



## BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: December 4, 2018

**Title:** Resolution - Acceptance of Pascua Yaqui Funds and Pass-Through to Conquistadores Youth Golf

### Introduction/Background:

Pursuant to A.R.S. § 5-601.02, the Pascua Yaqui Tribe provides grants to cities, towns, and counties for services benefitting the general public through its State-Shared Revenue Program.

### Discussion:

Per the Revenue Sharing Application released by the Pascua Yaqui Tribe (PYT), non-profit applications require inclusion of a supporting resolution from a governing body committing to act as the pass-through entity, if an award is received. The Conquistadores Youth Golf Fund (Conquistadores) is requesting such a resolution from the Pima County Board of Supervisors for its 2019 PYT grant application.

### Conclusion:

Once the Conquistadores has a Pima County support resolution, Conquistadores can complete and submit its grant application to the 2019 Revenue Sharing round of the PYT. The application is for \$10,293.00, to expand space at the Crooked Tree Golf Course for their youth program in Pima County. The Conquistadores have already been granted permission to build at the Crooked Tree Golf Course through a Use Agreement, should a grant be awarded. The Use Agreement incorporates the same review and approval requirements for any improvements that the course management company has in its agreement with the county. Any improvements constructed on the course will become the property of the county.

### Recommendation:

Recommend Pima County commit to act as pass-through to accept 2019 PYT Shared Revenue grant funds on behalf of Conquistadores, if such an award is designated, and pass-through funds to Conquistadores to expand space at the Crooked Tree Golf Course for their youth program. Conquistadores use the National First Tee Life Skills Curriculum to guide their program, which emphasizes the creation of positive relationships that support young people making positive choices.

### Fiscal Impact:

This project will have no impact on the Pima County General Fund. Conquistadores is a local 501(c)(3) non-profit organization that provides education and programming promoting positive development in youth.

### Board of Supervisor District:

☐ 1      ☐ 2      ☐ 3      ☐ 4      ☐ 5      ☒ All

Department: Grants Management & Innovation Telephone: 520-724-2240

Contact: Regina Kelly Telephone: 520-724-6679

Department Director Signature/Date: [Signature] 11/27/18

Deputy County Administrator Signature/Date: [Signature] 11/28/2018

County Administrator Signature/Date: C. DeMott 11/28/18

**RESOLUTION 2018 - \_\_\_\_**

**PIMA COUNTY RESOLUTION TO APPROVE ACCEPTANCE, IF AWARDED, OF PASCUA YAQUI TRIBE STATE-SHARED REVENUE PROGRAM FUNDS AND PASS-THROUGH TO THE CONQUISTADORES YOUTH GOLF FUND.**

**The Board of Supervisors of Pima County, Arizona finds:**

1. The Pascua Yaqui Tribe ("the PYT") and the State of Arizona have entered into a compact requiring twelve-percent (12%) of funds generated from PYT's gaming operations ("the 2018 Grant Funds") be distributed to cities, towns, and counties for services benefiting the general public including public safety, and the promotion of commerce and economic development ("State-Shared Revenue Program").
2. Pursuant to A.R.S. § 5-601.02(H)(4), and the Arizona Department of Gaming, the PYT selects government and non-government entities to receive the 2018 Grant Funds for services the PYT deems an appropriate for use of the State-Shared Revenue Program monies.
3. The PYT released a Revenue Sharing Application ("application") for the 2018 Grant Funds. Per the application, non-governmental organizations are eligible to submit an application, but must have a resolution of support from County, ensuring that County will distribute the 2018 Grant Funds to the entities selected by the PYT for the purposes determined by the PYT.
4. To complete its 2018 application for PYT grant funds, the Conquistadores Youth Golf Fund ("the Conquistadores"), a 501(c)(3) organization authorized to do business in the State of Arizona, has requested a resolution of support from Pima County for the Crooked Tree Golf Course: Program Expansion.
5. The Conquistadores, doing business as The First Tee of Tucson, combines affordable access to golf and The First Tee Life Skills curriculum which emphasizes golf's unique ability to instill and develop essential values (honesty, integrity, sportsmanship, self-discipline, respect and a solid work ethic) and give young people confidence and skills to pursue broader goals ("the Program").
6. Pursuant to an agreement with Wildcat Golf Partners, LLC, the operator of the County's Crooked Tree Golf Course, the Conquistadores offer the Program at Crooked Tree.
7. If funded, the Conquistadores will construct a storage shed for the Program's equipment and materials on the Crooked Tree Golf Course. The shed will be the property of Pima County.
8. The award of 2018 Grant Funds to the Conquistadores is in the best interests of the residents of Pima County.

**NOW, THEREFORE, BE IT RESOLVED, that:**

- A. Upon notification that the Conquistadores is awarded 2018 Grant Funds from the PYT, County will:
1. Accept the 2018 Grant Funds on behalf of the Conquistadores; and,
  2. Enter into a Grant Agreement with the Conquistadores for the distribution and use of the grant funds for the purposes for which the funds were awarded.
- B. The Chair of the Board of Supervisors is authorized to sign the Grant Agreement with Conquistadores for the purposes set forth above.

Passed and adopted, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Richard Elías, Chairman  
Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Clerk of the Board

  
\_\_\_\_\_  
Stacey Roseberry, Deputy County Attorney



### Golf Facility Use Agreement

**THIS GOLF FACILITY USE AGREEMENT** (the "Agreement") dated as of NOVEMBER, 2018 (the "Date Hereof"), by and between **Conquistadores Youth Golf Fund**, a 501 c 3 not for profit corporation, doing business as The First Tee of Tucson (hereinafter the "Chapter"), and Wildcat Gold Partners, LLC, a Delaware limited liability company (hereinafter the "Manager").

#### **RECITALS:**

A. Manager is the manager of the Crooked Tree Golf Course (the "Golf Facility"), which is owned by Pima County

B. The Chapter is a licensee of The First Tee, a division of World Golf Foundation, Inc. ("The First Tee"), pursuant to which the Chapter is responsible for introducing the game of golf to young people in Southern Arizona by combining affordable access to golf together with The First Tee Life Skills brand of curriculum which emphasizes golf's unique ability to instill and develop essential values such as honesty, integrity, sportsmanship, self-discipline, respect and a solid work ethic, and to give those young people the confidence and skills to pursue broader goals in life.

C. The Chapter desires to establish The First Tee Life Skills Education Program (the "First Tee Program" or the "Program") at the Golf Facility, and the Manager is willing to provide the Chapter access to and use of its Golf Facility, for the Program in accordance with the terms and provisions of this Agreement.

#### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein below, the receipt and sufficiency of which is hereby acknowledged, the Manager and Chapter agree and covenant as follows:

1. Manager agrees to provide the Chapter access to and use of the Golf Facility for First Tee Program participants ("Program Participants" or "Participants") in accordance with the use guidelines agreed upon by Manager and the Chapter from

time to time. Initially, Manager shall permit the Chapter and Participants to use the Golf Facility as follows, at no cost to the Chapter or the Participant, unless expressly stated otherwise herein:

