

LEASE AGREEMENT NO. 258

THIS LEASE AGREEMENT (this "Agreement" or "Lease"), is entered into and made effective the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter called "City" or "Lessor"), and TACOMA FIRS GOLF CENTER, LLC, a Washington limited liability company doing business as Tacoma Firs (hereinafter called "TFGC" or "Lessee").

WHEREAS, in 1998, pursuant to Resolution No. 33906, the City entered into an Operating Agreement (the "Operating Agreement") for the design, construction, and operation of a first class regional golf learning center on a City owned parcel of land adjacent to Tacoma's landfill, and

WHEREAS Family Golf, Inc. designed, constructed, and commenced operation of Tacoma Firs Golf Center under said Agreement, and

WHEREAS Family Golf, Inc. filed for Chapter 11 bankruptcy protection in May 2000, and continued to operate the Tacoma Firs Golf Center under the authority of the Bankruptcy Court, and

WHEREAS, as part of Family Golf, Inc.'s bankruptcy, the Bankruptcy Court approved the purchase by Tacoma Firs Golf Center, LLC of Family Golf, Inc.'s rights and interest in the Agreement for operation of the Tacoma Firs Golf Center, and

WHEREAS TFGC and the City entered into an updated agreement in 2001 pursuant to Resolution No. 35114 for the continued operation of the golf center, driving range, and associated facilities adjacent to the Tacoma Landfill, and

WHEREAS in 2003 the Operating Agreement was amended pursuant to Resolution No. 35907 to allow TFGC to construct a cover over the second level of the driving range, and

WHEREAS, the term of the Operating Agreement expires on December 31, 2031, and

WHEREAS, TFGC has proposed substantial improvements to the Golf Center to be funded entirely by TFGC, and has asked the City to enter into a lease agreement creating a leasehold interest in the Golf Center, authorizing certain improvements to be made to the Golf Center, providing for an initial 30 year term, with five (5), five (5)-year extensions, and providing for payment of rent, and

WHEREAS, the City and TFGC desire to terminate the existing operating agreement and enter into a lease agreement upon the terms and conditions as set forth herein;

W I T N E S S E T H:

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants and conditions set forth, the parties agree as follows:

ARTICLE I. RIGHTS GRANTED

1.1 Grant of Lease: Lessor does hereby lease to Lessee for the term, and upon the terms and conditions set forth herein, the surface of those certain premises described on Attachment A, and the improvements now or hereafter located thereon (collectively the "Premises") which improvements are commonly known and referred to herein as the "Tacoma Firs Golf Center."

1.2 Use of Premises: The Premises shall only be used as authorized pursuant to Article IV of this Agreement.

1.3 Lessor Representative: The chief executive officer of the Lessor (the City Manager), or designee, shall have authority to manage and administer this Agreement and to give all approvals on behalf of the Lessor, and exercise all rights and remedies of the Lessor, as given hereunder, except those rights, duties or obligations that are reserved to the Lessor's governing body (the City Council) under the Lessor's Charter, or local or state law.

ARTICLE II. TERM

2.1 Lessee shall have and hold all rights granted under this Agreement for a term commencing on July 1, 2018 ("Lease Commencement Date") and ending on December 31, 2047, unless sooner terminated pursuant to any of the provisions of this Agreement, or by mutual agreement of the Parties. This Agreement will be on a calendar year basis with any annual payments for the first year prorated.

2.2 Lessee and Lessor shall at any time and from time-to-time without charge, and within twenty (20) days after written request therefor by the other party, complete, execute and deliver to the requesting party a written statement, substantially in the form attached hereto as Attachment E, concerning the terms of this Lease, and containing such other reasonable factual information as may be reasonably requested.

2.3 Lessee shall have the option to renew this Lease for up to five (5) additional terms of five (5) years each. These renewal terms shall be automatic without notice by the Lessee, subject to, (i) the Lessor's right to terminate the Lease, with respect to each such term, in the event that Lessee is in default of any Lease term, by giving the Lessee not less than one hundred

eighty (180) days' written notice of default and termination prior to the expiration of the immediately preceding term, and (ii) the Lessee's right to elect not to renew, with respect to each such term, by giving the Lessor not less than one hundred eighty (180) days' written notice prior to the expiration of the immediately preceding term. This Lease shall remain in effect for each renewal term and each of the terms and conditions of this Lease shall govern the relationship of the parties except as expressly varied herein with respect to said renewal terms. During any renewal term, the Lessee shall have the right to terminate the Lease upon one hundred and eighty days (180) prior written notice.

### ARTICLE III. RENT AND PAYMENTS

3.1 Payment Due: Lessee agrees to pay all rent and leasehold excise tax due as set forth in this Agreement. All rent and leasehold excise tax payments due and owing under this Agreement shall be made in lawful money of the United States and paid on or before the fifteen (15th) day of each calendar month, to the Lessor or to such other party or at such other place as the Lessor may hereinafter designate.

#### 3.2 Rent.

3.2.1 Except as provided herein for the leasehold excise tax offset, Lessee shall not be obligated to pay rent during construction of the Tenant Improvements described in Article V. Commencing on the first day of the second (2nd) month after Lessee obtains its occupancy permit for the Premises ("Rent Commencement Date"), Lessee covenants and agrees to pay, without offsets or deductions, as rent the monthly minimum of FOUR THOUSAND FIVE HUNDRED SIXTY TWO DOLLARS (\$4,562.00) per month (the "Initial Rent").

3.2.2 Commencing 24 months from the Rent Commencement Date, the rent shall be increased to TEN THOUSAND THREE HUNDRED AND FORTY DOLLARS (\$10,340.00) per month (the "Base Rent").

3.3 Leasehold Excise Tax. With each payment of monthly rent, Lessee agrees to pay Lessor as additional rent (and Lessor agrees to remit to the Washington State Department of Revenue) all leasehold monthly excise taxes as may be assessed against the Premises.

3.4 Leasehold Excise Tax Offset. The Lessor agrees to offset the monthly rent due by the amount of the monthly leasehold excise tax then due and paid by Lessee to Lessor, e.g., the monthly leasehold excise tax arising under this agreement and applicable to the Initial Rent equals \$585.76 (12.84% x \$4,562.00 = \$585.76), and the monthly leasehold excise tax arising under this agreement and applicable to the un-adjusted Base Rent equals \$1327.66 (12.84% x \$10,340).

3.5 Annual Adjustment of Base Rent: On the third anniversary of the Commencement Date and on every anniversary of such date thereafter, the monthly Base Rent will be increased by the amount of the proportionate increase occurring in the cost of living as indicated by the Consumer Price Index for All Urban Consumers-Seattle-Tacoma-Bremerton Metropolitan Area (or any equivalent or successor index however named) – All Items as published by the United States Department of Labor's Bureau of Labor Statistics (the "CPI"). Such adjustment will be accomplished by multiplying the then-current monthly Base Rent by a fraction, the numerator of which will be the CPI level as of the month preceding the date on which the adjustment is to be made and the denominator of which will be the CPI level as of the same month one year earlier. Any adjustment of monthly Base Rent will become effective immediately. In no event will the monthly Base Rent be less than the then current monthly Base Rent.

3.6 Late Fees and Interest: ALL MONTHLY RENT SHALL BE PAID IN ADVANCE, ON OR BEFORE THE 15TH DAY OF EACH MONTH, WITHOUT DEMAND, TO LESSOR AT THE ADDRESS SET FORTH HEREAFTER. A LATE CHARGE OF 5% OF THE UNPAID FEE AMOUNT OR OTHER PAYMENT OBLIGATION, BUT NOT LESS THAN \$50.00, SHALL BE DUE AS AN ADDITIONAL FEE FOR ANY PAYMENT OF ANY KIND NOT RECEIVED BY THE 15TH DAY OF ANY MONTH OR THE 10TH DAY AFTER SUCH PAYMENT IS DUE, AS APPLICABLE, DURING THE TERM OR RENEWAL PERIODS OF THIS AGREEMENT. LESSOR AND LESSEE AGREE THAT THIS CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE PROCESSING AND ACCOUNTING COSTS THE LESSOR WILL INCUR BY REASON OF SUCH LATE PAYMENT. ALL PAST DUE AMOUNTS OWING TO THE LESSOR UNDER THIS AGREEMENT, INCLUDING FEE PAYMENTS, SHALL ALSO BE ASSESSED INTEREST AT AN ANNUAL PERCENTAGE RATE EQUAL TO THE LESSER OF EIGHTEEN PERCENT (18%) OR THE HIGHEST LEGAL PERCENTAGE RATE FROM THE DATE DUE OR DATE OF INVOICE, WHICHEVER IS EARLIER, UNTIL PAID. Lessee AGREES TO PAY TO LESSOR A \$50.00 FEE FOR ALL CHECKS RETURNED FOR INSUFFICIENT FUNDS (NFS).

