

**EXHIBIT  
"A"**

CORR redline draft; 4/03/15

**GOLF COURSE  
MANAGEMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF ROUND ROCK, TEXAS  
("Owner")**

**AND**

**CCA SILBAND/GOLFCORP/ROUND ROCK, INC.  
("Operator")**

**May 1, ~~2010~~ 2015**

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## GOLF COURSE MANAGEMENT AGREEMENT

THIS GOLF COURSE MANAGEMENT AGREEMENT ("Agreement"), dated the 1st day of May, ~~2010~~ 2015, by and between the CITY OF ROUND ROCK, TEXAS, a home rule city (hereinafter referred to as "Owner"), and CCA SILBAND/GOLFCORP/ROUND ROCK, INC., a Texas corporation (hereinafter referred to as "Operator") is as follows:

### RECITALS

WHEREAS, Owner is the owner of the Real Property, as hereinafter defined, upon which there is an 18-hole golf course facility with improvements, known as "Forest Creek Golf Course," together with all furniture, fixtures, and equipment required to be located thereon for the purpose of operating said 18-hole course and related amenities; and

WHEREAS, both Owner and Operator are desirous of entering into this Agreement for the management and operation by Operator of the Forest Creek Golf Course;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Owner and Operator agree as follows:

### ARTICLE 1. DEFINITIONS

1.1 Definitions. For the purposes of this Agreement, the following terms shall have the meanings indicated:

Annual Capital Budget. The term "Annual Capital Budget" shall have the meaning set forth in Section 6.4.

Annual Operations Budget. The term "Annual Operations Budget" shall have the meaning set forth in Section 6.3.

Base Management Fee. The term "Base Management Fee" shall have the meaning as defined in Section 4.1(b).

Bonds. The term "Bonds" shall mean the City of Round Rock, Texas Combination Tax and Revenue Certificates of Obligation, Series 1995, and any refinancing thereof.

Calendar Year. The term "Calendar Year" shall mean a period commencing on January 1 and ending on December 31.

Capital Improvement Expenditure. The term “Capital Improvement Expenditure” shall mean the sum of money ~~transferred from paid by the City’s Self Financed Construction Fund to pay Owner~~ for capital improvements to the Forest Creek Golf Course. ~~The amount of the Capital Improvement Expenditure on the effective date of this Agreement is agreed to be \$912,130.07.~~

Capital Improvement Plan. The term “Capital Improvement Plan” shall mean the five (5) year capital improvement plan developed each year by the Operator and approved by the Owner for improvements to be made to the Forest Creek Golf Course. ~~The 5-year CIP Capital Improvement Plan shall include both Annual Capital Budget items to be paid from the Capital Reserve and any agreed upon Capital Improvements funded outside of this agreement.~~

Capital Improvement Plan (2015). The term “Capital Improvement Plan (2015)” shall mean the capital improvement plan, as described in Sec. 6.2.1, for short term improvements currently required to be made to the Forest Creek Golf Course.

Capital Reserve. The term “Capital Reserve” shall mean those amounts at any given time funded into an account in Owner’s name for (i) capital replacements and improvements within and to the Forest Creek Golf Course, (ii) funding of the payment by Operator of the payments required to be made by Operator to Owner in accordance with the provisions of Section 4.3 in the amount of the Monthly Bond Debt Payments or (iii) payment of amounts due Operator under Section 4.2. At the conclusion of each month, Operator shall credit to the Capital Reserve account established, an amount equal to three percent (3%) of the Gross Receipts for such month.

Commencement Date. The term “Commencement Date” shall mean May 1, ~~2010~~ 2015.

Consumer Price Index. The term “Consumer Price Index” shall mean the Consumer Price Index for All Urban Consumers, All Items (1982-84=100), from time to time published by the Bureau of Labor Statistics, United States Department of Labor for Austin, Texas, or if none is published for such city, then the metropolitan area closest to Austin, Texas, for which the Bureau of Labor Statistics does publish such information. In the event that the Consumer Price Index shall be discontinued, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the consumer Price Index, together with information which will make possible the conversion of the new index. If for any reason the Bureau of Labor Statistics does not furnish such index and information, the parties hereto shall thereafter accept and use such other index or comparable statistics regarding the cost of living for Austin, Texas, or the closest metropolitan area for which the Bureau of Labor Statistics does publish such information, as the case may be, which shall be computed and published by an agency of the United States or by a financial periodical or recognized authority then to be selected by the parties.

Default. The term “Default” shall have the meaning as defined in Article 17 hereof.

Early Termination Date. The term “Early Termination Date” shall mean December 31, 2016.

Easements and Rights. The term “Easements and Rights” shall mean all rights of access, easements, rights-of-way, and any other property rights which allow Owner, its agents or assigns, Operator and/or any other party, the right to use, gain access to, or otherwise benefit the Real Property, including, but not limited to, the right to use all adjacent roads, streets, gates, utility lines and water rights owned by Owner and required for the operation of the Forest Creek Golf Course.

Financial Statements. The term “Financial Statements” shall mean a balance sheet of the Forest Creek Golf Course as of the close of each month of Gross Receipts and Expenses for that portion of the Calendar Year then ended, applied on a basis consistent with that of the preceding period or containing disclosure of the effect on the financial position or results of operations of any change during the period.

Forest Creek Golf Course. The term “Forest Creek Golf Course” shall mean the 18-hole golf course located on the Real Property.

Gross Receipts. The term “Gross Receipts” shall mean all receipts related to or derived from the operation of the Forest Creek Golf Course, computed on an accrual basis, from cash or credit transactions recognized after the Commencement Date, and shall include, but shall not be limited to, green fees, cart fees, the amount of all sales (wholesale or retail) of food, beverages, goods, wares or merchandise on, at, or from the Forest Creek Golf Course, or for services of any nature performed on, at, or from the Forest Creek Golf Course, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Receipts shall be reduced by any refunds, rebates, discounts and credits of a similar nature given, paid, or returned by Operator in the course of obtaining such Gross Receipts.

Gross Receipts shall not include:

1. Applicable gross receipts tax, admission, cabaret, excise, sales and use taxes, or similar governmental charges collected as a part of the sales price of any goods or services;
2. Income and revenues of licensees and concessionaires of Operator from the Forest Creek Golf Course or any part thereof; provided, however, (i) that all commissions, percentages or other payments received or earned by Operator from any licensee or concessionaire shall be included in Gross Receipts and (ii) any licenses or concessionaires of Operator from the Forest Creek Golf Course, or any



portion thereof, shall be subject to the prior approval of Owner which approval shall not be unreasonably withheld;

3. Service charges, which are defined to mean percentage gratuities added to billings as compensation to Operator's employees;
4. Proceeds of borrowing by Operator; or
5. Proceeds paid as a result of an insurable loss.

Gross Receipts Variable Fee. The term "Gross Receipts Variable Fee" shall have the meaning as defined in Section 4.1(b) of this Agreement.

Improvements. The term "Improvements" shall mean the improvements of any nature located or to be located on the Real Property (including, but not limited to, a clubhouse, an 18-hole golf course, and a maintenance facility), and any other improvements constructed or to be constructed on the Real Property.

Intangible Personal Property. The term "Intangible Personal Property" shall mean all intangible property or rights owned or held in connection with the Forest Creek Golf Course, including, but not limited to, security deposits, prepaid rents, liquor and operating licenses, and all trademarks related to the operation or use of the Forest Creek Course.

Management Fees. The term "Management Fees" shall collectively mean the Base Management Fee and the Gross Receipts Variable Fee to be paid to Operator pursuant to the terms of Article 4 herein.

Monthly Bond Debt Payment(s). The term "Monthly Bond Debt Payment" shall mean a monthly payment in accordance with Exhibit "A", said payments to be applied by the ~~City Owner~~ to the Bonds payment(s)

Monthly Capital Improvement Expenditure Payment(s). The term "Monthly Capital Improvement Expenditure Payment(s)" shall mean payments in accordance with Exhibit "B", said payments to be applied by the ~~City Owner~~ to the repayment of any Capital Improvement Expenditures for the Forest Creek Golf Course.

Negative Net Cash Flow. The term "Negative Net Cash Flow" shall be defined as the amount, if any, by which the sum of (i) Monthly Bond Debt Payments, plus (ii) the amount to be funded to the Capital Reserve, plus (iii) Operating Expenses exceeding Gross Receipts for the particular period in question.

Operating Expenses. The term "Operating Expenses" shall mean those necessary or reasonable operating expenses of the Forest Creek Golf Course incurred or paid during or after the Commencement Date hereof in connection with the normal course of conducting

and operating the business affairs of the Forest Creek Golf Course, set forth in the then current Annual Operations Budget, computed on an accrual basis, including, but not limited to, the following items:

1. Salaries, wages, employee benefits and payroll expenses, including, but not limited to, standard pension and/or profit sharing plans, payroll taxes, profit sharing programs and insurance of all employees employed on-site in the direct operation of the Forest Creek Golf Course, excluding, however, service charges, which are defined as percentage gratuities and paid to employees;
2. Marketing, advertising and promotional expenses;
3. Replacement of inventories of maintenance parts and supplies, food stores and bar supplies;
4. Replacement of broken, lost or damaged silver, chinaware, glassware, cooking utensils and other similar items of equipment;
5. Office supplies, postage, printing, routine office expenses and accounting services incurred in the on-site operation of the Forest Creek Golf Course;
6. The costs of entertainment at the restaurant, or other portion of the Forest Creek Golf Course, including vocalists and bands;
7. Reasonable travel expenses of on-site employees incurred exclusively in connection with the business of the Forest Creek Golf Course;
8. Accrual of a reserve for insurance and property taxes each month in an amount or at a rate that is sufficient to pay such insurance premiums or property taxes when they become due and payable;
9. Insurance premiums, to the extent not provided for in any reserve established therefor;
10. Accounts receivable previously included within Gross Receipts, to the extent they remain unpaid ninety (90) days after the first billing;
11. Auditing, accounting costs, computer fees and legal fees performed by a non-affiliate of Operator and incurred in respect of the operation of the Forest Creek Golf Course, including any financial management and accounting fees paid for services rendered by any non-affiliate of Operator;

12. Costs incurred for utilities, including, but not limited to, all electric, gas, and water costs and any other private utility charges incurred in connection with the operation of the Forest Creek Golf Course;
13. Ordinary maintenance and repairs, to the extent same are not paid from the Capital Reserve, as well as the cost of any capital improvements or capital replacements;
14. All lease payments on any item of furniture, fixtures or equipment utilized in the operation of the Forest Creek Golf Course, except as set forth below;
15. Any Negative Net Cash Flow deficit carried forward from previous months;
16. Principal or interest payments on indebtedness of Operator in providing the services under the terms of this Agreement;
17. Rental or lease payments for items of furniture, fixtures or equipment incurred by Operator in providing the services under the terms of this Agreement; and.
18. All other customary and reasonable expenses incurred in the operation of the Forest Creek Golf Course.

Any of the above provisions resulting in a double deduction as an Operating Expense shall be allowed as a deduction only once.

Operating Reserve Account. The term “Operating Reserve Account” shall mean an account established to fund Monthly Bond Debt Payments, Monthly reimbursement to the City Owner for Capital Improvement Expenditure Payments, accrued but unpaid Base Management Fees, and Operating Expenses, but only in the event that there are insufficient Gross Receipts for such payments.

Operator’s Personal Property. The term “Operator’s Personal Property” shall mean the property of Operator or others used in operations at the Forest Creek Golf Course as set forth in Exhibit “C”. Exhibit “C” may be amended from time to time by consent of the Owner and Operator.

Owner’s Personal Property. The term “Owner’s Personal Property” shall mean the personal property purchased by the Forest Creek Golf Course or by Operator for which the Operator is reimbursed. Owner may request that Operator prepare a listing of Owner’s Personal Property not more often than once every three (3) years.

Owner’s Return on Investment. The term “Owner’s Return on Investment” shall mean the Owner’s share of Positive New Cash Flow as set forth in Sec. 4.6(b)(iii).

Personal Property. The term “Personal Property” shall mean (a) Owner’s Personal Property, (b) Operator’s Personal Property, and (c) all other personal property, machinery, fixtures, furnishings, installed or to be placed or installed on or about the Real Property and to be used as a part of or in connection with the operation of the Forest Creek Golf Course, including, but not limited to, (i) all equipment, fixtures, and furniture, (ii) golf carts, (iii) restaurant equipment, (iv) golf course maintenance equipment, and (v) any other furniture, fixtures and equipment to be utilized by the Forest Creek Golf Course, as determined by Operator to be required to operate a public golf course facility.

Positive Net Cash Flow. The term “Positive Net Cash Flow” shall mean that amount, if any, by which Gross Receipts exceed the sum of the following for the month in question: (i) the Monthly Bond Debt Payments, plus (ii) the amount to be funded to the Capital Reserve, plus (iii) Operating Expenses.

Property. The term “Property” shall mean (i) the Real Property, (ii) the Easements and Rights, (iii) the Personal Property, (iv) the Intangible Personal Property, (v) the Improvements, and (vi) any other contract or property rights owned by Owner related to the Real Property and the Personal Property.

Real Estate Taxes. The term “Real Estate Taxes” shall mean all taxes, assessments, excises, levies and other charges required to be paid upon or with respect to the Real Property and/or improvements, assessed, levied or imposed by any public authority having jurisdiction, whether general or special.

Real Property. The term “Real Property” shall mean that certain parcel or parcels of land described in Exhibit “D” attached hereto.

Tax Year. The term “Tax Year” shall mean each year from time to time utilized by the taxing authorities having jurisdiction over the Real Property which occurs after the execution date of this Agreement.

Term. The term “Term” of this Agreement shall mean the period of time set forth in Article 3, unless sooner terminated as provided herein.

~~Term Year. The term “Term Year” shall mean the twelve month period of time beginning with May 1 of each year of the Term and ending on April 30 of the following year.~~

## **ARTICLE 2.**

### **APPOINTMENT OF OPERATOR AND OWNERSHIP OF PERSONAL PROPERTY**

2.1. Management of the Property. Owner hereby appoints, hires and employs Operator as Owner's exclusive agent to supervise, manage, direct and operate the Forest Creek Golf Course and the Property during the Term of this Agreement, and Operator hereby accepts said appointment upon and subject to the terms, conditions, covenants and provisions set forth herein. Owner hereby delegates to Operator the sole responsibility, discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing, and other policies, rules and regulations affecting the Forest Creek Golf Course or the operation thereof, to implement all such policies and procedures, and to perform any act on behalf of Owner deemed necessary or desirable for the operations and maintenance of the Forest Creek Golf Course. The performance of all activities shall be for the account of Operator.