- a. Each Participant shall be permitted to play up to sixteen (16) rounds of golf at the Golf Facility, at no cost to the Program Participant seeking to obtain certification under the Program (rounds of golf will be defined as either nine or eighteen holes of golf depending on the level of certification being sought by the Participant).
  - b. Program Participants shall also be permitted to play rounds of golf at the Golf Facility at green fees equal to 10% of the then applicable green fees, when such play is not in furtherance of Certification under the Program.
  - c. The Program and Participants shall be entitled to use the driving range and range balls at no cost.
  - d. The Chapter shall be entitled to use storage space at the Golf Facility to store the Chapter's equipment and materials used in connection with the Program.
2. Manager agrees that the Chapter's use of the Golf Facility provided for in Section 1 above is intended to permit the Chapter to operate the Program in accordance with the Chapter's current and future obligations under the Chapter's license from The First Tee, as that license may be amended from time to time. In order to meet its current Program requirements, the Chapter needs, and Manager has agreed to provide access to and use of the Golf Facility by the Chapter and the Participants in order that the Chapter may:
  - a. Provide a minimum of 250 hours annually, of golf instruction and life skills training at the Golf Facility.
  - b. Organize the scheduling of all programming for Program Participants.
  - c. Coordinate the certification process for all interested Participants at the Golf Facility.
  - d. Prepare youth participants for The First Tee's National Life Skills Camp.
  - e. Coordinate all documentation for Participants eligible for college scholarships.
3. The Chapter will use ongoing best efforts to secure donations of golf equipment, office equipment, and volunteers to assist with golf instruction, mentoring, fundraising events and other necessary tasks volunteers can complete. The Chapter also uses other affiliated golf course locations to serve young people. The Chapter shall be permitted to administer The First Tee Life Skills curriculum, and other elements of the Program, at other locations and other golf courses.
4. The Chapter and the Manager will work cooperatively to schedule the Program hours of operation at the Golf Facility. In determining reasonable access to and use of the Golf Facility, the parties will consider, among other things, the Program's desire to fully integrate Chapter Participants into the rhythm of play of the other patrons at the Golf Facility.

5. The term of this Agreement shall begin on the Date Hereof and shall continue until December 31, 2021. Thereafter, this Agreement shall automatically be deemed to have been renewed for an additional one-year period, unless either party delivers written notice to the other party that it intends to terminate this Agreement upon the expiration of the initial term of this Agreement, or at the end of any additional one-year term. Any such termination notice must be in writing and must be delivered at least ninety days before the termination date. Additionally, either party may terminate this Agreement in the event the material breach of this Agreement by the other party. However, before any termination for cause, the non-breaching party must provide the breaching party written notice specifying the breach, and allow the breaching party sixty days to cure such breach. If such breach is not cured to the reasonable satisfaction of the non-breaching party, this Agreement can then be terminated by the non-breaching party.
6. The Chapter shall pay to Manager, as a usage fee, the sum of one hundred dollars for the initial term of this Agreement, and an additional one hundred dollars for each one-year extension term.
7. The Chapter shall provide all operational funds necessary for all Chapter activities, except as provided herein. Manager shall pay the cost of all utilities serving the Golf Facility. The Manager shall pay all maintenance and management costs associated with operating the Golf Facility. The Manager may assist the Chapter with applying for grants from government related entities or conducting fundraising events to help offset the financial responsibilities of the Chapter.
8. Manager gives the Chapter permission to build a storage shed on the Golf Course. The storage shed shall be approximately 120 sq.ft (10'x12'). and shall be located on the Golf Course as indicated on the property diagram attached as Exhibit A.
9. Attached as Exhibit B is the Cooperative Management Agreement between Manager and Pima County. If the Chapter opts to build the storage shed referenced above in paragraph 8, the Chapter shall comply with section 5 of Exhibit B and the storage shed shall become the property of Pima County per section 5.6 of Exhibit B.
10. The Chapter and the Manager mutually desire to display distribute and sell merchandise within the Golf Facility that contains certain logos and marks of The First Tee of Tucson, to display such Chapter logos and marks at the Golf Facility in recognition of the Golf Facility as a First Tee facility and to permit the Chapter to comply with all requirements imposed upon the Chapter by The First Tee, provided that the Manager retains approval authority for the display of such logos and marks, which approval shall not be unreasonably withheld, conditioned or delayed. The use of such logos and marks is carefully circumscribed in the Chapter Agreement between the Chapter and The First Tee. The Chapter and the Manager will work together to display these Chapter logos or marks in

accordance with the Chapter Agreement. Manager understands that the Chapter is considering changing its name, or operating at the Golf Facility under another name, such as "The First Tee of Southern Arizona." The Chapter shall be entitled to select, and alter from time to time, the name under which the Chapter operates, or shall be entitled to operate under multiple names, in which event Manager shall only be entitled to use the name or names selected by the Chapter for the Chapter's Program at the Golf Facility.

11. To the extent allowed by applicable law, the parties hereto (each, an "Indemnifying Party") agree to protect, indemnify and hold the other party and the other party's parents, subsidiaries and affiliates including all related companies and their respective directors, officers, shareholders, members, managers, partners, employees, contractors, volunteers and agents (collectively, the "Indemnified Party") harmless from and against any and all expenses, damages, claims, suits, actions, judgments, and cost including reasonable attorneys' fees, arising out of or in any way connected with the negligence, reckless, or intentional acts or omissions of the Indemnifying Party, except for claims also based upon the Indemnified Party's negligence, reckless, or intentional acts or omissions which claims will be borne by each party in proportion to its negligence, recklessness or intentional acts or omissions. The terms of this paragraph shall survive the termination of this Agreement.
12. To further protect the parties to this Agreement, and assure compliance with the provisions of this Agreement, each of the parties shall obtain and maintain or cause to be maintained at all times during the term hereof, with a responsible insurer, for the benefit of the Chapter and the Manager as their respective interests may appear, comprehensive general liability insurance against any loss or liability for damages and any expenses of the parties associated with or arising out of any claim for damages which might result from the use or occupation or condition of the Golf Facility or any portion thereof, in such amount or amounts as shall not be less than is customary and usual for activities of the type, character and scope to be carried on by the parties at the Golf Facility, but in no event in amounts affording protection of less than:
  - a. Commercial General Liability: \$1,000,000 per occurrence/ \$2,000,000 aggregate
  - b. Workers Compensation: Statutory
  - c. Employers Liability: \$500,000
  - d. Auto Liability (incl. property and bodily injury): \$1,000,000
13. The insurance described in this Section 10 shall be maintained throughout the term of this Agreement. Each party shall name the other as an additional insured under their general liability policy. Additionally, the Chapter shall name Pima County as an additional insured on the Commercial General Liability policy. Each party shall furnish the other a certificate evidencing such insurance policy and renewals thereof. Such policies shall not be canceled without written notice to


the other party, provided no less than ten days prior to such cancellation. Further, the Chapter shall obtain, at its sole cost and expense, such insurance coverage as it deems necessary and desirable with respect to its fixtures and personal property situated on, in or about the Golf Facility. Manager shall maintain throughout the term of this Agreement, such policy or policies of casualty insurance against such risks and in such amounts as are customary for a prudent Manager or operator of like properties.

14. Each party hereby waives all claims, rights, demands or liabilities for recovery from the other party for any loss or damage whatsoever the nature, cause or extent insured under valid and collectible insurance policy or policies to the extent of any recovery collectible under such policy or policies. The parties agree to request that their respective insurance companies waive any right of subrogation the insurance carriers may have against each other for loss sustained under the respective insurance policies.
15. Neither party may assign its rights under the Agreement without the express written consent of the other party. This Agreement shall be governed by Arizona law and shall be binding upon and inure to the benefit of the Chapter, Manager and their duly authorized successors and assigns. This Agreement shall not be modified or amended except by a writing signed by all parties. This Agreement constitutes the entire agreement of the parties and supersedes all prior written and oral agreements and understandings related to the subject matter herein.

**IN WITNESS WHEREOF**, the parties hereby execute and deliver this Agreement as of the day and year first above written.