#### ARTICLE IV. BUSINESS PURPOSE

4.1 Lessee shall use the Premises for construction and operation of a golf center (the "Golf Center") that may include, but is not limited to, operation of, (a) a golf driving range, (b) a miniature golf course (c) electronic and/or computer-controlled golf games, rides and amusement devices, (d) a restaurant, entertainment and commercial merchandise center which may include the serving of beer, spirits and wine, and (e) any other use as Lessor may approve in writing, which approval shall not be unreasonably withheld if allowed under existing zoning laws. It is further provided that, Lessee shall comply with all applicable laws, ordinances, and governmental or municipal regulations and orders; shall not occupy or use the Premises for any purpose not specifically authorized by the Agreement; shall not make or permit any use of the Premises which may be dangerous to life, limb or property, or which increases the premium cost or invalidates any policy of insurance covering or carried on the Premises, the building or its



contents; shall not default on any terms or conditions or any loan obligation obtained for construction of the improvements; shall not make or permit any noise or odor to emit from the Premises which is objectionable to the public or to Lessor; and, shall not create, maintain or permit a nuisance thereon.

#### ARTICLE V. TENANT IMPROVEMENTS

5.1 The Lessor acknowledges that Lessee intends to construct a new building and improve the existing Leased Property substantially similar to the plans shown in Exhibit 5.1 attached hereto and incorporated herein by this reference (the "Tenant Improvements"). The Lessor shall cooperate in the development of the Leased Property consistent with Exhibit 5.1; provided, however, material changes and additions to the improvements, which affect the site plan or compatibility of appearance shown on Exhibit 5.1 shall not proceed without the prior written approval of the Lessor, which shall not be unreasonably withheld, conditioned or delayed.

5.2 Any and all Tenant Improvements made by the Lessee upon the Leased Property shall be at the sole cost and expense of the Lessee. The Lessor shall have no responsibility whatsoever with respect to any such Tenant Improvements, permitting costs or other costs of development, unless otherwise provided in writing. Except for the Tenant Improvements, Lessee shall have no responsibility whatsoever with respect to any improvements owned by the Lessor, including utilities or that are outside the Leased Property. Lessee shall obtain all required approvals and permits from the Lessor and any other State or local governmental agency, department or entity with jurisdiction.

5.3 Construction of any Tenant Improvements on the Leased Property shall be performed in a careful and workmanlike manner and in compliance with all applicable laws and codes.

5.4 The Lessor represents and warrants that, to the best of its knowledge, all utilities are in good working order and will abut or be readily accessible to the Leased Property. All utilities will be in good working order and condition throughout the term of this Lease.

5.5 During the course of construction of any Tenant Improvements upon the Leased Property, and upon termination of this Lease, Lessee will maintain the Leased Property in a safe and clean manner.

#### ARTICLE VI. MAINTENANCE AND RETURN OF PROPERTY

6.1 Lessee will permit no waste, damage or injury to the Premises. Lessee further agrees that Lessor shall have no obligation to maintain or repair any improvements on the Premises. Lessee shall keep the Premises neat, clean, and in a safe and sanitary condition. The

Premises shall at all times be kept and used in accordance with all directions, rules and regulations of the health officers, fire marshal, building inspectors and other proper officials all at the sole expense and cost of the Lessee. Lessee shall perform all building maintenance and mechanical systems at its sole expense.

6.2 Lessee shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises, and shall keep same in good condition and repair, reasonable wear and tear excepted. Lessee's repair obligations shall expressly include maintenance of: (1) mechanical, electrical, plumbing, sprinkler system and other fire/life safety systems within the Premises; (2) all lighting fixtures and restroom facilities located within the Premises; (3) building roof, ramp, door and entryway to the Premises; (4) building structural support and foundation, building landscaping and parking areas; and (5) all alterations performed by contractors retained by Lessee.

6.3 The Lessor may enter upon the Premises at any reasonable time for purpose of inspecting the property to determine compliance or non-compliance with this Agreement. During the term of this Agreement, the Lessor may, (a) conduct annual inspections of the structural, mechanical, heating, plumbing, and utility systems, and (b) monitor and evaluate Lessee's performance under and for compliance with the terms of this Agreement. The Lessor retains access rights to the real property for the purposes of maintenance and inspections as it relates to the Consent Decree for the adjoining Solid Waste landfill Premises as contemplated in Attachment C. Lessor will not unreasonably interfere with the operations of said golf facility.

6.4 Lessee shall not permit mechanic's or other liens to be placed upon the Property, Premises or Lessee's leasehold interest in connection with any work or service done or purportedly done by or for benefit of Lessee. If a lien is so placed, Lessee shall, within 10 days of notice from Lessor of the filing of the lien, fully discharge the lien by settling the claim which resulted in the lien or by bonding or insuring over the lien in the manner prescribed by the applicable lien Law. If Lessee fails to discharge the lien, then, in addition to any other right or remedy of Lessor, Lessor may bond or insure over the lien or otherwise discharge the lien. Lessee shall reimburse Lessor for any amount paid by Lessor to bond or insure over the lien or discharge the lien, including, without limitation, reasonable attorneys' fees (if and to the extent permitted by Law) within 30 days after receipt of an invoice from Lessor.

6.5 All permanent improvements and alterations that Lessee has constructed or purchased on the Premises are the Lessee's property as long as the Lease remains in effect, including any period of extension or holdover. At the termination, cancellation or expiration of the Agreement that is neither extended nor followed by a successor lease to the same lessee, Lessee agrees to execute and deliver to Lessor any and all documents that Lessor may request to transfer title to and ownership of all of the permanent improvements and alterations it has made on the Property, excluding business or trade fixtures/dress and other non-fixed personal property, to Lessor for the sum of ONE DOLLAR (\$1.00) and free and clear of all liens, encumbrances, easements, tenancies and restrictions. Lessee further agrees that at the cancellation, expiration or



sooner termination of this Agreement, Lessee will quit and surrender the Property and improvements and Alterations without notice and in a neat and clean condition, and will deliver all keys belonging to said Premises to the Lessor or to the Lessor's agent. If Lessee fails to convey full and complete title to and ownership of all of the permanent improvements and Alterations to Lessor, Lessee hereby grants to Lessor a non-revocable and durable power of attorney to Lessor and appoints Lessor as its attorney-in-fact to execute any and all documents necessary to accomplish such transfer of title and ownership. This obligation shall survive the termination, cancellation or expiration of this Agreement. All non-fixed property, including "trade dress", trade fixtures, signage and other personal property not removed within the time periods set forth at Sections 10.3 and 16.3 shall become the property of the Lessor, if the Lessor chooses to accept it, or disposed of by the Lessor pursuant to Section 17.1 of this Lease.

#### ARTICLE VII. UTILITIES AND TAXES

7.1 Lessee covenants and agrees to pay before delinquency any assessments and charges for heat, light, water, sewer, and other utilities which shall be used in or charged against the Premises during the full term and extension of this Agreement.

7.2 Lessee further covenants and agrees to pay all license or permit fees, business and occupation taxes and any other fees and taxes applicable to the property of Lessee for business conducted on the Premises, presently in effect or subsequently levied by federal, state, county or municipal governments, or any political subdivision thereof.

7.3 Lessee is to pay for all public utilities not specifically stated herein which shall be used in, or charged against, the Premises as a result of Lessee's occupancy during the term of this Agreement. Lessor shall not be liable for any injury or damages suffered as a result of the interruption of these utility services by fire or other casualty, strike, riot, vandalism, the making of necessary repairs or improvements, or any other cause beyond Lessor's control.

7.4 Lessee also shall be responsible for any tax on its personal property located on the Premises and surface water charges arising after the Commencement Date and relating to the subject Premises.

