

**CITY CLERK
ORIGINAL**

**GLEN LAKES GOLF COURSE (GLGC)
LICENSE, MANAGEMENT AND OPERATIONS AGREEMENT**

**C-8241
11/13/2012**

This License, Management and Operations Agreement (“Agreement”) is entered into between Arizona Golf Ventures, L.L.C., an Arizona limited liability company (“AZGOLF”), and the City of Glendale, an Arizona municipal corporation (“City”), to be effective on the 13th day of November, 2012 (“Effective Date”).

RECITALS

- A. The City owns the Glen Lakes Golf Course (“GLGC”) located at 5450 W. Northern Avenue, Glendale, Arizona, 85301, and has designated the GLGC as golf course and public amenity, which land is more particularly described and shown on Exhibit A attached;
- B. AZGOLF desires a License from the City to use and operate the GLGC as the Glen Lakes Golf Course; and
- C. The City is willing to grant a License to AZGOLF for the use of the golf course property on the terms and conditions set forth below.

LICENSE AGREEMENT

THEREFORE, in consideration of the premises and the following mutual covenants and conditions, the parties agree as follows:

- 1. **Designation of GLGC as a Golf Course.** City hereby designates the GLGC, owned by City, as a golf course.
 - 1.1 **Grant of License; Restrictions.** The City hereby grants an exclusive License for the possession, management and operations of the GLGC to AZGOLF, including subcontractors and concessionaires of AZGOLF, for its use solely as a nine-hole golf course and driving range open to the public subject to the terms of this Agreement. City agrees to take such action as may be appropriate to ensure AZGOLF, its subcontractors and concessionaires, and the public have sufficient access to the GLGC to enable AZGOLF and its contractors and concessionaires to carry out the provisions of this Agreement. In addition to the lease of the real property described on Exhibit A, the Licensee also leases the personal property listed on Exhibit B. As part of its operations, Licensee shall, at its own cost, maintain and operate such golf course and driving range and shall offer, or provide to the public, golf lessons from a qualified golf instructor, a clubhouse and pro shop, food and beverages, and other services customary to a nine-hole metropolitan public golf course. Licensee may provide food and beverages from a snack bar/restaurant on the Property. Licensee shall not use any portion of the Property for any purpose other than as a public golf course and driving range. Licensee shall not change the name of the golf course from Glen Lakes Golf Course without the written consent of the City. Licensee shall not provide or knowingly allow any alcoholic beverages on the Property except as allowed by law and in accordance with a liquor license issued by the State.

- 1.2 Management and Operations. AZGOLF agrees to be the exclusive manager and operator of the GLGC.

TERM

2. **Term.** The term of this Agreement shall be for two (2) years. The term shall commence on the Effective Date and expire on December 1, 2014, unless sooner terminated under the Agreement provisions. An optional extension of the License for one (1) year may be granted, if mutually agreed upon in writing by both parties.
 - 2.1 Early Termination. Either party to this Agreement shall have the right to terminate this Agreement for the other party's failure to perform, after providing thirty (30) calendar days' notice and a right to cure within that thirty (30)-day period. Both parties may agree to early termination of this Agreement by the written agreement.

LICENSE FEES

3. **Fees.** As a base fee for its right to use the Property, AZGOLF shall pay, without notice and free from all claims, deductions or set-offs against the City, a guaranteed monthly amount of \$1,000 beginning on the first day of the seventh month of this Agreement. In addition to the monthly fee, AZGOLF will also contribute no less than \$60,000 annually of in-kind community programming as indicated in the attached Exhibit E.
 - 3.1 Credits. AZGOLF shall be entitled to a credit against the base fee at the rate of \$200 per day for any day that the golf course is closed due to the act or omission of the City, the absence of sufficient water to maintain the golf course, or in the event of a Force Majeure, including without limitation, declared or undeclared war, sabotage, riot, or other acts of civil disobedience, acts or omissions of government, labor disputes, shortages of fuel or other materials, accidents, fires, explosions, floods, earthquakes, or other acts of God. In addition AZGOLF shall be entitled to a credit against the base fee at the rate of \$200 per day for any day that the City is in default and Tenant has the right to terminate this Lease pursuant to Section 14, but elects not to exercise its right to terminate.
 - 3.2 Monthly Payments; Gross Revenues. AZGOLF's base fee shall be payable to the City on a monthly basis. The fee shall be due on or before the 20th day of each calendar month. No later than the 20th day of each month, AZGOLF shall furnish the City with a written statement, in a form satisfactory to the Parks, Recreation, and Library Executive Director, stating AZGOLF's Gross Revenues, a Profit and Loss Statement and a Debt Service Report for the preceding calendar month. Such reports shall include such information as the City deems reasonably necessary and shall be accompanied by AZGOLF payment in full for the base fee for the preceding month. The willful, intentional or grossly negligent misrepresentation of Gross Revenues in any gross revenue statement submitted by AZGOLF shall be deemed material and an incurable breach of the agreement. Late payments, after the 20th of each month, must include a 3.5% penalty of the agreed monthly fee. Acceptance of late charges by the City shall in no event constitute a waiver by the

City of AZGOLF's default with respect to late payments, nor prevent the City from exercising any of the other rights and remedies granted in this Agreement.

3.3 Definition of Gross Revenues. For purposes of this Agreement, the term "Gross Revenues" shall mean all amounts actually received from all of AZGOLF operations on or from the Property, including all greens fees, tournament fees, league fees, cart fees (electric, gas or pull), driving range fees, club-feeal fees, sales of food and beverages, and sales from the pro shop (whether for goods or services), whether made by AZGOLFLicensee or any of its agents, representatives or affiliates and regardless of: (1) when or where the orders therefore are received; and (2) whether such sales are paid for with money, by barter or through any other form of property or consideration actually received by AZGOLF. For any non-cash sales, the reasonable value of the consideration received shall be deemed to be the sale price. The following shall be excluded or deducted from AZGOLF Gross Revenues:

- A. All transaction privilege taxes, excise taxes or similar taxes collected by AZGOLF from its customers;
- B. All fees received by AZGOLF qualified golf professionals/instructors for golf lessons, provided that such fees are deemed to be solely the income of such golf professionals/instructors as between the golf professionals/instructors and AZGOLF and are not remitted, in whole or in part, by the golf professionals/instructors to AZGOLF;
- C. Receipts from any sale for which AZGOLF issues a partial or total refund to the extent of the refund actually made, whether by cash or credit; provided that AZGOLF shall not be allowed to claim any exclusion or deduction from Gross Revenues resulting from any arrangements for a hidden rebate, kickback or credit given or allowed to any customer;
- D. Receipts attributable to discount coupons, but Gross Revenues shall include any consideration received for goods and services in excess of the amounts of the coupons;
- E. Receipts attributable to exchanges of merchandise, but Gross Revenues shall include any additional consideration received by AZGOLF in connection with exchanges;
- F. Non-retail sales of equipment, fixtures and other items of property that are not part of AZGOLF normal stock in trade;
- G. Deposits made by customers to the extent such deposits have not been forfeited by the customers;
- H. Receipts from credit card sales which are attributable to service charges payable to credit card companies;
- I. Insurance proceeds; and

- J. The amount of any reservation fee received from AZGOLF operation of an advanced reservation system.
- 3.4 Accounting Rights. The City's acceptance of any monies paid by AZGOLF as Percentage Fee under this Agreement shall not be an admission of the accuracy of AZGOLF figures or of the sufficiency of the amount of such payment. The City reserves all of its rights set forth herein to question the accuracy of AZGOLF statements and sufficiency of AZGOLF payments.