2.2. Use of the Property and Nondisturbance. Owner hereby grants to Operator the exclusive use and possession of the Property during the Term of this Agreement for the purposes set forth herein for the purposes of managing and operating the Forest Creek Golf Course. During the Term of this Agreement, Owner agrees that it may not in any event remove or prohibit Operator's use and possession of the Property, except due to an act which is not cured by Operator within the applicable grace period provided herein after written notice from Owner to Operator.

2.3. Ownership of Personal Property. The Owner and Operator agree that (i) Operator is the owner of all of Operator's Personal Property together with any and all additions and substitutions thereof during the Term of this Agreement and (ii) Owner is the owner of all of Owner's Personal Property together with any and all additions and substitutions thereof during the Term of this Agreement. Owner acknowledges and agrees that Operator owns Operator's Personal Property and that upon the termination of this Agreement for any reason whatsoever, including, but not limited to, a Default by Operator which is not cured within the time permitted after written notice from Owner to Operator, Operator will be entitled to remove all Operator's Personal Property together with all additions and substitutions thereof during the Term of this Agreement.

In the event that Operator does not elect to remove Operator's Personal Property following termination of the Agreement, and notifies Owner of his intention upon termination, then Owner shall have the option of purchasing one or more items of Operator's Personal Property for their actual cost or fair market value, whichever is less. If applicable, financing obligations will be assumed by Owner if such obligations can be prepaid without penalty and principal amounts owed do not exceed the lesser of cost or fair market value. Operator and Owner shall agree on an acceptable means of determining fair market value and Operator shall provide Owner with evidence of cost.

### ARTICLE 3. TERM

3.1. Term. The Term of this Agreement shall be for a period of ~~five (5)~~ four years and eight (8) months beginning on the Commencement Date unless sooner terminated in accordance with the provisions of this Agreement. Both the Owner and Operator hereby reserves the option to terminate this Agreement (the "Early Termination Option") on ~~the date which is three (3) years following the Commencement Date of this Agreement~~ (the "Early Termination Date") by the delivery of written notice ~~by Owner to Operator the other party of its decision to of the~~ exercise ~~by Owner of~~ the Early Termination Option not less than sixty (60) days prior to the Early Termination Date. The Owner and Operator agree and understand that the first "year" for reporting requirements in Sections 4 and 6 will be the 8 month period beginning with the Commencement date and ending December 31, 2015.

### ARTICLE 4. MANAGEMENT FEES, AUDIT REQUIREMENTS, AND PRIORITY OF PAYMENTS

4.1. Management Fees. During the period in which this Agreement is in effect, Operator shall be paid the following (collectively referred to as the "Management Fees"):

(a) Base Management Fee. On the last day of each month during the Term, Operator shall earn and be entitled to deduct from any Net Positive Cash Flow for such month, a fee equal to ~~TEN ELEVEN~~ THOUSAND ~~FIVE HUNDRED~~ AND NO/100 DOLLARS (~~\$10,500.00~~ \$11,000.00) (the "Base Management Fee"). The Base Management Fee shall be increased on January 1, 2016, and an annual basis on each anniversary date thereafter by multiplying the then current Base Management Fee by an amount equal to one-half of any increase in the Consumer Price Index over the Consumer Price Index for the prior year.

(b) Gross Receipts Variable Fee. Subject to the conditions set out below in this paragraph, on the last day of each ~~Term Year~~ Calendar Year, Operator shall earn a sum equal to four percent (4%) of Gross Receipts for the such ~~Term Year~~ Calendar Year (the "Gross Receipts Variable Fee.") Notwithstanding the foregoing, the parties agree that in no event will the Gross Receipts Variable Fee exceed the Base Management Fee accrued in any ~~Term Year~~ Calendar Year, provided, however, notwithstanding anything contained herein to the contrary, on a ~~Term Year~~ Calendar Year Basis, in the event the Gross Receipts Variable Fee exceeds the Base Management Fee, as adjusted, for such period, then the Gross Receipts Variable Fee that Operator shall be paid for such period shall be an amount which is ONE AND NO/100 DOLLAR (\$1.00) less than the Base Management Fee, as adjusted, that is payable to Operator for such applicable period. The Gross Receipts

Variable Fee shall be reduced by an amount equal to the amount that prior Monthly Bond Debt Payments have not been fully funded by Gross Receipts, but only to the extent that Bonds Debt Payment(s) have not been fully funded, and Monthly Capital Improvement Expenditure Payments have not been fully ~~funded~~ reimbursed out of Gross Receipts. ~~In addition, but subject to the foregoing limitations on the amount of the Gross Receipts Variable Fee, at the termination of this Agreement, Operator shall be entitled to an additional Gross Receipts Variable Fee equal to 30% of the Gross Receipts received for the month of May 2010, but only to the extent funds are available therefor in the Operating Reserve Account.~~

4.2. Accrual of Unpaid Management Fees. Notwithstanding anything herein to the contrary, in the event that during any month during the Term of this Agreement there are not sufficient Gross Receipts to pay the full amount of the Management Fees after payment by Operator to Owner of an amount equal to the Monthly Bond Debt Payments, and Operating Expenses, the unpaid portion of the Management Fees shall accrue until such time as and to the extent that Positive Net Cash Flow and/or funds in the Operating Reserve, as appropriate, is sufficient to pay such accrued Management Fees, at which time Operator shall deduct same from Positive Net Cash Flow and/or the Operating Reserve, as appropriate. At the termination of this Agreement, save and except arising from a Default by Owner which is not cured within the time permitted after written notice thereof from Operator to Owner, all Management Fees and unreimbursed Operating Expenses arising during the Term of this Agreement shall be paid solely from the existing, unencumbered or not otherwise budgeted balances in the Capital Reserve and Operating Reserve accounts and any remaining unpaid balance of such Management Fees, and unreimbursed Operating Expenses shall not subsequently be due or payable.

4.3. Monthly Debt Payments. From and after Commencement Date and continuing thereafter throughout the Term (including any renewals or extensions hereto), to the extent Gross Receipts are available, Operator shall make monthly payments to Owner in an amount equal to the Monthly Bond Debt Payments and Monthly Capital Improvement Expenditure Payments to Owner, or Owner's designee. The Monthly Bond Debt Payments shall be paid on the dates which occur during the Term of this Agreement in the amounts set forth on Exhibit "A", attached hereto, with the first such Monthly Bond Debt Payment due and payable as shown on Exhibit "A." If directed by the Owner in writing, Operator hereby agrees to make the payments otherwise payable to Owner in the amount of the Monthly Debt Payments required herein directly to the party specified by Owner in writing. Owner covenants to Operator and agrees to make the Bonds Debt Payments as they come due. The Monthly Capital Improvement Expenditure Payments shall be paid on the dates which occur during the Term of this Agreement in accordance with the terms set forth in Exhibit "B".

4.4. Financial Statement and Owner and Operator's Right to Audit. Owner and Operator agree that the parties shall have the following additional rights as set forth below:

(a) Operator's Right to Review and Audit. In the event of termination of this Agreement for any reason whatsoever prior to the payment in full to Operator of Management Fees, except for a termination of this Agreement arising from a Default by Operator which is not cured within the time permitted after written notice from Owner to Operator, within thirty (30) days of the end of each ~~e~~Calendar ~~y~~Year ending after the termination of this Agreement, Owner shall cause to be delivered to Operator (i) financial statements setting forth in similar detail and form as provided to Owner during the Term of this Agreement, the Gross Receipts, Operating Expenses and any other expenses or costs of any nature whatsoever relating to the Forest Creek Golf Course, or any portion thereof, for the prior ~~e~~Calendar ~~y~~Year then ending including a calculation of the amount that is to be paid by Owner to Operator toward the payment of the then current unpaid balance of Management Fees, Operator, at Operator's sole cost, shall be entitled to review and audit the books and records of Owner and any other entity that may have possession of such books and records relevant to the determination of Gross Receipts, Operating Expenses and other costs and expenses relating to the Forest Creek Golf Course, at any time upon not less than twenty-four (24) hours written notice to Owner. Such review and audit shall take place at the offices of Owner; provided, however, Operator shall use Operator's best efforts to minimize the disruption of Owner's business. If Operator disputes any calculation by Owner which impacts the amount of any payments to be paid by Owner to Operator on the unpaid balance of Management Fees, Operator shall provide Owner written notice of the disputed items within thirty (30) days following the completion of Operator's review and audit. In the event that Operator and Owner are unable to resolve any disputed items to which Operator has provided Owner written notice within the 30-day period following the delivery by Operator to Owner of such notice, such dispute shall be settled by a nationally recognized accounting firm mutually acceptable to Operator and Owner. In the event that Owner and Operator are unable to agree upon a nationally recognized accounting firm, Owner and Operator shall each select a nationally recognized accounting firm and the representatives of those two (2) firms shall jointly select one (1) nationally recognized accounting firm to settle the disputed items. Upon the conclusion of such review and audit by the nationally recognized accounting firm, the costs of such review and audit shall be paid by Operator unless the amount of the payment toward the payment of the then current unpaid balance of Management Fees is increased by two percent (2%) or more as a result of such audit over the amount of the payment specified in the applicable annual calculation of such payment provided by Owner to Operator in accordance with the provisions of this Agreement.

(b) Owner's Right to Review and Audit. During the Term of this Agreement, Owner shall have the right to request and have performed an audit, review or a financial examination agreed upon with Operator, of the financial records of Forest Creek Golf Course by an independent Certified Public Accountant selected by



Owner. Notwithstanding anything contained in Section 4.4(a) or 4.4(b) to the contrary, in no event will any audit which is performed at the request of Owner, which is to be an Operating Expense, exceed the sum of FIVE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$5,750.00) per year provided that the financial records of Operator are in reasonably good order, reasonably readily available for examination and there are no unusual circumstances that would otherwise cause the cost of such review, audit or other financial examination to be significantly higher.

4.5. Priority of Gross Receipts and Positive Net Cash Flow. Owner and Operator agree that the following shall be the priority of payments under this Agreement.

(a) Gross Receipts received shall be applied by Operator to the payment of the following items in priorities indicated:

(i) First, to the payment of the then current scheduled Bonds Debt Payment, if any, which is due;

(ii) Second, to any amounts remaining unpaid for prior Bonds Debt Payments,.

(iii) Third, to the payment of the amounts to be paid to the Capital Reserve account, including any amounts remaining unpaid from prior months and including the reimbursement to the account for any sums paid out for Monthly Bond Debt Payments or portion thereof; and

(vi) Fourth, to the payment of the then current Operating Expenses.

(b) Positive Net Cash Flow shall be applied by Operator to the payment of the following items in the priorities indicated within thirty (30) days following the end of each month, or at such other time as may be set forth below:

(i) First, to fund the Operating Reserve Account in the amount of ~~\$60,000~~ \$40,000 (at such time as the Operating Reserve Account has a balance of ~~\$60,000~~ \$40,000, no further deposits need to be made thereto unless and until proceeds are disbursed therefrom, in which event subsequent deposits shall be made so as to restore such balance to ~~\$60,000~~\$40,000.)

(ii) Second, to the payment of any of the Base Management Fees which are then currently due and payable to Operator until they are paid in full;

(iii) Third, to the reimbursement of any applicable Monthly Capital Improvement Expenditure Payments.

(iv) Fourth, any Positive Net Cash Flow remaining after the payment in full, on a then current basis, of all of the foregoing priorities of Positive Net Cash Flow shall be paid into the Operating Reserve Account.

4.6 Priority of Payments in the Operating Reserve Account at the end of each ~~Term Year~~Calendar Year.

(a) Any balance remaining in the Operating Reserve Account at the end of each ~~Term Year~~Calendar Year shall be applied to the payment of the following items in the priorities indicated within thirty (30) days following the end of such ~~Term Year~~Calendar Year, as set forth below:

(i) First, to the payment of any amounts remaining unpaid for prior Bonds Debt Payments;

(ii) Second, to the payment of any amounts remaining unpaid for the Capital Reserve account;

(b) After the payments described in 4.6(a) above are made from the Operating Reserve Account, any balance in excess of ~~\$60,000~~\$40,000 shall be applied to the payment of the following items in the priorities indicated below:

(i) First, to the payment of any accrued but unpaid Base Management Fees;

(ii) Second, to the payment of any amounts remaining unpaid reimbursement to the ~~City~~ Owner for any applicable Capital Improvement Expenditure Payments;

(iii) Third, to the payment of Owner's Return on Investment payments equal to one percent (1%) of the Gross Receipts for the previous ~~Term Year~~Calendar Year, as well as any such payments remaining unpaid for prior ~~Term Year~~Calendar Years;

(iii) Fourth, to the payment of any accrued but unpaid Operator's Gross Receipts Variable Fees for the previous ~~Term Year~~Calendar Year, as well as any such payments remaining unpaid for prior ~~Term Year~~Calendar Years, and

(iv) Fifth, any remaining balance shall remain in the Operating Reserve Account, provided however, at the expiration of this Agreement, such remaining balance will be paid ~~as follows:~~

~~(1) First, to pay the additional Gross Receipts Variable Fees accrued from Gross Receipts for May 2010; and~~

~~(2) Second, all remaining funds shall be paid~~ to Owner.

## **ARTICLE 5. REAL ESTATE TAXES AND PERSONAL PROPERTY TAXES**

5.1. Taxes. During the Term of this Agreement, Owner covenants and agrees that there shall be no Real Estate Taxes payable or levied of any nature whatsoever. Nothing herein contained shall require Operator to pay or be charged for any portion of (i) municipal, state or federal income taxes assessed against Owner, (ii) municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Owner, or (iii) corporation franchise taxes imposed upon Owner or any corporate owner of the fee of the Property.

