment, door locks and padlocks that are required for the golf course operation.
- 7.18 **Golf Club(s)/Organizations:** Lessee acknowledges that at Riverside Municipal Golf Course there is presently organized a Riverside Men's and Women's Golf Clubs that have, over long periods, been helpful to City in the operation and improvement of the course. Without granting any special privileges to any person or group, Lessee agrees to encourage and cooperate with these organizations, and to consult with their authorized representatives on matters of mutual interest.
- 7.19 **Tournament Dates:** On two weekday dates each year to be mutually agreed upon, Riverside Municipal Golf Course will be made available to host a fundraising event for the benefit of Parks & Recreation Department programs.

The charge to City per player shall be not more than \$10 (inclusive of cart and range balls). In addition, if applicable, EBIT, Inc. will add to the invoice the actual cost of hourly employees, and the actual cost of food and beverage sold to the tournament or tournament participants, for the day of the event. Lessee agrees to keep additional staffing to a minimum. Proceeds of the day shall not be subject to rent. City will reimburse costs from facility rents.

## **8 DESTRUCTION OF LEASED PREMISES**

- 8.1 In the event the Leased Premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, Lessee shall either restore the Leased Premises or terminate this Agreement. City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. If the destruction is from a risk for which insurance coverage is not required or provided under said policy of insurance, City shall either restore the Leased Premises or terminate this Agreement. Said insurance proceeds, if any, shall be held for the benefit of Lessee only in the event of an election by Lessee to restore the Leased Premises and shall be disbursed installments as construction progresses for payment of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the City and release of mechanic's liens by all persons furnishing labor and materials thereon. If Lessee elects to restore said premises and the proceeds of insurance are insufficient to pay the actual costs of restoration, Lessee shall deposit the amount of the deficiency with the City upon demand therefor by the City, and said sums shall be held for payment of said costs and disbursed in the manner heretofore provided. Any undistributed funds shall be retained by City and credited to the rent reserved over the remaining term of this Agreement. If Lessee elects to restore the Leased Premises, plans, specifications, and construction cost estimates for the restoration thereof shall be prepared by Lessee and forwarded to City for approval prior to the performance of any work thereon. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance by City. The required construction shall be performed by Lessee and/or licensed and bendable contractor(s) thereof who shall be required to carry comprehensive liability and property damage insurance, workers' compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by the City. Said construction shall be commenced promptly following the approval thereof by the City, issuance of permits therefor by governmental agencies having jurisdiction thereover, and posting of the construction site by City with notice of nonresponsibility, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes therein are approved in advance thereof by City. Lessee agrees that City may have on the site at any time during the construction period an inspector who shall have the right to access the Leased

Premises and the work occurring thereon. Lessee, at the commencement of the construction work, shall notify City in writing of the identity, place of business, and telephone number of responsible person(s) in charge of the construction to be occurring thereon. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, Lessee shall immediately record a notice of completion with the City Manager or designee.

- 8.2 If the Leased Premises are restored, this Agreement shall continue in full force and effect, except that the payment to be made by Lessee shall be abated and/or other relief afforded to the extent that the City may determine the damage and/or restoration interferes with the golf course operation provided a claim therefor is filed with the City within one hundred (100) calendar days of notice of election to restore the Leased Premises. Any such claim shall be denied if the destruction of the Leased Premises is reasonably found by the City to have been caused by the fault or neglect of Lessee. Lessee agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the golf course operation, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 8.3 Lessee shall cooperate in the restoration of the Leased Premises by vacating and removing therefrom all items of inventory, trade, fixtures, equipment and furnishings for such periods as are required for the restoration thereof.
- 8.4 The aforesaid provisions for abatement and/or other relief shall also be applicable to a total or partial destruction of the Leased Premises by the aforementioned causes, except that the relief to be provided shall be based upon the extent the City may reasonably determine that the reduction in the public's use of the Leased Premises due to the partial or total closure thereof has affected the golf operation.

## **9 CONSTRUCTION BY CITY AFFECTING LEASED PREMISES**

- 9.1 In the event City shall construct or cause to be constructed a new facility on the Leased Premises, this Agreement shall continue in full force and effect, except that the payments to be made by Lessee shall be abated and/or other relief afforded to the extent that the City may determine the construction interferes with the golf course operation, provided a claim therefor is filed with the City within one hundred (100) calendar days of commencement of construction.
- 9.2 Lessee agrees to cooperate with City in the event the construction affects the Leased Premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Lessee further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 9.3 Following completion of the new facility, Lessee shall resume golf course operations within thirty (30) calendar days of written notice from the City that the Leased Premises are tenantable.



- 9.4 The aforementioned provisions of this Section 9 shall also be applicable in the event of performance of work on the Leased Premises that requires a partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the City may reasonably determine that the reduction in the public's use of the Leased Premises due to the partial or total closure thereof, has affected the golf course operation.
- 9.5 Clubhouse Development: City and Lessee agree to negotiate in good faith during the course of this Agreement on a long-term mutually agreeable plan on the feasibility and financial viability of a Clubhouse Development capable of providing expanded food and beverage catering services for large banquets and events (defined as serving more than 150 people). .