BOOKS AND RECORDS

4. **Records.** At all times during the term of this Agreement, and until all claims by the City for payments hereunder have been fully ascertained and paid, AZGOLF shall keep, in accordance with generally accepted accounting principles ("GAAP"), separate and accurate records of AZGOLF Gross Revenues, showing in detail all business transacted on or from the Property. AZGOLF shall enter all receipts arising from such business in regular books of account, and all entries in such records shall be made at or about the time of the underlying transactions.
- 4.1 Annual Financial Statements. On or before the second Friday of each May of each calendar year, AZGOLF shall furnish the City with the previous year's annual statement of gross revenue prepared in accordance with GAAP, and an attestation statement from an independent certified public accountant plus copies of previous year's tax return.
- 4.2 Inspection and Audit. The City shall have the right to inspect, audit and copy the books and records of AZGOLF with respect to AZGOLF operations under this Agreement at any time upon no less than 24 hours notice during the business hours on Monday through Friday from 9:00 a.m. to 5:00 p.m. each day. Information acquired by the City concerning AZGOLF financial records shall not be made public except as required by law. AZGOLF shall maintain all such books and records at a mutually agreeable location in the metropolitan Phoenix area. Within the Examination Period deemed in Section 4.4, the City may employ, at its sole cost, a certified public accountant to examine AZGOLF books and records. If, pursuant to such audit, a discrepancy of more than a 3% deficiency exists between the base fees reported and paid to the City and the base fees actually due, AZGOLF shall reimburse the City for the costs of the City's audit and any resulting deficiencies within thirty (30) days of billing by the City. The City's billing shall be accompanied by a complete copy of the auditor's report. If the audit reveals an overpayment of rent, any overpayment shall be deducted from future base fees due after a credit memorandum from the City is issued. If no future base fees will be due, the overpayment shall be promptly refunded to AZGOLF.
- 4.3 Deposit Records. AZGOLF shall provide the City with a written description of AZGOLF cash and sales record system and shall install such system, including equipment upon which AZGOLF shall record each transaction made on or from the Property. Each cash register shall have locking totals and shall be accessible to

and subject to inspection by the City. Deposits will be placed in a split drop safe supplied by the AZGOLF.

- 4.4 Retention. Records relevant to AZGOLF Gross Revenue for any particular calendar year shall be kept by AZGOLF and made available to the City for a period of at least three (3) years after the end of such calendar year. For purposes of this Agreement, the term "Examination Period" shall mean the period during which AZGOLF is required to keep records pursuant to this subsection.

WATER; UTILITIES

5. **Utilities.** AZGOLF may use Salt River Project irrigation water for its operations of the golf course. AZGOLF shall pay before delinquency all charges for all utilities used in its operations on the Property, including all charges for telephones, water, sewer, gas, electricity, cable television and other telecommunications services.

AZGOLF IMPROVEMENTS

6. **Permits; City Consent.** AZGOLF shall make no improvements or modifications to the Property without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Before commencing any improvements or modifications, AZGOLF shall submit detailed construction plans and specifications of the work as completed. Prior to the start of any construction of improvements or modifications to the Property, AZGOLF shall secure all applicable building permits and approvals from the City, which shall not be unreasonably withheld or delayed. AZGOLF shall furnish any additional information concerning any proposed improvements or modifications which the City may reasonably deem necessary.
- 6.1 **Standard of Work.** All improvements to the Property shall be constructed pursuant to the plans and specifications which have been approved by the City, which approval shall not be unreasonably withheld or delayed. All improvements and modifications made by AZGOLF shall be constructed in a good workmanlike manner.
- 6.2 **Performance Bonds.** Prior to the commencement of any construction on the Property, AZGOLF shall provide the City with performance bonds in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. The bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of its judgment such reasonable attorney's fees as may be fixed by the court. The bond shall be executed by a surety company duly authorized to do business in Arizona and acceptable to the City. The bond shall be filed with the City Clerk immediately upon execution.
- 6.3 **Liens.** AZGOLF shall keep the GLGC and all improvements thereon free of any mechanic's or materialmen's liens or liens of any kind or nature for any work done, labor performed or materials furnished on or to the GLGC. If any

such lien is filed, AZGOLF shall, at its own cost, either: (1) initiate necessary action to remove such lien from the Property within thirty days of notice thereof, and diligently proceed with such action until the lien is removed; or (2) provide the City with security that such lien will not be foreclosed, which security must be acceptable to the City.

- 6.4 Progress. Should AZGOLF desire to build improvements to the course, AZGOLF shall begin construction of any improvements and modifications to the Property within a reasonable period of time following the approval of the City and the issuance of building permits, if necessary, for the construction. AZGOLF shall diligently pursue construction of the improvements or modifications and shall complete construction in accordance with the schedule for completion to be agreed upon by the City. All improvements and modifications made by AZGOLF which become fixtures to the GLGC shall become the property of the City, at no cost to the City, upon the expiration or termination of this Agreement, free of any security interest or claims of any kind from or through AZGOLF.

ACCEPTANCE; MAINTENANCE; REPAIRS

7. **“As-Is Condition.”** AZGOLF acknowledges that it has inspected the GLGC, and except as expressly provided in this Agreement, accepts the Property "as is" in its present condition. The City shall not be required to maintain or to make any improvements, repairs or modifications to the GLGC, or any improvements thereon. Under no circumstances shall the City have any obligation to repair, maintain or restore any improvements placed upon the Property by AZGOLF, or any obligation regarding the personal property listed on Exhibit B unless the parties otherwise mutually agree in writing. Notwithstanding the foregoing, the City shall have the obligation to promptly repair, replace or reimburse AZGOLF for any repairs or replacements of personal property resulting from the acts or omissions of the City.
- 7.1 Responsibility for Improvements. Except as provided in Section 7, AZGOLF shall be solely responsible, at its own cost and expense, for all repairs and maintenance whatsoever on the GLGC, and shall maintain all improvements thereon in a good, workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. AZGOLF shall, without limiting the generality hercof:
- A. Keep at all times in a clean and orderly condition and appearance, the Property, all improvements thereon, and all of AZGOLF fixtures, equipment and personal property;
 - B. Be responsible for the maintenance and repair of all utility service lines placed on the Property and used exclusively by AZGOLF;
 - C. Repair any damage to the Property caused by AZGOLF or its agents, employees or invitees including any damage caused by any hazardous material, including oil, gasoline, grease, lubricants, herbicides, pesticides

or other flammable liquids and substances having a corrosive or detrimental affect thereon;