## **ARTICLE 6. GENERAL RESPONSIBILITIES OF OPERATOR**

6.1. Operation of Forest Creek Golf Course. Operator shall operate, maintain and manage the Forest Creek Golf Course in a manner which Operator deems in its sole discretion to be necessary to operate a public golf club; provided, however, the Forest Creek Golf Course shall be maintained by Operator in a good and attractive condition and in compliance with the golf course maintenance standards set forth in Exhibit "F". Operator shall have the authority and duty to exercise all prerogatives of management with respect to the Forest Creek Golf Course, including implementing all policies and procedures established by Operator, collecting Gross Receipts into a special trust account held in Operator's name in trust for the benefit of Owner and paying an amount to Owner equal to the Monthly Bond Debt Payments and Monthly for the reimbursement for Capital Improvement Expenditure Payments required pursuant to Section 4.3 and Operating Expenses therefrom, and performing any act necessary or desirable for the operation and management of the Forest Creek Golf Course. In the event that in any month there are insufficient Gross Receipts to fund Monthly Bond Debt Payments, Monthly or to reimburse Capital Improvement Expenditure Payments, and Operating Expenses, payment therefore shall be made out of the Operating Reserve Account.

6.2. Commencement Date. From and after the Commencement Date and so long as it has not been excluded from possession of the Property by Owner, Operator shall,

as Operating Expenses, maintain, preserve and keep the Property in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Property in such condition. Owner shall have no responsibility for such maintenance or for any of these repairs, replacements or improvements. All such additions, modifications and improvements shall thereafter comprise part of the Property and be subject to the provisions of this Agreement. Such additions, modifications and improvements shall not in any way damage the Property nor cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value not less than the value of the Property immediately prior to the making of such additions, modifications and improvements.

6.2.1 Capital Improvement Plan (2015). Operator and Owner agree that the Capital Improvement Plan (2015) will be negotiated and agreed upon. The estimated cost for total improvements under this plan is not expected to exceed \$1,000,000 and are expected to include, but are not limited to, parking lot improvements, flood and drainage improvements, bunker replacements/enhancements and other major improvements. These improvements will be funded from City Owner sources outside of this agreement. ~~and estimated costs therefor are set out in Exhibit B.~~ Operator and Owner agree to cooperate with each other to complete the improvements listed therein within a reasonable period of time.

6.2.2 Capital Improvement Plan. Each year, no later than July 1<sup>st</sup> prior to the commencement of the next Calendar Year, Operator shall prepare, and provide to Owner, a five year Capital Improvement Plan setting forth the projected capital repairs and improvements for the Forest Creek Golf Course. The annual Capital Improvement Plan shall be subject to the approval of Owner, such approval not to be unreasonably withheld, conditioned or delayed. In the event Owner has not disapproved the same in writing to Operator within thirty days after Operator's submission of the same, the proposed annual Capital Improvement Plan shall be deemed approved.

6.3. Annual Operations Budget. No later than each ~~December~~ November 1<sup>st</sup> prior to the commencement of the next Calendar Year, Operator shall prepare, and provide to Owner, an annual operations budget for such Calendar Year (hereinafter referred to as the "Annual Operations Budget") setting forth the projected Gross Receipts and Operating Expenses for such Calendar Year associated with the operation of the Forest Creek Golf Course. Such proposed Annual Operations Budget shall be subject to the approval of Owner, such approval not to be unreasonably withheld, conditioned or delayed. In the event Owner has not disapproved the same in writing to Operator within thirty days after Operator's submission of the same, the proposed Annual Operations Budget shall be deemed approved.

6.4. Annual Capital Budget. No later than each ~~September~~ July 1<sup>st</sup> prior to the commencement of each Calendar Year, Operator shall prepare, and provide to Owner, an annual capital replacements and repair budget for such Calendar Year (hereinafter referred to as the “Annual Capital Budget”) setting forth the projected capital repairs and improvements to the Forest Creek Golf Course for such Calendar Year. The parties agree that the source for the funding of the items set forth in the Annual Capital Budgets shall be the funds in the Capital Reserve. In the event during any Calendar Year, Operator spends an amount in excess of the funds available in the Capital Reserve account, then the amount of such excess shall be reimbursed to Operator out of the Capital Reserve account in subsequent Calendar Years. In the event that during any Calendar Year, Operator spends an amount which is less than the funds available in the Capital Reserve account, Operator shall be entitled to spend such unutilized funds in subsequent Calendar Years with Owner’s approval, which approval shall not be unreasonably withheld.

6.5. Accounting Records and Reporting. Operator agrees from and after the Commencement Date and during the Term of this Agreement, at Operator’s cost, to maintain efficient and accurate accounting records in a format consistent with other public golf courses operated by Operator or its affiliates as follows:

(a) From and after the Commencement Date, and during the Term of this Agreement, Operator shall submit to Owner on or before the twenty-fifth (25<sup>th</sup>) day following the previous month, a Financial Statement showing in detail all of the Gross Receipts, Operating Expenses, a profit and loss statement, and a statement of financial position (a balance sheet), of the Forest Creek Golf Course for the preceding month and the Calendar Year to date. Operator shall provide a written explanation for all extraordinary or non-standard items.

(b) From and after the Commencement Date, and within sixty (60) days after the close of each Calendar Year, Operator shall submit to Owner a financial statement showing all Gross Receipts, Operating Expenses and statement of position (a balance sheet) for the Calendar Year then ended. The Financial Statement shall be certified by a Certified Public Accountant selected by Operator and shall include a statement that the financial statements were compiled in compliance with the terms and conditions of this Agreement and in accordance with generally accepted accounting principles.

6.6. Status Reports and Meetings. A representative of Operator and a representative of Owner shall hold quarterly meetings for the purpose of having the representative of the Operator update the Owner on the general operations of the Forest Creek Golf Course and review the financial performance of the Forest Creek Golf Course. On or before ~~December~~ March 15<sup>th</sup> of each year, Operator shall provide Owner with an annual status report setting forth the general condition of the Forest Creek Golf Course and ~~a general outline of all planned improvements~~ an update to the Capital Improvement Plan and any needed changes for the forthcoming current operating year.

6.7. Emergency Expenditures. In the event that a condition should exist in, on, or about the Property, or any portion thereof, of an emergency nature, including structural repairs, which requires immediate repairs to preserve and/or protect the Property, and assure its continued operation or to protect the golf course clientele or employees. Operator is authorized to take all steps and to make all expenditures necessary to repair and correct any such conditions whether or not provisions have been made in the applicable budget or budgets for any such emergency expenditures and the applicable budget or budgets shall be amended to include the full amount of such expenditures as if such amounts were originally set forth in the applicable budgets. Operator agrees to notify the Owner within twenty-four (24) hours of any such emergency specifying the exact nature of the emergency and the expenditures which Operator has made or may be additionally planning on making in order to address the repairs or other measures required to be done in connection with the applicable emergency.

6.8. Expenditures Required for Compliance with Law. In the event that at any time during the Term of this Agreement repairs, additions, changes, or corrections in or to the Property shall be required by reason of any laws, ordinances, rules, or regulations, now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer, such repairs shall be made at the direction of Operator; provided, however, in the event that any such expenditures were not included within the applicable budget or budgets, the applicable budget or budgets shall be automatically increased to include the full amount of such expenditures as if such amounts were originally set forth in the applicable budgets.

6.9. Golf Course Maintenance Standards. During the Term of this Agreement, Operator agrees to keep the course maintained in accordance with the standards set forth in Exhibit "F" hereto.

6.10 Initial Inventories and Supplies. Operator agrees that it will be responsible for providing the initial inventories and supplies for the golf shop merchandise, food and beverages, golf course maintenance supplies, and office supplies in the amount of at least \$30,000. Operator agrees to provide Owner with a detailed listing of the aforesaid initial inventories. At the expiration of this Agreement, Owner shall have the option of purchasing all of the inventories and supplies on hand for \$30,000, actual cost or fair market value, whichever is less. If Owner elects not to exercise its option to purchase such inventories and supplies, then Operator may remove them at the expiration of this Agreement.

## **ARTICLE 7. POSSESSION OF THE PROPERTY**

7.1 Possession. On the Commencement Date, Owner shall deliver possession of the Property to Operator.

## **ARTICLE 8. UTILITIES AND SERVICES**

**8.1 Utilities and Services.** Operator agrees to pay all charges for utilities and services used by it on the Property, which shall be separately metered, including, but not limited to, gas, electricity, telephone, sanitary sewer, domestic water, fire protection, water, and trash collection. Notwithstanding the foregoing, Owner and Operator agree that during the Term of this Agreement, Operator shall have the option of utilizing water wells on the Real Property for the irrigation of the Real Property at no cost except for the actual operation and maintenance cost associated with the well and the production of the water. Operator shall also have the option of using effluent from the Brushy Creek Regional Wastewater Treatment Plant. The cost of the effluent will also be the actual operation and maintenance cost of transporting it from the treatment plant to the Real Property.

## **ARTICLE 9. OWNER'S COVENANTS AND REPRESENTATIONS**

**9.1. Owner's Covenants.** Owner makes the following representations to Operator, which representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement and the Commencement Date:

- (a) **Status.** Owner is a duly formed and validly existing home rule city of the State of Texas, governed by the Constitution and the laws of the State of Texas.
- (b) **Authorization.** The Constitution and the laws of the State of Texas authorize Owner to enter into this Agreement and the transactions contemplated hereby and thereby; and to carry out its obligations under this Agreement. The officers of Owner executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution or resolutions of Owner's governing body or by other appropriate official action.
- (c) **Compliance.** Owner has complied with all open meetings and public bidding laws and all other State laws applicable to this Agreement and the acquisition of the Property by Owner.
- (d) **Governmental Agencies.** As of the execution date hereof, Owner has no knowledge of any existing conditions in or about the Property or otherwise which violate any city, county, state or federal law, ordinance or regulation, including but not limited to, regulations relating to zoning and use of the Property, and Owner has not received any notice, written or otherwise, from any governmental agency requiring the correction of any condition with respect to the Property which might be in violation of any law, ordinance or regulations.

(e) Title to the Real Property, Existing Encumbrances. Owner has good and indefeasible title to the Real Property, free and clear of all liens, claims and encumbrances of any nature, except those specific items set forth on Exhibit "E" (the "Existing Real Property Conditions").

(f) Access. There is no fact or condition which would result in the termination of the current access to the Real Property from existing road or to sewer and other utility services, and Owner represents that on the Commencement Date the Real Property will enjoy access and service for sewers and all utilities (including, but not limited to, water, sewer, electricity and telephone facilities) available to the Real Property in sufficient quantities necessary to service the Property for use as a public golf course facility.

(g) Zoning. The Real Property is properly zoned for use as a public golf course facility, including, but not limited to, the sale of alcoholic beverages.

(h) Assessments. As of the execution date hereof, Owner has received no notice and has no knowledge of any pending improvements, liens or special assessments to be made against the Property by any governmental authority.

(i) Violation of Representations. From and after the execution date hereof and until the termination of this Agreement, Owner shall not take any action or omit to take any action which would have the effect of violating any of the representations of Owner contained in this Agreement.

(j) Violation of Agreement. Neither the execution and delivery of this Agreement by Owner nor Owner's performance of its obligations hereunder will result in a violation or breach of any term or provision or constitute a Default or accelerate the performance required under any other agreement or document to which Owner is a party, or is otherwise bound, or to which the Property, or any part thereof, is subject, and will not constitute a violation of any law, ruling, regulation or order to which Owner is subject.

(k) Documentation. If necessary to carry out the intent of this Agreement and as allowable by law, Owner agrees to execute and provide to Operator, on or after the execution date hereof, any and all other instruments, documents conveyances, assignments and agreements which Operator may reasonably request in connection with the operation of the Forest Creek Golf Course.

(l) Noninterference. If Operator shall keep and perform its covenants, conditions and obligations hereunder, owner covenants and agrees that Owner will not, other than as permitted by this Agreement or required by law, interfere in any manner with Operator's operation, possession and management of the Forest Creek Golf Course.



(m) Litigation, Claims, or Proceedings. There are no existing or pending actions, suits, litigation, claims, proceedings or governmental investigations with respect to any aspect of any of the Property or the Forest Creek Golf Course, nor, to the knowledge of Owner, have any such actions, suits, litigation, claims, proceedings or governmental investigations been threatened or asserted. In the event that a lien, claim or cause of action affecting the Property or the Forest Creek Golf Course should arise resulting from any activities by Owner prior to the Commencement Date, Owner shall advise Operator in writing.

(n) Construction Claims. Owner shall hold Operator harmless, to the extent permitted by law, from any unpaid bills or claims in connection with the construction of any improvements to the Property.

(o) Improvements. The Improvements have been constructed and installed in compliance with (i) all applicable laws, statutes, ordinances, codes, covenants, conditions, and regulations, (ii) restrictions of any kind or nature affecting the Real Property, and (iii) any occupancy classification applicable to the Forest Creek Golf Course's operation.

(p) Permits. All permits and licenses necessary for the operation and occupancy of the Property, including but not limited to, all building and use permits, have been obtained for all operations of the Forest Creek Golf Course, and no notice to revoke, suspend, or terminate same has been received by Owner. Owner shall cooperate fully with Operator as necessary to enable Operator to procure and/or transfer and maintain all licenses, permits or authorizations necessary for the operation of the Forest Creek Golf Course.

(q) Liens. From and after the execution date hereof and until the Commencement Date or earlier termination of this Agreement, Owner shall not sell, assign or create any right, title, or interest whatsoever in or to the Property, or create or permit to exist any lien, encumbrance or charge thereon, without promptly discharging the same.

(r) Contracts. There are no outstanding contracts, commitments, leases, or agreements of any nature to which the Forest Creek Golf Course, Operator, or the Property is or may become subject. Owner further agrees not to enter into any contracts, commitments, leases, or agreements after the execution date hereof to which the Forest Creek Golf Course, Operator, or the Property may be or become subject to without the prior express written approval of Operator.

(s) Owner's Violation. In the event of a violation of any of the representations made in this Article by Owner occurring subsequent to the execution date hereof, Owner shall promptly cure any condition created by such violation. In the event Owner fails to promptly cure said violation, Operator may take whatever action, at

law or in equity, available to Operator as a result of said Default, including, but not limited to, the right to (i) terminate this Agreement, or (ii) bring suit for specific performance and/or damages sustained by Operator as a result of Owner's Default. No remedy herein conferred upon or reserved to Operator is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any breach by Owner shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE 10.**

### **OPERATOR'S COVENANTS AND REPRESENTATIONS**

10.1. Operator's Covenants. Operator makes the following representations to Owner, which representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement.

(a) Corporate Status. Operator is a corporation duly organized, validly existing, and in good standing under the law of Texas, with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Operator has been duly authorized and approved by all requisite action of the Board of Directors of Operator, and this Agreement has been duly executed and delivered by Operator and constitutes a valid and binding obligation of Operator, enforceable in accordance with its terms.

