

Town of Wellton



Request for Proposals: Operation of Golf Course Pursuant to Lease or Concessionaire Agreement

Submission Deadline

Time: 3:00PM

Date: Wednesday, August 1, 2018

Proposal Must Be Submitted To

Town Hall
Town of Wellton
28634 Oakland Avenue
PO Box 67
Wellton Arizona 85356

928-785-3348
928-785-4374 Fax
sjones@town.wellton.az.us

**NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR
CONCESSIONAIRE AGREEMENT**

Town of Wellton
28634 Oakland Avenue
Wellton, Arizona 85356

SOLICITATION INFORMATION AND SCHEDULE

Property Location: Northwest Corner, Avenue 29 E and County 12th St.
Wellton, Arizona 85356

Solicitation Number **2018-01**

Release Date: **June 7, 2018**

Advertisement Dates: **June 7, 2018**

Final Date for Inquires **July 19, 2018**

Mandatory Prospective Proposer's Conference: **July 12, 2018**

Proposal Deadline: **August 1, 2018**
3:00 p.m. (local time, Wellton, Arizona)

Proposal Opening: **August 1, 2018**
3:00 p.m. (local time, Wellton, Arizona)

Location of Proposal Opening: Office of the Town Clerk, 28634 Oakland Avenue
Wellton, Arizona 85356

Town Representative: Larry Killman, Town Manager
LKillman@town.wellton.az.us

Competitive sealed Proposal will be received by the Town Clerk at the Town Clerk's Office at the above-referenced location until the date and time referenced above. Proposals received by the Proposal Deadline shall be publicly opened and the Proposal Price read. Proposals shall be in the actual possession of the Town Clerk on, or prior to, the Proposal Deadline date. Late Proposals shall not be considered. Proposals shall be submitted in a sealed envelope with the Solicitation Number and the Proposal's name and address clearly indicated on the front of the envelope.

*** The Town of Wellton reserves the right to amend the solicitation schedule as necessary.**

OFFER

The undersigned (the "Proposal") hereby (i) offers this Proposal as an offer to contract with the Town under the terms and conditions of a real property lease agreement, or a facility concessionaire agreement in the form provided by the Town (the "Contract"), to be entered into following selection of the winning Proposal, and (ii) certifies that Proposer has read, understands and agrees to fully comply with, and be contractually bound by, all terms and conditions as set forth in this Request for Proposal ("RFP"), the Contract entered into subsequently and any amendments thereto, together with all exhibits and other documents included as part of this transaction (the "Contract Documents").

Arizona Transaction (Sales) Privilege Tax License Number: <hr/> Federal Employer Identification Number: <hr/> <p style="text-align: center;">Proposer Name</p> <hr/> <p style="text-align: center;">Address</p> <hr/> <p>City State Zip Code</p>	Contact For Clarification of this Proposal : Name: _____ Telephone: _____ Facsimile: _____ Email: _____ <hr/> <p style="text-align: center;">Authorized Signature for Proposer</p> <hr/> <p style="text-align: center;">Printed Name</p> <hr/> <p style="text-align: center;">Title</p>
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ARTICLE I - DEFINITIONS

For purposes of this Request for Proposals, the following definitions shall apply:

1.1 “Call for Proposal” or “RFP” means this request by the Town for participation in the competitive process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Proposals.

1.2 “Confidential Information” means that portion of a Proposal or Offer that contains information that the person submitting the information believes should be withheld, provided (A) such person submits a written statement advising the Town of this fact at the time of the submission and (B) the information is so identified wherever it appears.

1.3 “Driving Range” means the real property consisting of approximately 21.13 acres as depicted on Exhibit A and comprising the driving range and shop that are adjacent to and serve the Golf Course.

1.4 “Golf Course” means the real property consisting of approximately 155.02 acres as depicted on Exhibit B and comprising the Coyote Wash “Links” Golf Course.