- D. At a minimum, maintain the Property according to the standards set forth in the attached Exhibit C.
- 7.2 Monthly Meetings with City. AZGOLF on-site manager shall meet at least monthly with the Parks, Recreation and Library Executive Director, or designee, to review the condition of the GLGC. If the Parks, Recreation and Library Executive Director, or designee, determines that AZGOLF is not operating or maintaining the facility/property in substantial compliance with the operations standards set forth in Exhibit C, then the City shall send written notice to AZGOLF listing the specific actions which must be undertaken to bring AZGOLF back into substantial compliance with the operating standards.
- 7.3 Evaluation Objections. If AZGOLF disagrees with the notice, then AZGOLF shall have ten (10) business days to deliver a written objection to the City setting forth the basis of AZGOLF position that AZGOLF has performed in substantial compliance with the operations standards set forth in Exhibit C. If the parties cannot mutually agree to a course of action within twenty (20) business days after the filing of the objection, then the matter shall be submitted to arbitration as provided in Section 8 below. The arbitrator shall award to the prevailing party its reasonable costs and attorneys' fees and the costs of the arbitration shall be paid by the party which does not prevail.
- 7.4 Action upon Notice. If AZGOLF does not dispute the notice or fails to timely dispute the notice, then AZGOLF shall initiate the necessary action to maintain, clean, repair, resurface, replace, rebuild or repair within thirty (30) days after termination of the period in which to object to the written notice from the City. Thereafter, AZGOLF shall diligently proceed with such necessary action until completion. If AZGOLF fails to timely initiate remedial efforts, the City may terminate this Agreement or, at its option, enter the GLGC, without such entering causing or constituting a termination of this Agreement or any interference with the possession of the GLGC, and repair, replace, rebuild, resurface, repaint or otherwise maintain any part of the GLGC Property or the improvements thereon, and do all things reasonably necessary to accomplish the work required, and all costs thereof shall be payable to the City by AZGOLF on demand.
- 7.5 Self-Performed Maintenance; Risk to Public. If, in the reasonable opinion of the City, AZGOLF's failure to perform any such maintenance endangers the safety of the public, the employees, or the property of the City or others, and the City so states in its written notice to AZGOLF, the City may, in its sole discretion, elect to perform such maintenance at any time after the giving of such notice, and AZGOLF shall pay to the City all costs of such work on demand.
- 7.6 Wage of Damages. If the City or any of its elected or appointed officials, employees, or agents undertake any work hereunder after AZGOLF fails to

timely undertake the required action, AZGOLF hereby waives any claims for damages, consequential or otherwise resulting therefrom except for claims for damages arising from the sole negligence or fault of the City or its employees or agents.

DISPUTE RESOLUTION

8. **Disputes.** The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner. The dispute resolution provisions will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement:

- A. **Initiation.** A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- B. **Informal Resolution.** When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- C. **Access.** The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
- D. **Promptness.** The parties' senior managers will meet within ten (10) business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
- E. **Additional Meetings.** The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

8.1 **Arbitration.** If the parties are unable to resolve the Dispute by negotiation within thirty (30) days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently:

- A. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
- B. The arbitrator selected must be an attorney with at least fifteen (15) years' experience with commercial legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for, or adverse to, either Party for at least ten (10) years.

- C. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
 - D. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona, unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
 - E. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
 - F. The Arbitrator's decision should be rendered within fifteen (15) days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
 - G. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
- 8.2 Services to Continue Pending Dispute. Unless otherwise agreed to in writing, AZGOLF must continue to perform and maintain the level of required Services during any Dispute resolution or arbitration proceedings.
- 8.3 Exceptions to Arbitration. The following types of disputes are exceptions to the binding arbitration proceedings:
- A. Third Party Claims. City and AZGOLF are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and AZGOLF.
 - B. Liens. City or AZGOLF may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Section.
 - C. Governmental Actions. This Section does not apply to, and must not be construed to require arbitration of, any claims, actions, or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

HAZARDOUS MATERIALS

9. **General Requirements.** AZGOLF shall at all times comply with federal, state, and local laws and regulations governing the use, handling and disposal of any hazardous, toxic, or non-hazardous material or chemical. AZGOLF shall provide appropriate training and enforcement programs to ensure its employees and agents are aware that domestic drains, storm drains or industrial waste drains shall not be used to dispose of gasoline, paint thinners, hydraulic fluid, battery acid, solvents, concentrated cleaning agents or any other hazardous or toxic materials. AZGOLF shall be responsible for collecting, storing, recycling and/or disposing of its hazardous or toxic waste off the GLGC Property in compliance with all federal, state and local laws, rules and regulations governing the storage and disposal of hazardous or toxic waste. All hazardous or toxic waste shall be stored in a manner such that it is protected from physical damage to the containers and is isolated from incompatible materials, and all such waste shall be promptly removed from the GLGC.
- 9.1 **Documentation.** AZGOLF shall obtain and keep on file a Material Safety Data Sheet ("MSDS") for each hazardous or toxic material used on the GLGC Property. A copy of each MSDS shall be submitted to the City annually. AZGOLF shall provide the City with such other documentation as the City deems necessary with regard to the generation, use, storage, handling and disposal of hazardous or toxic materials on or from the Property, in order to prevent any contamination of the GLGC Property. Such documentation shall be provided upon request during periodic inspections of the GLGC by the City. AZGOLF shall copy the City with all correspondence between AZGOLF and any regulatory agency concerning AZGOLF compliance with environmental laws, rules and regulations.
- 9.2 **Protective Devices and Plans.** AZGOLF shall install and maintain appropriate protective devices to prevent accidental discharge of any hazardous or toxic materials into the domestic or industrial drains on the Property. Protection shall be provided for hazardous or toxic materials and any other material for which a slug load discharge can pollute or disrupt operations at the City's sewage treatment plant. AZGOLF shall develop written spill protection plans and shall at all times post a notice in a prominent place on the Property advising employees what actions to take and whom to call in the event of a discharge of hazardous or toxic materials. AZGOLF shall ensure that all employees are trained in the requirements for emergency notification. AZGOLF shall provide the City with a copy of its spill protection plan within thirty (30) days of the effective date of this agreement.
- 9.3 **Permit.** AZGOLF shall obtain from the City's fire code officials, all necessary permits for the installation, removal, repair, alteration and operation of all portable tanks used for the storage of flammable, combustible, hazardous, or toxic materials.
- 9.4 **Reporting Requirements.** AZGOLF must comply with the following reporting requirements:
- A. In addition to any other environmental reporting requirements by AZGOLF under the terms of this Agreement, AZGOLF shall provide

copies to the City of all annual water usage reports and all other reports or written correspondence relating to water usage on the Glen Lakes Golf Course which AZGOLF files with or sends to the Arizona Department of Water Resources or any other federal, state or local government entity or agency. AZGOLF shall provide copies of such reports and correspondence to the City's Environmental Resource Division at the time that such reports and correspondence are filed with or sent to the applicable governmental entity or agency, without any specific request by the City for such documentation.

- B. In addition to any other reporting requirements by AZGOLF under the terms of the agreement, AZGOLF shall provide copies to the City of all environmental permits, certifications, and other reports or written correspondence relating to any federal, state, or local environmental regulations. AZGOLF shall provide copies of such permits, certifications, reports and correspondence to the City's Environmental Resource Division at the time that such permits, certifications, reports or correspondence are obtained from, filed with, or sent to the applicable governmental entity or agency, without any specific request by the City for such documentation.

- 9.5 **Environmental Maintenance and Repairs.** AZGOLF shall be solely responsible, at its own cost for any and all violations of federal, state and local environmental regulations and the property and all improvements "real or chattel" shall be maintained within the scope of all environmental regulatory guidelines. AZGOLF is responsible for all underground storage tanks or equipment used to monitor or access environmental equipment.