(c) Violation of Agreement. Neither the execution and delivery of this Agreement by Operator nor Operator's performance of its obligations hereunder will result in a violation or breach of any term of provision or constitute a Default or accelerate the performance required under any other agreement or document to which Operator is a party or is otherwise bound or to which the Property or any part thereof is subject, and will not constitute a violation of any law, ruling, regulation or order to which Operator is subject.

(d) Documentation. If necessary to carry out the intent of this Agreement, Operator agrees to execute and provide to Owner, on or after the execution date hereof, any and all other instruments, documents, conveyances, assignments and agreements which Owner may reasonably request in connection with the operation

of the Forest Creek Golf Course, including, but not limited to, an assignment of Operator's contractual rights to all leased equipment and any licenses or permits.

## **ARTICLE 11. INDEMNITY AND INSURANCE**

11.1. Operator's Indemnification. Operator covenants to defend and to save Owner and its officers and employees, while acting within the scope of their duties, harmless and indemnified from and against any and all actions, suits, proceedings, claims, demands, costs (including attorneys' fees and court costs), expenses and liability of any kind or nature whatsoever, for injury to or death of person or damage of property including property owned by Owner), which may be brought, made, filed against, imposed upon or sustained by Owner, its officers or employees, based upon or arising out of an act or omission of Operator, its officers, agents, or employees. This indemnity shall not include claims based upon or arising out of the willful misconduct of Owner, its officers or employees. Further, this indemnity shall not require payment of a claim by Owner or its officers or employees as a condition precedent to Owner's recovery under this provision.

11.2. Owner's Indemnification. Owner covenants and agrees, to the extent permitted by law, to indemnify and save Operator, Operator's affiliates, Operator's shareholder, parent corporation, and all its respective officers, directors, legal representatives, and employees (hereinafter referred to as the "Indemnified Parties") harmless from any and all costs, expenses, penalties, claims, demands, and liabilities resulting from (i) any action or claim, or otherwise, arising with respect to Owner's operation or ownership of the Forest Creek Golf Course or the Property, or the construction or acquisition of the Improvements, and (ii) any negligent act or omission of Owner or of its invitees, agents or employees, but this indemnity shall not extend to costs, expenses, penalties, claims, demands and liabilities resulting from acts of willful misconduct of Operator, its employees or agents. Further, this indemnity shall not require the payment of a claim by any of the Indemnified Parties as a condition to recovery under this provision.

11.3. Operator's Insurance. Operator shall obtain, as Operating Expenses, the following insurance concerning the Property and cause all contractors to maintain similar insurance, where appropriate:

- (a) Worker's compensation and employer's liability insurance, or equivalent coverage, as may be required under applicable laws covering all employees of Operator included in the operation of the Forest Creek Golf Course, with such deductible limits as are generally established by Operator;
- (b) Comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in, or about the Property, and

automobile insurance on vehicles operating in conjunction with the Property, with a combined single limit of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) each occurrence for personal injury, death, and property damage, with such deductible limits as are generally established by Operator;

(c) Insurance on the Property, including the Improvements and Personal Property, against loss or damage by fire, lightning, flood, earthquake, and all other risks covered by the usual standard extended coverage endorsements, in such amounts and with such deductible limits as established by Operator and agreed to by Owner, all in an amount of not less than ninety percent (90%) of the replacement cost thereof; and

(d) Such other insurance in amounts as Operator, in its reasonable judgment, deems advisable for protection against claims, liabilities and losses arising out of, or connected with, the operation of the Forest Creek Golf Course.

(e) All insurance provided by Operator under this Article shall name Operator and Owner as named insureds. Operator shall deliver to Owner, at least thirty (30) days prior to the Commencement Date, certificates of insurance with respect to all policies so procured, including existing, additional, and renewal policies, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies not less than ten (10) days prior to the respective dates of expiration. All policies of insurance provided under this Article 11 shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to Owner and Operator.

11.4. Subrogation. Anything in this Agreement to the contrary notwithstanding, Owner and Operator each hereby waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers, and employees for any loss or damage that may occur to the Property, any personal property therein, or any improvements made thereto, or any part thereof, or any other real or personal property of either party by reason of fire, the elements, or any other cause which is insured against under the term of the policies of casualty insurance that Operator or Owner are required to provide hereunder or may otherwise carry, to the extent and only to the extent of any proceeds actually received by Owner or Operator, respectively, with respect thereto, regardless of cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**ARTICLE 12.**  
**DESTRUCTION BY FIRE OR OTHER CASUALTY**

12.1. Total Destruction. In the event that the Improvements are totally destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred forty (240) days from the date construction commences, Operator may, at its option, terminate this Agreement by giving written notice to the other party within sixty (60) days following such damage or destruction. In the event of termination of this Agreement pursuant to this Section, this Agreement shall cease and come to an end as of the date of such damage or destruction as though such date were the date originally fixed for the expiration of the Term of this Agreement.

12.2. Partial Destruction. In the event the Improvements are damaged by fire or other casualty and such damage can be materially restored with due diligence within two hundred forty (240) days following the date construction commences, Owner shall have the obligation to repair the Improvements, as the case may be, as nearly as practicable to the condition same was in prior to such damage, but in no event shall Owner be required to expend funds in excess of proceeds of insurance received relating to the damage. Owner shall cause such repair to be commenced with all reasonable dispatch so as to complete the same at the earliest, reasonable, possible date.

**ARTICLE 13.**  
**CONDEMNATION**

13.1 Notice of Taking. Owner shall, within ten (10) days of Owner's receipt of notice of a proposed and/or actual taking of the Real Property, or a portion of either, under any governmental law, ordinance or regulation, or by right of eminent domain, provide Operator (i) written notice of such proposed or actual taking, and (ii) a copy of the documents and/or pleadings received from the governmental authorities.

13.2. Effect of Entire Taking. If, during the Term of this Agreement, the entire Real Property shall be appropriated or taken for any public or quasi-public use under any governmental law, ordinance or regulation, or under the power of eminent domain by any public or quasi-public authority, then this Agreement and the Term hereof shall cease and come to an end as though such date were the date originally fixed for the expiration of the Term of this Agreement.

13.3. Effect of Partial Taking. If, during the Term of this Agreement, a portion of the Real Property shall be appropriated or taken for any public or quasi-public use under any governmental law, ordinance or regulation, or under the power of eminent domain by any public or quasi-public authority so as to render the Property substantially unusable for the purposes and in the manner contemplated herein, then, in such event, Operator shall have the right to cancel and terminate this Agreement by giving written notice to Owner

within sixty (60) days after the receipt by Operator from Owner of written notice of such appropriation or taking. In the event of termination of this Agreement pursuant to this Section, then this Agreement shall cease and come to an end as of the date of such written notice by Operator as though such date were the date originally fixed for the expiration of the Term of this Agreement, and neither party shall have any obligation to the other arising out of or in any way connected with this Agreement by virtue of such termination.

In the event less than the whole of the Real Property are so appropriated or taken and Operator does not elect to terminate this Agreement and Operator remains in that portion of the Real Property which shall not have been appropriated or taken, then, in such event, the rental payable hereunder to Owner shall abate until Owner has restored (and Owner hereby agrees, at Owner's cost and expense, to restore) the Property as far as possible to a complete unit of the like quality and character as existed prior to such appropriation or taking.

13.4. Operator's Award. If this Agreement is terminated pursuant to the provisions of this Article, then the damage award to be made pursuant to the condemnation proceedings shall be apportioned between Owner and Operator according to the value of their respective interests in the Property and this Agreement.

## **ARTICLE 14. RIGHT TO CURE**

14.1. Owner's Performance. After the expiration of any permitted grace period recited in this Agreement, if Operator shall have failed to cure any Default in the performance of any covenant or promise on its part to be performed, Owner may, immediately, or at any time thereafter, without further notice, perform the same for the account and at the expense of Operator. Notwithstanding the above, in the case of an emergency (being defined as a situation involving the immediate threat of a loss of property or injury), Owner may, after notice to Operator, so perform in Operator's stead prior to the expiration of any applicable grace period; provided, however, Operator shall not be deemed in default under this Agreement.

14.2. Operator's Performance. After the expiration of any permitted grace period, if Owner shall have failed to cure any Default in the performance of any covenant or promise on its part to be performed, Operator may, immediately, or at any time thereafter, without further notice, perform the same for the account and at the expense of the Owner. Notwithstanding the above, in the case of an emergency, Operator may, after notice to Owner, so perform in Owner's stead prior to the expiration of any applicable grace period provided, however, Owner shall not be deemed in default under this Agreement.

14.3. Reimbursement. If, pursuant to this Article, Owner or Operator at any time is compelled or elects to (i) pay any sum of money, (ii) do any act which will require the

payment of any sum of money, or (iii) incur any expense (including reasonable attorneys' fees) in instituting, prosecuting and/or defending any action or proceeding instituted by reason of Operator's or Owner's failure to reimburse, as herein provided, the sum or sums so paid or payable by Owner or Operator, as the case may be, with all interest, costs and damages, shall be immediately due from the other upon receipt of a statement thereof.

## **ARTICLE 15. QUIET ENJOYMENT**

15.1. Quiet Enjoyment. Owner, for itself, its successors and assigns, agrees that upon the due performance and observance by Operator of the terms, covenants and conditions contained herein, Operator shall, and may, at all times during the Term of this Agreement, peaceably and quietly have, hold, and enjoy the Property. Within ten (10) days of the date of execution of this Agreement, Owner shall obtain for Operator from any present mortgagee or mortgagees of the Property a nondisturbance agreement (the "Nondisturbance Agreement") assuring Operator that in the event of a default and/or foreclosure under such mortgage, Operator's possession and enjoyment of all of its rights under this Agreement shall continue unimpaired. The executed Nondisturbance Agreement shall be delivered by Owner to Operator and shall be recorded of record in the real property records of Williamson County, Texas.

15.2. Inspection and Maintenance of Property. Operator agrees that Owner shall have the right at all reasonable times to enter upon and to examine and inspect the Property. Operator further agrees that Owner and any representative of Owner shall have such rights of access of the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of a Default herewith, or to carry out Owner's obligations and exercise Owner's rights under Article 17, or to determine whether Operator is in compliance with this Agreement.

## **ARTICLE 16. SALE AND ASSIGNMENT**

16.1. Operator's Sale or Assignment. Operator shall not assign, sublet or permit an assignment by operation of law of this Agreement or any interest hereunder without the prior written approval of Owner, which approval shall not be unreasonably withheld by Owner. If this Agreement is assigned, Owner may collect payments from such assignee or sublessee and shall apply the net amount collected to the rental for which Operator is obligated to pay, but no such collection shall be deemed a waiver of Owner's prior approval or the acceptance of such assignee hereunder.

16.2. Effect of Assignment. Any person who shall by operation of law or otherwise become an assignee of this Agreement or become vested with the leasehold interest hereunder, or a portion thereof, shall be bound by and liable upon all covenants

and provisions contained in this Agreement, but neither Operator nor any subsequent tenant whose interest is assigned or divested shall be relieved of liability hereunder. In the case of any transfer or vesting of the interest hereunder, or any part thereof, either through foreclosure proceedings or otherwise by operation of law, it shall be a condition to the validity of such transfer or vesting of interest that, if so requested by Owner, any person or persons claiming the leasehold interest hereunder, or any part thereof, so derived shall promptly execute and deliver to Owner a written assumption of the obligations of Operator hereunder, in such form so that such person or persons shall thereupon be bound by and liable upon all the covenants and provisions of this Agreement to the same extent as was Operator.

16.3. Owner's Sale, Lease, or Assignment. In the event of the sale or assignment of Owner's interest in this Agreement to another party, as a condition precedent to such sale or assignment, the assign thereof ("Owner's Successor") must execute an assumption agreement providing for the assignment by Owner's Successor of all of the obligations and liabilities of Owner under this Agreement. Additionally, in the event of the sale or lease of the Property, the Forest Creek Golf Course or any portion thereof or in the event of the assignment ~~by the City~~ of this Agreement by Owner, as a condition precedent to either of the foregoing, the ~~City~~ Owner must pay in full to Operator the then current unpaid principal balance of Operator's investment plus all accrued interest thereon.

## **ARTICLE 17. EVENTS OF DEFAULT**

17.1. Operator's Default. The occurrence of any of the following events which is not cured in the time permitted herein shall constitute a default under this Agreement (hereinafter referred to as a "Default"):

- (a) If Operator fails to pay any sums payable under this Agreement when and as the same shall become due and payable, and said failure shall continue for a period of twenty (20) days after written notice (specifying the item not paid) thereof from Owner to Operator to cure any payment failure.
- (b) If Operator shall fail in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this Agreement other than that referred to in the immediately preceding Paragraph, and such failure shall continue for a period of thirty (30) days after written notice thereof from Owner to Operator specifying in detail the nature of such failure, or, in case such failure cannot be cured with due diligence within thirty (30) days. Operator fails to proceed promptly and with all due diligence to cure the same and thereafter to prosecute the curing of such failure with all due diligence (it being intended that in connection with a failure not susceptible of being cured with due diligence within thirty [30] days, that the time within which to cure the same shall be extended for



such period as may be reasonably necessary to complete the same with all due diligence).

(c) If the Forest Creek Golf Course shall fail to generate Gross Receipts, during any twelve (12) month period beginning on ~~June-January~~ 1<sup>st</sup> of each ~~e~~Calendar ~~y~~Year and ending on ~~May-December~~ 31<sup>st</sup> of the subsequent ~~e~~Calendar ~~y~~Year during the Term of this Agreement, of at least FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), it shall be considered as a Default of Operator. If during the initial eight month period of this Agreement, the golf course fails to generate Gross Receipts of at least \$333,333.00 it shall be considered as a Default of Operator. The parties hereto acknowledge and agree that said failure shall not be considered as a Default if any Unavoidable Delay, as defined in Article 20 hereof, cause or significantly contributed to such failure.

17.2. Owner's Default. The occurrence of any of the following events which is not cured in the time permitted herein shall constitute a default under this Agreement (hereinafter referred to as a "Default"):

(a) If Owner shall fail to pay any sums payable to Operator under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of twenty (20) days after written notice thereof from Operator to Owner.

(b) If Owner shall fail in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from Operator to Owner specifying in detail the nature of such failure, or, in the case such failure cannot, with due diligence, be cured within thirty (30) days, Owner fails to proceed promptly and with all due diligence to cure the same and thereafter prosecute the curing of such failure with all due diligence, it being intended that in connection with a failure not susceptible to being cured with due diligence within thirty (30) days, that the time within which to cure the same shall be extended for such period as may be necessary to complete the same with all due diligence.