## **10 INDEPENDENT CONTRACTOR**

- 10.1 This Agreement is by and between the City of Fresno and Lessee as an independent contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between City and Lessee.
- 10.2 Lessee understands and agrees that all persons furnishing services to City pursuant to this Agreement are, for purposes of Worker's Compensation liability, employees solely of Lessee and not of City.
- 10.3 Lessee shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries from or connected with services performed on behalf of Lessee pursuant to this Agreement.

## **11 SECURITY DEPOSIT**

- 11.1 No security deposit will be required for this Agreement in recognition of the Lessee's 30 year track record with the City and investment in the facility.

## **12 INDEMNIFICATION AND RELEASE**

- 12.1 To the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Lessee's: (i) occupancy, maintenance and/or use of the Premises; or (ii) performance of, or failure to perform, this Lease. Lessee's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City. If Lessee should contract any work on the Premises or subcontract any of its obligations under this Lease,

Lessee shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. Lessee's occupancy, maintenance and use of the Premises shall be at Lessee's sole risk and expense. Lessee accepts all risk relating to Lessee's: (i) occupancy, maintenance and/or use of the Premises; and (ii) the performance of, or failure to perform, this Lease. City shall not be liable to Lessee or Lessee's insurer(s) for, and Lessee and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises or in any way related to the Lessee's operations and activities. Lessee shall immediately notify City of any occurrence on the Premises resulting in injury or death to any person or damage to property of any person.

The provisions of this section shall survive termination or expiration of this Lease.

### **13 INSURANCE**

#### **13.1 INSURANCE**

Throughout the life of this Lease, Lessee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Lease) with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$1,000,000 per occurrence for fire or damage to leased premises, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.

COMMERCIAL LIQUOR LIABILITY insurance shall provide coverage for liquor liability with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate, these limits should be not eroded by any other claims other than Liquor Liability.

COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non owned automobiles

or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(v) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

Lessee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Lessee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Lessee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the Lease, Lessee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability, Liquor Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Lessee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Lessee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of this Lease.

Upon request of City, Lessee shall immediately furnish City with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy.

This requirement shall survive expiration or termination of this Lease.

- 13.2 Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve City of its responsibilities under this Lease.
- 13.3 The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee.
- 13.4 Lessee and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Lessee or its officers, employees, agents, consultants, contractors, subcontractors, invitees and volunteers, or its property or the property of others under its care, custody and control. Lessee shall give notice to its insurers that this waiver of subrogation is contained in this Lease.

This requirement shall survive termination or expiration of this Lease.

- 13.5 If Lessee should contract any work on the Premises or subcontract any of its obligations under this Lease, Lessee shall require each consultant, contractor and subcontractor to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' or subcontractors' certificates and endorsements shall be on file with Lessee and City prior to the commencement of any work by the subcontractor.

## **14 TAXES AND ASSESSMENTS**

- 14.1 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereof, Lessee shall pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment-levying body upon the Leased Premises and any improvements located thereon.
- 14.2 Lessee shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.
- 14.3 Assessments: Other than those taxes, assessments, fees or charges presently being levied upon said property, and all increases in the taxes, assessments,

fees or charges presently being levied, the Lessee shall not be financially liable for any new and additional assessments not presently levied against the property. To the extent there is such a levy, the City shall be financially responsible. For purposes of this Agreement, an assessment is defined as any levy on the Leased Premises for purposes of raising money for any public improvement benefitting the Leased Premises.

## **15 TRANSFERS**

- 15.1 Lessee shall not, without the prior written consent of the City, assign, hypothecate, or mortgage this Agreement or sublease or license any portion of the Leased Premises. Any attempted assignment, hypothecation, mortgage, sublease or license without the consent of the City shall render this Agreement null and void.
- 15.2 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Lessee shall be binding upon any transferee thereof.
- 15.3 The golf course operation shall not be transferable by testamentary disposition or the State laws of intestate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of Lessee occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Lessee or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under Chapter X and XI of the Bankruptcy Act.
- 15.4 Shareholders and/or partners of Lessee may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Lessee to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, prior City approval thereof shall be required. Consent to any such transfer shall be at the city's discretion, which consent shall not be unreasonably withheld.
- 15.5 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the City.
- 15.6 In reference to Section 15.5 hereinabove, the City's consent with regard to successive transfers of this Agreement arising from the exercise of a power to sale or judicial foreclosure or the assignment of the Agreement in lieu of foreclosure, pursuant to the terms of a deed of trust previously approved by the City, shall not be unreasonably withheld.
- 15.7 In the event Lessee shall request the prior written consent of City to give, assign, transfer or grant control of this Agreement, and subsequently City gives written consent to the assignment, a transfer fee equal to one percent (1%) of the gross

sales price shall be paid to City. Said sum shall be payable to City in full either within thirty (30) calendar days after said consent is given or prior to the close of any escrow, whichever occurs first. Prior to City's consent to such assignment, the assignor shall:

- 15.7.1 Deliver to assignee a written schedule of all sums due and owing to City from the assignor with such schedule being in form and content subject to the approval of the city in all respects; and
- 15.7.2 Deliver to City, as part of the acceptance of the assignment, a written acknowledgment by the assignee that the assignee:
  - 15.7.2.1 Affirms the sums due and owing to City; and
  - 15.7.2.2 Accepts responsibility for payment of such sums directly to City.