1.5 “Golf Facilities” means the real and personal property consisting of approximately 4.45 acres as depicted on Exhibit C and comprising the golf clubhouse, golf cart barn, restaurant and all related outbuildings that are adjacent to and serve the Golf Course.

1.6 “Offer” means a responsive Proposal submitted by a Proposer in response to this Request for Proposal.

1.7 “Procurement Code” means the Town’s Procurement Code, as amended from time to time.

1.8 “Proposal Deadline” means the date and time set forth on the cover of this RFP for the Town Clerk to be in actual possession of the sealed Proposals.

1.9 “Proposer” means any person or firm submitting a competitive Proposal in response to this RFP.

1.10 “Proposer Opening” means the date and time set forth on the cover of this RFP for opening of sealed Proposals.

1.11 “Town” means the Town of Wellton, an Arizona municipal corporation.

1.12 “Town Representative” means the Town employee who is responsible for monitoring and overseeing this solicitation.

ARTICLE II – PROPOSAL PROCESS; PROPOSAL AWARD

2.1 Purpose; Background. The Town is issuing this RFP to secure Proposals from entities capable of operating the Golf Course, Golf Facilities and Driving Range for a period of at least one year beginning on September 1, 2018. The Town will consider Proposals for lease of the Golf Course, Golf Facilities and Driving Range, or a concessionaire agreement for the operation of the same. The Golf Course is owned by the Town, and the Golf Facilities and Driving Range are owned by G-12, LLC; the Town and G-12 have agreed to cooperatively offer the Golf Course, Golf Facilities and Driving Range for a lease or a concessionaire agreement. The Town shall be the primary point of contact and shall manage the resulting Contract. For more information about the Golf Course, Golf Facilities and Driving Range, or the RFP, please contact the Town Manager Larry Killman at LKillman@town.wellton.az.us.

2.2 Amendment of RFP. No alteration may be made to this RFP or the resultant Contract without the express, written approval of the Town in the form of an official RFP addendum or Contract amendment. Any attempt to alter this RFP or the Contract without such approval is a violation of the Town Procurement Code. Any such action is subject to the legal and contractual remedies available to the Town including, but not limited to, Contract cancellation and suspension and/or debarment of the Proposer.

2.3 Preparation/Submission of Proposals. Proposers are invited to participate in the competitive process specified in this RFP. Proposers shall review their submissions to ensure the following requirements are met.

A. Irregular/Non-responsive Proposals. The Town will consider as “irregular” or “non-responsive” and shall reject any Proposals not prepared and submitted in accordance with the RFP, or any Proposals lacking sufficient information to enable the Town to make a reasonable determination of compliance with the requirements herein. Unauthorized or unreasonable exceptions, conditions, limitations, or provisions shall be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the Town Representative, any of the following are true:

1. Proposer does not meet the minimum required skill, experience or requirements to operate the Property as required below.
2. Proposer has a past record of failing to fully perform or fulfill contractual obligations.
3. Proposer cannot demonstrate financial stability.
4. The submission contains false, inaccurate or misleading statements that, in the opinion of the Town Representative, are intended to mislead the Town in its evaluation of the Proposal or the Proposer’s qualifications.

B. Required Submittal. Proposers shall provide **all of the following** documents to be considered responsive:

1. Complete, fully executed original of this RFP, with the Offer signed in ink by a person authorized to bind the Proposer.
2. Acknowledgment for each Addendum received, if any.
3. All of the following information
 - (i) Office location.
 - (ii) Length of time in business.
 - (iii) Total number of employees and number of local employees.
 - (iv) Services provided by the company.
 - (v) Basic business plan (operating hours, marketing plan, etc.).
 - (vi) Prior experience managing golf courses and operating accessory facilities including club house restaurants and pro shops.
 - (vii) Golf Course maintenance experience and capabilities.
 - (viii) Financial summary – show estimated annual revenue per location.
 - (ix) Proposed compensation to be paid by Proposer to Owners. Payment may be in the form of rent (for proposals to lease the Premises) or on a percentage of actual golf course greens fees, cart rental, food, beverage, and retail sales.
 - (x) Provide three references.