## **ARTICLE 18. REMEDIES**

18.1. Owner's Remedies. Upon the occurrence of a Default by Operator which is not cured within the time permitted, Owner shall be entitled to proceed with the following remedies as set forth below:

(a) Right to Remedy Defaults of Operator. Owner may remedy any Default of Operator, and in connection with such remedy, Owner may pay all expenses and employ counsel, and all sums so expended or obligations incurred by Owner in connection therewith shall be paid by Operator to Owner, upon demand by Owner, and on failure of such reimbursement, Owner may at Owner's option, deduct all costs and expenses incurred in connection with remedying a Default of Operator from the next sums subsequently becoming due to Operator from Owner under the terms of this Agreement.

(b) Right to Terminate Agreement. Owner may terminate this Agreement by Owner's written notice to termination to Operator. Upon receipt of Owner's notice of termination of this Agreement, Operator shall surrender possession of the Real Property, Owner's Personal Property and the Improvements to Owner and assist in an orderly transfer of the operation to another management entity or Owner; provided, however, in the event of the termination of this Agreement arising from a Default by Operator which is not cured within the time permitted, the parties stipulate and agree that in the event of such termination of this Agreement, the unpaid or unreimbursed portion of any amounts owed to Operator including, but not limited to, any Management Fees shall be deemed to be paid in full not as a penalty but as liquidated damages for the Default by Operator as Owner's sole and exclusive remedy hereunder.

(c) Remedies Not Exclusive with Specific Exceptions. Save and except for (i) the remedy of having the unpaid portion of the Management Fees and any reimbursed amounts owed to Operator, being deemed to have been paid in full in the event of a Default by Operator which is not cured and the termination of this Agreement arising from such Default as provided in Section 19.1(b). hereof, and (ii) the exercise by Owner of the Option To Terminate in accordance with the provisions of Section 19.1(d). hereof, no remedy granted to Owner is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of Owner to exercise any right or power accruing upon any Default shall impair Owner's exercise of any right or power or shall be construed to be a waiver of any Default or acquiescence therein.

18.2. Operator's Remedies. Upon the occurrence of a Default which is not cured by Owner within the time permitted, Operator shall be entitled to proceed with any or all of the following remedies:

(a) Right to Remedy Defaults by Owner. Operator may remedy any Default of Owner, and in connection with such remedy, Operator may pay all expenses and employ counsel, and all sums so expended obligations incurred by Operator in connection therewith shall be paid by Owner to Operator, upon demand by

Operator, and on failure of such reimbursement, Operator may, at Operator's option, deduct all costs and expenses incurred in connection with remedying a Default of Owner from the next sums subsequently becoming due to Owner from Operator under the terms of this Agreement.

(b) Right to Terminate Agreement. Operator may terminate this Agreement by Operator's written notice of termination to Owner.

No remedy granted to operator is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of Operator to exercise any right or power accruing upon any Default shall impair Operator's exercise of any right or power or shall be construed to be a waiver of any Default or acquiescence therein.

18.3. Attorneys' Fees. In the event Operator or Owner should Default under any of the provisions of this Agreement and the nondefaulting party should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party, the defaulting party shall, on demand therefore, pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses reasonably incurred.

## **ARTICLE 19. TERMINATION**

19.1. Termination. The Term of this Agreement shall terminate on the occurrence of any of the events set forth:

- (a) A Default by Operator which is not cured within the time permitted and Owner sends to Operator a written notice of termination for cause;
- (b) A Default by Owner which is not cured within the time permitted and Operator sends to Owner a written notice of termination for cause;
- (c) The expiration of the Term of this Agreement; and
- (d) In the event that ~~Owner~~ either party delivers written notice of ~~the~~ its exercise ~~by Owner~~ of the Early Termination Option in accordance with the provisions of Section 3.1 hereof.

## **ARTICLE 20. UNAVOIDABLE DELAYS**

20.1 Unavoidable Delays. The provisions of this Article shall be applicable if there shall occur during the Term of this Agreement or prior to the Commencement Date any of the following (hereinafter collectively referred to as “Unavoidable Delays”): (i) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty; or (ii) other conditions similar to those enumerated in this Article beyond the reasonable control of the party obligated to perform. As the result of any of the above described events, if Owner or Operator shall fail punctually to perform any obligation on its part to be performed under this Agreement, then, upon written notice to the other, within ten (10) days of such event, such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay, but only to the extent occasioned by such event. If any right or option of either party to take any action under of with respect to the Term of this Agreement is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the unavoidable delay. Notwithstanding anything contained herein to the contrary, the provisions of this Article shall not be applicable to Operator’s or Owner’s obligation to pay any sums, monies, costs, charges or expenses required to be paid pursuant to the terms of this Agreement.

## **ARTICLE 21. OPERATOR’S OBLIGATIONS**

21.1. Independent Corporation. Owner recognizes and acknowledges that Operator is an independent corporation, chartered under the laws of the State of Texas, and is solely responsible for the obligations and liabilities recited herein, arising hereunder, or in any manner related to the transactions contemplated hereby, and Owner further recognizes and acknowledges that no other entity or entities, including (i) the parent corporation of Operator, OnCourse Strategies, (ii) any officer, employee or individual, or (iii) any corporation affiliated with Operator, is in any manner liable or responsible for the obligations and liabilities of Operator whether recited herein, arising hereunder, or in any manner related to the transactions contemplated hereby.

21.2. Entire Agreement. This Agreement embodies the entire agreement and understanding of Owner and Operator relating to the subject matter hereof and supersedes all prior representations, agreements and understandings, oral and written, relating to such subject matter. Neither this Agreement nor any provision hereof may be amended, enlarged, modified, waived, discharged or terminated orally, but only as expressly provided herein or by an instrument signed by Owner and Operator.

## **ARTICLE 22. NOTICES**

22.1. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) forwarded by prepaid telegram, or (iii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. All notices personally delivered shall be deemed received on the date of delivery. All notices forwarded by prepaid telegram shall be deemed received two (2) days after the date same are sent. All notices forwarded by mail shall be deemed received on a date seven (7) days (excluding Sundays and holidays) immediately following date of deposit in the U.S. mail; provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt.

If to Owner:                   CITY OF ROUND ROCK, TEXAS  
                                      221 East Main  
                                      Round Rock, Texas 78664  
                                      Attention: City Manager

With a copy to:  
Stephan L. Sheets  
309 East Main  
Round Rock, Texas 78664

If to Operator:               J. Michael Ussery, President  
                                      CCA Silband/Golf Corp/Round Rock, Inc.  
                                      1001 S. Capital of Texas Hwy. Suite 200-M  
                                      Austin, TX 78746

With a copy to:  
Mike Ussery  
Forest Creek Golf Club  
99 Twin Ridge Parkway  
Round Rock, Texas 78664-9603

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice of either Owner or Operator shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either Owner or Operator.

## **ARTICLE 23. GENERAL PROVISIONS**

23.1. No Broker. Owner and Operator each warrant that no real estate broker or person acting as such was consulted or dealt with by them in connection with or had any part in interesting them to enter into this Agreement. Each party shall hold the other harmless from any liability or expense incurred by the other party because of any claim for commission, fees or other compensation made by any real estate broker or other person based on claims contrary to this warranty.

23.2. Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

23.3. Successors and Assigns. This Agreement and terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns whenever the context so requires or permits.

23.4. Time. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty or obligation under this Agreement shall not be considered an extension of time for the performance of any other duty of obligation under this Agreement.

23.5. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall be deemed not to be a part of this Agreement.

23.6. Applicable Law. This Agreement has been executed and delivered in the State of Texas and shall be construed in accordance with the laws of the State of Texas. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction in which the Property is located. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same; it being agreed that all parties hereto have participated in the preparation of this Agreement and that legal counsel was consulted by each responsible party before the execution of this Agreement.

23.7. Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either Owner or Operator may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving any of its obligations under this Agreement.

23.8. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal agent, (ii) a partnership, or (iii) a joint venture between the parties hereto.

23.9. Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein; provided, however, in the event that at the time of the execution of this Agreement any of the Exhibits to be attached are incomplete, the parties shall use their best efforts to complete such Exhibits at the earliest possible date. To the extent this Agreement may be rendered unenforceable by the lack of completion of any of the Exhibits, such defect shall be cured as such incomplete Exhibits are made complete in accordance with this Section, except to the extent that such Exhibits are deemed and stipulated by the parties to be complete on the execution of this Agreement by the parties hereto. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and initialed by the parties.

23.10. Caption. Captions, title to sections, and paragraph headings used herein are for convenience or reference and shall not be deemed to limit or alter any provision hereof.

23.11. Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of this Agreement. All other documents and instruments to be executed and delivered in accordance herewith shall continue in full force and effect.

23.12. Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper, duly authorized corporate officers, all as of the day and year first above set forth.

**OWNER:**

Attest:

**CITY OF ROUND ROCK, TEXAS**

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

By: \_\_\_\_\_  
Alan McGraw, Mayor

**OPERATOR:**

Attest:

**CCA SILBAND/GOLFCORP/ROUND  
ROCK, INC.**

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

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_



## Exhibit A

### Forest Creek Golf Course Monthly Bond Debt Payments

<u>Pymnt #</u>	<u>Date Due</u>	<u>Revised Debt Payment</u>
1	5/25/2015	30,000
2	6/25/2015	30,000
3	7/25/2015	40,000
4	8/25/2015	30,000
5	9/25/2015	30,000
6	10/25/2015	30,000
7	11/25/2015	30,000
8	12/25/2015	20,000
		<hr/> 240,000
9	1/25/2016	15,000
10	2/25/2016	15,000
11	3/25/2016	20,000
12	4/25/2016	30,000
13	5/25/2016	30,000
14	6/25/2016	30,000
15	7/25/2016	40,000
16	8/25/2016	30,000
17	9/25/2016	30,000
18	10/25/2016	30,000
19	11/25/2016	30,000
20	12/25/2016	20,000
		<hr/> 320,000
21	1/25/2017	15,000
22	2/25/2017	15,000
23	3/25/2017	20,000
24	4/25/2017	30,000
25	5/25/2017	30,000
26	6/25/2017	30,000
27	7/25/2017	40,000
28	8/25/2017	30,000
29	9/25/2017	30,000
30	10/25/2017	30,000
31	11/25/2017	30,000
32	12/25/2017	20,000
		<hr/> 320,000

33	1/25/2018	15,000
34	2/25/2018	15,000
35	3/25/2018	20,000
36	4/25/2018	30,000
37	5/25/2018	30,000
38	6/25/2018	30,000
39	7/25/2018	40,000
40	8/25/2018	30,000
41	9/25/2018	30,000
42	10/25/2018	30,000
43	11/25/2018	30,000
44	12/25/2018	20,000
		<hr/>
		320,000

45	1/25/2019	15,000
46	2/25/2019	15,000
47	3/25/2019	20,000
48	4/25/2019	30,000
49	5/25/2019	30,000
50	6/25/2019	30,000
51	7/25/2019	40,000
52	8/25/2019	30,000
53	9/25/2019	30,000
54	10/25/2019	30,000
55	11/25/2019	30,000
56	12/25/2019	20,000
		<hr/>
		320,000

## EXHIBIT B

### Capital Improvement Expenditure Repayment Terms

1. The Capital Improvement Expenditure Repayment may include one or more transactions on different dates, but the total principal amount of the Capital Improvement Expenditure shall not exceed \$912,130.07 in the aggregate unless agreed to by the Round Rock City Council.

The interest rate on the unpaid principal amount will be equal to the National Municipal Bond Yield (5 year) in effect on the date of the loan, as published by Bloomberg.

*At the effective date of the Agreement, the Capital Improvement Expenditure is the sum of \$912,130.07 as summarized below:*

May 1, 2010

	<u>Prin. Bal.</u>	<u>Mo. Pymt.</u>	<u>Final Pymt. Due</u>
Loan #1	\$334,379.69	\$2,192.23	April 1, 2027
Loan #2	\$502,750.38	\$3,229.49	Nov 1, 2027
Loan #3	\$75,000.00	\$361.56	May 1, 2030
Total	\$912,130.07		

The term *of the repayment* of the Capital Improvement Expenditure shall be at least 18 years but not more than 20 years.