7.5 Lessee shall pay any and all leasehold excise taxes which may be due and owing as a result of the fee(s) paid by Lessee. The Lessor shall have the right to determine which payments are "contract fees" as that term is defined under RCW Chapter 82.29A and received for a lease of public property and which payments have been paid.

#### ARTICLE VIII. ACCIDENTS AND INDEMNITY

8.1 All personal property on the Premises shall be at the risk of Lessee. Lessor or Lessor's agents shall not be liable for any damage, either to person or property, sustained by Lessee or others, caused by any defects now on the Premises or hereafter occurring thereon, or

due to the building which is situated on the Premises, or any part or appurtenance thereof, becoming out of repair, or caused by fire or by the bursting or leaking of water, gas, sewer or steam pipes, or from any act or neglect of employees, co-tenants or other occupants of said building, or any other persons, or due to the happening of any accident from whatsoever cause in and about said building, unless caused by Lessor's gross negligence or intentional acts. Lessee agrees to hold Lessor and Lessor's agents, employees or assigns harmless for any injury to any person, or for the loss of or damage to any property (including property of Lessee) claims, causes of action, damages or expenses, including Court costs and attorney fees occurring in or about the Premises from any cause whatsoever, except for such as arise out of Lessor's gross negligence or intentional acts.

#### ARTICLE IX. COVENANT OF TITLE AND QUIET ENJOYMENT

9.1 Lessor is well seized of and has good title to the Premises free and clear of all liens, encumbrances, easements, tenancies and restrictions. Lessor warrants and will defend the title thereto, and will indemnify Lessee against any damage and expense which Lessee may suffer by reason of any defects in the title or description herein of the Premises. Lessor hereby guarantees Lessee quiet possession and enjoyment of the property so long as Lessee complies with all of the terms and conditions herein, subject to the right of access as identified within Section 6.2.

9.2 Lessor shall, upon Lessee's request, obtain from the holder of any encumbrance against the subject Premises an agreement in form satisfactory to Lessee whereby the holder of any such encumbrance shall agree with Lessee that in the event of foreclosure or other judicial or non-judicial acquisition of the Premises, such holder of such encumbrance shall not disturb the rights of Lessee as created by this Agreement. In return, Lessee shall agree to attorn to any such holder of any such encumbrance.

#### ARTICLE X. ALTERATIONS

10.1 Lessee will have the right, subject to the provisions of this Article X, Article V, and Article XIV, to remodel, equip, paint and decorate the interior of the improvements upon the Premises.

10.1 Lessee desires to perform during the term of this Agreement certain Alterations (as defined below) to the Premises. All Alterations made by or on behalf of Lessee shall be performed in compliance with Section 10.3 below and shall be owned by Lessee and remain upon the Premises; provided that, Lessee may request, at the time of its request for approval of the Alterations under Section 10.3, Lessor's consent (which consent shall not be unreasonably withheld) to remove certain Alterations with unique value to the operation of Lessee's business. Lessor, by written notice to Lessee within 30 days prior to the termination/expiration date, may require Lessee to remove, at Lessee's expense, any non-permanent Alterations for which Lessee does not receive Lessor's written consent, before commencement of construction, allowing such improvement to remain at the expiration of the term of this Agreement (collectively, "Required



Removables”). The Required Removables designated by Lessor shall be removed by Lessee before the termination or expiration date. Lessee shall repair damage caused by the installation or removal of any such improvements. If Lessee fails to remove any Required Removables or perform related repairs in a timely manner, Lessor, at Lessee’s expense, may remove and dispose of the Required Removables and perform the required repairs. Lessee, within 30 days after receipt of an invoice, shall reimburse Lessor for the reasonable costs incurred by Lessor. The Lessor agrees that at the termination or expiration of this Agreement, Lessee shall have fifteen (15) calendar days from receipt of the notice of termination, or following the date of expiration of the Agreement, to remove Lessee’s “trade dress”, signage, and Lessee’s other personal property from the Premises.

10.2 Lessee shall not make alterations, additions or improvements to the Premises (collectively referred to as “Alterations”) without first obtaining the written consent of Lessor in each instance, which consent shall not be unreasonably withheld or delayed; provided that, Lessor’s consent shall not be required for any Alteration that satisfies all of the following criteria: (1) is not visible from the exterior of the Premises or Building; (2) will not affect the systems or structure of the Building or Improvements; and (3) does not require work to be performed inside the walls or above the ceiling of the Premises. However, even though consent is not required, the performance of Alterations shall be subject to all the other provisions of this Article 10. Alterations requiring the Lessee’s prior consent shall be subject to a design review process from Environmental Services Director, or designee, prior to the submittal of plans for issuance of permits or land use approvals. Prior to starting work, Lessee shall furnish Lessor with plans and specifications reasonably acceptable to Lessor; names of contractors reasonably acceptable to Lessor (provided that Lessor may designate specific contractors with respect to Building systems); copies of contracts; necessary permits and approvals; evidence of contractor’s and subcontractor’s insurance in amounts reasonably required by Lessor; and any security for performance that is reasonably required by Lessor. Changes to the plans and specifications must also be submitted to Lessor for its approval. No approval given, inspection made, review or supervision performed by the Lessee pursuant to or under authority of this Agreement shall constitute or be construed as a representation or warranty express or implied by the Lessor that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Agreement or meets any particular standard, code or requirement, or is in conformance with the approved plans, and no liability shall attach with respect thereto. Lessee is under no obligation or duty to supervise the design, construction, or operation of the improvements or Alterations.

10.3 Alterations shall be constructed in a good and workmanlike manner using materials of a quality that is at least equal to the quality designated by Lessor as the minimum standard for the Building. Upon completion, Lessee shall furnish “as-built” plans (except for Cosmetic Alterations), completion affidavits, full and final waivers of lien and receipted bills covering all labor and materials. Lessee shall assure that the Alterations comply with all insurance requirements and all applicable building, plumbing, fire, and health codes and zoning regulations. Lessor’s approval of an Alteration shall not be a representation by Lessor that the Alteration complies with the applicable Laws or will be adequate for Lessee’s use.

10.4 Upon termination or expiration of this Agreement, such Alterations made in, to or on the Premises (except unattached moveable business fixtures) shall remain upon and be surrendered as a part of the Premises as provided pursuant to Section 6.5 of this Agreement.

#### ARTICLE XI. INSURANCE

11.1 Liability Insurance: Lessee, at its sole expense, shall preserve and maintain in full force and effect, general comprehensive public liability insurance in responsible companies, qualified to do business in the State of Washington, which shall insure Lessee and its agents and employees against all claims for injuries or death to persons or damage to property occurring in or about the Premises with combined single limits of at least FIVE MILLION DOLLARS (\$5,000,000.00). Lessee shall deliver to Lessor, upon each anniversary, a certificate of said insurance of renewals thereof during the term of the Agreement.

11.2 Casualty Insurance: Lessee, at its sole expense, shall preserve and maintain in full force and effect insurance covering the building and improvements constructed on the Premises against loss or damage by fire and other casualties normally covered by Standard Fire and Extended Coverage policies for not less than one hundred (100%) percent of their replacement value in responsible insurance companies licensed in the State of Washington.

11.3 Builders All Risk Comprehensive Coverage. Lessee shall keep, or shall require its general contractor to keep, all project components insured for Builders All Risk Comprehensive Coverage including earthquake, fire, and flood and to include amounts sufficient to prevent Lessee from becoming a co-insurer under the terms of the applicable policies but in any event in an amount not less than 100% of the then full "Replacement Cost," being the cost of replacing the project components, and all fixtures, equipment, improvements and betterments thereto.

11.4 Indemnity: Lessee further agrees to indemnify, defend and save Lessor and Lessor's officers, agents, employees and assigns harmless from any liability, loss, cost, expense or claim of any nature on account of any damage to person or property arising out of the failure of the Lessee, or Lessee's agents, employees, servants, licensees or contractors, in any respect, to keep the subject Premises in a safe condition.

Lessee specifically assumes potential liability for actions brought by Lessee's own employees against the Lessor and, solely for the purpose of this indemnification and defense, Lessee specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Lessee RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION



11.5 Insurance Policy: All insurance required under terms of this paragraph and all renewals thereof shall be issued by companies approved by the holder of any security interest in the Premises (the "Lender"), or the Lessor in the absence of a Lender, shall be endorsed with such mortgagee rider as may be required by Lender, and shall be payable to Lessor and Lender as their interests may appear. Any loss adjustment shall require the joint written consent of Lessor and Lender. All policies shall expressly provide that such policies shall not be canceled, terminated or altered without thirty (30) days' prior written notice to Lessor and Lender. Upon the issuance thereof, each such policy or a duplicate or certificate thereof shall be delivered to Lessor and Lender.