HOURS OF OPERATION: USE OF FACILITIES

- 10. **Hours.** Unless otherwise agreed to in writing by the City and except for closures, interruptions or delays resulting from inclement weather, natural disasters, fires, water shortages, riot, war, the negligence or fault of the City or its employees, agents or Licensees, or other events or circumstances beyond AZGOLF reasonable control, AZGOLF shall keep the golf course and driving range open for business each and every day; provided that AZGOLF may, in its discretion, close the golf course and driving range for up to fifteen (15) days each fall for purposes of overseeding the GLGC Property. AZGOLF shall not operate the driving range between the hours of 10:00 p.m. and sunrise without the written consent of the City, which the City may withhold in its sole discretion.
- 10.1 **Golf Uses.** The golf course and driving range shall be used for tournaments, leagues and lessons in such a manner as to provide the general public with a substantial opportunity to use the same.
- 10.2 **Golf Carts.** AZGOLF shall not require any golfer to use or rent golf carts (electrical, gas or pull) in order to use the golf course. At all times that the golf course is open for play, AZGOLF shall maintain at least twenty (20) riding golf carts available for rental to the public.

- 10.3 **Playing; Use Fees.** AZGOLF shall have the right to set all fees charged to customers of the golf course and driving range, which fees may be less than, comparable to, or more than those fees charged by competing metropolitan Phoenix-area public golf courses and driving ranges providing similar services. AZGOLF shall not increase any greens fees, cart fees, driving range fees or club-rental fees without first giving the City thirty (30) days' written notice of such increases, but such increases shall not require the approval of the City. Notwithstanding any provision herein to the contrary, AZGOLF may, in its discretion, offer discounts to junior or senior golfers and/or to Glendale residents using course or driving range.

ADDITIONAL OPERATIONAL OBLIGATIONS

11. **Safety Standards.** AZGOLF shall operate and manage the golf course and driving range in a safe manner comparable to other publicly owned golf courses providing similar facilities and services. AZGOLF shall maintain a high standard of service at least equal to that of other competing public golf courses in the metropolitan Phoenix area which are listed on Exhibit D.
12. **Food and Beverage.** AZGOLF shall operate a restaurant or snack bar offering coffee and a reasonable selection of soft drinks, snacks and other meals typically found at a golf course restaurant grill. AZGOLF shall at all times maintain a minimum of the Maricopa County Health Department Gold or "A" rating for its food and beverage operation.
13. **Additional Services.** AZGOLF shall perform all the following services, at its own cost, in connection with its operations on the GLGC Property:
- A. Provide and maintain all equipment and machinery necessary for the proper maintenance of the Property.
 - B. Accept telephone and walk-in reservations for tee times in a manner and number which AZGOLF determines will maximize the use and enjoyment of the golf course.
 - C. Supervise and control all play on, and use of, the GLGC Property.
 - D. Provide the services of an adult on-site manager at all times that the golf course or driving range is open for play.
 - E. Provide golf lessons and instruction to persons of all skill levels.
 - F. Render the customary and usual services of golf instruction.
 - G. Represent the golf course and driving range in accordance with standards accepted by the golf industry.
 - H. Provide an adequate supply of golf clubs and pull carts for rental to the public.

- I. Use its best reasonable efforts to control the conduct and demeanor of AZGOLF employees, agents and invitees and, upon objection from the City concerning the conduct or demeanor of any such person, immediately take all lawful steps necessary to remove the cause of the objection.
 - J. Use its best reasonable efforts to conduct its operations in an orderly and proper manner so as not to unreasonably annoy, disturb, endanger or be offensive to others.
 - K. Implement and maintain reasonable security procedures.
 - L. Do nothing which may result in the commission of a nuisance, waste or injury on the GLGC Property.
14. **Assignment.** This License Agreement is in the nature of a personal services contract not subject to assumption or assignment under 11 U.S.C. Section 365 (Bankruptcy Code). AZGOLF shall not assign or sublease any of its interest under this Agreement, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. The City may, as a condition of assumption of the License or assignment approval, require that any potential assignee submit such biographical and financial information to the City as the City reasonably deems necessary. It shall be unreasonable for the City to withhold its consent to any proposed assignee or sublessee who: (a) has a tangible net worth at the time of assignment or sublease sufficient to perform the duties and obligations of AZGOLF Licensee; (b) has a demonstrable record of golf course operations experience (retention of a substantial number of AZGOLF's senior management team shall automatically be deemed to satisfy this requirement); and (c) has a good reputation in the business community and would otherwise qualify to do business with the City. For purposes of this section, a sale of more than 50% of the membership interests by AZGOLF to a third party unrelated to the AZGOLF or its current members shall be deemed an assignment of this Agreement.
15. **Advertising Signs.** AZGOLF may install on the Property, subject to the City's sign ordinance, signs identifying its business. The number, general type, size and location of signs must be approved in writing by the City before installation.
16. **Default; Termination by City.**
- A. The City may terminate this Agreement by giving AZGOLF thirty (30) days' written notice after the occurrence of any of the following events:
 - 1. The failure of AZGOLF to materially perform any of its obligations under this Agreement, if AZGOLF fails to cure its default within the thirty (30)-day notice period; or if a cure is not reasonably possible within thirty (30) days and such default has not been caused by the gross negligence or willful misconduct of AZGOLF management level personnel (i.e., at or above the level of golf course manager), the failure of AZGOLF to initiate action necessary to cure the default and to diligently proceed with such action until the default is cured.

2. The taking of possession for a period of ten (10) days or more of substantially all of the personal property used on the Property belonging to AZGOLF by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree, or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 3. The filing of any lien against the GLGC Property because of any act or omission of AZGOLF which is not discharged within thirty (30) days of receipt of actual notice by AZGOLF, unless AZGOLF initiates necessary action to remove such lien within thirty (30) days and diligently proceeds with such action until the lien is removed.
 4. The City may place AZGOLF in default of this Agreement by giving AZGOLF twenty (20) days' written notice of AZGOLF's failure to timely pay the base fee provided for in this Agreement or any other charges required to be paid by AZGOLF pursuant to this Agreement. During said twenty (20)-day notice period, AZGOLF shall cure said default, otherwise the City may elect to terminate this Agreement, exercise the "Remedies of the Landlord" as set forth in Arizona Revised Statutes, Title 33, or exercise any other remedy allowed by law or equity. This cure time period shall not apply to defaults based upon the willful, intentional or grossly negligent misrepresentation to the City of Gross Revenues used as a basis for calculating the appropriate amount due under this License. The City's legal remedies are not mutually exclusive, nor waived by the City should one remedy be chosen over the other.
- B. Neither AZGOLF, nor any of its agents or representatives shall encumber, mortgage, hypothecate, or use as collateral, the City-owned Glen Lakes Golf Course Property and attached improvements. Should AZGOLF desire to make capital improvements to the Property which require the pledging of its license interest, AZGOLF representatives shall meet with City representatives to discuss any capital improvements to, or remodeling of, the course or its amenities. The City reserves its right of approval and written consent to any capital improvement, remodeling, or redevelopment plan.
- C. The City may terminate this Agreement immediately, upon written notice to AZGOLF, if AZGOLF abandons its operations on the Property. For purposes of this Agreement, AZGOLF shall be conclusively deemed to have abandoned its operations at any time AZGOLF fails to offer or provide the services required by this Agreement for a period of ten (10) consecutive days without the written consent of the City, unless such failure is because of circumstances beyond AZGOLF's control such as, but not limited to, weather, infestation of, or fungus in, the grass, or lack of water.
- D. If AZGOLF at any time fails to maintain any insurance required by this Agreement, the City shall have the right, upon written notice to AZGOLF, to terminate this Agreement if AZGOLF has not acquired the insurance within ten

(10) days of the date of the notice and/or to secure the required insurance at AZGOLF expense.