## **16 NONDISCRIMINATION AND CIVIL RIGHTS COMPLIANCE**

- 16.1 Lessee hereby certifies and agrees that it will comply with the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, Title IX of the Education Amendments of 1972, where applicable, and Title 43, Part 17 of the Code of Federal Regulations Subparts A and B, to the end that no persons shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.
- 16.2 Lessee certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap and in compliance with all Federal and State laws prohibiting discrimination in employment, including but not limited to, the Federal Civil Rights Act of 1964; the Unruh civil Rights Act, the Cartwright Act, and the California Fair Employment and Housing Act.
- 16.3 Lessee certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap.
- 16.4 All employment records shall be open for inspection and reinspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of nondiscrimination by Lessee in the areas heretofore described.
- 16.5 If City finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which City may determine to cancel, terminate, or suspend this Agreement. While City reserves the right to determine independently that the nondiscrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Department or the Federal Equal Employment Opportunity commission that Lessee has violated State or Federal nondiscrimination laws or regulations shall constitute a finding by City that Lessee has violated the nondiscrimination provisions of this Agreement.
- 16.6 Lessee agrees to abide by the requirements of the Immigration Reform and Control Act of 1986 assuring the right to work of all newly hired employees and

that all required documentation of the right to work is inspected and that INS Form 1-9 is completed. Lessee shall make the required documentation available upon request to the City for inspection.

## **17 EASEMENTS**

- 17.1 City reserves the right to establish, grant or utilize easements or rights-of-way over, under, along and across the Leased Premises for utilities and/or public access to the Leased Premises provided City shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive Lessee of the use of a portion of the Leased Premises, an abatement or payments shall be provided in an amount proportional to the total area of the Leased Premises in the before and after conditions.

## **18 TERMINATION OF AGREEMENT**

- 18.1 Termination for Non-appropriation. In the sole event of Non-appropriation relating to this Lease, the City shall have the right to terminate this Lease at the end of any Fiscal Year. The City shall endeavor to give written notice of such termination not less than 60 days prior to the end of such Fiscal Year. For purposes of this paragraph, "Fiscal Year" means the 12-month fiscal period of the Tenant, which commences on July 1 in every calendar year and ends on June 30 of the following calendar year. As used in this Lease, "Non-appropriation" means the failure of the City or the City's governing body to appropriate money for any Fiscal Year sufficient for the continued performance of this Lease by the City.
- 18.2 Upon the occurrence of any one or more of the events of default described in Section 19 of this Agreement, this Agreement shall be subject to termination following any applicable cure periods. As a condition precedent thereto, the City shall give Lessee ten (10) calendar days' notice by registered or certified mail of the date set for cancellation thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made therefor .
- 18.3 Upon termination, City shall have the right to take possession of the Leased Premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.
- 18.4 Action by City to effectuate a termination and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.
- 18.5 Any trustee, beneficiary, mortgage or lender (hereinafter called "Lender") under a hypothecation or mortgage previously approved by the City shall have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a termination of this Agreement and a forfeiture of the operation. Accordingly, the City shall send a copy of any intended termination of this Agreement to any of the aforementioned parties whose

security would be affected thereby; and upon request thereof for postponement, extend the date set therefor by such time as the City finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new lessee under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the City.

- 18.6 The City shall provide a notice of default to Lender, provided that such Lender shall have previously registered with the City by written notice specifying the name and address of said Lender, at the same time the City provides such notice to the Lessee. With regard to monetary defaults and other nonmonetary defaults which are curable by Lender, the City shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and within a reasonable time after the expiration of the Lessee's curative periods to cure the defaults as provided in Section 19, commences promptly to pay or to institute foreclosure proceedings to foreclose the deed of trust and proceeds with the due diligence thereafter to prosecute such proceedings to a conclusion or to cure the defaults. With regard to defaults which cannot be cured by Lender, the City shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and within a reasonable time after the expiration of the Lessee's curative periods to cure the defaults as provided in Section 19, institutes promptly foreclosure proceedings to foreclose the deed of trust and proceeds with due diligence thereafter to prosecute such proceedings to a conclusion. In the event that this Agreement is rejected by a trustee in bankruptcy due to Lessee's bankruptcy, the City shall provide to Lender or its assignee an option to enter into a new lease agreement with the city upon the same terms and conditions as are contained in this Agreement and for the balance of the term thereof.