**CONQUISTADORES YOUTH GOLF FUND**

doing business as The First Tee of Tucson

By:   
Name: STEVE GLASER  
President

**WILDCAT GOLF PARTNERS**


By:   
Name: RICH MUELLER



EXHIBIT A



41191/00631057/v1

EXHIBIT B

CONTRACT	
NO.	7N-ED-12 00000 00000 00000/07
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**Management Agreement**

**ARTHUR PACK DESERT GOLF COURSE**

9101 North Thornydale Road  
Tucson, AZ 85742  
July 1, 2004

**PIMA COUNTY NATURAL RESOURCES PARKS AND RECREATION**

3500 W. River Road Tucson, AZ 85741  
(520) 877-6000

and

**WILDCAT GOLF PARTNERS, LLC**

## **Cooperative Management Agreement Arthur Pack Golf Course**

This Cooperative Management Agreement (the "Agreement") is made by and between Pima County, a political subdivision of the State of Arizona, (the "County"), acting through its Natural Resources Parks and Recreation Department ("NRPR"), and Wildcat Golf Partners, LLC, a Delaware limited liability company ("Manager").

### **RECITALS**

- A. The County owns a golf course located at 9101 N. Thornydale Road, Tucson Arizona, known as the Arthur Pack Golf Course which is legally described on Exhibit A attached hereto and incorporated herein by this reference, and all buildings and improvements thereon, including structures listed on Exhibit B (collectively the "Golf Course"). The Golf Course is part of the Arthur Pack Regional Park (the "Park") which was conveyed to the County by the United States of America, through the Bureau of Land Management ("BLM"), under the Recreation and Public Purposes Act (the "R&PP Act"), 43 U.S.C. sec. 869, et seq.
- B. The Golf Course was previously operated pursuant to an agreement that is expiring on June 30, 2004. County issued a Request for Qualifications and Bid with respect to the operation and management of the Golf Course on April 14, 2004. Manager submitted the proposal/bid most advantageous to the County.
- C. County desires to have Manager operate, manage and maintain the Golf Course for the recreational benefit of the citizens of Pima County, and continue to make capital improvements to it.
- D. The County is authorized, pursuant to A.R.S. § 11-932, to enter into agreements for the operation of County public parks.

### **AGREEMENT**

**NOW THEREFORE**, County and Manager, in consideration of the mutual covenants set forth herein, agree and covenant as follows:

**1. Management of Golf Course**

Manager agrees that it shall operate, manage, maintain and improve the Golf Course substantially as set forth in Manager's proposal, which is attached hereto as Exhibit C (the "Proposal"), and under the terms and conditions set forth herein. This Agreement shall control over the Proposal in the event of any conflict between the two.

**2. Term**

The term of this Agreement shall be ten years commencing on July 1, 2004, and ending on June 30, 2014 (the "Initial Term"). The term of this Agreement may be extended, by written agreement of the

parties, for an additional 5 years to end on June 30, 2019. Manager may request this extension, by written notice to the Director of the Pima County Natural Resources Parks and Recreation Department, at any time after Manager has installed or constructed at least One Million Five Hundred Thousand Dollars (\$1,500,000) in capital improvements on the Golf Course, but no later than twelve (12) months prior to the end of the Initial Term. As used herein, "year" shall mean the period from July 1 to June 30 rather than a calendar year.

### **3. Golf Course Revenues**

#### **3.1. Collection of Revenues**

Manager shall collect all fees generated by the operation of the Golf Course, including but not limited to, greens fees paid by Golf Course users and the amounts collected from concessionaires and subcontractors pursuant to Paragraph 3.5.3 below ("Gross Revenues").

#### **3.2 Amount of Operating Fees**

Manager shall pay to County, without demand or right of offset, in order to reimburse County for a portion of the sums expended by the County in maintaining, operating and improving the Park, and administering this Agreement, (a) a sum certain per year (the "Annual Base Fee") and (b) a percentage of Gross Revenues (the "Percentage Fee"). The amount of the Annual Base Fee and the Percentage Fee is set forth in Attachment 5 of Exhibit C (collectively, the "Operation Fees").

#### **3.3 Fees for Extension Term**

If the Agreement term is extended for an additional five (5) years, as set forth in Paragraph 2 above, the parties will negotiate in good faith to reach agreement on a new Annual Base Fee amount for that extension period.

#### **3.4 Payment of Fees**

Except as otherwise provided in Paragraph 4.1.2 below, Manager shall pay 1/12 of the Annual Base Fees, in advance, by the first of each month (commencing on July 1, 2004). By the 15<sup>th</sup> of each month after the first month (until one month after the Agreement expires or is earlier terminated), Manager shall provide to County a statement showing actual Gross Revenues received by Manager to date. By the 15<sup>th</sup> of each month in which Gross Revenues have reached \$1,000,000 for that year, Manager shall pay to County, in arrears, the Percentage Fees for the prior month.

#### **3.5. R&PP Restrictions**

The Golf Course is subject to (a) the terms of an R&PP patent, recorded in Book 5528 at Page 848, Pima County Records (the "Patent") from the United States of America, and administered by the BLM; (b) the terms of the R&PP Act; and (c) related federal regulations (43 CFR Subparts 2740, 2741) and internal BLM policies and procedures (collectively, (a), (b), and (c) are referred to as the "R&PP Restrictions").

### **3.5.1 R&PP Restrictions Control**

If any provision of this Agreement conflicts with the R&PP Restrictions, the R&PP Restrictions shall control.

### **3.5.2 BLM Approval Required**

Manager acknowledges that the validity of this agreement is conditioned upon BLM final approval, which has not been obtained as of the execution of this Agreement. In the event that the BLM disapproves of this Agreement, it shall terminate, unless the parties agree to an amendment correcting the deficiencies identified by the BLM. To this end, the County Administrator is authorized to approve an amendment to this Agreement in order to bring it into compliance with the BLM's requirements, except that, if the changes affect a material term hereof in a manner that is not favorable to the County, the Amendment shall require approval of the Board of Supervisors of Pima County. Any expenditures made by Manager prior to approval of this Agreement by the BLM shall be made at the Manager's own risk

### **3.5.3 Net Revenues**

Manager shall collect from any concessionaires or subcontractors who contract with Manager to provide services on the Golf Course, such as concessionaires for the operation of the restaurant or the pro shop ("Revenue Users"), all Net Revenues from their operations (as defined in Paragraph 3.5.4 below). This shall not include persons who provide services on the Golf Course directly for Manager rather than for the public, such as turf consultants, landscapers, and construction and design contractors, provided that these contractors are not related to Manager; nor shall it include organizations that utilize the Golf Course for fundraising activities in compliance with the terms of this Agreement. These Net Revenues shall be part of the Manager's Gross Proceeds as defined in Paragraph 3.1 above.

### **3.5.4 Manager Operations**

All Net Revenues collected by Manager from its operations on the Golf Course must be used by Manager for the public purposes for which the Patent was granted. As used herein, "Net Revenues" means Gross Revenues, including the sums collected under Paragraph 3.5.3 above, less those revenues used by Manager, or used to compensate Manager, for all Manager's reasonable and necessary expenses associated with Manager's operation of the Golf Course, according to standard accounting practices including but not limited to financing costs [including any debt service and any cost associated with obtaining financing], operating expenses, capital expenditures, taxes, and other costs and liabilities. Manager shall set aside all Net Revenues in a special fund and use them for improvement or operation of the Golf Course, or the funding of programs on the golf course for the benefit of the public.

### **3.6 Fundraising Activities**

Third party fundraising shall be permitted on the Golf Course, and the revenues raised by the fundraising party need not be paid to Manager and used for operation or improvement of the Golf Course or the public programs operated thereon, provided that Manager does not discriminate

against any group based on the beliefs or viewpoints that it espouses, and the fund-raising entity pays a standard fee for use of the Golf Course, which fee is established by Manager and approved by NRPR.