- E. Upon termination of this Agreement for any reason, all rights of AZGOLF shall terminate including all rights of AZGOLF creditors, trustees and assigns and all other similarly situated as to the Property.
- F. If, at any time during the term of this Agreement, there shall be filed by, or against, AZGOLF in any court, pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or appointment of a receiver or trustee of all or a part of the property of AZGOLF, or if AZGOLF makes an assignment for the benefit of creditors, this Agreement, at City's option, may be canceled and terminated. In that event, neither AZGOLF nor any person claiming through or under AZGOLF by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the licensed GLGC Property, but shall promptly quit and surrender the GLGC Property.
- G. Failure by the City to take any authorized action upon default by AZGOLF of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by AZGOLF.

17. **Default; Termination By AZGOLF.** AZGOLF may terminate this Agreement at any time it is not in default in its obligations under this Agreement by giving the City thirty (30) calendar days' written notice after the happening of any of the following events:

- A. The failure of the City to materially perform any of its obligations under this Agreement, if the City fails to cure its default within the thirty (30)-day notice period; or if a cure is not reasonably possible within 30 days and such default has not been caused by the City's gross negligence or intentional misconduct, the failure of the City to initiate necessary action to cure the default and to diligently proceed with such action until the default is cured.
- B. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining AZGOLF use of any substantial portion of the Property and the remaining in force of such injunction for a period of thirty (30) consecutive days.
- C. The inability of AZGOLF to use any substantial portion of the Property for a period of thirty (30) consecutive days, due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
- D. The material breach of any of the City's representations and warranties set forth in this Agreement.

18. **Indemnity; Insurance; Bond.**

- A. AZGOLF Indemnity. AZGOLF will defend, indemnify and hold harmless, the City, its officers, agents, servants and employees from and against any and all

loss, cost, expense, liability, damage for injury, including legal fees, costs, and disbursements as a result of: (a) any claim or lawsuit for all damages or injuries of any kind or nature (including death) to all persons, and to all property damage to the extent caused by, resulting from or arising out of or in connection with the negligent, reckless or intentional acts of AZGOLF, or the subcontractors, employees, servants, agents, officers thereof; (b) the use, management or operation of the GLGC by AZGOLF, or the subcontractors, employees, servants, agents, officers thereof; or (c) the performance of, or failure to perform, the obligations under this Agreement.

B. City Indemnity. The City will defend, indemnify and hold harmless AZGOLF its officers, agents, members, and employees from and against any and all loss, cost, expense, liability, damage for injury, including legal fees, costs, and disbursements, as a result of: (a) any claim or lawsuit for all damages or injuries of any kind or nature (including death) to all persons, and to all property damage to the extent caused by, resulting from or arising out of or in connection with the negligent, reckless or intentional acts of City or the subcontractors, employees, servants, agents, officers of City; (b) the use, of the GLGC by City, or any of its invitees; or (c) the performance of, or failure to perform, the obligations under this Agreement.

C. Insurance Requirements. AZGOLF, performing as an independent contractor, is fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees throughout the term of this Agreement and any renewals; the City shall have no responsibility of liability for such insurance coverage.

1. AZGOLF must provide to the City of Glendale a copy of the policy or a certification by the insurance carrier showing the AZGOLF to have in effect during the term of this Agreement a Commercial General Liability Insurance policy, which shall be the primary coverage for AZGOLF activities under this Agreement.
2. The coverage limits of such insurance shall not be less than those listed as follows:
 - (i) The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. The certificate and policy shall name the City of Glendale as an additional insured and shall be primary and non-contributory coverage.
 - (ii) The City shall also be an additional insured to the full limits of the liability insurance purchased by AZGOLF even if those limits of liability are in excess of those required by this Agreement.
 - (iii) The City reserves the right to terminate any AZGOLF Agreement if the AZGOLF fails to maintain such insurance coverage.

- (iv) AZGOLF must provide certification of insurance compliance within ten (10) calendar days after its execution of this Agreement. Certification must include name and address of insurance company; policy number; liability coverage amounts; and a statement the policy will not be canceled or failed to be renewed without thirty (30) calendar days' written notice to the City.
- (v) The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Agreement.

D. Minimum Scope and Insurance. AZGOLF must obtain and maintain, at a minimum, commercial general liability insurance in the amount of \$2,000,000 per single limit per occurrence. Such insurance must include broad form contractual coverage, property damage and personal injury coverage, products/completed operations coverage, premises/operations coverage, personal/advertising injury coverage, and, if applicable, host liquor liability coverage. The general aggregate limit shall be twice the occurrence limit. Commercial automobile liability insurance for all owned, non-owned, and hired vehicles in the amount of \$2,000,000 combined single limit for bodily injury and property damage per occurrence.

1. Acceptance by City Risk Manager. The insurance must be in a form satisfactory to, and from a company acceptable to, the City's Risk Manager; shall name the City as an additional insured; and shall require thirty (30) calendar days' written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Agreement.
2. Workers' Compensation. AZGOLF must be in full compliance with the provisions of the Arizona Workers' Compensation Law A.R.S. § 23-901 et seq., as amended, and all rules and regulations of the Industrial Commission of Arizona. AZGOLF shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona. AZGOLF further agrees to require any and all Subcontractors performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by AZGOLF, or any of his Subcontractors, shall be considered the employees of AZGOLF, or its Subcontractor(s).
3. City's Self-Insurance. City may self-insure or obtain Commercial General Liability Insurance, in City's sole discretion, to cover City's obligation to indemnify AZGOLF and the Service Provider as set forth in this Agreement, although the existence of insurance shall not be construed as limiting the liability of City under this Agreement.
4. Permits. AZGOLF shall be responsible for determining and securing, at its expense, any and all licenses and permits that are required by any

statute, ordinance, rule, or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the GLGC. During the term of the Agreement, AZGOLF must notify the City in writing, within two (2) business days, of any suspension, revocation or cancellation of any required license or permit.

5. Performance Bond. AZGOLF shall be responsible for obtaining and having in effect at all times during the term of this contract, a performance bond in the amount of \$250,000. The bond shall be submitted within ten (10) calendar days upon execution of this contract by the City of Glendale. The bond shall be renewed for each year of this License Agreement.