11.6 Insurance Proceeds: Any insurance proceeds that are received by Lessee and/or Lessor under the insurance policies described in the paragraphs above shall be paid to Lessor for the cost of repair, reconstruction, replacement of or reimbursement for the buildings and improvements as herein required. If the insurance proceeds are insufficient to cover the cost of repairing, reconstructing or replacing the buildings and improvements as herein required, Lessee shall be obligated to pay the deficiency.

## ARTICLE XII. DAMAGE OR DESTRUCTION

12.1 Destruction: Restoration by Lessee: If the premises is damaged or destroyed during the Term by a casualty covered by Lessee's fire and extended coverage insurance, then Lessee shall restore the premises to substantially the same condition as it was in immediately before such damage or destruction utilizing the proceeds of such insurance. Lessee shall also be responsible for the amount of any deductible. Lessee shall restore the premises and re-open the driving range for business within a reasonable period of time following the casualty, taking into account the reasonable time required to receive the insurance proceeds, assess the scope of the casualty, prepare plans and specifications for rebuilding, obtain permits, enter into a construction contract, obtain materials, and similar factors.

12.2 Lessee's Right to Terminate: If the premises is damaged or destroyed during the Term by a casualty, and (i) such casualty is not covered by Lessee's full replacement fire and extended coverage insurance, or (ii) the casualty occurs during the last five (5) years of the Term, then Lessee shall have the option of either repairing and reconstructing the premises or of terminating this Agreement. If Lessee elects to repair and reconstruct, Lessee shall promptly do so.

## ARTICLE XIII. EMINENT DOMAIN

13.1 Total Condemnation: If the whole of the real property and improvements shall be acquired by eminent domain for any public or quasi-public use or purpose, then the term of this Agreement shall cease and terminate as of the date title or possession shall be transferred in such proceeding, whichever shall occur first, and all fees shall be paid up to that date. Lessor shall be entitled to any part of the Condemnation Award, settlement or compensation, attributed

to the reversionary interest in the land and improvements. Lessee shall be entitled to any part of the Condemnation Award, settlement or compensation attributed to the value of its interest hereunder.

### 13.2 Partial Condemnation:

13.2.1 Land: If any part of the land shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Premises unsuitable for the purpose of the Lessee, as determined by Lessor, then the term of this Agreement shall cease and terminate as of the date, title or possession shall be transferred in such proceeding, whichever shall first occur. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the designated use by the Lessee, then Lessor may promptly restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion lost and shall replace the portion lost with adjoining square footage of equal size and similar utility for Lessee's intended use, and this Agreement shall continue in full force and effect without offset or deduction, or the monthly fee shall be reduced by a fraction, the numerator of which shall be the number of square footage taken or condemned, and the denominator of which shall be the square footage of the subject Premises prior to the taking, whichever the Lessor shall desire. Lessor shall be entitled to any part of the Condemnation Award, settlement or compensation attributed to the reversionary interest in the land.

13.2.2 Building Improvements: If any part of the building and related improvements shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Premises unsuitable for the purpose of the Lessee, as determined by Lessor (which determination of unsuitability shall be made in light of Lessee's intended use and shall not be unreasonably withheld), then the term of this Agreement shall cease and terminate as of the date, title or possession shall be transferred in such proceeding, which ever shall first occur, and Lessee shall have no claim against Lessor for the value of any unexpired term of this Agreement. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of the Lessee, then this Agreement shall continue in full force and effect, subject to an equitable abatement in fees as agreed by the Lessor and Lessee in writing. In addition to those rights described below, Lessor shall be entitled to any part of the Condemnation Award, settlement or compensation attributed to the reversionary interest of the building or related improvements constructed by Lessee, subject to the rights of Lender in the proceeds.

13.2.3 Lessee's Damages: Notwithstanding the provisions of Paragraphs 13.1 and 13.2 above, Lessee also shall have the right to claim and recover from the condemning authority, but not from the Lessor, unless it is the condemning authority, such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damage to Lessee's business by reason of the condemnation and for or on account of any cost



or loss to which Lessee might be put in removing Lessee's merchandise, furniture, fixtures, fixtures, improvements and equipment and lost profit. Lessee shall have no claim against the Lessor for the value of any unexpired term of this Agreement unless Lessor is the condemning authority, in which event Lessee will have the right to claim against Lessor for the value of the unexpired term of the Agreement.

#### ARTICLE XIV. EXTERIOR SIGNS

14.1 Lessee shall have the sole right to determine the design, shape, color, plan and location for all signs and "trade dress" to be exposed to the interior or exterior of the buildings or established at the entryway of the subject Premises; provided however, the size and location of all signs or symbols posted or displayed on the exterior of the Premises shall be in compliance with all applicable building, plumbing, fire and health codes and zoning regulations.

14.2 The City grants to Lessee an easement for signage purposes advertising for Lessee's business located upon the real property located at the corner of \_\_\_\_\_ Street and \_\_\_\_\_ Street, which is described on Exhibit \_\_\_\_\_. ("Off-site signage"). The size of the easement shall be \_\_\_ feet by \_\_\_ feet. Lessee shall be responsible for any of the costs associated with the installation of the Off-site signage. Lessee shall be responsible for the costs in removing any signage and restoring the easement area to its original condition.

#### ARTICLE XV. ASSIGNMENT; TRANSFER AND SUBLEASE

##### 15.1 Lessee Assignment; Transfer; Sublease:

15.1.1 Consent. Except as provided in Subsection 15.1.3 below, Lessee may not assign, sublease or otherwise transfer the whole or any part of this Lease without the prior written consent of the Lessor, which consent will not be unreasonably withheld or delayed; provided, Lessee may license the food service concession without approval or consent of Lessor.

15.1.2 Qualifications; Consent Agreement. Prior to granting any consent to an assignment or transfer of the Lease requiring the Lessor's prior consent, Lessor may require that the assignee or transferee (collectively "Successor") establish to the reasonable satisfaction of the Lessor that the Successor has the legal, technical and financial qualifications to operate the Golf Center and execute an assignment/transfer agreement in a form and content acceptable to the Lessor's city attorney, accepting and agreeing to comply with all terms and conditions of the Lease and to cure any un-cured breach or default of the Lessor occurring prior to the date of such acceptance.

15.2 No Release of Lessee: No sublease, transfer or assignment without Lessor's prior consent when required under this Lease, shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the fees provided for hereinabove and to perform all other obligations to be performed by Lessee hereunder. The acceptance of fee payments by Lessor

from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment, transfer or sublease shall not be deemed consent to any subsequent assignments, transfers or sublease.

15.3 Lessor Assignment: Lessor may not assign, transfer, sell or convey its interest in the Premises or this Agreement to a third party due to its obligation under a consent decree and other matters set forth in Attachment D.

#### ARTICLE XVI. DEFAULT AND RE-ENTRY

16.1 The occurrence of any of the following events shall constitute a default of this Agreement by Lessee with or without notice from the Lessor:

16.1.1 Failure to pay rent or leasehold excise tax within fifteen (15) days after due date and notification of such failure by Lessor in writing.

16.1.2 Breach other than failure to pay rent or leasehold excise tax by Lessee in the performance of any of the covenants, agreements or obligations under this Agreement or any lease encumbrance and failure by Lessee for a period of thirty (30) days after notice from Lessor specifying such breach to cure the breach (which cure shall include compensation for any damage suffered by the Lessor due to such breach), provided; that where such breach cannot be reasonably cured within the thirty (30) day period, Lessee shall not be in default unless it fails to begin to cure such breach within thirty (30) days of receiving notice or fails to continue diligently to cure the breach. Any notice period specified hereunder is specifically intended by Lessor and Lessee to be in lieu of and not in addition to any notice required under any regulations regarding unlawful detainer or ejectment actions or similar regulations. In the event that the Lessor provides notice of breach to Lessee, it shall contemporaneously provide notice to Affiliate and/or Franchisor. Lessor and Lessee agree that the Affiliate and/or Franchisor will have the right, but not the obligation, to cure the default as provided as Section 16.2 of this Agreement.