## **19 EVENTS OF DEFAULT**

- 19.1 The occurrence of any of the following events shall constitute a material default and breach of the Agreement by Lessee:
- 19.1.1 The abandonment, vacation or discontinuance of golf course facilities/operations/activities/services on the Leased Premises as authorized and required by the Agreement for more than twenty-four (24) consecutive hours by the Lessee unless such abandonment, vacation or discontinuance is due to a Force Majeur event or City action.
- 19.1.2 The failure of Lessee to operate in the manner required by this Agreement, where such failure continues for more than ten (10) calendar days after written notice from the City to correct or to make diligent efforts to correct, the condition therein specified.
- 19.1.3 The failure to maintain the Leased Premises as required in the Specific Maintenance Standards and Requirements for Riverside Municipal Golf Course where such failure continues for more than ten (10) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Lessee shall have immediately, following receipt of such notice, commenced to perform whatever



may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.

- 19.1.4 The failure to reasonably maintain the improvements constructed thereon in the state of repair required hereunder and in a clear, sanitary, safe, and satisfactory condition, where such failure continues for more than ten (10) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Lessee shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- 19.1.5 The failure of Lessee to keep, perform and observe all other promises, covenants, conditions and terms set forth in this Agreement, when such failure continues for more than thirty (30) calendar days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Lessee shall have commenced to perform whatever may be required to cure the particular default within ten (10) calendar days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- 19.1.6 The occurrence of any of the following:
  - 19.1.6.1 Lessee's becoming insolvent, or the making by Lessee of any general arrangement or any assignment for the benefit of creditors;
  - 19.1.6.2 The filing by or against Lessee of a petition to have Lessee adjudged a Bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) calendar days);
  - 19.1.6.3 The appointment of a receiver to take possession of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in the Agreement, where possession is not restored to Lessee within thirty (30) calendar days; or
  - 19.1.6.4 The attachment, execution or other judicial seizure of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in the Agreement, where such seizure is not discharged within sixty(60) calendar days.
- 19.1.7 Determination by the City, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Lessee in violation of State and/or Federal laws thereon.
- 19.1.8 Transfer of the majority controlling interest of Lessee to persons other than those who are in control at the time of the execution of this Agreement without prior approval thereof by the City, said approval not to be unreasonably withheld.
- 19.1.9 The inability of and/or failure by Lessee to obtain, pay for, and maintain in full force and effect at all times during the life of the Agreement, without any lapse in coverage, such insurance as shall be required of Lessee thereunder.
- 19.1.10 The discovery by City that any financial statement provided City by Lessee, any assignee of Lessee, any successor in interest of Lessee, or any

guarantor of Lessee's obligations under the Agreement, and/or anyone or more of such persons or entities, was materially false.

- 19.1.11 The failure by Lessee to make any payment of rent or any other required payment, when due under the Agreement and when not subject to a good faith dispute, where such failure shall continue for a period of ten ( 10) calendar days following service of notice thereof upon lessee by City.
- 19.1.12 The failure by Lessee to provide and/or submit financial records and reports as required under Section 4 and Section 5 of this Agreement.
- 19.2 The occurrence of the following events shall constitute a material default and breach of the Agreement by City: the failure of City to keep, perform and observe all other promises, covenants, conditions and terms set forth in this Agreement, when such failure continues for more than thirty (30) calendar days after written notice from the Lessee for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Lessee shall have commenced to perform whatever may be required to cure the particular default within ten (10) calendar days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Lessee.

## **20 WAIVER**

- 20.1 Any waiver by City of any breach of anyone or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping City from enforcing the full provisions thereof.
- 20.2 No delay, failure, or omission of City to re-enter the Leased Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.
- 20.3 No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by City of any default.
- 20.4 No option, right, power, remedy or privilege of City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, privileges and remedies given City by this Agreement shall be cumulative.

## **21 RIGHT OF ENTRY**

- 21.1 Should Lessee be deemed deficient, as reasonably determined by City, in Lessee's performance of Lessee's material obligations required hereunder, City in addition to all other available remedies may, but shall not be so obligated,

enter upon the Leased Premises and correct Lessee's deficiencies using City forces, and equipment and materials on such premises suitable for such purposes, or by employing a separate private contractor. City's costs so incurred, including direct and indirect overhead costs as determined by City, shall be reimbursed to City by Lessee and/or Lessee's sureties within thirty (30) calendar days of demand thereof.