C. Proposer Responsibilities. All Proposers shall (1) examine the entire Proposal package, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Proposal and (4) submit the entire, completed Proposal package by the official Proposal Deadline. Late Proposals shall not be considered. Proposals submitted without an **original, signed** Offer page by a person authorized to bind the Proposer shall be considered non-responsive. Negligence in preparing a Proposal shall not be good cause for withdrawal after the Proposal Deadline.

D. Sealed Proposals. All Proposals shall be sealed and clearly marked with the RFP title and number on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Proposal.

E. Proposal Delivery. All Proposals shall be directed to the following address: Town Clerk, 28634 Oakland Avenue, Wellton, Arizona 85356, or hand-delivered to the Town Clerk's office. Telegraphic (facsimile), electronic (email) or mailgram Proposals will not be considered.

F. Modifications. Erasures, interlineations, or other modifications in the Proposal shall be initialed in original ink by the authorized person signing the Proposal.

G. Withdrawal. At any time prior to the specified Proposal Opening, a Proposer (or designated representative) may amend or withdraw its Proposal. Facsimile, electronic (email) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Deadline.

2.4 Inquiries; Interpretation of Specifications; Scope of Work.

A. Inquiries. Any question related to the RFP shall be directed to the Town Representative whose name appears on the cover page of this RFP. Questions shall be submitted in writing by the Final Date for Inquiries indicated on the cover page of this RFP; the Town will not respond to any inquiries submitted later than the Final Date for Inquiries. The Proposer submitting such inquiry will be responsible for its prompt delivery to the Town. Any correspondence related to the RFP shall refer to the title and number, page and paragraph. However, the Proposer shall not place the RFP number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Proposal and may not be opened until the Proposal Opening. Any interpretations or corrections of the proposed Contract Documents will be made only by addenda duly approved and issued by the Town. The Town will not be responsible for any other explanations or interpretations.

B. Addenda. It shall be the Proposer's responsibility to check for addenda issued to this RFP. Any addendum issued by the Town with respect to this RFP will be available at:

Town of Wellton Town Hall
28634 Oakland Avenue, Wellton, Arizona 85356
Town of Wellton website at: <https://town.wellton.az.us>

2.5 Prospective Proposers' Conference. A Prospective Proposer' Conference may be held. If scheduled, the date and time of the Prospective Proposer' Conference will be indicated on the cover page of this RFP. The Prospective Proposer' Conference may be designated as mandatory or non-mandatory on the cover of this RFP. Proposals shall not be accepted from Proposers who do not attend a mandatory Prospective Proposers' Conference. Proposers are strongly encouraged to attend those Prospective Proposer's Conferences designated as non-mandatory. The purpose of the Prospective Proposers' Conference will be to clarify the contents of the RFP in order to prevent any misunderstanding of the Town's requirements. Any doubt as to the requirements of this RFP or any apparent omission or

discrepancy should be presented to the Town at the Prospective Proposer' Conference. The Town will then determine if any action is necessary and may issue a written amendment or addendum to the RFP. Oral statements or instructions will not constitute an amendment or addendum to the RFP.

2.6 Cost of Proposal Preparation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Town does not reimburse the cost of developing, presenting or providing any response to this solicitation; the Proposer is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the Town and will not be returned.

2.7 Public Record. All Proposals shall become the property of the Town. After Contract award, Proposals shall become public records and shall be available for public inspection in accordance with the Town's Procurement Code, except that any portion of a Proposal that was designated as confidential pursuant to Section 2.8 below shall remain confidential from and after the time of Proposal Opening to the extent permitted by Arizona law.