- 3.7 **Compliance.** NRPR and Manager shall meet periodically, but not less than annually, with BLM representatives to review compliance with the R&PP Restrictions. On a semi-annual basis, beginning October 1, 2004, Manager shall provide NRPR an accounting of all the Gross and Net Revenues from the operation of the Golf Course, as well as a reasonably detailed itemized statement showing how the Net Revenues were calculated. Manager shall require its subcontractors and concessionaires to provide Manager with similar statements, which Manager will provide to NRPR or BLM upon request. If at any time the BLM informs NRPR or Manager that a particular activity violates the R&PP Restrictions, Manager shall immediately cause such activity to cease. To that end, Manager shall provide in each subcontract, concession agreement, temporary use agreement, or other type of agreement with a party that will conduct revenue producing activities on the Golf Course that such party shall cease such activity upon direction from the BLM to NRPR or Manager.

#### 4. Capital Improvements.

##### 4.1. Capital Improvement Program.

- 4.1.1 **Initial Improvements.** Manager shall, during the first three years of the Agreement term, construct capital improvements on the Golf Course, as provided in Exhibit C (see particularly the chart labeled "Funded Capital Improvements" in Exhibit C), with a cost no less than provided in Exhibit C.

- 4.1.2 **Reclaimed Water Line.** In addition to the capital improvements described in Exhibit C, Manager shall install a twelve-inch reclaimed water line from Tucson Water's reclaimed line along Thornydale Road to the reservoir at the Golf Course, along the route, and with the components shown on the attached Exhibit D. Manager shall make a reasonable effort to complete installation of this line expeditiously, but no later than December 31, 2005. Manager shall construct the line according to plans and specifications to be provided to it by County, and in a manner meeting all reasonable requirements and specifications of the Tucson Water Department. In addition to providing the plans and specifications for the new line, the County shall be responsible for re-vegetating and re-paving any areas that are disturbed by the excavation for the new line, and will pay all County permit fees required for the construction. NRPR will provide other assistance to Manager as resources are available.

In exchange for building this reclaimed water line, Manager shall receive a credit against the Operating Fees due to the County as set forth in Paragraph 3.2 above, for Manager's actual costs in designing and installing the line (plus interest on this amount at the rate of 8% per annum until paid), up to a maximum amount of Five Hundred Thousand Dollars (\$500,000). Manager shall still submit the monthly revenue reports as required under Paragraph 3.4 so that the Percentage Fee, against which Manager is receiving a credit, can be calculated. The line, when built, will belong to the County, and the County may use it to supply water to

other parts of the Park, so long as such use does not have a detrimental affect on Manager's use of the line.

**4.1.3 Periodic Improvement Reports.** Beginning January 1, 2005, and every six (6) months thereafter during the term of the Agreement (but not during the last eighteen (18) months of the term), Manager shall submit to NRPR a report describing the capital improvements that have been completed to that point, planned future capital improvements, the date of completion or projected completion of each project, and the cost or projected cost of each project.

**4.2. Continuing Investment.** As provided in Paragraph 3.5.4 above, Manager shall set aside, in a special fund (the "Capital Improvement/Special Program Fund"), all Net Revenues from its operations on the Golf Course. Manager shall use these funds for (a) the planning, design and construction of capital improvements to the Golf Course; or (b) the funding of programs for the public at the golf course, such as those referred to in Paragraph 10.1 below, that are consistent with the recreational purposes for which the Patent was issued to the County. Manager shall expend each year the funds set aside in the Capital Improvement/Special Program Fund from the previous year unless Manager has specific plans to use several years' accumulated funds on a larger project and NRPR approves in writing. The funds set aside during the last year of the Agreement (together with any other funds accumulated in the Capital Improvement/Special Program Fund), unless spent by Manager for the purposes set forth above, shall be paid to County as soon as reasonably possible following expiration or earlier termination of the Agreement.

## **5. Alterations.**

**5.1. Approval Required.** Manager may not make any improvements, alterations, additions, or changes to the Golf Course (the "Alterations") (including the capital improvements described in Section 4 above) without first obtaining the written consent of NRPR (if the cost of the Alterations is \$100,000 or less) or the written consent of the County's Board of Supervisors (if the cost of the Alterations is more than \$100,000). The capital improvements shown in Exhibit C shall be deemed approved already, though Manager shall still submit plans and specifications to the County for review, once they are developed.

**5.2. Process for Approval.** Notwithstanding the cost of Alterations, Manager shall provide NRPR with written notice of the proposed Alterations, and plans and specifications for the Alterations, not less than thirty (30) days before such Alterations are made. If the cost of the proposed Alterations is less than \$10,000 and are non-structural in nature, NRPR shall have the right to disapprove the plans and specifications within five (5) business days. If the cost of the proposed Alterations is more than \$10,000 or are structural in nature, NRPR shall have the right to object to the plans and specifications within twenty (20) business days. Failure to object shall be deemed approval.

**5.3. Reasons for Disapproval.** NRPR shall not unreasonably withhold consent; provided, however, it shall be reasonable for NRPR to withhold consent if, among other reasons,

- 5.3.1. the Alterations adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Golf Course or affect the integrity of the Golf Course itself or its infrastructure;
- 5.3.2. result in County being required to perform any work that County could otherwise avoid or defer;
- 5.3.3. result in an increase in the premiums for any hazard or liability insurance carried by County;
- 5.3.4. result in an increase in the demand for utilities or services that County is required to provide; or
- 5.3.5. adversely affect the County's use of the remaining property owned by County adjacent to the Golf Course.

**5.4. Purpose of Review of Plans and Specifications.** NRPR's review of the plans and specifications shall be solely for County purposes and shall not imply NRPR's review for quality, design, legal compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by NRPR or its architects, engineers, or consultants, County shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Manager's indemnity set forth in Paragraph 14 of this Agreement shall specifically apply to the construction drawings. NRPR's review shall be to determine that the proposed improvements are consistent with the purposes of this Agreement of providing recreational opportunities for the benefit of the people of Pima County.

**5.5. Construction Standards; Permits.** All work relating to any improvements or buildings shall be done in a good and workmanlike manner, using new materials, and shall be diligently prosecuted to completion. Manager shall comply with applicable building codes, fire codes, zoning codes, and other laws, regulations and orders for any construction, whether of a permanent Alteration or a temporary structure, and shall obtain all applicable permits from regulatory agencies, including but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.

County acknowledges the necessity for expeditious review by the County of all plans and other materials submitted to the County for permitting or other governmental approvals in connection with the initial capital improvements described in Paragraph 4.1.1 above, in order for Manager to meet its construction goals. NRPR shall work with Manager in any reasonable manner to assist in obtaining expedited reviews and approvals.

**5.6. Ownership of Alterations.** Manager agrees that, upon construction or installation, any building, structure, or system on the Golf Course constructed or installed by Manager shall become the property of County.

## **6. Repairs and Maintenance.**

**6.1. Manager Responsible for all Repairs and Maintenance.** Manager shall, at Manager's sole cost and expense, keep the Golf Course, including all buildings, improvements, landscaping, turf, and irrigation systems located thereon, and all exterior, interior, structural and mechanical components



thereof, in good clean condition and repair except that Manager shall not be obligated to perform repairs or maintenance to the extent that such repairs or maintenance are required as a result of the negligence or intentional misconduct of the County, its agents, employees, or contractors, which repairs and maintenance County shall conduct at its sole expense. Manager shall further make all repairs to the Golf Course made necessary by reason of the negligence or intentional misconduct of Manager, its employees, licensees, invitees, subcontractors, Managers, servants or agents. Manager will be responsible for disposal of waste generated at the Golf Course. Repairs to mechanical systems, such as air conditioning, heating plant, and turf irrigation systems, shall be performed promptly in order to minimize any waste of utilities or water.