- 21.2 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours unless caused by a Force Majeure event or City action, Lessee hereby irrevocably appoints City as an agent for continuing operation of the services granted herein, and in connection therewith authorizes the officers and employees thereof to:
  - 21.2.1 Take possession of the Leased Premises, including all improvements, equipment, and inventory thereon; and
  - 21.2.2 Remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Lessee; and
  - 21.2.3 Sublease or license the Leased Premises; and
  - 21.2.4 After payment of all expense of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Lessee's breach of this Agreement. Entry by the officers and employees of City upon the Leased Premises for the purpose of exercising the authority conferred thereon as agent of Lessee shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

## **22 SURRENDER**

- 22.1 Upon expiration of the term hereof, or termination or cancellation thereof as herein provided, Lessee shall peaceably vacate the Leased Premises and any and all improvements located thereon and deliver up the same to City in a reasonably good condition, ordinary wear and tear excepted, subject to the right of City to demand removal thereof to the extent that paragraph 1.5 may be applicable thereto.

## **23 INTERPRETATION**

- 23.1 This Agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code, commencing Section 1635.
- 23.2 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.
- 23.3 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:
  - 23.3.1 "State" the State of California
  - 23.3.2 "Controller" the Director of Finance of City, or an authorized representative thereof.

23.3.3 "Golf Course Operation" -the privilege of engaging in the activities authorized herein on the public property designated therefor.

23.4 In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule or inconsistency shall be resolved by giving precedence in the following priority order: first to the Agreement; then to Exhibit B, entitled Specific Maintenance Standards and Requirements for Riverside Municipal Golf Course.

## **24 ENFORCEMENT**

24.1 The City's Chief Administrative Officer shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of City having duties in connection with the administration thereof.

24.2 Any officers and/or authorized employees of City may enter upon the Leased Premises at any and all reasonable times for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of City within the Leased Premises.

24.3 Attorney's Fees and Costs. In the event of any action, suit or proceeding brought by either party as against the other to enforce compliance with any of the covenants or conditions of this Agreement the prevailing party shall be entitled to have and to recover from the losing party reasonable attorney's fees and costs of litigation.

## **25 LESSEE'S NONCOMPLIANCE AND LIQUIDATED DAMAGES**

25.1 If the City reasonably determines that there are deficiencies in Lessee's performance of the golf course operations authorized and required therein, the City will provide, as specified in Section 19 herein, a written notice to the Lessee to correct said deficiencies within specified reasonable time frames, except for the repair of leaking water valves which must be corrected within twenty-four (24) hours following notification.

25.2 In the event that Lessee fails to correct the deficiencies, or fails to take diligent curative actions, within the prescribed time frame, the City may, at its option:

25.2.1 Exercise City's rights under Section 19 herein; and/or

25.2.2 Assess liquidated damages pursuant to the schedule hereinafter listed.

25.2.3 The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Lessee to comply with the obligations for golf course operations required and authorized herein, and specified in Sections 3.1 (Golf Professional Services); 3.2 (Food and Beverage Services); 3.3 (Golf Starter Services); 3.4 (Building and Equipment Maintenance Services); and 7 (Operating Responsibilities). The parties hereby agree that under the current circumstances a reasonable estimate of such damage is Five Hundred Dollars (\$500) per day for each of the period of time that the deficiencies exist, and that Lessee shall be liable to City for liquidated damages in said amount not to exceed a total of Fifty Thousand Dollars (\$50,000.00).

25.2.4 The parties further agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Lessee to comply with the obligations for golf course grounds maintenance required and herein as specified in Section 3.5 (Grounds Maintenance Services) and Exhibit B entitled Specific Maintenance Standards and Requirements for Riverside Municipal Golf Course. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is Five Hundred Dollars (\$500) per day for each day of the period of time that the deficiencies exist, and that Lessee shall be liable to City for liquidated damages in said amount, not to exceed a total of Fifty Thousand Dollars (\$50,000.00).

## **26 NOTICES**

26.1 Any notice required to be given under the terms of this Agreement or any law applicable thereto may be:

26.1.1 Delivered by personal service; or

26.1.2 Placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, return receipt requested, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon Lessee shall be EBIT Golf Inc. 1039B north McDowell Boulevard Petaluma, CA 94954, or such other place as may hereafter be designated in writing to the City by Lessee. Any notice served by mail upon City shall be addressed to the Parks, Recreation and Community Services Director or designee, 1515 E Divisadero Street, Fresno, California 93721, or such other place as may hereafter be designated in writing to Lessee by the City. Service by mail shall be deemed complete upon deposit in the above mentioned manner.

## **27 ENTIRE AGREEMENT**

27.1 This document, and the exhibits attached hereto, constitutes the entire agreement between the City and Lessee for the Riverside Municipal Golf Course operations and use granted herein. All other agreements, promises, and representations 'with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises, and covenants relating to the golf course operation and the Leased Premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid or illegal.