## **EXHIBIT C**

### **Operator's Personal Property**

Clubhouse Point of Sale and Office Computer System  
Clubhouse Telephone System  
Big Screen Projection Television  
Kronos Timeclock System  
Golf Shop Merchandise Display Fixtures  
Office Equipment  
Folding Tables and Chairs  
Golf Cart Maintenance Tools and Supplies

The following are subject to a financing agreement with VGM Financial  
Golf Cart Fleet  
Golf Range Service Cart  
Beverage Carts  
Golf Utility Cart

## **EXHIBIT D**

**(Property Description)**

## FIELD NOTES

## FOREST CREEK GOLF CLUB

BEING 185.25 acres of land out of the E. W. Matthews Survey, Abstract No. 449, and the John H. Randall Survey, Abstract No. 531, Williamson County, Texas, being all of that certain 15.25 acre tract of land described in a deed to the City of Round Rock recorded in Volume 1853 at Page 855, Official Records, Williamson County, and 170.00 acres out of that certain 582.35 acre tract of land described in a deed to the Ben Franklin Corporation recorded in Volume 1020 at Page 812, Official Records of Williamson County, and being more particularly described by metes and bounds as follows, to wit:

## TRACT 1

BEGINNING at the most northerly northeast corner of said 582.35 acre tract, said Beginning Point also being the southeast corner of Oak Bluff Estates, Phase 2, a subdivision of record filed in Cabinet F, Slide 253, Plat Records of Williamson County;

THENCE S 11° 59' 28" W a distance of 241.09 feet with the east line of said 582.35 acre tract to an iron rod set at the most northerly corner of said 15.25 acre tract;

THENCE S 44° 23' 26" E a distance of 362.62 feet to an iron rod set at the northeast corner of said 15.25 acre tract;

THENCE S 12° 43' 00" W a distance of 1068.00 feet to an iron rod at the southeast corner of said 15.25 acre tract in the north line of said 582.35 acre tract;

THENCE N 89° 17' 00" W a distance of 250.00 feet with the north line of said 582.35 acre tract and the south line of said 15.25 acre tract to an iron rod, from which an iron rod at the southwest corner of said 15.25 acre tract bears N 89° 17' W a distance of 490.00 feet;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set:

- (1) S 00° 00' 00" W a distance of 185.00 feet;
- (2) S 73° 08' 37" E a distance of 491.70 feet;
- (3) N 87° 47' 51" E a distance of 910.67 feet;
- (4) S 71° 18' 25" E a distance of 702.03 feet;
- (5) S 41° 49' 46" E a distance of 249.69 feet;
- (6) S 12° 06' 57" W a distance of 428.54 feet;
- (7) S 63° 30' 59" E a distance of 192.50 feet;
- (8) S 06° 19' 50" W a distance of 195.32 feet;
- (9) S 67° 12' 02" W a distance of 209.34 feet;
- (10) S 03° 27' 20" E a distance of 133.67 feet;
- (11) S 70° 46' 37" W a distance of 337.32 feet;
- (12) N 37° 21' 55" W a distance of 80.59 feet;
- (13) N 73° 21' 35" W a distance of 861.06 feet;
- (14) N 79° 41' 42" W a distance of 479.02 feet;
- (15) N 85° 13' 05" W a distance of 113.57 feet;
- (16) N 73° 15' 50" W a distance of 97.58 feet;
- (17) S 61° 31' 35" W a distance of 59.27 feet;
- (18) S 14° 32' 49" W a distance of 629.23 feet;
- (19) S 35° 34' 39" W a distance of 665.09 feet;
- (20) N 83° 58' 40" W a distance of 213.16 feet;

EXHIBIT

"D"

## TRACT 1 (Continued)

- (21) N 55° 02' 00" W a distance of 167.70 feet;
- (22) N 03° 13' 30" E a distance of 592.02 feet;
- (23) N 62° 54' 16" E a distance of 231.51 feet;
- (24) N 00° 00' 00" E a distance of 215.00 feet;
- (25) N 43° 36' 10" E a distance of 290.00 feet;
- (26) N 08° 12' 44" W a distance of 115.12 feet;
- (27) N 32° 48' 33" W a distance of 477.18 feet;
- (28) N 01° 50' 47" W a distance of 532.27 feet;
- (29) N 47° 40' 35" W a distance of 118.82 feet;
- (30) N 09° 17' 54" W a distance of 310.19 feet;
- (31) N 07° 12' 51" E a distance of 786.85 feet;
- (32) N 50° 33' 43" W a distance of 146.28 feet;
- (33) N 77° 28' 40" W a distance of 129.26 feet;
- (34) S 54° 45' 43" W a distance of 574.87 feet;
- (35) S 41° 49' 01" W a distance of 674.91 feet;
- (36) S 03° 16' 37" E a distance of 73.15 feet to an iron rod set in the north line of Golf Road;
- (37) N 59° 49' 56" W a distance of 405.72 feet with the north line of said Golf Road to an iron rod set;
- (38) N 30° 10' 04" E a distance of 42.96 feet;
- (39) N 07° 40' 14" W a distance of 299.68 feet;
- (40) N 00° 39' 17" E a distance of 175.01 feet;
- (41) N 32° 12' 39" E a distance of 118.19 feet;
- (42) N 61° 45' 31" E a distance of 111.23 feet;
- (43) N 79° 39' 30" E a distance of 231.84 feet;
- (44) N 58° 08' 42" E a distance of 351.95 feet;
- (45) N 24° 26' 38" E a distance of 226.91 feet to an iron rod set in the south line of Golf Road;

## TRACT 1 (Continued)

THENCE along and with the southerly line of Golf Road, the following described four (4) courses and distances:

- (1) S 88° 54' 23" E a distance of 236.04 feet to an iron rod found at the beginning of a curve to the right;
- (2) An arc distance of 138.62 feet with said curve to the right, said curve having a central angle of 6° 59' 52", a radius of 1134.99 feet, tangents of 69.40 feet, and a chord bearing and distance of S 85° 24' 27" E 138.53 feet, to an iron rod found at the point of tangency of said curve;
- (3) S 81° 54' 31" E a distance of 84.27 feet to an iron rod found at the beginning of a curve to the left;
- (4) An arc distance of 240.06 feet with said curve to the left, said curve having a central angle of 59° 48' 05", a radius of 230.00 feet, tangents of 132.26 feet, and a chord bearing and distance of N 68° 11' 27" E 229.31 feet, to an iron rod found at the intersection of the southerly line of said Golf Road and the north line of said 582.35 acre tract;

THENCE along and with the north line of said 582.35 acre tract and the south line of said Oak Bluff Estates, Phase 2, the following described three (3) courses and distances:

- (1) S 88° 53' 40" E a distance of 89.20 feet to an iron rod found;
- (2) S 88° 47' 57" E a distance of 380.72 feet to an iron rod found, and;
- (3) S 89° 02' 29" E a distance of 501.86 feet to the Place of Beginning, containing 145.4457 acres of land.

SAVE AND EXCEPT PARCEL 1, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 1, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 812, Official Records of Williamson County, (also being the northeast corner of Tract 1), bears N 10° 12' 08" E a distance of 2008.84 feet;

THENCE traversing the interior of said 130.1957 acre tract, the following described courses and distances to iron rods set;

- (1) S 59° 10' 43" E a distance of 286.11 feet;
- (2) S 82° 42' 15" E a distance of 256.26 feet;
- (3) N 84° 11' 36" E a distance of 593.04 feet;
- (4) N 65° 03' 22" E a distance of 237.12 feet;
- (5) S 53° 33' 39" E a distance of 665.02 feet;
- (6) S 10° 14' 05" E a distance of 365.82 feet;
- (7) S 20° 33' 22" W a distance of 170.88 feet;
- (8) S 59° 51' 31" W a distance of 115.00 feet;
- (9) N 68° 55' 55" W a distance of 397.09 feet;
- (10) N 50° 37' 50" W a distance of 252.24 feet;



## PARCEL 1 (Continued)

- (11) N 86° 18' 31" W a distance of 621.29 feet;
- (12) N 70° 27' 48" W a distance of 164.47 feet;
- (13) S 61° 08' 59" W a distance of 190.66 feet;
- (14) N 56° 43' 30" W a distance of 153.10 feet;
- (15) N 36° 08' 31" W a distance of 220.42 feet;
- (16) N 25° 06' 53" W a distance of 168.12 feet, and;
- (17) N 18° 35' 36" E a distance of 286.88 feet to the Place of Beginning, containing 25.2753 acres of land.

AND ALSO TRACT 2, described as follows, to wit:

BEGINNING at an iron rod set in the southerly line of Golf Road, from which the northeast corner of said 582.35 acre tract bears N 55° 29' 40" E a distance of 2490.84 feet;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set;

- (1) S 03° 16' 42" E a distance of 172.03 feet;
- (2) S 65° 02' 25" W a distance of 323.33 feet;
- (3) S 10° 27' 36" W a distance of 400.32 feet;
- (4) S 18° 21' 32" E a distance of 548.24 feet;
- (5) S 00° 00' 00" E a distance of 161.86 feet;
- (6) S 45° 35' 55" W a distance of 328.92 feet;
- (7) S 62° 39' 48" W a distance of 132.83 feet;
- (8) S 19° 44' 27" W a distance of 48.14 feet to an iron rod set in the northerly line of Golf Road;
- (9) N 70° 15' 53" W a distance of 146.91 feet with the north line of Golf Road to an iron rod set;
- (10) N 19° 44' 10" E a distance of 96.36 feet;
- (11) N 19° 13' 50" W a distance of 227.71 feet;
- (12) N 48° 14' 23" W a distance of 187.68 feet;
- (13) N 90° 00' 00" W a distance of 260.00 feet;
- (14) S 81° 47' 34" W a distance of 475.50 feet;
- (15) S 64° 17' 29" W a distance of 95.14 feet;
- (16) S 46° 47' 24" W a distance of 85.12 feet;
- (17) S 28° 48' 59" W a distance of 293.23 feet to an iron rod set in the north line of Golf Road;

## TRACT 2 (Continued)

- (18) An arc distance of 210.00 feet with the north line of said Golf Road, said north line being a curve to the left having a central angle of  $23^{\circ} 08' 19''$ , a radius of 520.00 feet, tangents of 106.45 feet, and a chord bearing and distance of N  $77^{\circ} 58' 57''$  W 208.58 feet, to an iron rod set;
- (19) N  $08^{\circ} 31' 04''$  W a distance of 103.05 feet;
- (20) N  $57^{\circ} 08' 21''$  W a distance of 191.67 feet;
- (21) N  $61^{\circ} 28' 37''$  W a distance of 471.77 feet;
- (22) N  $01^{\circ} 09' 00''$  E a distance of 224.77 feet;
- (23) N  $30^{\circ} 05' 17''$  E a distance of 269.28 feet;
- (24) N  $09^{\circ} 10' 59''$  W a distance of 626.69 feet;
- (25) N  $18^{\circ} 49' 17''$  W a distance of 132.25 feet;
- (26) S  $75^{\circ} 00' 00''$  W a distance of 20.00 feet;
- (27) N  $27^{\circ} 19' 05''$  W a distance of 115.46 feet;
- (28) N  $08^{\circ} 41' 22''$  E a distance of 117.28 feet;
- (29) N  $73^{\circ} 36' 11''$  E a distance of 200.60 feet;
- (30) N  $25^{\circ} 15' 48''$  E a distance of 96.35 feet;
- (31) N  $52^{\circ} 48' 39''$  E a distance of 177.48 feet;
- (32) N  $46^{\circ} 31' 54''$  E a distance of 437.22 feet;
- (33) N  $52^{\circ} 16' 52''$  E a distance of 494.26 feet;
- (34) N  $05^{\circ} 41' 35''$  W a distance of 286.74 feet;
- (35) N  $89^{\circ} 49' 52''$  E a distance of 228.02 feet;
- (36) S  $75^{\circ} 38' 46''$  E a distance of 75.39 feet;
- (37) S  $61^{\circ} 23' 10''$  E a distance of 75.22 feet;
- (38) S  $25^{\circ} 08' 10''$  E a distance of 79.27 feet;
- (39) S  $07^{\circ} 51' 10''$  W a distance of 81.81 feet;
- (40) S  $54^{\circ} 17' 36''$  E a distance of 174.08 feet;
- (41) S  $19^{\circ} 39' 22''$  E a distance of 420.78 feet;
- (42) S  $54^{\circ} 28' 33''$  E a distance of 475.71 feet;
- (43) N  $36^{\circ} 09' 31''$  E a distance of 26.21 feet to an iron rod set in the south line of Golf Road;
- (44) An arc distance of 210.32 feet with the south line of said Golf Road, said south line being a curve to the left having a central angle of  $22^{\circ} 16' 25''$ , a radius of 541.03 feet, tangents of 106.51 feet, and a chord bearing and distance of S  $48^{\circ} 41' 44''$  E 209.00 feet, to an iron rod found at the point of tangency of said curve;
- (45) S  $59^{\circ} 49' 56''$  E a distance of 530.52 feet with the south line of said Golf Road to the Place of Beginning, containing 118.4600 acres of land.

SAVE AND EXCEPT PARCEL 2, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 2, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 812, Official Records of Williamson County, bears N 63° 22' 40" E a distance of 2903.79 feet;

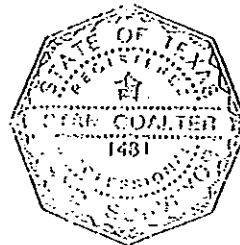
THENCE traversing the interior of said 118.4600 acre Tract 2, the following described courses and distances to iron rods set;

- (1) S 15° 56' 43" W a distance of 135.00 feet;
- (2) S 32° 29' 26" W a distance of 154.35 feet;
- (3) S 10° 50' 05" W a distance of 425.59 feet;
- (4) S 00° 47' 07" E a distance of 221.07 feet;
- (5) S 68° 36' 00" W a distance of 1177.19 feet;
- (6) N 71° 50' 18" W a distance of 120.23 feet;
- (7) N 49° 32' 18" W a distance of 198.82 feet;
- (8) N 22° 49' 00" W a distance of 90.58 feet;
- (9) S 67° 11' 00" W a distance of 152.19 feet;
- (10) N 28° 27' 38" W a distance of 48.46 feet;
- (11) N 30° 21' 46" E a distance of 310.60 feet;
- (12) N 21° 00' 23" W a distance of 772.36 feet;
- (13) N 49° 18' 38" E a distance of 676.38 feet;
- (14) N 43° 37' 01" E a distance of 556.66 feet;
- (15) S 66° 18' 34" E a distance of 107.02 feet;
- (16) S 17° 41' 23" E a distance of 396.44 feet;
- (17) S 67° 22' 48" E a distance of 825.00 feet to the Place of Beginning, containing 53.3804 acres of land.

COALTER & ASSOCIATES, SURVEYORS

*Stan Coalter*

Stan Coalter, RPS, LSLs  
7-21-91



STATE OF TEXAS COUNTY OF WILLIAMSON  
I hereby certify that this instrument was FILED  
on the date and at the time stamped hereon  
by me, and was duly RECORDED in the Volume  
and Page of the named RECORDS of Williamson  
County, Texas, as stamped hereon by me, on  
SEP 26 1991



*Clair B. Byrnes*  
COUNTY CLERK  
WILLIAMSON COUNTY, TEXAS

FILED FOR RECORD  
1991 SEP 26 PM 4:23  
*Clair B. Byrnes*  
COUNTY CLERK

## **EXHIBIT E**

### **Existing Real Property Conditions**

THIS POLICY IS BE ISSUED IN LIEU OF POLICY NUMBER 0-5801 677836 A  
SCHEDULE A

GF No. 89014961

Owner Policy No.: 0-5801- 788110. A

Date of Policy: December 29, 1989

Name of Insured: CITY OF ROUND ROCK

Amount of:

\$6,232,969.00

1. The estate or interest in the land insured by this policy is: (fee simple, leasehold, easement, etc.-identify or describe)  
FEE SIMPLE

2. The land referred to in this policy is described as follows:

TRACT A: 170.00 acres of land, more or less, out of the E. W. MATTHEWS SURVEY, Abstract No. 531, in Williamson County, Texas, and being more fully described by metes and bounds in Exhibit "A" attached hereto and made a part hereof.

TRACT B: 15.25 acres of land, more or less, out of the E. W. MATTHEWS SURVEY, Abstract No. 449, in Williamson County, Texas, and being more fully described by metes and bounds in Exhibit "A" attached hereto and made a part hereof.