- 6.2. Condition of Golf Course upon Surrender.** Manager shall, upon the expiration or sooner termination of this Agreement, surrender the Golf Course to County in at least as good condition as it was in at the beginning of this Agreement damage from causes beyond the reasonable control of Manager excepted.

## **7. Manager's Obligation to Reconstruct.**

- 7.1. Insurable Casualty.** In the event the Golf Course or any portion thereof are damaged by fire or other perils covered by extended coverage insurance (whether or not Manager has such insurance), Manager shall forthwith repair the damage, restoring the Golf Course to the condition which existed prior to the casualty, and this Agreement shall remain in full force and effect without abatement of Fees. Manager's obligation shall be only to restore the Golf Course to the condition which existed prior to the casualty or to a comparable facility subject to compliance with all applicable building codes. In the event of any such casualty which damages Manager's furniture, fixtures and/or equipment at the Golf Course, Manager shall proceed with reasonable diligence and at Manager's sole cost and expense to restore, repair or replace all of Manager's improvements, fixtures, and other personal property of Manager to the same condition which existed prior to the casualty. Manager shall continue the operation of its business within the Golf Course to the extent practicable during any period of reconstruction or restoration. To the extent any of Manager's insurance proceeds covering such loss to the Golf Course are received by County, County shall make available such proceeds from insurance to reimburse Manager for such reconstruction.
- 7.2. Uninsurable Casualty.** In the event the Golf Course or any portion thereof are damaged to an extent that the cost of repair will exceed \$500,000 as a result of any cause other than the perils covered by fire and extended coverage insurance, Manager shall have the option to: (1) repair, reconstruct or restore the Golf Course, in which event this Agreement shall continue in full force and effect except that Manager's obligation to pay the Operation Fees shall abate for a reasonable period of time (up to six months) during which the Golf Course is closed for repairs; or (2) give notice to NRPR at any time within sixty (60) days after such damage, terminating this Agreement, in its entirety or as to the damaged parcel(s) only (provided that the purpose of this contract can be fulfilled without the damaged parcels), as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice.

If Manager elects to terminate this Agreement (in its entirety or only with respect to the damaged parcel(s)) in accordance with this Subparagraph 7.2, County shall have the right to repair, reconstruct and/or restore the Golf Course at its sole cost by providing written notice of the same

to Manager within thirty (30) days of receipt of Manager's notice of termination in which case this Agreement shall remain in full force and effect and County shall diligently pursue the repair, reconstruction and/or restoration of the Golf Course to the condition which existed prior to the casualty or to a comparable facility subject to compliance with applicable building codes. The Operation Fees due hereunder and Manager's non-monetary obligations shall not abate.

8. **Liens and Encumbrances.** Manager shall keep the Golf Course free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Manager. Notwithstanding the prohibition on liens on the Golf Course itself, Manager may encumber Manager's interest in this Agreement for the construction of improvements on the Golf Course. NRPR shall execute, on behalf of the County, consent, estoppel, non-disturbance and similar instruments reasonably requested by Manager's lenders; provided, however, County shall not be required to amend this Agreement or consent to additional notice or cure provisions as part of any such consent, estoppel, non-disturbance and similar instruments.
9. **County's Option to Perform Maintenance and Repairs at Manager's Cost.** If Manager is in default hereunder (after the cure period set forth in Paragraph 21.4 below) because it fails to perform its construction, maintenance or repair obligations hereunder, in addition to the remedies set forth in Paragraph 21, County, without notice, may, but not shall be obligated to, perform Manager's obligations. All reasonable costs and expenses reasonably suffered or incurred by County in performing these obligations, which shall accrue interest at a per annum rate of eight percent (8%), shall be paid by Manager to County within thirty (30) days of notice thereof. Any such default by Manager shall not be considered cured until Manager has fully reimbursed County for the costs incurred in performing Manager's obligation hereunder plus interest.
10. **Permitted and Required Activities.**
  - 10.1. **Operation of Golf Course.** Manager may only use the Golf Course, and shall use the Golf Course, to operate a public golf course and other activities incidental thereto, such as but not limited to a pro shop, restaurant and bar, and golf lessons, for the benefit of the people of Pima County, and to host Special Events on the Golf Course pursuant to Paragraph 10.5 below, in substantial compliance with the management plan set forth in Exhibit C. Manager shall conduct its activities, and shall ensure that its employees and contractors, and all Revenue Users conduct their activities, in a highly professional and competent manner and shall maintain and operate the Golf Course to industry standards. In addition to Manager's normal operations, Manager shall operate programs geared toward disadvantaged youth and women, as described in Exhibit C.
  - 10.2. **Right of Public to use Golf Course.** The Golf Course shall be open to the general public except during Special Events approved by NRPR. When the Golf Course is open to the public, Manager shall provide suitable staffing. Manager may exclude members of the public from the golf course only if Manager reasonably believes them to be in material violation of Manager's rules with respect to use of the Golf Course, which rules must be reasonable, approved by NRPR, and must be posted in a prominent place or places on the Golf Course. In the event that Manager does exclude a member of the public, it shall submit a written report to the County detailing the reasons for the exclusion. Manager shall also inform the person who has been excluded (the "Excluded Person"), in writing, that he/she has a right to appeal Manager's decision to NRPR by submitting an appeal in writing to the Director of NRPR, or his designee, at the address given herein for

notifications. If the Excluded Person exercises his/her right to appeal, the NRPR Director or his designee shall review Manager's decision and shall have the right to reverse it if he/she finds that Manager has acted in an arbitrary or capricious matter. The NRPR Director or his designee shall issue a written decision in the case of such appeals, by which Manager shall be bound.

Manager shall have the right to prohibit commercial activities on the Golf Course (including the provision of golf lessons by golf professionals) unless the person conducting the activity has a written agreement with Manager.

- 10.3. **Fees.** Manager shall charge greens fees in the amounts set forth on page 14 of Exhibit C; and may charge fees for Special Events, as defined in Paragraph 10.5 below. Fees charged for fundraising and other Special Events shall be consistent and non discriminatory. Beginning on January 1<sup>st</sup> 2005, and every other year thereafter, Manager may increase the fees by the average of the change in the consumer price index (all items, all cities) for each of the previous two years; provided, however, the fee structure shall at all times reflect the public nature of the course and remain competitive with other public golf courses. Manager shall inform NRPR of any proposed change to the fee structure, and NRPR shall have sixty (60) days to object if NRPR concludes that the fee structure is non-competitive or inappropriately high given the public nature of the Golf Course. If County does not object to the new schedule within sixty day after Manager's submission of the new schedule, NRPR shall be deemed to have approved the schedule.
- 10.4. **Hours of Operation.** The Golf Course shall be open to the general public at least 10 consecutive hours per day, between the hours of 5a.m. and 10p.m. (the "Normal Hours of Operation") for not less than 340 days per year; provided, however, that temporary and minor deviations from this schedule may be permitted with the written approval of the NRPR Director. On other days of the year, Manager may close the Golf Course to the general public, shorten the hours of operation or conduct limited activities on site (including but not limited to Special Events, etc.). Subject to the provisions of Paragraph 10.5 below, in addition to the Normal Hours of Operation, the Golf Course may be open additional hours of the day but shall in no event be open later than 11p.m.
- 10.5. **Special Events.** "Special Event," as used herein, is an event which is beyond the normal scope of Manager's operations; which is held outside Normal Hours of Operation; which is designed to attract larger numbers of people than normal; or which may increase risk of injuries to persons at the Golf Course. NRPR may impose reasonable traffic, safety and noise restrictions on Special Events to promote the health and safety of the participants and of the traveling public. Manager may submit a general plan for traffic control, safety, security and noise restrictions for NRPR's approval which plan, if approved, may be used by Manager without further approval; provided, however, such general plan shall be effective for no more than 24 months before being subject to review and approval by NRPR again. In the event Manager wishes to conduct a Special Event, Manager shall, except as provided in Paragraph 10.6 below, give NRPR thirty (30) days advance written notice of Manager's intent and provide County, at the time of such notice, with a description of the Special Event, together with a traffic control plan for the roads leading to and from the Golf Course and a safety and security plan for the Special Event.
- 10.6. **Calendar.** On or before January 1 and July 1 of each year, Manager shall provide NRPR with a projected operating calendar for the following 12 month period, including projected hours of operation, planned Special Events, and the dates on which the Golf Course will be open for

Normal Hours of Operation. If a Special Event is on this calendar and Manager intends to use its approved general plan for traffic control, safety, security and noise restrictions, Manager need not send the thirty-day notice for such Special Event as set forth in Paragraph 10.5 above.