16.1.3 General assignment by Lessee for the benefit of creditors.

16.1.4 The filing of a voluntary petition by Lessee or the filing of an involuntary petition by any of Lessee's creditors seeking the rehabilitation, liquidation or reorganization of Lessee under any laws relating to bankruptcy, insolvency or other relief of debt, or unless the trustee or receiver, as the case may be, affirms this Agreement within thirty (30) days of filing and agrees to be bound by the terms thereof, provided further bankruptcy or insolvency shall not be a default if the license mortgagee agrees to pay fees and assume the obligations under the fee for the balance of its term.

16.1.5 Attachment, execution and other judicial seizure of substantially all of Lessee's assets or the interests and rights granted hereunder. If the Lessor has given notice to



Lessee of default and of potential termination by reason of Lessee's default, Lessee's bankruptcy or attachment of the Premises, the Lessee mortgagee, if any, shall be entitled to assume all of the Lessee's rights, duties and obligations hereunder, provided that, the Lessee mortgagee does so within the cure period, and provided further that the Lessee mortgagee thereafter proceeds timely to cure all defaults, including violations of any nondiscrimination provisions that are susceptible of being cured by the Lessee mortgagee.

16.2 In the event of any default of this Agreement by the Lessee, this Agreement shall not terminate unless Lessor, at Lessor's option, elects at any time when Lessee is in default, to terminate Lessee's right to possession as provided herein; provided that, the Affiliate and/or Franchisor shall be granted the right but not the obligation to cure any default on the part of Lessee, and to, upon prior notice to Lessor, enter upon the Premises and do all things necessary to that end, provided it is within fifteen (15) days following the expiration of the cure period, or such other period agreed to in writing by the Lessor, in its sole discretion. In the event of default of this Agreement by the Lessee, Lessor shall have the right to terminate this Agreement by written notice of termination to Lessee and the Affiliate and/or Franchisor setting forth, (i) the default and the requirements to cure it, if any, unless the Lessor has previously notified Lessee and the Affiliate and/or Franchisor thereof, and (ii) a demand for possession which shall be effective either three (3) days after it is given or upon expiration of the time for cure herein set forth, whichever occurs later. Any such demand for possession shall be in lieu of and not in addition to any notice to pay rent or quit or similar notice required under applicable law. Upon the failure of Lessee or the Affiliate and/or Franchisor to timely cure default and the election by Lessor to terminate the Agreement, Lessor may, (i) using such legal proceedings as may be available, peaceably re-enter the Premises upon voluntarily surrender by Lessee or remove Lessee therefrom and any other persons occupying the subject Premises. Following termination, Lessor shall have all rights and remedies of Lessor provided by law. The amount of damage Lessor may recover following termination shall include, but not be limited to, the worth at the time of an award of an amount by which the unpaid fees for the balance of the term after the time of award exceeds the amount of fee loss Lessee proves could be reasonably avoided. If the Lessee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Agreement, Lessor shall be entitled to enjoin such breach or threatened breach and to invoke any remedy allowed by law, equity, by statute or otherwise as through re-entry, summary proceeding and other remedies where not provided for in this Agreement. Lessee agrees to pay a premium for any bond required in connection with an injunction against Lessee's breach or threatened breach of any covenant, term or condition contained in this Agreement. Each right and remedy of Lessor provided for in this Agreement or now or hereafter existing at law, in equity, by statute or otherwise, shall be cumulative and not preclude Lessor from exercising any other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise. Failure of Lessor to exercise any right or remedy shall not relieve the Lessee from any liability for failure to strictly perform Lessee's obligations under this Agreement or otherwise preclude Lessor from exercising any right or remedy.

#### ARTICLE XVII. REMOVAL OF PROPERTY

17.1 Any goods or fixtures of Lessee not removed by Lessor in accordance with the provisions of Article X or Article XVI of this Lease, and not otherwise accepted as property of the Lessor, may be removed from the Premises by Lessor and stored at the cost and expense of Lessee and at the sole risk of Lessee and without any further responsibility on the part of Lessor, and Lessor may, without removing said goods and fixtures, or after removing said goods and fixtures, at the sole discretion of Lessor, without obligation to do so and upon not less than thirty (30) days' notice to Lessee, sell or dispose of the same at public or private sale for the account of Lessee, in which event the proceeds therefrom may be applied by Lessor upon any indebtedness due from Lessee to Lessor. Lessee hereby waives all claims for damages that may be caused by Lessor re-entering and taking possession of the Premises and removing or disposing of said goods and fixtures as herein provided.

#### ARTICLE XVIII. COVENANTS AGAINST HAZARDOUS SUBSTANCES

18.1 Lessee shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on or under the Premises, or any adjacent property, or in any improvements placed on the Premises. Lessee represents and warrants to Lessor that Lessee's intended use of the Premises does not involve the use, production, disposal or bringing on to the Premises of any hazardous waste or materials. Lessee shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Premises or any adjacent property, or incorporated in any improvements, at Lessee's expense. Lessee shall notify Lessor immediately of any release of any hazardous waste or materials on the Premises.

18.2 Lessee agrees to indemnify and hold harmless the Lessor and the Lessor's agents, employees, contractors and assigns against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against the other or the Premises by reason of, or in connection with (i) any misrepresentation, breach of warranty or other default under this Agreement, or (ii) the acts or omissions of Lessee or any licensee or other person for whom Lessee would otherwise be liable, resulting in the release of any hazardous waste or materials.

18.3 As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect. As used herein, the term "release" shall be the same definition as those used by any federal, state or local statute, regulation, rule or ordinance now or hereinafter in effect.

18.4 Environmental Hold Harmless: Pursuant to the limitations of the terms specifically set forth in Attachment D, as well as the limitations of the assets and the available



revenues of the Solid Waste Utility, the Lessor agrees to hold harmless Lessee as well as its lender, if any, from and against any and all claims, demands, causes of action, damages, liabilities, losses, and expenses caused by or resulting from Hazardous Substances (as defined in Attachment D), which were generated, stored, disposed of, or existing on, at, or under the Tacoma Landfill, including Hazardous Substances which may have in the past, or in the future, migrate from the Tacoma Landfill to the Premises or Landfill and exceed the levels of the chemicals of concern identified in the Consent Decree.

ARTICLE XIX. COSTS AND ATTORNEYS' FEES

19.1 If by reason of any default on the part of Lessee, it becomes necessary for the Lessor to employ an attorney or in case Lessor shall bring suit to recover any fee due hereunder, or for breach of any provision of this Agreement or to recover possession of the Premises, or Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party, in addition to the costs allowed by law, such sum as a court may adjudge to be a reasonable attorney's fee.

ARTICLE XX. NONWAIVER OF BREACH

20.1 The failure of the Lessor to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such or any other covenants or agreements, but the same shall be and remain in full force and effect.

ARTICLE XXI. NOTICES

21.1 All notices to be given to Lessor shall be in writing and addressed to:

Solid Waste Division Manager  
Environmental Services Department  
Tacoma Municipal Building  
747 Market Street, Room 420  
Tacoma, Washington 98402

or faxed to: (253) 591-5097

with copies to: The City of Tacoma  
Tacoma City Attorney  
Tacoma Municipal Building  
747 Market Street, Suite 1120  
Tacoma, Washington 98402

or faxed to: (253) 591-5755

or at such other place as designated in writing by the Lessor.

21.2 All notices to be given to Lessee shall be given in writing and addressed to:

Tacoma Firs Golf Center, LLC  
c/o Michael R. Givens  
11718 Madera Drive SW  
Lakewood, Washington 98499

with copies to: W.W. Philip  
Kelcin, LLC  
13140 Country Club Drive SW, #404  
Lakewood, Washington 98498

and to: Morton McGoldrick, P.S.  
c/o Mark E. Holcomb  
820 A Street, Suite 600  
Tacoma, Washington 98402

or at such other place as designated in writing by the Lessee.

21.3 Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage

prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery. The above addresses and email addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

#### ARTICLE XXII. HOLD OVER

22.1 If Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this Agreement, such continued operation shall be for an indefinite period of time on a month-to-month basis, which basis may be terminated as provided by the laws of the State of Washington. During such operation, Lessee agrees to pay to the Lessor a fee equal to One Hundred Twenty-Five Percent (125%) of the equivalent monthly fee as set forth herein, unless a different rate is agreed upon in writing, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as applicable.