27.2 This document may be modified only by further written agreement between the parties hereto. Any such modification shall not be effective unless and until executed by Lessee and in the case of City, until approved by the City Council and executed by an authorized City agent.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

City of Fresno,  
A California municipal corporation

EBIT GOLF Inc., a California Corporation

By: \_\_\_\_\_  
Wilma Quan-Schechter,  
City Manager

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

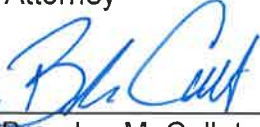
Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

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

By:  2/22/19  
Brandon M. Collet  
Senior Deputy City Attorney

Date

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

REVIEWED BY:

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

Deputy

Addresses:  
CITY:  
City of Fresno  
Attention: PARCS  
1515 E Divisadero Street  
Fresno, CA 93721  
Phone: (559) 621-2900  
FAX: (559) 498-1104

Attention: Thomas B. Isaak  
CourseCo, Inc.  
1039B North McDowell Blvd  
Petaluma, Ca 94954  
Phone: (800) 763-0335

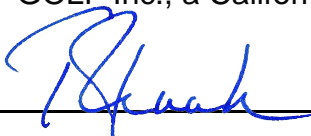
Attachments:  
Exhibit A: Riverside Municipal Golf Course Legal Description  
Exhibit B: Specific Maintenance Standards and Requirements for Riverside Municipal Golf Course

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

City of Fresno,  
A California municipal corporation

EBIT GOLF Inc., a California Corporation

By: \_\_\_\_\_  
Wilma Quan-Schechter,  
City Manager

By:  \_\_\_\_\_  
Name: Tom Isaak

Title: President  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

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

By: \_\_\_\_\_  
Brandon M. Collet                      Date  
Senior Deputy City Attorney

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

REVIEWED BY:

By: \_\_\_\_\_  
Deputy                                      Date

\_\_\_\_\_

Addresses:  
CITY:  
City of Fresno  
Attention: PARCS  
1515 E Divisadero Street  
Fresno, CA 93721  
Phone: (559) 621-2900  
FAX: (559) 498-1104

Attention: Thomas B. Isaak  
CourseCo, Inc.  
1039B North McDowell Blvd  
Petaluma, Ca 94954  
Phone: (800) 763-0335

Attachments:  
Exhibit A: Riverside Municipal Golf Course Legal Description  
Exhibit B: Specific Maintenance Standards and Requirements for Riverside Municipal  
Golf Course



## EXHIBIT A

### RIVERSIDE MUNICIPAL GOLF COURSE LEGAL DESCRIPTION

A portion of the West half of Section 33, Township 12 South, Range 19 East, Mount Diablo Base and Meridian, as said Section is shown on the United States Township Plats and more particularly described as follows:

BEGINNING at the Southwest corner of said Section 33; thence North  $00^{\circ} 36' 54''$  West along the West line of said Section 33, a distance of 1332.10 feet; thence South  $88^{\circ} 17' 50''$  East, a distance of 30.00 feet to the TRUE POINT OF BEGINNING; thence continuing South  $88^{\circ} 17' 50''$  East, a distance of 1290.26 feet; thence North  $00^{\circ} 32' 26''$  West, a distance of 1325.76 feet; thence South  $88^{\circ} 33' 26''$  East, a distance of 1322.06 feet; thence South  $88^{\circ} 34' 02''$  East, a distance of 1322.72 feet; thence North  $00^{\circ} 24' 35''$  West, a distance of 44.48 feet; thence North  $49^{\circ} 24' 00''$  West, parallel with and 50.00 feet Southwest of the center line of the Atchison Topeka and Santa Fe Railway, a distance of 1903.08 feet; thence South  $40^{\circ} 36' 00''$  West, a distance of 150.00 feet; thence North  $49^{\circ} 24' 00''$  West, parallel with and 200.00 feet Southwest of the said center line of Atchison Topeka and Santa Fe Railway, a distance of 1031.99 feet; thence South  $41^{\circ} 01' 52''$  West, a distance of 1555.40 feet; thence South  $68^{\circ} 51' 15''$  West, a distance of 649.57 feet to the intersection with the West line of said Section 33; thence South  $01^{\circ} 27' 03''$  West along the West line of said Section 33, a distance of 336.27 feet to the West one-quarter corner of said Section 33; thence South  $88^{\circ} 33' 26''$  East, a distance of 29.98 feet; thence South  $00^{\circ} 36' 54''$  East, parallel with the West line of said Section 33, a distance of 1320.14 feet to the TRUE POINT OF BEGINNING.