10.7. **Alcohol.** Manager may serve and sell alcoholic beverages for consumption on the Golf Course provided Manager complies with applicable liquor laws and provides County with the required insurance set forth herein.

10.8. **Signs/Name of Golf Course.** Manager may affix and maintain upon the Golf Course such signs relating to the services provided on the Golf Course as Manager deems appropriate; provided, however, if such signs are visible outside of the Golf Course, such signs must first receive the written approval of NRPR as to type, size, color, location, copy nature and display qualities; provide further, however, that all signs utilized by Manager on or about the Golf Course, whether visible outside the Golf Course or not, shall at all times comply with the Pima County Sign Code and shall be installed and maintained at Manager's sole cost. Any and all advertising signs placed by Manager on the Golf Course shall be immediately removed by Manager upon termination of this Agreement for any reason, and any damage resulting from such removal shall be repaired immediately by Manager at its sole cost. Manager shall not remove any operational or safety signage from the Golf Course. Manager shall pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Golf Course. Manager shall, through coordination with NRPR, identify the Golf Course as belonging to Pima County in signs placed at the entrances to the Golf Course and shall display the NRPR logo on such signs. Manager may rename the Golf Course "The Habitat at Arthur Pack Regional Park," or "The Habitat Golf Course at Arthur Pack Regional Park," or such other name as the Board of Supervisors of the County approves.

## 11. Prohibited Activities.

11.1. **Activities Outside the Permitted Activities.** Manager shall not do or permit anything to be done in or about the Golf Course nor bring or keep anything therein which is not within the permitted use of the Golf Course as set forth in Paragraph 10 above.

11.2. **Activities not Insured or that Affect Insurance.** Manager shall not conduct any activity on the Golf Course which is not covered by the insurance policies provided pursuant to Paragraph 17 herein without first obtaining the written consent of NRPR and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to County. Manager shall not do or permit anything to be done in or about the Golf Course nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Golf Course or any of its contents or cause a cancellation of any insurance policy covering the Golf Course or any part thereof or any of its contents.

11.3. **Nuisance/Waste.** Manager shall not do or permit anything to be done in or about the Golf Course which materially obstructs or interferes with the rights of other users of County's property adjacent to the Golf Course; nor shall Manager cause, maintain or permit any nuisance in, on or about the Golf Course. Manager shall not commit or allow to be committed any waste in or upon the Golf Course.

- 11.4. **Storage.** Manager shall not store within the Golf Course equipment other than that to be used in the Golf Course or used in connection with the operation of Manager's business at the Golf Course.
- 11.5. **Unlawful Activities.** Manager shall not use the Golf Course, or permit anything to be done in, on, or about the Golf Course, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated (herein referred to as a "Law" or collectively as "Laws"), including the R&PP Restrictions (as defined in Paragraph 3 above).
12. **Security and Safety.** Manager shall be responsible for all security and safety relating to the Golf Course and shall provide such security personnel and security and safety features sufficient to adequately protect the Golf Course and persons on the Golf Course from property damage or bodily injury.
13. **Compliance with Laws.** Manager shall, at its sole cost and expense, promptly comply with all Laws in connection with its use of the Golf Course. Any changes in the governing laws, rules and regulations during the terms of this Agreement shall apply without the necessity of an amendment. The judgment of any court of competent jurisdiction or the admission of Manager in any action against Manager, whether County be a party thereto or not, that Manager has violated any Law, shall be conclusive of that fact as between County and Manager.
14. **Indemnification.** Manager shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the Manager, its agents, employees, invitees or anyone under its direction or control or acting on its behalf, or anyone permitted by Manager to conduct any activity on the Golf Course, or in connection with any use or occupancy of the Golf Course under the terms of this Agreement.
15. **Financial Statements and Audits.**
- 15.1. **Financial Statements.** For each Year of the term of this Agreement, Manager shall, at Manager's expense, provide NRPR with financial statements relating to expenses and revenues resulting from any and all activities on the Golf Course (including activities by Manager and by any other Revenue User) prepared in accordance with generally accepted accounting principles. The financial statements must show the revenue collected by Manager from other Revenue Users; all the uses for which the funds were expended in order to comply with the R&PP Restrictions as provided in Paragraph 3; and a reconciliation of Operating Fees paid to County during the year to actual revenues. Any adjustments with respect to any of these payments or set-asides shall be made promptly following receipt of the financial statements.
- 15.2. **Special Audits.** County may also require Manager to provide an audit at any time by providing written notice to Manager at least ten (10) days in advance of the start of the audit, but any such special audit shall be conducted at County's expense. Such notice shall specify the period to be

covered by the audit, the type of audit and the time for completion and submission of the audit. County shall also have the right at any reasonable time to inspect Manager's books and records.

**16. Insurance.**

**16.1. Insurance Required.** Manager shall, at Manager's sole cost and expense, obtain and maintain during the term of this Agreement and any renewals thereof, the following insurance policies:

16.1.1. Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than \$5,000,000, covering the Golf Course furnished to the Manager for exclusive use, endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10.

16.1.2. Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000 for vehicles actually used in the operations at the Golf Course (as compared to used for simple commuting).

16.1.3. Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000 per injury, illness, or disease.

16.1.4. Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of all the improvements and all of Manager's personal property located at the Golf Course.

16.1.5. Business Interruption insurance sufficient to permit Manager to continue services required under this Agreement in the event of serious loss or damage to the Golf Course.

16.1.6. Liquor Liability insurance in an amount not less than \$5,000,000 per occurrence if alcohol is sold or provided on the Golf Course, endorsed to include Pima County as an additional insured.

16.1.7. Special Events insurance in an amount acceptable to the Pima County Risk Management for any event held at the Golf Course not covered by other insurance provided as required above. County reserves the right to increase the limits on coverage for unique or high risk Special Events.

**16.2. Injury Reports.** By the 15<sup>th</sup> of each month, Manager shall provide to NRPR a report listing any incident involving injury to persons or damage to property occurring on the Golf Course. If any such injury to persons required emergency medical treatment, Manager shall contact NRPR within one (1) business day of such incident. NRPR shall have the right to investigate any incident involving injury to persons or property occurring on the Golf Course, and Manager shall provide County with all information available to Manager about such incidents.

**16.3 Insurance Certificates.** Manager shall provide NRPR with current certificates of insurance which shall show County as an additional insured where required. All certificates of insurance

must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

- 16.4. **Waiver of Subrogation.** Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.
- 16.5. **Changes to Insurance Requirements.** County retains the right to reasonably increase the limits or types of coverage from time to time as determined in the best interests of County by the Pima County Risk Management.