2.8 Confidential Information. If a Proposer believes that a Proposal, Specification, or protest contains information that should be withheld from the public record, a statement advising the Town Representative of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Proposer as confidential shall not be disclosed until the Town Representative makes a written determination. The Town Representative shall review the statement and information with the Town Attorney and shall determine in writing whether the information shall be withheld. If the Town Attorney determines that it is proper to disclose the information, the Town Representative shall inform the Proposer in writing of such determination.

2.9 Certification. By submitting a Proposal, the Proposer certifies:

A. No Collusion. The submission of the Proposal did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a Town employee, officer, agent or elected official in connection with the submitted Proposal or a resultant Contract.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Contract.

E. No Signature/False Statement. The signature on the Proposal is genuine. Failure to sign the Proposal, or signing with a false statement, shall void the submitted Proposal and any resulting Contract, and the Proposer may be debarred from further bidding in the Town.

2.10 Award of Contract.

A. Evaluation. The evaluation of this Proposal will be based on, but not limited to, the following: (1) Proposer's overall experience and capability; (2) management competence and staffing ability; (3) proposed compensation to be paid by the Proposer to the Town and the Golf Facilities owner, whether in the form of rent or rent and a percentage of golf course greens fees, cart rentals, food and beverage sales and retail sales (payment for a concessionaire agreement shall only be in the form of a percentage of actual sales of golf passes, green fees, cart rental, food and beverage sales, retail sales, and

rental fees for Golf Facilities use); (4) quality and thoroughness of business plan; and (5) Proposer's demonstrated capabilities relating to the operation of similar facilities.

B. Form of Agreement. The selected Proposer will be required to execute the applicable Lease or Concessionaire Agreement in a form acceptable to the City Attorney. A sample of the Lease is attached hereto as Exhibit D, and incorporated herein by reference. A sample Concessionaire Agreement is attached hereto as Exhibit E and incorporated herein by reference. If the City is unsuccessful in negotiating an agreement with the highest-scoring Proposer, the City may then negotiate with the second, then third, highest-scoring Proposer until an agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

C. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFP, the Town expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Proposals or portions thereof or (3) cancel or reissue an RFP.

D. Offer. A Proposal is a binding offer to contract with the Town based upon the terms, conditions and specifications contained in this RFP and the Contract.

E. Protests. Any Proposer may protest this RFP, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the process set forth by the Town Manager or qualified designee.

ARTICLE III – SPECIAL TERMS AND CONDITIONS

3.1 Restrictions. The resulting Contract, whether a lease or a concessionaire agreement, shall require that the Golf Course, Golf Facilities and Driving Range must be operated as a public golf course, open to the general public, and that any and all uses of the Golf Facilities and Driving Range shall be complimentary to the Golf Course.

3.2 Potential Sale of Property. The Town will be submitting to the Wellton voters the request for permission to sell the Golf Course. If voter authorization is granted the Town intends to jointly market the Golf Course, Driving Range and Golf Facilities (with permission of the Driving Range and Golf Facilities owner) for sale. In the event that the current lessee or concessionaire of the property bids in the public action for the Golf Course, Golf Facilities and Driving Range, any in-kind contributions to improvements made to the Golf Course, Golf Facilities and Driving Range may be credited towards the Proposal amount of the party that made the improvements, so long as such party provides a description and value of such improvements as part of its Proposal, and the improvements have been approved and accepted by the Town.

EXHIBIT A
TO
NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR CONCESSIONAIRE
AGREEMENT

[Depiction of Driving Range Acreage]

See following page.

Driving Range Acreage 21.13



EXHIBIT B
TO
NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR CONCESSIONAIRE
AGREEMENT

[Depiction of Golf Course Acreage]

See following page.

Coyote Wash Golf Course Front 9
56.19 acres



Coyote Wash Golf Course Back 9
98.83 acres



EXHIBIT C
TO
NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR CONCESSIONAIRE
AGREEMENT

[Depiction of Golf Facilities Acreage]

See following pages.