EXHIBIT

"E"

STEWART TITLE  
GUARANTY COMPANY

## SCHEDULE B

Policy No.: 0-5801-

GF 89014961

788110 A

This policy is subject to the Conditions and Stipulations hereof, the terms and conditions of the leases or easements insured, if any, shown in Schedule A, and to the following matters which are additional exceptions from the coverage of this policy:

1. The following restrictive covenants of record itemized below (the Company must either insert specific recording data or delete this exception): AS TO TRACT A: None of record, except as recorded in Volume 1020, Page 769, Official Records, Williamson County, Texas, and Amendment to Restrictions and Easements dated December 8, 1989, recorded in Volume 1866, Page 1, Official

Continued on next page

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements.
3. Standby Fees and taxes for the year 19 89 \* and subsequent years, and subsequent assessments for prior years due to change in land usage or ownership. \* SEE BELOW
4. The following lien(s) and all terms, provisions and conditions of the instrument(s) creating or evidencing said lien(s):
5. Rights of parties in possession.
6. Visible and apparent easements, if any.
7. The rights of Brushy Creek Water Control and Improvement District No. 1 to levy taxes and issue bonds.
8. Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does guarantee that no such liens have been filed with the County Clerk of Williamson County, Texas, prior to the date hereof. Liability hereunder at the date hereof is limited to \$1,700,000.00. Liability shall increase as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the Insured in improvements at the time the loss occurs. Any expenditures made for improvements, subsequent to the date of this policy, will be deemed made as of the date of this policy. In no event shall that liability of the Company hereunder exceed the face amount of this policy. Nothing contained in this paragraph shall be construed as limiting any exception or any printed provision of this policy.
9. All rights, terms, conditions, liens, mineral reservations, easements, reversionary interests and other provisions of Land Use Agreement for Texas and Franklin Capital Corporation, recorded in Volume 1853, Page 806, Official Records, Williamson County, Texas, as corrected by instrument recorded in Volume 2060, Page 447, Official Records, Williamson County, Texas.

Countersigned:

Continued on next page

GEORGETOWN TITLE COMPANY, INC.

By

  
 Authorized Countersignature

**STEWART TITLE**  
 GUARANTY COMPANY

Continuation of Schedule B

SCHEDULE B, PARAGRAPH 1 CONTINUED  
Records, Williamson County, Texas.

AS TO TRACT B: None of record, except those in Deed dated December 21, 1989, recorded in Volume 1853, Page 855, Official Records, Williamson County, Texas.

10. Terms, provisions and conditions of Trust Agreement dated as of December 1, 1989 by and among the City of Round Rock, Texas, First City, Texas-Austin, N.A. and Round Rock Golf, Inc. as described in Memorandum of Trust Agreement, recorded in Volume 1864, Page 940, Official Records, Williamson County, Texas.
  11. Terms, provisions and conditions of Golf Course Construction Lease/ Purchase Agreement between Round Rock Golf, Inc., as Lessor and the City of Round Rock, Texas, as Lessee, dated as of December 1, 1989, recorded in Volume 1851, Page 693, Official Records, Williamson County, Texas, as corrected by instrument recorded in Volume 2060, Page 419, Official Records, Williamson County, Texas.
  12. Terms, provisions and conditions of Ground Lease between City of Round Rock and Round Rock Golf, Inc. dated December 1, 1989.
  13. Terms, provisions and conditions of Management Agreement between City of Round Rock and CCA Silband/GolfCorp/Round Rock, Inc. dated December 1, 1989.
  14. We do not insure access to the herein described property.
  15. Easement dated May 1, 1958, executed by Otto C. Pfluger to Brushy Creek Water Control and Improvement District No. 1, recorded in Volume 430, Page 643, Deed Records, Williamson County, Texas.
  16. AS TO TRACT A: Easement dated June 29, 1981, executed by Karen Lamprecht et al to Texas Power & Light Co. and Southwestern Bell Telephone Co., recorded in Volume 848, Page 611, Deed Records, Williamson County, Texas, if located so as to affect this property.
  17. Portion of the property lying within 100 year flood plain as shown on survey plat dated January 13, 1984, prepared by R. T. Magness, Jr., Registered Public Surveyor No. 1433.
  18. 10' public utility easement along the most northerly property
- Continued on next page

Page \_\_\_\_\_

Continuation of Schedule B

- line as set out in deed dated May 10, 1984, executed by Pfluger-Knebel Ranch Partnership to Richland Hills Joint Venture, recorded in Volume 1020, Page 769, and as shown on survey plat dated January 13, 1984, prepared by R. T. Magness, Jr., Registered Public Surveyor No. 1433, and subject to the terms set out in Paragraph 3 of Amendment to Restrictions and Easements dated December 8, 1989, recorded in Volume 1866, Page 1, Official Records, Williamson County, Texas.
19. Roadway easements as set out in Paragraph 4 of Amendment to Restrictions and Easements dated December 8, 1989, recorded in Volume 1866, Page 1, Official Records, Williamson County, Texas.
20. Covenant and Agreement to provide access to a certain 100 acre tract by dedicated and constructed public roads in two (2) locations as set out in deed dated May 10, 1984, from Pfluger-Knebel Ranch Partnership to Richland Hills Joint Venture, recorded in Volume 1020, Page 769, Official Records, Williamson County, Texas, as amended by Amendment to Restrictions and Easements dated December 8, 1989, recorded in Volume 1866, Page 1, Official Records, Williamson County, Texas.
21. Reversionary interest as set out in Dedication Deed dated September 28, 1989, executed by Franklin Capital Corporation to City of Round Rock, recorded in Volume 1853, Page 798, Official Records, Williamson County, Texas, as corrected by Correction Dedication Deed recorded in Volume 2060, Page 401, Official Records, Williamson County, Texas.
22. AS TO TRACT B: Repurchase Option by Grantor in the event the construction of a public golf course on this property is not commenced within two (2) years after the date of the deed set forth in Deed dated December 21, 1989, from Pfluger-Knebel Ranch Partnership to the City of Round Rock, recorded in Volume 1853, Page 855, Official Records, Williamson County, Texas.
23. Covenant to include the remainder of the 100 acre tract of land (approximately 84.75 acres) in Grantee's master plan for streets and utility services as set forth in Deed dated December 21, 1989 from Pfluger-Knebel Ranch Partnership to the City of Round Rock, recorded in Volume 1853, Page 855, Official Records, Williamson County, Texas.
24. Agreement for the installation of fence by the Grantee on the common property line of this property and the remainder of that certain 100 acre tract of land as set forth in Deed dated December 21, 1989, from Pfluger-Knebel Ranch Partnership to the City of Round Rock, recorded in Volume 1853, Page 855, Official
- Continued on next page

Page \_\_\_\_\_



GF 89014961

Attached to and made a part of Stewart Title Guaranty Company Policy No. 0-5801-788110-A

Continuation of Schedule B

Records, Williamson County, Texas.

\*including taxes levied by Brushy Creek Water Control and  
Improvement District No. 1

Page \_\_\_\_\_

## TRACT A

## REVISED FIELD NOTES

## FOREST CREEK GOLF CLUB

BEING 170.00 acres of land out of the E. W. Matthews Survey, Abstract No. 449, and the John H. Randall Survey, Abstract No. 531, Williamson County, Texas, and being a part of that certain 582.35 acre tract of land described in a deed to Ben Franklin Corporation recorded in Volume 1020 at Page 812, Official Records of Williamson County, and being more particularly described by metes and bounds as follows, to wit:

## TRACT 1

BEGINNING at the northeast corner of said 582.35 acre tract, said Beginning Point also being the southeast corner of Oak Bluff Estates, Phase 2, a subdivision of record filed in Cabinet F, Slide 253, Plat Records of Williamson County;

THENCE S 11° 59' 28" W a distance of 610.09 feet to an iron rod found;

THENCE S 48° 10' 52" W a distance of 766.87 feet to an iron rod found;

THENCE S 09° 53' 59" W a distance of 425.73 feet to an iron rod found;

THENCE S 89° 17' 00" E a distance of 490.00 feet to an iron rod set;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set:

- (1) S 00° 00' 00" W a distance of 185.00 feet;
- (2) S 73° 08' 37" E a distance of 491.70 feet;
- (3) N 87° 47' 51" E a distance of 910.67 feet;
- (4) S 71° 18' 25" E a distance of 702.03 feet;
- (5) S 41° 49' 46" E a distance of 249.69 feet;
- (6) S 12° 06' 57" W a distance of 428.54 feet;
- (7) S 63° 30' 59" E a distance of 192.50 feet;
- (8) S 06° 19' 50" W a distance of 195.32 feet;
- (9) S 67° 12' 02" W a distance of 209.34 feet;
- (10) S 03° 27' 20" E a distance of 133.67 feet;
- (11) S 70° 46' 37" W a distance of 337.32 feet;
- (12) N 37° 21' 55" W a distance of 80.59 feet;
- (13) N 73° 21' 35" W a distance of 861.06 feet;
- (14) N 79° 41' 42" W a distance of 479.02 feet;
- (15) N 85° 13' 05" W a distance of 113.57 feet;
- (16) N 73° 15' 50" W a distance of 97.58 feet;
- (17) S 61° 31' 35" W a distance of 59.27 feet;
- (18) S 14° 32' 49" W a distance of 629.23 feet;
- (19) S 35° 34' 39" W a distance of 665.09 feet;
- (20) N 83° 58' 40" W a distance of 213.16 feet;

EXHIBIT

" A "

- (21) N 55° 02' 00" W a distance of 167.70 feet;
- (22) N 03° 13' 30" E a distance of 592.02 feet;
- (23) N 62° 54' 16" E a distance of 231.51 feet;
- (24) N 00° 00' 00" E a distance of 215.00 feet;
- (25) N 43° 36' 10" E a distance of 290.00 feet;
- (26) N 08° 12' 44" W a distance of 115.12 feet;
- (27) N 32° 48' 33" W a distance of 477.18 feet;
- (28) N 01° 50' 47" W a distance of 532.27 feet;
- (29) N 47° 40' 35" W a distance of 118.82 feet;
- (30) N 09° 17' 54" W a distance of 310.19 feet;
- (31) N 07° 12' 51" E a distance of 786.85 feet;
- (32) N 50° 33' 43" W a distance of 146.28 feet;
- (33) N 77° 28' 40" W a distance of 129.26 feet;
- (34) S 54° 45' 43" W a distance of 574.87 feet;
- (35) S 41° 49' 01" W a distance of 674.91 feet;
- (36) S 03° 16' 37" E a distance of 73.15 feet to an iron rod set in the north line of Golf Road;
- (37) N 59° 49' 56" W a distance of 405.72 feet with the north line of said Golf Road to an iron rod set;
- (38) N 30° 10' 04" E a distance of 42.96 feet;
- (39) N 07° 40' 14" W a distance of 299.68 feet;
- (40) N 00° 39' 17" E a distance of 175.01 feet;
- (41) N 32° 12' 39" E a distance of 118.19 feet;
- (42) N 61° 45' 31" E a distance of 111.23 feet;
- (43) N 79° 39' 30" E a distance of 231.84 feet;
- (44) N 58° 08' 42" E a distance of 351.95 feet;
- (45) N 24° 26' 38" E a distance of 226.91 feet to an iron rod set in the south line of Golf Road;

## TRACT 1 (Continued)

THENCE along and with the southerly line of Golf Road, the following described four (4) courses and distances:

- (1) S 88° 54' 23" E a distance of 236.04 feet to an iron rod found at the beginning of a curve to the right;
- (2) An arc distance of 138.62 feet with said curve to the right, said curve having a central angle of 6° 59' 52", a radius of 1134.99 feet, tangents of 69.40 feet, and a chord bearing and distance of S 85° 24' 27" E 138.53 feet, to an iron rod found at the point of tangency of said curve;
- (3) S 81° 54' 31" E a distance of 84.27 feet to an iron rod found at the beginning of a curve to the left;
- (4) An arc distance of 240.06 feet with said curve to the left, said curve having a central angle of 59° 48' 05", a radius of 230.00 feet, tangents of 132.26 feet, and a chord bearing and distance of N 68° 11' 27" E 229.31 feet, to an iron rod found at the intersection of the southerly line of said Golf Road and the north line of said 582.35 acre tract;

THENCE along and with the north line of said 582.35 acre tract and the south line of said Oak Bluff Estates, Phase 2, the following described three (3) courses and distances:

- (1) S 88° 53' 40" E a distance of 89.20 feet to an iron rod found;
- (2) S 88° 47' 57" E a distance of 380.72 feet to an iron rod found, and;
- (3) S 89° 02' 29" E a distance of 501.86 feet to the Place of Beginning, containing 130.1957 acres of land.

SAVE AND EXCEPT PARCEL 1, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 1, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 812, Official Records of Williamson County, (also being the northeast corner of Tract 1), bears N 10° 12' 08" E a distance of 2008.84 feet;

THENCE traversing the interior of said 130.1957 acre tract, the following described courses and distances to iron rods set;

- (1) S 59° 10' 43" E a distance of 286.11 feet;
- (2) S 82° 42' 15" E a distance of 256.26 feet;
- (3) N 84° 11' 36" E a distance of 593.04 feet;
- (4) N 65° 03' 22" E a distance of 237.12 feet;
- (5) S 53° 33' 39" E a distance of 665.02 feet;
- (6) S 10° 14' 05" E a distance of 365.82 feet;
- (7) S 20° 33' 22" W a distance of 170.88 feet;
- (8) S 59° 51' 31" W a distance of 115.00 feet;
- (9) N 68° 55' 55" W a distance of 397.09 feet;
- (10) N 50° 37' 50" W a distance of 252.24 feet;

## PARCEL 1. (Continued)

- (11) N 86° 18' 31" W a distance of 621.29 feet;
- (12) N 70° 27' 48" W a distance of 164.47 feet;
- (13) S 61° 08' 59" W a distance of 190.66 feet;
- (14) N 56° 43' 30" W a distance of 153.10 feet;
- (15) N 36° 08' 31" W a distance of 220.42 feet;
- (16) N 25° 06' 53" W a distance of 168.12 feet, and;
- (17) N 18° 35' 36" E a distance of 286.88 feet to the Place of Beginning, containing 25.2753 acres of land.