#### ARTICLE XXIII. ENTIRE AGREEMENT

23.1 It is expressly understood and agreed by Lessor and Lessee that there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them regarding the subject matter of this Agreement, except as contained in this Agreement, and that this Agreement shall not be modified in any manner except by an instrument in writing and executed by the parties and in conformance with the consent requirements of Section 2.4 of this Agreement. Any prior understanding or representation of any kind preceding the date of this Agreement, including the updated operating agreement approved in 2001 pursuant to Resolution No. 35114, and as subsequently amended, shall not be binding on either party except to the extent incorporated in this Agreement.

#### ARTICLE XXIV. HEIRS AND SUCCESSORS

24.1 The covenants and agreements of this Agreement shall be binding upon the heirs, executors, administrators, successors and assignees of both parties hereto, except as herein above provided.

ARTICLE XXV. RIDERS

25.1 The riders, if any, attached hereto, are made a part of this Agreement by reference.

ARTICLE XXVI. RECORDING

26.1 The parties agree to execute and record a short form memorandum of this Agreement prepared by Lessee. The cost of recording shall be borne by Lessee.

ARTICLE XXVII. TIME OF ESSENCE

27.1 Time is of the essence in the performance of any obligation or term herein.

ARTICLE XXVIII. DISPUTE RESOLUTION

28.1 Arbitration: Any controversy, dispute, or claim arising under this Agreement shall be resolved at the request of either party ("Initiation") directed to the American Arbitration Association ("AAA") by a binding arbitration conducted by a single Arbitrator in Pierce County, Washington, in accordance with the Commercial Arbitration Rules ("CAR") of the AAA, except as modified by the terms of this Section. The arbitrator shall apply State of Washington substantive law to the matters which are the subject of the arbitration. The arbitrator shall be limited to interpreting this Agreement in accordance with the Washington substantive law. The arbitrator shall prepare and provide to the parties a written decision ("Decision") on all materials which are the subject of the arbitration, including factual findings and the reasons which form the basis of the Decision of the arbitrator. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to Washington law for any such error. The Decision shall have the effect and be enforceable in the manner provided by the Washington law. Each party shall pay onehalf (1/2) of the fees of the arbitrator. The parties hereby agree that the CAR are modified as follows:

28.1.1 If the parties have not agreed to an Arbitrator within sixty (60) days after Initiation of arbitration, then the AAA shall appoint a single neutral Arbitrator as soon thereafter as practical.

28.1.2 The parties shall be permitted discovery under the supervision and rules set by the Arbitrator; provided, however, that discovery shall be completed within one hundred twenty (120) days of selection or appointment of the Arbitrator. The Arbitrator shall have power to impose such sanctions as the Arbitrator deems appropriate for failure of a party or counsel for a party to comply with discovery rules established by the Arbitrator.

28.1.3 A hearing before the Arbitrator shall be held no later than one hundred eighty (180) days after Initiation of arbitration, unless a hearing is waived by all parties.



28.1.4 No later than fourteen (14) days from the date of closing of the arbitration hearing, or, if an oral hearing has been waived, from the date of transmitting final statements and proofs of the Arbitrator, the Arbitrator shall render a written Decision.

#### ARTICLE XXIX. COUNTERPARTS

29.1 This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All counterparts together will constitute one and the same agreement.

#### ARTICLE XXX. SEVERABILITY

30.1 Each provision of this Agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

#### ARTICLE XXXI. TERMINATION

31.1 In addition to Lessee's right to terminate this Lease pursuant to Section 2.3 of this Lease, Lessee shall have the right to terminate this Agreement at any time by giving Lessor one hundred twenty (120) days written notice; provided that, Lessee's right to terminate this Lease is subject to the provisions of Section 2.4 of this Lease.

#### ARTICLE XXXII. MISCELLANEOUS

32.1 Liquor License: The Lessor acknowledges that Lessee will apply for, and if granted, will operate with a liquor license to serve wine, spirits and beer on the Premises.

32.2 Additional Golf Facilities: Intentionally Omitted

32.3 Right to Operate Golf Center: Lessor grants a right to operate the Golf Center as subject to the terms of Attachment C attached hereto and incorporated herein by reference.

32.4 Gas Monitoring: Landfill gas shall be monitored by the City of Tacoma in accordance with the Landfill Gas Management Plan developed pursuant to the Consent Decree, defined herein, as it has been or may be in the future amended. For more information, please contact Gary Kato at the Solid Waste Utility. If requested, monitoring results shall be provided to Lessee. No fees shall be charged to Lessee for this service.

32.5 Landfill Expansion: The City agrees that it will not place solid waste over the closed, unlined areas of the landfill within 1,000 feet of the Premises.

32.6 Third Party Beneficiary. Lessor and Lessee expressly agree that, during the term of the Franchise Agreement, or any extension thereof, Franchisor is an intended third party beneficiary of the provisions of Sections 2.4, 15.1, 16.1.2, 16.2, 16.3, 21.2, and Article 15 of this Lease.

ARTICLE XXXIII PLEDGE AS SECURITY/LIENS


33.1 Lessee shall have the right to pledge Lessee's capital improvements or leasehold interest, or any part thereof, as security for any loan during the term of this Agreement. Any such pledge shall be subject to the Lessor's superior right to terminate this Lease and all interests of Lessee and any secured party in the Premises or Lessee Improvements constructed thereon as provided for in this Lease, including by way of example and not limitation, the Lessor's right pursuant to Section 6.5 of this Agreement purchase the capital improvements. The Lessor agrees to reasonably cooperate and consent to the necessary security instruments, which consent shall not be unreasonably withheld, conditioned or delayed. Except as provided above, Lessee shall keep the Premises free from all liens arising out of or in any way relating to Lessee's conduct in, upon or about the Premises, or the conduct of its officers, directors, members, agents, employees and/or contractors including, but not limited to, the Lessee Improvement or any other work performed, materials furnished, or obligations incurred by Lessee. Lessee shall have the right to contest any lien as provided in Chapter 60.04 RCW. Nonetheless, if any such liens are filed, Lessor may, without waiving its rights and remedies for breach, and without releasing Lessee from any of its obligations hereunder, require Lessee to post security in a form and amount reasonably satisfactory to Lessor or cause such liens to be released by any means Lessor deems proper, including payment in satisfaction of the claim giving rise to the lien. Lessee shall pay to Landlord upon written demand any sum paid by Landlord to remove the liens, together with interest from the date of payment by Lessor, at the lesser of one percent (1%) per month or the maximum rate allowed by law.

IN WITNESS WHEREOF, the City and TFGC have executed this Agreement the day and year first above written.

CITY OF TACOMA

TACOMA FIRS GOLF CENTER, LLC

\_\_\_\_\_  
Marilyn Strickland, Mayor

By   
Its: Owner / mgr  
Name: Michael Givens

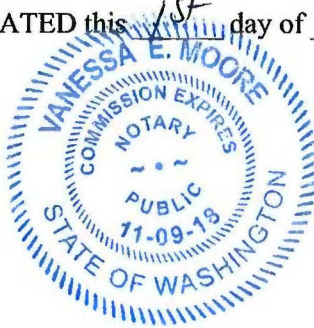




STATE OF WASHINGTON )  
 ) ss.  
County of Pierce )

I certify that I know or have satisfactory evidence that Michael Givens is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as one of the Managers of TACOMA FIRS GOLF CENTER, LLC, to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 1st day of November, 2017.



Vanessa E. Moore  
Vanessa E. Moore [Print Name]  
NOTARY PUBLIC in and for the State of Washington  
Residing at Labwood  
My commission expires 11/09/2018

Attachments:

- A – Legal Description of Property
- A-1 Site Plan
- B – Legal Description of Landfill
- C – Special Warranty with Reservation of Easement
- D - Environmental Hold Harmless Agreement, Tacoma To Tacoma Firs Golf Center, LLC
- E - Form of Estoppel Certification
- F - Collateral Assignment of Lease

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

The subject Premises is known as Tax Parcel Nos. 2201-33000 and 2201-33010, and is legally described as follows:

**Parcel 3010**

That portion of the Southeast Quarter of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M., described as follows;

Commencing at the southwest corner of said subdivision, thence northerly along the west line of said subdivision a distance of 270.0 feet; thence easterly parallel with the south line of said subdivision a distance of 762.52 feet, more or less, to a point distant 580.00 feet westerly of, measured at right angles, to the east line of said subdivision, and the point of beginning; thence northerly parallel with said east line a distance of 1053.8 feet, more or less, to the point of intersection with the north line of said subdivision; thence easterly along said north line to the point of intersection with said east line of said subdivision; thence southerly along said east line of said subdivision to the southeast corner thereof; thence westerly along the south line of said subdivision 580.00 feet; thence northerly to the point of beginning.