Contains: 5,390,898.48 Sq. Ft. or 123.76 Acres 7-D-38

## **EXHIBIT B**

### **SPECIFIC MAINTENANCE STANDARDS AND REQUIREMENTS FOR RIVERSIDE MUNICIPAL GOLF COURSE**

#### **MAINTENANCE SERVICES**

1. The Lessee shall perform the following maintenance services at no less than the frequencies indicated in these specifications; however, the City shall have the right to determine the extent and frequency of any additional "as-needed" services. Standards and frequencies may be modified from time to time as deemed necessary by the City for the proper maintenance of the golf course facilities.
2. Greens Maintenance. Maintain all greens according to accepted playability and golf industry- wide standards as determined by the City at all times, observing the following minimum requirements.
  - a. Change cups no less than five (5) times per week and repair ball marks daily.
  - b. Mow greens (not less than 1/8 inch and not more than 1/4 inch) five (5) times per week from October through May and a minimum of four (4) times per week (Saturday, Sunday, Tuesday, and Thursday) from June through September. Greens shall be mowed with a reel-type mower with no less than seven (7) blades per reel. Mower shall be designed specifically for mowing golf greens and shall be of the type, make, and model accepted by the golf industry. More frequent mowing may be required by the City.
  - c. Verticut all greens from March through October should thatching occur.
  - d. Aerate greens at least two (2) times per year no sooner than the second week in March and no later than the second week in May, and no sooner than the first week in September and no later than the first week in November. Remove all plugs the same day. Top dress with approved material as to type and quantity following each aerification of greens.
  - e. Lessee shall have the soil analyzed within thirty (30) days after the start of the "Maintenance Standards Program" and once a year thereafter. Apply fertilizer in the quantity and type recommended by soil analysis to provide uniform growth of turf throughout the year.
  - f. Treat greens with proper chemicals to control insects, disease, weeds, and other pests as approved by the City.
3. Tee Maintenance. Maintain tees according to accepted playability and golf industry-wide standards as determined by the City at all times, observing the following minimum requirements:
  - a. Service tees daily by moving tee markers and benches. Change tee towels weekly and keep ball washers filled to proper level with water and cleaning agent.

- b. Mow tees at least three (3) times weekly during warm weather months with reel-type mower at 9/16 inch or less as required by the City or weather conditions.
  - c. Aerate tees at least two (2) times per year, once in the spring and again in the fall. Lessee may aerate more frequently if conditions dictate. Remove or destroy all plugs the same day. Top dress with approved material if needed.
  - d. Repair worn and damaged turf areas as they occur by overseeding or resodding to ensure playable tees at all times.
  - e. Treat tees for control of insects, disease, weeds, and other pests as necessary to maintain healthy turf.
  - f. Apply fertilizer in the quantity and type recommended by the soil analysis to provide uniform growth, color, and root strength of the turf. Fertilize no less than six (6) times per year .
- 4. Fairway Maintenance (including Driving Range Area). Maintain all fairways according to accepted playability and golf industry-wide standards as determined by the City at all times, observing the following minimum requirements:
  - a. Mow all fairways with a reel-type mower at 3/4 inch or less depending on the type of grass and time of year.
  - b. Aerate all fairways between the months of June and August when the turfgrass is actively growing, and then on an as-needed basis.
  - c. Overseed and top dress (or resod) worn or bare areas of fairways as necessary.
  - d. Treat turf to control weeds, diseases, insects, and other pests as necessary to maintain weed-free and healthy turf.
  - e. Apply fertilizer in the quantity and type recommended by the soil analysis to provide uniform growth, color, and root strength. Apply a minimum of four (4) pounds of actual nitrogen per 1,000 square feet between March and September.
  - f. Keep all fairways free of gopher holes and other conditions which may hinder play at all times.
- 5. Maintenance of Other Turf Areas. Maintain turf and landscaped lawn areas according to acceptable golf industry-wide standards as determined by the City at all times, observing the following minimum requirements :
  - a. Mow at least twice per week from May through October and as growth requires from November through April.
  - b. Overseed and top dress (or resod) worn or bare areas in turf as necessary.
  - c. Treat turf to control weeds, disease, insects, and other pests as necessary to maintain a healthy turf.
  - d. Apply fertilizer in the quantity and type recommended by the soil analysis.
- 6. Maintenance of Nursery. Maintain sod nurseries for greens at all times:
  - a. Greens -Bent grass
    - i. Maintain according to greens maintenance specification as stated in Item 2 above.
    - ii. Following removal of sod, replace soil and reseed.

7. Maintenance of Accessory Equipment. Maintain all golf course accessory equipment in clean, safe, and functioning condition at all times, replacing with City-approved equipment and/or materials as necessary, including but not limited to the following :
  - a. All signs
  - b. Tee benches
  - c. Tee markers
  - d. Ball washers, including tee towels and soap
  - e. Out-of-bounds markers
  - f. Directional flags and poles
  - g. Distance markers (150 yards, etc.)
  - h. Greens flags, poles, and cups
  - i. Practice green markers and cups
  - j. Trash receptacles
  - k. Cleat brushes
8. Irrigation. Irrigate as required to maintain adequate moisture for proper growth and appearance. The City may require a change in the irrigation schedule should the need require. Adequate soil moisture shall be determined by visual observation, plant resiliency, examining cores removed by soil probe, and moisture sensing devices.
  - a. Consideration shall be given to soil texture, structure, porosity, water holding capacity, drainage, compaction, precipitation rate, run off, infiltration rate, evapotranspiration, seasonal temperatures, prevailing wind condition, time of day or night, type of grass plant, and root structure.
  - b. In areas where wind creates problems of spraying onto private property or road rights-of- way, the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night.
  - c. The Lessee shall be responsible for monitoring all systems within the Leased Premises and correct for: coverage, adjustment, clogging of lines, and removal of obstacles, including plant materials which obstruct the spray.
  - d. Check system daily and adjust and/or repair any sprinkler heads causing excessive runoff, including slope area or which throw directly onto roadway paving or walks within rights-of-way.
  - e. All controllers shall be inspected on an appropriate schedule and adjusted or repaired when needed, considering the water requirements of each remote control valve (sprinkler station).
  - f. A soil probe or tensionmeter (measuring the surface tension of liquid) or other approved measures shall be used to determine the soil moisture content in various areas.
  - g. The Lessee shall observe and note deficiencies occurring from the original design and review these findings with the City so necessary improvements can be considered.
  - h. In the event of a reduction of the volume of water supplied to a golf course during peak demand periods, the priority of water distribution by Lessee