AND ALSO TRACT 2, described as follows, to wit:

BEGINNING at an iron rod set in the southerly line of Golf Road, from which the northeast corner of said 582.35 acre tract bears N 55° 29' 40" E a distance of 2490.84 feet;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set;

- (1) S 03° 16' 42" E a distance of 172.03 feet;
- (2) S 65° 02' 25" W a distance of 323.33 feet;
- (3) S 10° 27' 36" W a distance of 400.32 feet;
- (4) S 18° 21' 32" E a distance of 548.24 feet;
- (5) S 00° 00' 00" E a distance of 161.86 feet;
- (6) S 45° 35' 55" W a distance of 328.92 feet;
- (7) S 62° 39' 48" W a distance of 132.83 feet;
- (8) S 19° 44' 27" W a distance of 48.14 feet to an iron rod set in the northerly line of Golf Road;
- (9) N 70° 15' 53" W a distance of 146.91 feet with the north line of Golf Road to an iron rod set;
- (10) N 19° 44' 10" E a distance of 96.36 feet;
- (11) N 19° 13' 50" W a distance of 227.71 feet;
- (12) N 48° 14' 23" W a distance of 187.68 feet;
- (13) N 90° 00' 00" W a distance of 260.00 feet;
- (14) S 81° 47' 34" W a distance of 475.50 feet;
- (15) S 64° 17' 29" W a distance of 95.14 feet;
- (16) S 46° 47' 24" W a distance of 85.12 feet;
- (17) S 28° 48' 59" W a distance of 293.23 feet to an iron rod set in the north line of Golf Road;

## TRACT 2 (Continued)

- (18) An arc distance of 210.00 feet with the north line of said Golf Road, said north line being a curve to the left having a central angle of  $23^{\circ} 08' 19''$ , a radius of 520.00 feet, tangents of 106.45 feet, and a chord bearing and distance of  $N 77^{\circ} 58' 57'' W$  208.58 feet, to an iron rod set;
- (19)  $N 08^{\circ} 31' 04'' W$  a distance of 103.05 feet;
- (20)  $N 57^{\circ} 08' 21'' W$  a distance of 191.67 feet;
- (21)  $N 61^{\circ} 28' 37'' W$  a distance of 471.77 feet;
- (22)  $N 01^{\circ} 09' 00'' E$  a distance of 224.77 feet;
- (23)  $N 30^{\circ} 05' 17'' E$  a distance of 269.28 feet;
- (24)  $N 09^{\circ} 10' 59'' W$  a distance of 626.69 feet;
- (25)  $N 18^{\circ} 49' 17'' W$  a distance of 132.25 feet;
- (26)  $S 75^{\circ} 00' 00'' W$  a distance of 20.00 feet;
- (27)  $N 27^{\circ} 19' 05'' W$  a distance of 115.46 feet;
- (28)  $N 08^{\circ} 41' 22'' E$  a distance of 117.28 feet;
- (29)  $N 73^{\circ} 36' 11'' E$  a distance of 200.60 feet;
- (30)  $N 25^{\circ} 15' 48'' E$  a distance of 96.35 feet;
- (31)  $N 52^{\circ} 48' 39'' E$  a distance of 177.48 feet;
- (32)  $N 46^{\circ} 31' 54'' E$  a distance of 437.22 feet;
- (33)  $N 52^{\circ} 16' 52'' E$  a distance of 494.26 feet;
- (34)  $N 05^{\circ} 41' 35'' W$  a distance of 286.74 feet;
- (35)  $N 89^{\circ} 49' 52'' E$  a distance of 228.02 feet;
- (36)  $S 75^{\circ} 38' 46'' E$  a distance of 75.39 feet;
- (37)  $S 61^{\circ} 23' 10'' E$  a distance of 75.22 feet;
- (38)  $S 25^{\circ} 08' 10'' E$  a distance of 79.27 feet;
- (39)  $S 07^{\circ} 51' 10'' W$  a distance of 81.81 feet;
- (40)  $S 54^{\circ} 17' 36'' E$  a distance of 174.08 feet;
- (41)  $S 19^{\circ} 39' 22'' E$  a distance of 420.78 feet;
- (42)  $S 54^{\circ} 28' 33'' E$  a distance of 475.71 feet;
- (43)  $N 36^{\circ} 09' 31'' E$  a distance of 26.21 feet to an iron rod set in the south line of Golf Road;
- (44) An arc distance of 210.32 feet with the south line of said Golf Road, said south line being a curve to the left having a central angle of  $22^{\circ} 16' 25''$ , a radius of 541.03 feet, tangents of 106.51 feet, and a chord bearing and distance of  $S 48^{\circ} 41' 44'' E$  209.00 feet, to an iron rod found at the point of tangency of said curve;
- (45)  $S 59^{\circ} 49' 56'' E$  a distance of 530.52 feet with the south line of said Golf Road to the Place of Beginning, containing 118.4600 acres of land.

SAVE AND EXCEPT PARCEL 2, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 2, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 812, Official Records of Williamson County, bears N 63° 22' 40" E a distance of 2903.79 feet;

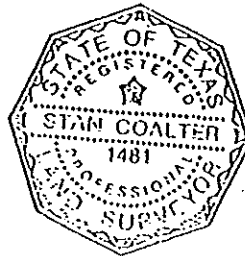
THENCE traversing the interior of said 118.4600 acre Tract 2, the following described courses and distances to iron rods set;

- (1) S 15° 56' 43" W a distance of 135.00 feet;
- (2) S 32° 29' 26" W a distance of 154.35 feet;
- (3) S 10° 50' 05" W a distance of 425.59 feet;
- (4) S 00° 47' 07" E a distance of 221.07 feet;
- (5) S 68° 36' 00" W a distance of 1177.19 feet;
- (6) N 71° 50' 18" W a distance of 120.23 feet;
- (7) N 49° 32' 18" W a distance of 198.82 feet;
- (8) N 22° 49' 00" W a distance of 90.58 feet;
- (9) S 67° 11' 00" W a distance of 152.19 feet;
- (10) N 28° 27' 38" W a distance of 48.46 feet;
- (11) N 30° 21' 46" E a distance of 310.60 feet;
- (12) N 21° 00' 23" W a distance of 772.36 feet;
- (13) N 49° 18' 38" E a distance of 676.38 feet;
- (14) N 43° 37' 01" E a distance of 556.66 feet;
- (15) S 66° 18' 34" E a distance of 107.02 feet;
- (16) S 17° 41' 23" E a distance of 396.44 feet;
- (17) S 67° 22' 48" E a distance of 825.00 feet to the Place of Beginning, containing 53.3804 acres of land.

COALTER & ASSOCIATES, SURVEYORS

*Stan Coalter*

Stan Coalter, RPS, LSLs  
2-21-91



TRACT B

FIELD NOTES

BEING 15.25 acres of land out of the E. W. MATTHEWS SURVEY, ABSTRACT NO. 449, Williamson County, Texas, and being a part of that certain 640 acre tract of land described as the "First Tract" in a deed to Otto C. Pfluger by deed recorded in Volume 347 at Page 574, Deed Records of Williamson County, and being more particularly described by metes and bounds as follows, to wit:

BEGINNING at an iron rod set in an easterly line of that certain 582.35 acre tract of land described in a deed to The Ben Franklin Corporation recorded in Volume 1020 at Page 812, Deed Records of Williamson County, from which an iron rod found at the most northerly northeast corner of said 582.35 acre tract, (said northerly northeast corner also being the southeast corner of Oak Bluff Estates, a subdivision of record filed in Cabinet F, Slide 253, Plat Records of Williamson County), bears N 11° 59' 28" E a distance of 241.09 feet;

THENCE S 44° 23' 26" E a distance of 362.62 feet to an iron rod set;

THENCE S 12° 43' 00" W a distance of 1068.00 feet to an iron rod set in the southerly north line of said 582.35 acre tract, from which an iron rod found at the most easterly northeast corner of said tract bears S 89° 17' E a distance of 2501.38 feet;

THENCE N 89° 17' 00" W a distance of 740.00 feet with the southerly north line of said 582.35 acre tract to an iron rod found at an "L" corner in said line;

THENCE N 09° 53' 59" E a distance of 425.73 feet with an easterly line of said 582.35 acre tract to a nail found at an angle point in said line;

THENCE N 48° 10' 52" E a distance of 766.87 feet with said easterly line to an iron rod found at an angle point in said line;

THENCE N 11° 59' 28" E a distance of 369.00 feet with said easterly line of said 582.35 acre tract to the Place of Beginning, containing 15.25 acres (664,270 square feet) of land, subject to easements, conditions or restrictions of record, if any.



## **Exhibit “F”**

### **Golf Course Maintenance Standards**

#### **Supervision of Maintenance**

The golf course Superintendent shall be responsible for the supervision of the maintenance staff. The Superintendent shall be a member in good standing of the GCSAA minimum Class A classification, to be maintained as prescribed by the GCSAA. The golf course Superintendent shall develop and implement a sound maintenance program. Golf course Superintendent must be a licensed pesticide applicator.

Full maintenance crew consisting of a minimum of eight seasonal workers in season and a minimum of five workers through the off season.

#### **Greens Maintenance**

All greens are to be smooth uniformly turfed, evenly watered, firm but not hard, well defined and free of all major pest problems. Hole locations are to be changed as specified below and mowing patterns are to be changed with each mowing. Cups, poles and flags are to be uniform, neat and clean. Integrated Pest Management and Scouting of putting surfaces will be done daily. Warm season grasses to be overseeded with certified rye, fescue or Poa trivialis blends at application rates determined by Superintendent.

Mowing frequency (in season)	Daily with change in mowing direction
Mowing equipment	Triplex with 11 bladed reels
Mowing height	Between 1/8 – 3/16 inch depending on season
Putting speed	7.0 –9.0 feet on a stimpmeter
Hole locations	Changed daily within USGA guidelines
Ballmarks	Repaired by volunteer marshal staff
Aerification	Two times per year to be done in no more than 2 days
Soil Analysis	Two times per year to monitor salt levels
Grass clippings	To be spread out “recycled” 50 feet from green
Topdressing of greens	In season light topdressing every 21 days
Vertical mowing	Seasonal to reduce grain minimum 2 times per monthly

### **Tees, Collars & Approaches**

Tees smooth completely turfed, level, firm but not hard, clean, markers properly directed with amenities in good condition and repair.

Mowing frequency	Two times per week
Mowing equipment	Triplex
Mowing height	Between 3/8 – 1/2 inch depending on season
Approach and Collar cut	Well defined and mowed two times per week
Tee Markers	Changed daily, lined up properly and clean
Divot repair	Regularly by volunteer marshal staff
Overseeding of turf	Determined year to year by Superintendent
Soil Analysis	Annually
Aerification	Twice annually incorporate vertical mowing

### **Fairways**

Smooth uniform turf cover, clean, irrigation monitored for proper soil moisture. Turf healthy enough to provide satisfactory playing conditions.

Mowing frequency	Two time per week
Mowing equipment	5 plex
Mowing height	Between 3/8 – 1/2 inch depending on season
Divot repair	Daily by volunteer marshal staff
Overseeding of turf	Determined year to year by Superintendent
Soil Analysis	Annually
Aerification	Twice annually incorporate vertical mowing
Yardage markings	100,150, 200 yards marked visible and clean

## **Primary Rough**

Properly mowed trimmed, clean and adequately uniform for play. Distinct in height from fairway cut to provide for definition between rough and fairway.

Mowing frequency	1 to 1.5 times a week
Mowing equipment	5 gang, 72" rotaries, three gang trim unit
Mowing height	Between 1- 2 inches depending on season
Mowing green and tee banks	Two times a week
Course properly marked	White OB stakes and red and yellow hazard stakes

## **Secondary Rough**

Mowed at 2" twice monthly with rotary or flail type mowers, fertilized one to two times annually with post emerge herbicides applied as needed to control undesirable vegetation.

## **Mulched Rough Areas**

Canopies of trees raised to a minimum height of 5' with understory removed and kept clean and covered with mulch to a 2" depth. Non selective herbicides to be applied once annually as needed to control encroaching vegetation.

## **Improved Native Areas**

Partially irrigated areas mowed once annually with brush hog type mowers, seeded with native grasses or wildflowers where designated with post emerge or non selective herbicides applied as needed to control undesirable vegetation.

## **Native Areas**

Natural and existing vegetation and foliage will remain unmaintained in a natural state.

\* The golf course superintendent shall designate the fringe areas of the golf course to be maintained in these various manners in accordance with the master golf course maintenance plan.

## **Bunkers**

Clean well-defined weed free raked and edged, well drained, uniform and consistent throughout each bunker and the golf course. Minimum sand depth of four inches in the base and two inches on bunker faces. Rakes placed outside and parallel to bunker edge.

Mechanical raking frequency	
Green side	Three times a week
Fairway	Two times a week
Spot Check/raking by hand	As needed
Mechanical edging	Three times per growing season

### **Irrigation system**

The system should be kept in a good state of repair at all times. All piping, heads, valves, and controllers are to perform in accordance with manufacturer specifications.

The pump station is to receive an annual preventative maintenance inspection to insure proper calibration and operation.

Additional irrigation heads may be installed periodically to insure uniform irrigation.

Water analysis to be done once a year

### **Buildings and Structures**

All buildings and structures will be maintained as clean, safe, and in good repair. All building maintenance and storage will comply with applicable regulatory requirements

### **Clubhouse Grounds**

Neat well-maintained grounds, lawns weed free, mowed and edged, flowers of the season well cared for and properly rotated. All beds free of weeds, leaves, and litter. All grounds free of litter and debris.

Parking lot and sidewalks policed for litter daily and blown or swept and maintained as needed

Lawns to be mowed minimum 1x weekly in season, fertilized, irrigated, and edged on a regular basis to maintain color and appearance.

### **Water Bodies**

Clean well defined free of weeds and noxious growth. Marked attractively in accordance with USGA rules.

Algae blooms to be controlled by preventative and curative measures. Balance between aquatic life and chemical algae control may result in periodic algae blooms

## **Cart Paths & Traffic Control**

All paths clean, well defined, smooth, in good repair, well drained and properly located with adequate width and proper surface for use.

Traffic control, curbing to be used wherever possible. Permanent traffic control should be rotated to spread cart wear on turf.

## **Driving Range & Practice Facilities**

Practice greens to be smooth, uniformly turfed, firm but not too hard, evenly watered well defined and free of major pest problems. Cups and teeing areas to be rotated daily, amenities to be uniform, clean neat and in good repair.

Mowing frequency     putting and practice green daily, tee 3x weekly landing area 1x weekly

Putting speed             consistent to other greens on course

Hole location             change 3x weekly on putting green