GENERAL PROVISIONS

19. Immigration Law Compliance.

- A. AZGOLF warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to its employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under this Section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. City retains the legal right to inspect the papers of AZGOLF or its employee(s) or Subcontractors who perform work under this Agreement to ensure that AZGOLF and its employee(s) are compliant with the warranty under this Section.
- D. City may conduct random inspections, and upon reasonable request of City, AZGOLF will provide copies of its papers and records demonstrating continued compliance with the warranty under this Section. AZGOLF agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.
- E. AZGOLF agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon AZGOLF and expressly accrue those obligations directly to the benefit of the City.
- F. AZGOLF's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

G. The “E-Verify Program” above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

19.1 Prohibitions. AZGOLF certifies under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it does not have, and during the term of this Agreement will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

19.2 Notice. All notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To the City: City of Glendale
Attention: Parks, Recreation and Library Services Executive
Director
5850 West Glendale Avenue
Glendale, Arizona 85301

with a copy to: City of Glendale
Attention: City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

To AZGOLF: AZGOLF
15655 West Roosevelt Street, Suite 222
Goodyear, Arizona 85338

19.3 Taxes. AZGOLF will pay any taxes imposed on AZGOLF in connection with the services provided under this Agreement.

19.4 Compliance with Laws. AZGOLF will at all times comply with all federal, state and local laws, rules and regulations which are applicable to its operations at the GLGC (including the Americans with Disabilities Act), including all laws, rules and regulations adopted or amended after the effective date of this Agreement.

19.5 Discrimination Prohibited. AZGOLF shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, political affiliation or national origin and shall comply with the City’s adopted affirmative action program for equal employment opportunities. AZGOLF shall not, on grounds of race, color, religion, sex, age disability, political affiliation or national origin, deny any services, furnish any benefit which is different from that provided to others, subject any person to segregated or separate treatment at the GLGC, or in any manner or process related to receipt of any service or benefit, restrict the enjoyment of any privilege enjoyed by others receiving such service or benefit.

19.6 Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements. This Agreement shall be

interpreted and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

- 19.7 Binding Agreement. Subject to any limitation on assignment under this Agreement, all terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective legal representatives, successors, and assigns.

(Signatures appear on the following page.)

EXHIBIT A

Legal Description for Glen Lakes Municipal Golf Course

Part of Section 32, Township 3 North, Range 2 east of the Gila and Salt River base and Meridian, described as follows:

The West one-half of the Southwest one-quarter of Section 32, except the North 800 feet and except the South 370 feet and except the West 40 feet, and

The West 235.46 feet of the South 370 feet of the Southwest one-quarter of the Southeast one-quarter except the South 40 feet and except the West 40 feet.

EXHIBIT B

Personal Property Inventory

1. 2 each EZGO workhorses w/ trailers
2. 1 each Jacobson 3800
3. 1 each 5-gang rough mower w/ plastic rollers
4. 1 each 216 Reelmaster bank mower
5. 1 each McLane steel cart path edger
6. 1 each 3-wheel Cushman Turf Truckster (carries boom sprayer)
7. 1 each Echo backpack blower
8. 1 each Weedeater
9. 1 each Toro top dresser machine
10. 1 each Echo power hedge trimmer
11. 1 each Husqvama chainsaw
12. 1 each Lely fertilizer spreader
13. 1 each Reel grinder
14. 1 each Air compressor with attachments
15. 1 each Arc welder
16. 1 each Gas welder
17. 1 each Range ball picker
18. 1 each Power range ball washer w/ storage cage
19. 1 each Power range ball washer

EXHIBIT C Operational Standards

The operational period shall be daily from daylight to 10:00 P.M., seven days per week, 365 days a year including holidays. The Licensee shall provide written rationale for closing the course for maintenance or times deemed necessary.

Golf Course Fees

The Licensee shall collect all fees associated with golf course operations.

Method of Payment

Monies shall be collected and deposited daily at Licensee's expense. The Licensee shall remit the base rent due along with reports required by the Parks and Recreation Department to the City of Glendale on a monthly basis, on or before the 20th day of the month.

Cash Collection System

Should the City implement an electronic cash collection system, the selected Licensee shall, at the Licensee's expense, be required to connect to the system using City approved equipment and software or revise reporting formats or forms.

Credit Cards

Licensee shall be required to accept two or more major credit cards for fees charged. All charges related to the acceptance of such cards shall be borne at the expense of the Licensee.

Sale of Alcohol and Tobacco Products

The Licensee shall adhere to all laws applicable to the sale of alcohol. The Licensee shall be responsible for the acquisition of all necessary permits and licenses. There shall be no sale of tobacco products in vending machines during the contract term or any extensions if awarded.

Sales and Rental Limitations

Any plan of operation submitted by the Licensee shall include provisions for preventing problems that may arise from private cart operation or any other potential liability. The Licensee shall have the exclusive right to sell or rent golf cart related equipment, provide golf lessons and provide all food and beverage concessions.

Signage

The Licensee shall not place any signage or advertisement upon any property of the City or upon any fence, vehicle, or fixture without approval by the Parks and Recreation Director or designee. The City will have the right to remove any sign that may be installed without prior approval. The Licensee shall at all times provide signage that complies with the City signage ordinances.

Cross Marketing

The Licensee shall agree to promote other departmental activities, facilities, and concessions by prominently displaying related brochures, schedules or other such parks and recreation literature. The Licensee shall maintain any sign, awning, canopy, decoration, lettering and any other advertising which has been approved by the Licensee and Parks and Recreation Director or designee.

Golf Course Maintenance

The Licensee shall accomplish the normal maintenance of the golf course in a proper manner, including but not limited to irrigating, applying required chemicals, sodding, mowing, aerifying, top dressing replacing sand in bunkers, and over seeding. The Licensee shall be responsible, at its cost, for any new additions to and the continuing maintenance and repair of all the related properties, fixtures, plantings, furniture and related equipment, plumbing, electrical, natural gas and cable television systems.

Within sixty (60) days of the signing of the contract, the Licensee shall submit a detailed grounds maintenance plan consistent with the Licensee's projected cash flow budget to the Parks and Recreation Director or designee for approval. This detailed plan will be required to be submitted annually by the end of August each year of the contract. The detailed annual grounds maintenance plan shall address the standards included herein and include, but not be limited to, the following: monthly schedule of chemical applications (including fertilizer by analysis, herbicide by type, fungicide by type, pesticide by type, etc) schedule of green, tee and fairway aeration, schedule of over seeding, schedule of bunker repair and maintenance, tee divot repair schedule, anticipated equipment acquisition, maintenance equipment inventory, integrated pest management plan, and any other items pertinent to the maintenance of the greens, tees, fairways, roughs, trees and landscape on the golfcourse as well as the parking lots.

Greens, Tees and Fairways

Mowing. The Licensee shall mow greens daily ranging from 0.125" ~ 0.250" depending on weather and time of year. Mowing direction must be varied each time the greens are mowed. The Licensee shall mow all tee areas at a height ranging from 0.375" ~ 0.625" no less than three times per week at an interval not to exceed three days. The Licensee shall mow fairways a minimum of twice a week at a height of 0.500" ~ 0.625" during the active growing season and as needed for the balance of the year. Contour mowing of the greens and fairways shall be followed.

Cups and Tee Set Ups. The Licensee shall change cup locations daily meaning each day the course is open for play. The Licensee shall move all tee markers daily.