shall be as follows: (1) Greens; (2) Tees; (3) Fairways; (4) Other turf and landscape areas.

9. Tree Maintenance: Maintain all trees on the Leased Premises in a safe, healthy, structurally sound and aesthetically pleasing condition at all times. Implement an ongoing maintenance program to trim, shape, prune, thin out, treat, and generally promote growth in all such trees. Said program shall generally employ acceptable arboricultural practices as determined by the City. Lessee's program shall include, but not be limited to the following:

- a. Prune trees to maintain and stimulate proper health and growth by cutting out dead, diseased, weak, insect-infected, and damaged limbs.
- b. Regularly prune trees to maintain a clearance of seven (7) feet in all areas of pedestrian traffic and areas accessible to golf cart traffic. Maintain clearance of fourteen (14) feet in all areas of vehicular traffic such as parking lots, driveways, and tree extensions over and through fence lines and into roadways and adjacent streets. Such pruning shall provide safe vehicular and pedestrian visibility and clearance in order to prevent or eliminate hazardous situations.
- c. Trim and shape trees to provide a symmetrical appearance typical of the species
- d. Remove and dispose, any downed trees whether caused by natural causes or otherwise. Stumps shall be removed to twelve (12) inches below grade and wood chips removed and the resultant hole backfilled to grade, unless otherwise authorized by the City.
- e. Keep surrounding turf mowed and trimmed to the trunks of trees on the premises . The use therefor of any herbicides or contact sprays of any kind shall have the prior approval of the City.
- f. Shall not remove trees from the Leased Premises, except fallen trees or trees in an otherwise hazardous condition, without the prior written consent of the City. All trees so removed shall be replaced in close proximity of the original location or that specified by the City. All dead trees shall be removed and replaced. Replanting shall take place in the spring or fall during optimal replanting conditions (not to be performed in the hot summer months).

10. Other Required Duties

- a. Remove and properly dispose of all litter daily from golf course grounds including the golf course property, maintenance yard, landscaped areas, and driving range. Remove all trash and debris resulting from golf course maintenance as it occurs. Clean, repair, and replace trash receptacles as necessary to maintain clean, safe, and sanitary conditions at all times.
- b. Maintain all shrub and ground cover and lawn areas in a manner to promote proper health growth and an aesthetically pleasing appearance at all times.
- c. Maintain all bunkers in raked, edged, and weed-free condition at all times, replacing sand and rakes as necessary, and provide at least two (2) rakes per sand trap.
- d. Take whatever preventive steps are necessary to protect all slope area

- e. Control rodent and other animal pests as necessary to prevent erosion and destruction of plantings on golf course property.
- f. Maintain and repair as necessary surface flow lines swales, catch basins, grates, sub- surface drainage system, and other drainage structures in clear, weed-free, and properly functioning condition at all times.
- g. Observe all legal requirements and safety regulations in the use and storage of chemicals, hazardous materials, supplies, and equipment at all times according to OSHA requirements.
- h. Maintain golf maintenance storage room and yard in a clean, orderly, and safe condition at all times, conforming to all applicable laws and regulations.
- i. Maintain walkways, steps, handrails on walkways, headerboards, and cart paths in clean, edged, safe, weed-free condition at all times.
- j. Maintain and repair all fencing, netting, and fence lines in safe, secure, and aesthetically pleasing condition at all times.
- k. Maintain parking lots and driveways in clean, safe, and weed-free condition at all times.
- l. Maintain the interior, unpaved service roads in safe and useable condition at all times.
- m. Inspect the following frequently and repair as needed:
  - i. All area lighting system for safe and functioning condition.
  - ii. All golf course buildings, including restrooms and locker facilities, and accessory structures for clean, safe, secure, and sanitary condition.
  - iii. All golf course parking lots, walkways, and interior paved and/or unpaved service roads.
- n. Maintain irrigation system in proper working condition at all times, including timely repair and replacement of worn irrigation equipment.