**17. Environmental Compliance.**

- 17.1. **Hazardous Materials Prohibited; Clean Air Act.** Manager shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Golf Course by Manager, its agents, employees, contractors or invitees, without the prior written consent of NRPR, other than such Hazardous Materials which are necessary or useful to Manager's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Manager's operations on the Golf Course shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3.
- 17.2. **Indemnity.** If (i) Manager breaches the obligations stated in the preceding paragraph, (ii) the presence (whether consented to by County or otherwise) of Hazardous Material on the Golf Course or on or in the soil or ground water under or adjacent to the Golf Course is caused or permitted by Manager, its agents, employees, contractors or invitees results in contamination of the Golf Course or such soil or ground water, (iii) contamination of the Golf Course or such soil or ground water by Hazardous Material otherwise occurs for which Manager is legally liable to County for damage resulting therefrom, or (iv) contamination occurs elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Golf Course, then Manager shall indemnify, protect, defend and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Golf Course or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Golf Course or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Golf Course or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Agreement as a result of such contamination. The foregoing obligation of Manager to indemnify, protect, defend and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Manager, its agents, employees, contractors or invitees, in the Golf Course or the soil or ground water on, under or adjacent to the Golf Course, or elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Golf Course.
- 17.3. **Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Golf Course, or the soil or ground water under or adjacent to the Golf Course caused or permitted

by Manager, or its agents, employees, contractors or invitees results in any suspected contamination of the Golf Course, the soil or ground water under or adjacent to the Golf Course, Manager shall promptly notify NRPR in writing and take all actions at its sole expense as are necessary to return the Golf Course, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Golf Course, or to such soil or ground water; provided that NRPR's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Golf Course.

**17.4. Pre-existing Contamination.** County agrees that any Hazardous Materials contaminating the Golf Course prior to possession of the Golf Course by Manager shall not result in liability for Manager under this Paragraph except to the extent such contamination is aggravated by the action or inaction of Manager.

**17.5. Notices Regarding Environmental Conditions.** Manager shall, within ten (10) business days following receipt thereof, provide NRPR with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Manager or the Golf Course alleging any violation of any local, state or federal environmental law or regulation or requiring Manager to take any action with respect to any release on or in the Golf Course or the soil or ground water under or adjacent to the Golf Course of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Manager may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Golf Course or the soil or ground water under or adjacent to the Golf Course or any damages caused by such release.

**17.6. Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et. seq.

**17.7. Survival.** Manager's and County's obligations under this Section shall survive the expiration or earlier termination of this Agreement and vacation of the Golf Course.

**18. Assignment, Subletting, Concessions, and Subcontractors.** Manager shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Agreement or any interest therein (except as set forth in Paragraph 8 above), and shall not sublet the Golf Course or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Manager excepted) to occupy or use the Golf Course, or



any portion thereof, without first obtaining the written consent of NRPR, which consent shall not be unreasonably withheld. Although Manager may enter into concessions or subcontracts for the operation of activities ancillary to the operation of the golf course, such as the restaurant, bar, and pro shop, and may hire contractors to perform services such as turf maintenance and landscaping, Manager shall not delegate its overall responsibility for all operations on the Golf Course, nor its operation of the actual golfing component, without NRPR's written consent, which may be withheld at the reasonable discretion of NRPR, and no delegation of duties or hiring of contractors shall in any way relieve Manager of its responsibilities and obligations hereunder.

County's review of a request to sublet a portion of the Golf Course or to subcontract duties or obligations hereunder shall be limited to the determination that the subcontract complies with the R&PP Restrictions and that the subcontract is consistent with the specific purposes for which the Golf Course are being operated by Manager, and does not create a violation of Manager's obligation to retain management of the Golf Course, as set forth in the above Paragraph. Manager shall not grant a license to any portion of the Golf Course for uses that are not exclusively related to the Golf Course. Uses that are not exclusively related to the Golf Course include things such as licenses to locate or operate facilities on the Golf Course which provide services to persons located off the Golf Course, such as, but not limited to, food catering services, telecommunication facilities, or storage facilities.

Consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be consent to any other assignment, subletting, occupation, or use by another person. Consent to any such assignment or subletting shall in no way relieve Manager of any liability under this Agreement and shall not impose any additional burden or obligation on County. Any such assignment or subletting without such consent shall be void, and shall, at the option of County, constitute a default under the terms of this Agreement. All gross receipts by any such subcontractor, licensee, Manager or any other Revenue User in connection with their use of the Golf Course shall be subject to the provisions of Paragraph 3. Manager shall provide County with copies of any subcontract, concession or similar agreement entered into during the term of this Agreement.

#### **19. Utilities, Services and Taxes.**

**19.1. Manager Responsible for Utilities.** Manager shall be responsible to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, pest and termite service, security services and all other services and utilities supplied to the Golf Course and any buildings located within the Golf Course, together with any taxes thereon.

**19.2. Reclaimed Water.** Type B treated effluent (reclaimed water) is currently delivered to the Golf Course through a reclaimed water line from the County's Ina Road Wastewater Treatment Facility. Manager shall be required to pay for the utility costs necessary to pump the reclaimed water from the treatment facility to the Golf Course, and Manager shall be responsible for the cost of maintenance, repair and replacement of pumps on the Premises, but Manager shall not be required to pay for the water itself until the water line through which this reclaimed water is delivered is replaced and Manager begins receiving water through the new line.

Manager has been advised that the existing reclaimed water line is not considered to be 100% reliable, because of its vintage and condition. For this reason, Manager has agreed to install a

new reclaimed water tap and line, as described in Paragraph 4.1.2 above, in exchange for a credit toward the Operating Fees due to the County.

From and after the time that this new reclaimed water line is functional and is delivering reclaimed water to the Golf Course, Manager shall pay County for the water it uses, at the rate of \$100 per acre foot. This rate shall be adjusted periodically to reflect increases in the cost of the reclaimed water to the County; if the rate the County pays Tucson Water for delivery of the water increases, the rate paid by Manager shall increase a like percentage.

Until such time as the new reclaimed water line is functional and is delivering reclaimed water to the Golf Course, Manager shall make reasonable efforts to minimize wear and tear on the existing reclaimed water line through the coordination of its operation with County Wastewater staff. These efforts shall include, but not necessarily be limited to, maintaining an optimal water inventory at all times; and keeping County staff informed of anticipated water needs and usages, to the extent that this can reasonably be foreseen. Manager shall also fill in the non-irrigation-related pond on the Golf Course to lessen pressure on the existing line, at such time as the County makes fill for the project available to Manager at no cost.

Manager shall be permitted to use the existing line, even after completion of the new line, until the earlier of the following occurs: (a) the Randolph Wastewater Treatment Plant is operating; and (b) the existing reclaimed water line breaks, leaks, or shows other signs of increased instability. Upon the occurrence of either of these events, Manager shall abandon use of the existing line and switch to the new line.

With respect to the reclaimed water line, Manager will be operating under Tucson Water's ADEQ Reuse Permit.

- 19.3. **Interruption of Services.** County shall not be liable to Manager if any utilities or services, whether or not furnished by County hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond County's reasonable control (including any interruption in the supply of reclaimed water from Tucson Water), nor shall any such termination relieve Manager of any of its obligations under this Agreement. County shall have no liability to Manager if any utility service is interrupted by the utility provider or otherwise. Nevertheless, the County is currently working with Tucson Water to connect to Tucson Water's Thornydale reclaimed water line, which could be utilized to deliver water through temporary above-ground delivery lines, in the event that the existing reclaimed water line becomes non-operational. The County will make a reasonable effort to put this agreement and emergency plan in place.
- 19.4. **Taxes.** Manager shall be responsible for payment of all taxes, whether real property taxes, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Golf Course or any use of the Golf Course by Manager.
20. **Entry by County.** County reserves the right to enter the Golf Course to inspect the same; provided that if such entry is not during normal business hours, County shall provide Manager with at least twenty-four (24) hours advance written notice. County shall use its reasonable best efforts to not interrupt Manager's business at the Golf Course. County at any and all times shall have the right to use any and

all means which County may deem proper to open gates or doors in an emergency in order to obtain entry to the Golf Course, without liability to Manager, except for any failure to exercise due care for Manager's property, and any entry to the Golf Course obtained by County by any such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Golf Course, or an eviction of Manager from the Golf Course or any portion thereof.