**Parcel 3000**

The south half of the east half of the northeast quarter of the southwest quarter of Section 13, Township 29 North, Range 2 East, W.M., less the following described tract;

Beginning at the southwest corner of said subdivision, thence South 88°20'44" East along the south line of said subdivision 87.52 feet; thence North 5°57' West, 667.4 feet to the northeast corner of said subdivision; thence South 1°35' West along the west line of said subdivision 661.52 feet to the point of beginning.

LEGAL DESCRIPTION OF ACCESS PROPERTY

Access to the subject premises is via property known as Parcel 374 000 0130, more specifically described as follows,

The North 285 feet of the South 902 feet of the Southwest Quarter of the Southeast quarter of Section 13, Township 20 North, Range 2 East of the Willamette Meridian, lying west of the west line of Tyler Street, measured parallel to the south line of said subdivision,

Said parcel being a portion of Tracts 23 and 24 of the Excelsior Park Tracts.

The above easement is conditioned by a limit on any tree

cutting in the easement area without prior approval by the City of Tacoma.



**LEGAL DESCRIPTION OF PROPERTY FOR MAINTENANCE OF IDENTIFICATION  
SIGN**

For Placement:

Beginning at the south quarter corner of Section 13, Township 20 North, Range 2 East, W.M., Pierce County, WA., thence along the west line of the southeast quarter of said section 13, North 1°37'08" East, 807.38 feet; thence east, 97.40 feet to the point of beginning; thence East, 18.00 feet; thence South 13.00 feet; thence West 18.00 feet; thence North 13.00 feet to the point of beginning.

For Construction, if needed:

Beginning at the south quarter corner of Section 13, Township 20 North, Range 2 East, W.M., Pierce County, WA., thence along the west line of the southeast quarter of said section 13, North 1°37'08" East, 822.39 feet; thence east, 81.98 feet to the point of beginning; thence East, 48.00 feet; thence South 43.00 feet; thence West 48.00 feet; thence North 43.00 feet to the point of beginning.

ATTACHMENT A-1

SITE PLAN

ATTACHMENT B

LEGAL DESCRIPTION OF LANDFILL

Commencing at the Southeast corner of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence along the South line of Section 13 North 88° 26' 10" West, 1341.84 feet; thence North 1° 43 ' 47 " East, 1324.13 feet; thence North 8° 10 ' 26 " West, 672.00 feet; thence North 88° 18 ' 34 " West, 201.00 feet; thence North 1° 41 ' 26 " East, 615.89 feet to the South line of South 40th Street; thence along said South line North 88° 13 ' 35 " West, 568.22 feet; thence North 1° 53 ' 04 " East, 46.16 feet to the north line of said Quarter; thence North 1° 37 ' 22 " East, 1323.92 feet to the Northeast corner of "Orchard Terrace," thence North 88° 20 ' 6 " West, 116.37 feet along the north line of "Orchard Terrace"; thence North 1° 36 ' 52 " East, 1100.74 feet; thence South 88° 25 ' 49 " East, 50.00 feet; thence North 1° 36 ' 52 " East, 223.35 feet to the north line of Section 13, Township 20 North 2 East, W.M.; thence North 88° 25 ' 49 " West, 3.82 feet along said north line of Section 13; thence North 2° 03 ' 45 " East, 376.66 feet; thence North 88° 25 ' 49 " West, 50.00 feet to the southeast corner of South 34th Street; thence North 2° 03 ' 45 " East, 955.31 feet to the north line of the Southwest Quarter of (THE SOUTHWEST QUARTER OF) Section 12, Township 20 North(, RANGE) 2 East, W.M.; thence South 88° 10 ' 24 " East, 1493.20 feet along said north line of the Southwest Quarter of Section 12; thence South 1° 53 ' 09 " West, 736.49 feet; thence South 18° 06 ' 51 " East, 263.14 feet; thence South 1° 53 ' 09 " West, 350.98 feet to the North line of said Section 13; thence South 88° 25 ' 49 " East, 282.63 feet along said North line of Section 13; thence South 0° 32 ' 59 " West, 917.04 feet to the South line of South 36th Street; thence South 88° 20 ' 33 " East, 62.96 feet to the Northwest corner of that parcel deeded to Edward Lindblom by AFN Deed 2309767, August 11, 1969; thence around said deed South 1° 36 ' 20" East, 130.00 feet; thence continuing around said deed South 88° 20 ' 36 " East, 70.00 feet; thence continuing around said deed North 1° 36 ' 20 " East, 130.00 feet to the South line of South 36th Street; thence South 88° 20' 33" East, 60.00 feet along South 36th Street; thence South 1° 36' 20 " West, 400.36 feet; thence North 88° 20 ' 06 " West, 200.00 feet; thence South 1° 36 ' 20 " West, 254.68 feet; thence South 88° 20 ' 36 " East, 19.11 feet; thence South 0° 32 ' 59" West, 428.46 feet to the northwest corner of "Mason Circle" plat; thence South 0° 32 ' 35 " West, 643.65 feet along the West line of said plat to the North line of the Southwest quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence North 88° 15 ' 00 " West, 246.49 feet along said north line; thence South 1° 35 ' 01 " West, 661.38 feet; thence South 88° 15 ' 03 " East, 781.83 feet to the West line of Tyler Street, said point being on a non-tangent curve which radius point bears South 79° 15 ' 26 " East, 1210.75 feet; thence southerly along said curve and right-of-way line 172.52 feet to a point of tangency; thence continuing along said right-of-way, South 2° 35' 16" West, 488.79 feet; thence continuing along said right-of-way South 88° 12' 32" East 1.70 feet; thence continuing along said right-of-way, South 2° 12 ' 29 " West, 1239.59 feet to a tangent curve which radius bears North 87° 47 ' 31 " West, 1220.9 feet; thence continuing southerly along said curve and right-of-way 82.59 feet to the South line of said Section 13; thence along said South line North 88° 10' 46" West, 74.97 feet to the point of beginning.

ATTACHMENT C



SPECIAL WARRANTY WITH RESERVATION OF EASEMENT

The City, The City of Tacoma, a Washington municipal corporation, for and in consideration of TEN DOLLARS (\$10.00) and other valuable consideration, in hand paid, grants and covenants to TFGC, TACOMA FIRS GOLF CENTER, LLC, a Washington limited liability company, a leasehold interest in the following described real estate situated in the County of Pierce, State of Washington.

See Exhibit A attached hereto and incorporated herein.

Landfill Effects Easement: Reserving unto City, however, for the benefit of that certain real property legally described on Exhibit B attached hereto (the "Benefited Premises") a perpetual, nonexclusive easement (the "Landfill Effects Easement") burdening the property described in Exhibit A hereto (the "Burdened Premises") for the benefit of the Benefited Premises, pursuant to which the City and the City's successors in interest in the Benefited Premises is and shall perpetually be entitled to subject the Burdened Premises to any and all adverse impacts (including, without limitation, private nuisances) associated with past, present, or future operation and/or maintenance of a solid waste related facility, recycling facility, and landfill operation on the Benefited Premises, including, without limitation, noxious odors, air pollution not violative of applicable health and safety standards, excessive noise, artificial lighting, seagulls and other birds and associated bird excrement and noise, noise associated with the generation of electricity from methane gas, traffic, and all other environmental, social, health and economic conditions, associated with operation of a solid waste related facility, recycling facility and a landfill on the Benefited Premises, provided, however, that unless authorized by the Consent Decree (defined below) and applicable Solid Waste Permits (defined below), nothing herein shall authorize City's use of the Benefited Premises, or actions with respect to the Burdened Premises, in any manner which violates the Consent Decree or the Environmental Laws (defined below).