Aerification. The Licensee shall aerate all greens and tees, a minimum of two times per year. Three times is recommended typically in April, July and September. This will be done with a tine aerifier using deep 3/8" to 5/8" coring tines. Cores shall be removed following aerification and prior to top dressing. Fairway aerification shall be performed two times a year. Aeration holes shall not exceed a spacing of six inches on center or be a diameter of less than 1" and a maximum penetration of 5". Cores shall be reduced using a drag mat and/or mower following aerification.

Topdressing. The Licensee shall topdress all greens and tees after aerification. Topdressing shall be done with sufficient sand to fill in the aerification holes. Excess sand shall be dragged off the green. Greens may require additional treatments as needed to maintain a smooth putting surface. Topdressing material shall be washed sand similar in particle size to the rootzone profile.

Vertical Mowing. The Licensee shall perform a light vertical mowing of all greens to prevent buildup of organic matter and thatch to stimulate optimum turf growth. The Licensee shall perform a heavy vertical cutting on all greens prior to overseeding in the fall. The Licensee shall perform a heavy vertical mow on all fairways as necessary to control mat or thatch build up at least annually.

Spiking. The Licensee shall perform spiking of all greens as needed between aerations to maintain proper water infiltration.

Fertilization. The Licensee shall fertilize all greens and tees at a rate to provide a minimum of actual available material per year of 12 pounds per 1000 square ft. of actual nitrogen (3 pounds per square ft. for tees & fairways), 3 pounds per 1000 square ft. of actual phosphorus, and 6 pounds per 1000 square ft. of actual potash and other trace elements as required to maintain growth, color and integrity of the turf. The use of slow release, soluble quick release, or liquid fertilizer shall be based on the results of soil analysis.

Soil Analysis. The Licensee shall perform a soil analysis of all putting greens and randomly selected tees and fairways within 12 months of the Execution Date. Samples shall be analyzed by an accredited laboratory and the results submitted to the City. Thereafter, soil analysis shall be done by Licensee at such time as the City and the Licensee mutually agree as necessary.

Fungicide. The Licensee shall perform appropriate applications on all greens at a preventative rate when climactic conditions favor sporulation of fungal pathogens. Additional applications at a curative rate shall be required to control fungus activity and prevent damage to the turf when disease is present. In the event of fungal infestation, an additional soil analysis shall be performed to determine the recommended course of action.

Pre-Emergent. The Licensee shall apply pre and post emergent chemicals to the greens, surrounding fairways, tees, roughs and planting areas using an impregnated granular fertilizer or in liquid form. Chemicals shall be applied according to product labels to prevent the germination of weeds difficult to eradicate. Intrusion of weeds into the greens shall be a goal of pre-emergent applications.

Weed Control. The Licensee shall keep all tee areas, fairways, fence lines and parking lots weed free to an extent of at least 90% of the area by the proper application of approved pre-emergent and post-emergent herbicides.

Insecticide. The Licensee shall treat all greens on a preventative basis in the spring and fall on a curative basis to prevent damage to the turf. Licensee shall submit an Integrated Pest Management (IPM) plan to the Parks and Recreation Department within sixty (60) days following the start of the contract as well as an annual IPM plan by the end of January each year of the contract. The Licensee must be a certified and licensed applicator.

Over seeding. The Licensee shall over seed all greens from November to April using a suitable mixture of poa trivialis and perennial rye grass approved by the City. The Licensee shall over seed all tee areas at a rate of not less than 20 pounds per 1000 square ft. from November to April using a perennial rye. The Licensee shall over seed defined fairways. The seed used shall be a perennial rye at a minimum application rate of 375 pounds per acre.

Staking. The Licensee shall stake all trees, as necessary, to protect and establish sufficient size to stand unassisted.

Pruning. The Licensee shall prune all trees, as necessary, for the protection from wind and pests as well as for appearance, safety and playability of the golf course. Proper pruning techniques shall be approved by the City using ANSI Tree Standards.

Tree Irrigation. The Licensee shall water all trees to provide adequate moisture for proper growth.

Mowing Around Trees. The Licensee shall not mechanically remove grass within one foot of the trunk.

Tree Removal and Replacement. All damaged trees, with the approval of the City of Glendale, shall be removed and replaced by the Licensee. Tree debris shall be removed or chipped to be used as mulch. Tree stumps shall be removed by a mechanical stump grinder or manually. Mutually agreed upon replacement trees will be expensed to the annual capital improvement reserve fund.

Turf Irrigation. The Licensee shall repair where possible all heads, valves, valve boxes, filters, controllers, wiring, pipe, pumps, motors and computers as needed to maintain the proper operation of the entire golf course irrigation system (including greens, tees, fairways, planters, flower beds, landscape etc.) on an ongoing basis. If irrigation repairs cannot be completed by the Licensee and third party contractors are necessary, then with the permission of the City, Licensee will contract with the approved third party vendor to complete the necessary repairs and all related expenses will be charged to the equipment and replacement reserve fund as approved by the City. The Licensee shall irrigate all greens, tees, fairways and rough on the golf course in a sufficient manner to maintain healthy turfgrass. The Licensee shall monitor the daily evapotranspiration (ET) rate on the golf course. The Licensee shall visually inspect the course daily to observe indications of plant wilting and ensure the turf does not reach the permanent wilting point.

Fences. The Licensee shall repair all broken or damaged fencing within one week of occurrence. The Licensee shall repair or replace all fences, gates and locking devices needed for the protection of the golf course or equipment with similar or like material.

Edging. The Licensee shall on a weekly basis edge all sidewalks, patios and areas around the clubhouse, valve boxes, meter boxes and backflow devices.

Bunkers. All sand bunkers shall be edged, at a minimum, bi-weekly with a neat lip, raked daily and filled with fresh sand as needed to maintain a 6" depth on the bottom and a 4" depth on the slopes. Replacement sand shall be washed sand, silt free to ensure proper drainage of bunkers. Greenside bunkers shall be maintained with sand that conforms with industry standards dealing with the construction and topdressing of greens.

Construction and Remodeling. The Licensee shall receive prior approval from the City before any changes in the physical characteristics of any buildings or the movement of more than 20 cubic yards of material in any single area of the golf course occurs.

Staffing

General Manager. The City shall have the right to approve the General Manager selected by Licensee and shall not unreasonably withhold its approval. Licensee shall provide a General Manager who has a minimum of 3-5 years operations management experience in golf course management and a demonstrated ability to manage and develop a staff. Licensee shall have

available for oversight purposes a person who has a bachelor's degree in business, marketing, sports, hospitality management or a related field. The General Manager shall be responsible for:

- Golf Operations - Encompassing tee sheet management, outside services, instruction programs, individual lessons, outings and tournaments.
- Course Maintenance - Partnering with the Course Superintendent to ensure a healthy and manicured course from tee to green.
- Customer Service - Providing service and products to increase guest retention to similar nine-hole metropolitan public golf courses.
- Sales and Marketing - Implementing key strategies to generate revenue through increased rounds, merchandise sales; understanding local competition and creatively increasing participation numbers.
- Food & Beverage - Understanding F&B operations and fully maximizing all reasonable opportunities to enhance the dining experience for increased guest satisfaction and sales.
- Accounting & Budgeting - Creating annual budgets; independently perform or oversee the preparation of daily, weekly, monthly accounting and financial reporting.
- Human Resources - Recruiting, training and developing staff and coworkers; manage compensation, payroll and benefits administration.
- Leadership - Cultivating a positive and productive workplace through communication, vision, teamwork and commitment.