21. **Default and Remedies.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Manager:

21.1. **Operation of Golf Course.** The vacating or abandonment of the Golf Course, or any portion thereof, by Manager, or the failure of Manager to maintain Normal Hours of Operation, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Manager.

21.2. **Monetary Obligations.** The failure by Manager to make any payment of Operation Fees or any other payment required to be made by Manager hereunder, as and when due, where such failure shall continue for a period of ten (10) calendar days after such payment is due. County is not required to give Manager notice of failure to pay Operation Fees, and Manager acknowledges that all Operation Fees are due and payable without demand or offset.

21.3. **Insurance.** The failure by Manager to maintain insurance policies as set forth above for any time; in which event Manager must immediately cease all operations at the Golf Course until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Manager shall, within five (5) days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage.

21.4. **Other Covenants.** The failure by Manager to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Manager, where such failure shall continue for a period of thirty (30) days after written notice thereof by NRPR to Manager; provided, however, that if the nature of Manager's default is such that more than thirty (30) days are reasonably required for its cure, then Manager shall not be deemed to be in default if Manager commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within one hundred and twenty (120) days of the notice by NRPR.

21.5. **Repeated Defaults.** More than three defaults by Manager, as set forth in subsections 21.1 to 21.4 above, in any calendar year, even if Manager cures the defaults within the applicable grace periods set forth above.

21.6. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement, including without limitation, the right to recover all future Operation Fees, subject to the duty to mitigate.

## 22. General Provisions.

- 22.1. **Conflict of Interest.** This Agreement is subject to cancellation pursuant to Arizona Revised Statutes § 38-511 which is incorporated herein by reference.
- 22.2. **Waiver.** The waiver by County or Manager of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of Operation Fees hereunder by County shall not be deemed to be a waiver of any preceding default by Manager of any term, covenant or condition of this Agreement, other than the failure of Manager to pay the particular Operation Fees so accepted regardless of County's knowledge of such preceding default at the time of the acceptance of such Operation Fees. Failure of County or Manager to insist upon strict performance of any provision or to exercise any remedy hereunder shall not be deemed to be a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver is sought to be enforced. Nothing herein shall require or obligate County to accept any partial payment of the then current and owed Operation Fees due or partial performance of obligations under this Agreement. County may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder, such acceptance of partial payments of Operation Fees due or partial performance of obligations hereunder shall in no way be considered or constitute a waiver by County of any failure on the part of Manager to timely pay Operation Fees due or perform the obligations hereunder nor shall such acceptance be considered an accordance satisfaction of the Operation Fees then due under this Agreement.
- 22.3. **Marginal Headings.** The marginal headings and section titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- 22.4. **Time.** Time is of the essence for this Agreement and each and all of its provisions in which performance is a factor.
- 22.5. **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties hereto.
- 22.6. **Recordation.** Either this Agreement or a short form memorandum hereof may be recorded at the request of either party.
- 22.7. **Parking Lot.** Manager acknowledges that portions of the parking lot of the Golf Course are subject to an agreement between County and the Marana School District which expires in May 2005, but which Manager acknowledges may be extended by the County and the District. Manager further acknowledges that the portion of the parking lot used by the Marana School District is also used from time to time by persons involved in the Little League games played at the ball fields adjacent to the Golf Course.
- 22.8. **Prior Agreements, Amendments, and Modifications.** This Agreement constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior or contemporaneous

agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

- 22.9. **Partial Invalidity.** Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid, void, or illegal provision.
- 22.10. **Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of Arizona and the venue for any action in regard hereto shall be the Pima County Superior Court.
- 22.11. **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement the prevailing party shall be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees, in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.
- 22.12. **Approvals.** Unless otherwise provided herein, whenever the approval of a party is required by this Agreement, such approval shall be given within thirty (30) days. If such approval is not given with such time period, the request shall be deemed disapproved and denied. When "NRPR" is used in this Agreement, it means the County, acting through the Pima County Natural Resources Parks and Recreation Department, which has been delegated the responsibility of administering this Agreement.
- 22.13. **Notices.** Wherever this Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service such as Federal Express or United Parcel Service, addressed to the parties at the addresses specified below and to the following individuals. Either party may change such address by written notice to the other as herein provided.

If notice is to County:

Director  
Pima County Natural Resources Parks and Recreation Department  
3500 W. River Road Tucson, Arizona 85741  
Telephone Number: (520) 877-6000  
Fax Number: (520) 877-6208

If notice is to Manager:

Director of Golf Operations  
Wildcat Golf Partners  
9101 N. Thornydale Road  
Tucson, Arizona 85749

- 22.14. **Authority of Manager.** Each individual executing this Agreement on behalf of Manager represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County shall not be liable to Manager or any third party by reason of such determination or by reason of this Agreement.
- 22.15. **Books and Records.** Manager shall retain, and require all subcontractors to retain, for inspection and audit by the County and the Arizona Auditor General, all books, accounts, reports, files and other records relating to performance of the Agreement for a period of five years after its completion or if later, until any related proceedings initiated during the five (5) year period are completed. Upon request by the County or the Auditor General, a legible copy or the original of all such records shall be produced by the Manager at the administrative office of the County or the office of the Auditor General.
- 22.16. **No Subsidy by County.** Manager acknowledges that County does not intend to and cannot under the terms of this Agreement pay, subsidize or otherwise contribute to Manager for the operation of the Golf Course.
- 22.17. **Compliance with ADA.** Manager shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, at any time Manager remodels, renovates, or has new construction. Pima County reserves the right but not the obligation to enter unto the Golf Course to make improvements, at Pima County's cost, to provide reasonable ADA accommodations.
- 22.18. **Non-Discrimination in Employment.** Manager shall not discriminate against any County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Manager's duties pursuant to this Agreement. Manager shall comply with the provisions of Arizona Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Agreement by reference as if set forth in full herein.
- 22.19. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, if there are not sufficient appropriated and available monies for the purpose of maintaining County's obligations under this Agreement, County shall have no further obligation to Manager; provided, however, Manager may continue to occupy the Golf Course if Manager performs all of Manager's obligations under this Agreement.
- 22.20. **Independent Contractor.** The status of the Manager shall be that of an independent contractor. Neither Manager, nor Manager's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Manager shall be responsible for payment of all federal, state and local taxes associated with Manager's activities and shall indemnify and hold County harmless from any and all liability which County may incur because of Manager's failure to pay such taxes. Manager shall be solely responsible for program development and operation.

IN WITNESS WHEREOF, the parties hereto duly authorized have executed this Agreement.

Pima County

Shawn Bronser  
Chair, Board of Supervisors **JUN 1 - 2004**

Wildcat Golf Partners, L.L.C.

Bud Clark  
Bud Clark  
Vice President

Approved as to form:

Regina Alessi  
Deputy County Attorney

Richard Mueller  
Richard Mueller  
Member and Manager

Approved as to content:

Rafael Payan  
Rafael Payan,  
Director, Natural Resources,  
Parks and Recreation Department

ATTEST:

Robert Brigade, Deputy  
Clerk, Board of Supervisors  
Pima County, Arizona

List of Exhibits:

- Exhibit A – Site Plan and Legal Description
- Exhibit B – Property Inventory
- Exhibit C – Manager's Proposal
- Exhibit D – Specifications and Route for Reclaimed Water Line