By acceptance of this Lease, TFGC acknowledges that its use and enjoyment of the Real Premises may be adversely affected by the impacts, disturbances, and activities resulting from City's use of the Benefited Premises and TFGC hereby waives and releases any claims now or hereafter arising, which TFGC may have against City as a result of, arising out of or in any way relating to the impacts, disturbances and/or activities resulting from City's use of the Benefited Premises provided that such impacts, disturbances and activities do not result from either: 1) City's violations of the Consult Decree or Solid Waste Permits or; 2) City's violations of the Environmental Laws in a manner not authorized by the Consent Decree.

The Landfill Effects Easement shall be perpetual, and the Landfill Effects Easement and the foregoing provisions shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

As used herein, the term “Environmental Law” shall mean the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Federal Hazardous Materials Transportation Control Act, 49 U.S.C. Section 1801 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq.; the Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Washington Water Pollution Control Act, RCW Chapter 90.48; the Washington Clean Air Act, RCW Chapter 70.904; the Washington Solid Waste Management Recovery Act, RCW Chapter 70.95; the Washington Hazardous Waste Management Act, RCW Chapter 70.105; the Washington Hazardous Waste Fees Act, RCW Chapter 70.105A; the Washington Model Toxics Control Act, RCW Chapter 70.105D; Washington Initiative Measure 97, 1989 Laws Chapter 2; the Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98; the Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99; and any federal, state and local law, ordinance and rule of a similar nature regulating the discharge of hazardous substances and pollutants.

As used herein, the term “Consent Decree” means that certain Consent Decree, as it has been or may be in the future amended, originally entered into between the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the State of Washington Department of Ecology (“DOE”), et al. vs. City of Tacoma, dated March 25, 1991, U.S. District Court for the Western District of Washington Case No. C 89-583T, including all attachments thereto.

As used herein, the term “Solid Waste Permit” means any permit granted for the Tacoma Landfill by the Tacoma-Pierce County Health Department or the Washington Department of Ecology as authorized by Criteria for Municipal Solid Waste (WAC 173-351) or Minimum Functional Standards for Solid Waste Handling (WAC 173-304).

Subject to Exhibit A attached hereto.

ATTACHMENT D

ENVIRONMENTAL HOLD HARMLESS AGREEMENT  
TACOMA TO TACOMA FIRS GOLF CENTER, LLC

WHEREAS, the City of Tacoma ("City"), by Resolution No. 30227 (1988), has authorized the proper officers of the City to insure that the City of Tacoma be the sole responsible party for Superfund investigation and cleanup of the Tacoma Landfill, and that the parties adjacent to the Landfill be provided assurances that the City will be solely responsible for any contamination emanating from the Landfill at levels exceeding those identified for the chemicals of the concern in the hereinafter defined Consent Decree;

WHEREAS, the City and the United States of America, on behalf of the Environmental Protection Agency ("EPA") and the State of Washington Department of Ecology ("DOE") executed and lodged a Consent Decree in the U.S. District Court on May 17, 1991, under Cause No. C89583T, pursuant to which the City has undertaken to commence and complete all planning, monitoring, and remedial work on the Tacoma Landfill in accordance with the Consent Decree; and

WHEREAS, Tacoma Firs Golf Center, LLC, is considering the operation of property in the vicinity of the Tacoma Landfill near South Tyler Street, which is more particularly described in Exhibit A hereto ("Premises"), and in that undertaking seeks assurance that it and its guests, invitees, employees, assignees, subtenants, and successors would not be exposed to environmental liability as a consequence of the lease of the Premises in the vicinity of the Tacoma Landfill;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, the City of Tacoma extends to Tacoma Firs Golf Center, LLC, in connection with said operation of the Premises, the following hold harmless agreement:

1. Environmental Hold Harmless: Subject to the assets and revenues from the Solid Waste Utility, the City shall defend and hold Tacoma Firs Golf Center, LLC and its guests, invitees, employees, assignees, subtenants, and successors harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses, and expenses caused by or resulting from Hazardous Substances, which were generated, stored, disposed of, or existing on, at, or under the Tacoma Landfill, including Hazardous Substances which may have in the past, or in the future, migrate from the Tacoma Landfill to the Premises and exceed the levels of the chemicals of concern identified in the Consent Decree. This agreement to hold harmless is to apply to claims brought by any party based upon any state or federal statutory or common law, including any claims brought under the laws described in Paragraph 2 below, and shall include claims for investigation, litigation, administration, oversight, and personnel costs, all costs arising out of or related to the cleanup, storage, treatment, handling, disposal, transportation, presence of, or threatened release or discharge of, any contaminants, at, from, or beneath the Tacoma Landfill, and any property damage or damages for personal injury related thereto.



2. Hazardous Substances: For purposes hereof, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances," which exceed the acceptable levels identified in the Consent Decree and incorporated documents in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 1601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.49.010, et seq.; the Hazardous Waste Management Statute, RCW 90.105, et seq.; the Toxic Substance Control Act, RCW 70.105C, et seq.; and the Model Toxics Control Act, RCW 70.105C, et seq.; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

3. Notice to City: The City's obligation pursuant to this Agreement shall be conditioned upon receipt by the City of timely written notice of any such claim or suit, giving the City reasonable opportunity to assume and defend such claim or suit, and cooperation by Tacoma Firs Golf Center, LLC or successors with the City in connection therewith.

4. Successors: This Agreement shall be binding upon and inure to the benefit of Tacoma Firs Golf Center, LLC, and its heirs, successors, and assigns, and shall run with the land.

DATED at Tacoma, Washington, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TACOMA

Countersigned:

\_\_\_\_\_  
Finance Director

By \_\_\_\_\_  
City Manager

Attest:

Approved:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Director, Public Works Department

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Risk Manager

ATTACHMENT E

Form of Estoppel Certification

\_\_\_\_\_, 19\_\_

TO: Lessor

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

RE: Lessee: Tacoma Firs Golf Center LLC  
Property: 4504 S. Tyler, Tacoma 98409

Ladies and Gentlemen:

The undersigned is a party to that certain lease dated \_\_\_\_\_, 19\_\_ (the "Lease") between \_\_\_\_\_ ("Lessor") and \_\_\_\_\_ ("Lessee"), a true and complete copy of which is attached hereto. The Lease has not been amended, modified or supplemented except as follows, [a copy/copies] of which [is/are] also attached hereto: \_\_\_\_\_

\_\_\_\_\_ (and as so amended, modified or supplemented hereinafter referred to as the "Lease").

The undersigned hereby certifies to Lessor, its successors and assigns that, as of the date hereof-

1. The undersigned has entered into no further amendment, modification or supplement to the Lease, except as stated above, the Lease is valid, binding and in full force and effect, and constitutes the entire agreement between Lessor and Lessee. The following information pertains to the Lease:

Commencement Date: \_\_\_\_\_, 2017;  
Rent Commencement Date: \_\_\_\_\_, 2017;  
Current Monthly Base Rent: \$ \_\_\_\_\_;

2. No party is in default in the performance of any covenant, agreement or condition contained in the Lease, and the undersigned has neither given nor received any notice of default under the Lease. The undersigned has no defenses, counterclaims, liens, or claims of offset or credit under the Lease or against rents, or other claims against Lessor.

3. The current monthly base rent is correctly stated above. Rent and all other charges payable under the Lease on or before the date hereto have been paid. No prepayments of

any rentals or other charges under the Lease have been made for more than one (1) month in advance of their due dates.

4. The Commencement Date of the term of the Lease is correctly stated above. Lessee has not been granted and has not exercised any options or rights to renew, extend, amend, modify or change the term of the Lease, except as may be stated in the copy of the Lease.

5. Lessee has not been granted and has not exercised any options or rights of purchase, expansion, first offer, or first refusal as to the Premises (as defined in the Lease), except as may be stated in the copy of the Lease.

6. Lessor has delivered possession of the Premises to Lessee and Lessee has accepted possession of, and currently occupies, the Premises. No improvements or repairs are required to be made by Lessor under the Lease and Lessee has no claims against Lessor with respect to the condition of the Premises.

7. Lessee has not filed and is not the subject of any filing for insolvency, bankruptcy, reorganization or similar proceeding in any federal, state or other court or jurisdiction.

8. Lessee has not subleased any portion of the Premises or assigned any of its rights under the Lease.

9. The person signing this Estoppel Certificate on behalf of Lessee is a duly authorized agent of the Lessee.

LESSEE:

By: 

Name: Michael Coivens

Title: Owner / Mgr

Attachment[s]



ATTACHMENT F  
*(Collateral Assignment of Lease)*