Golf Course Superintendent. Licensee shall hire a Golf Course Superintendent which City shall have the right to approve, which approval shall not be unreasonably withheld. The Golf Course Superintendent shall have three years of supervisory experience as a golf course superintendent or assistant superintendent on an eighteen or nine hole golf course.

Licensee shall have available for consultation with and supervision of a Golf Course Superintendent a person who has a combination of experience and education or training that is likely to provide the required knowledge to maintain a golf course.

- The Licensee shall provide sufficient supervision to ensure the performance of all of its personnel and subcontractors.
- The Licensee shall include, at the time the proposal is submitted, a detailed staffing plan and organizational chart.
- This chart then needs to be updated twice annually (January and July) or whenever significant changes in staffing occur and submitted to the City.
- The Licensee shall provide office numbers for telephone (landline and cellular), fax and a list of secondary numbers for staff to be reached on a 24-hour basis.

Pest Control. The Licensee shall provide a level of pest control to eliminate such pests from the clubhouse, food preparation, food storage and disposal areas. A Gold rating from the Maricopa County Health Department is required.

Trash and Debris Removal. Trash and debris removal will be at the Licensees expense. The Licensee will take special care to insure minimal problems from refuse odors, insects, etc.

Damages and Repairs. The Licensee shall be responsible for all drainage issues that may develop as a result of nature and compaction. Repairs will be made to bare spots created through play and wet spots which may occur. Damage reports (including pictures) should be made to document any problems and are to be submitted to the City as they occur.

Cart Paths. Bridges and Walkways. The Licensee shall maintain all cart paths and all concrete areas around the clubhouse in a smooth condition, free of structural cracks or trip hazard defects and repair promptly as needed. The Licensee shall maintain all walkways, cart paths and pedestrian ways in a safe condition. Floors shall be maintained free of trip hazards caused by protruding nails or knots.

Tools and Equipment. The Licensee shall provide, at its expense, all power tools, machines and equipment necessary to perform work as specified. All equipment must be maintained in a condition to ensure safe and effective performance. Licensee will provide at all times the necessary fleet to maintain the golf course and submit a current inventory list reflecting the status of existing equipment.

Material Safety Data Records. The Licensee shall provide a Material Safety Data Sheets (MSDS) for each chemical or material used in the performance of work, or stored at the golf course, as required by applicable law. The disposal and storage of all chemicals shall comply with the regulations of the Environmental Protection Agency (EPA), state and local laws and regulations. Materials used should be selected from the most current, safest and effective materials available to the landscape industry trade.

Permits and Licenses. The Licensee shall be responsible for determining and securing, at his/her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the golf course. Such fees shall be included in and are part of the total proposal cost. The Licensee shall notify the Glendale Parks and Recreation Director or designee in writing, during the term of the contract, within two (2) working days, of any suspension, revocation and renewal.

Hiring of Displaced Employees. The Licensee shall be expected to make a good faith effort to interview and employ any person(s) whose employment is terminated as a result of any contractual agreement realized from this RFP.

Safety. Within thirty (30) days after the Notice to Proceed (NTP), the Licensee shall submit an emergency operation plan which is reasonably acceptable to the City. This plan shall outline general procedures in advance for all foreseeable reasonable emergency situations including but not limited to, customer safety, personnel injuries, sickness, rowdiness, vandalism, intoxication, fire, smoke, power outage, etc. The Licensee shall not be required to incur significant costs and time in the preparation and amendment of the plan. The Licensee shall immediately report all accidents and safety incidents by telephone and or e-mail to the Park and Recreation Director or designee. In addition, the Licensee shall report all accidents and safety incidents in writing to the Parks and Recreation Director or designee within four (4) hours of constructive knowledge of said accidents or incidents arising out of or in connection with operational management of the golf course, which results in injuries or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or damages are caused, the same shall be reported immediately by telephone to the Director or designee. The report shall include a

complete description of the accident or safety incident including an explanation of what occurred, the probable cause and the actions taken by all parties and proposed follow-up action to minimize recurrence of the accident or incident. The Licensee shall also make available its employees to be interviewed by investigators of the accident or incident and to testify in any legal proceedings. The Licensee shall meet all OSHA requirements for safety. Licensee shall conduct monthly safety meetings with staff and provide documentation to the Parks and Recreation Director or designee.

Utilities. The Licensee is responsible for all utility related costs associated with the operation and maintenance of the golf course facility.

EXHIBIT D

Comparison Courses

In entering into this Agreement, the City and Licensee have foremost in mind providing public access to enjoyable golf course services and facilities of the customary to a nine-hole metropolitan public golf course. To accomplish this end, Licensee shall maintain and operate the Glen Lakes Golf Course (the "Course") according to standards equal to or higher than those maintained at other similar facilities in Maricopa County, Arizona all as reasonably determined by the City. For purposes of this Agreement, the golf courses listed below (the "Comparison Courses") shall be deemed to be similar facilities. The City shall have the right by written notice from time to time in its reasonable discretion to designate other comparable public golf courses in Maricopa County as additional or new Comparison Courses. Without limitation, Licensee shall operate the Course in a manner which is customary to a nine-hole metropolitan public golf course; shall furnish prompt and courteous service; and shall keep the Course attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to the reasonable satisfaction of the City. So long as Licensee complies with the maintenance standards set forth in the Lease and operates within the approved budgets, the City shall be deemed to be satisfied. Licensee shall not employ any person on or about the Course who shall fail to be courteous, efficient and neat in appearance or who shall use improper, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner. No nudity or adult entertainment of any sort is permitted at the Course.

Name

Address

Bellaire Golf Course	Phoenix, AZ
Rolling Hills Golf Course	Tempe, AZ
Palo Verde Golf Course	Phoenix, AZ
Villa De Paz Golf Course	Phoenix, AZ
Desert Mirage Golf Course	Glendale, AZ

Exhibit E

As stated in Section 3 of this License Agreement, “in-kind” community programming can be the cash value of any combination of the following items (the bullet list below is provided for illustrative examples and is not meant to be a limitation) provided by the Licensee:

- Posted discounted rounds for senior and junior players. (This can be in the form of monthly and annual passes)
- The provision of free junior and senior citizen golf tournament and workshops
- Discounted range passes
- Volunteer opportunities for juniors to better learn the golf industry and the local operation (mentoring program); a range marshal
- Partnering for the “Summer Hook A Kid On Golf” program
- Special market targeting with discount rates or special lessons
- Sponsorship of a Play Golf America Program
- The pursuit of PGA golf scholarships and the First Tee Program
- Equipment scholarships & discounted equipment and apparel for youth
- Lunch specials targeting at-risk youth
- The development and/or construction of a youth golf development center
- Partnering with the City for fund-raising purposes such as “Hole in One” contests and “Glow Stick Golfing”
- Providing lessons through the City’s SIC program & programs (free tutorials, introductory programs, workshops, etc.)
- Grassroots programs that reach out to low/mod income areas to make golf accessible and affordable.
- SNAG Golf (NRPA’s “Starting New at Golf” Program)
- Development of a GLGC Scholarship program for underprivileged kids
- Any other agreed to golf programming that benefits Glendale residents free of charge