Golf Facilities Acreage 4.45



EXHIBIT D
TO
NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR CONCESSIONAIRE
AGREEMENT

[Lease]

See following pages.

GOLF COURSE LEASE

This Golf Course Lease is made and entered into as of the ____ day of _____, 2018, by and between THE TOWN OF WELLTON ("Wellton"), _____ ("Clubhouse Owner") (collectively, the "Landlord") and _____ (the "Tenant").

DEFINITIONS

Capitalized terms used in this Lease and not defined elsewhere have the meanings given them on EXHIBIT "A".

BASIC TERMS

The following Basic Terms are applied under and governed by the particular section(s) in this Lease pertaining to the following information:

1. **Premises:** Approximately ____ acres of land as depicted on EXHIBIT "B".
2. **Buildings:** The buildings and other improvements currently located on the Premises including without limitation, the clubhouse, cart barn and other buildings and structures located on the Premises.
3. **Property:** The Premises, the Buildings, the Equipment, and all other improvements located on the Premises from time to time.
4. **Initial Term:** __ years (See Section 1.2)
5. **Extension Periods:** __ successive periods of __ years
6. **Equipment:** Means the equipment described on EXHIBIT "C" attached hereto
7. **Permitted Use:** The operation of a public golf course including but not limited to golf-related education, recreation, entertainment, artistic, cultural, or convention activities and events, operation of a restaurant in the Clubhouse, food and beverage services to golfers while on the Course, operation of a pro shop, including related concessions.
8. **Rent Payment Address:** Town Manager
Town of Wellton
28634 Oakland Avenue
Wellton, AZ 85356

9. **Address of Landlord for Notices and Rent:** Town Manager
Town of Wellton
28634 Oakland Avenue
Wellton, AZ 85356
- With copy to:** Nicholle Harris
Gust Rosenfeld PLC
One East Washington, Suite 1600
Phoenix, AZ 85004-2553
10. **Address of Tenant for Notices:** _____
Attn: _____

Email: _____
11. **Broker:** None

EXHIBITS

- EXHIBIT "A" Definitions
 EXHIBIT "B" Description of Premises
 EXHIBIT "C" Description of the Equipment
 EXHIBIT "D" Memorandum of Lease
 EXHIBIT "E" Subordination, Non-Disturbance and Attornment Agreement

**ARTICLE 1
LEASE OF PROPERTY, LEASE TERM AND AS-IS DISCLAIMER**

1.1 Property. In consideration of the covenants and agreements set forth in this Lease and other good and valuable consideration, Landlord leases the Property to Tenant and Tenant leases the Property from Landlord, upon and subject to the terms and conditions set forth in this Lease.

1.2 Commencement Date; Initial Term. The "Commencement Date" will be the date hereof, and the Initial Term will end on _____, 20__.

1.3 Extension Periods. Tenant has the option to extend the Term for the number of successive Extension Periods specified in the Basic Terms. If Tenant desires to exercise its right to extend the Term for an Extension Period, it will give Landlord notice of its intent to do so at least 8 months prior to the expiration of the Initial Term or the then-current Extension Period (but not earlier than 24 months prior to the expiration of the Initial Term or the then-current Extension Period). Failure to timely exercise an Extension Period shall be deemed to be a waiver of the right to extend.

1.4 Quiet Enjoyment. So long as no Event of Default by Tenant is in existence, Landlord covenants and agrees that, Tenant may quietly hold, occupy and enjoy the Property during the Term without any manner of hindrance or interference with its quiet enjoyment, possession and use from any person claiming by, through or under Landlord.

1.5 No Warranties – "As Is" Lease. Except as set forth in this Lease, no representations, inducements, understanding or anything of any nature whatsoever, made, stated or represented by Landlord or anyone acting for or on Landlord's behalf, either orally or in writing, have induced Tenant to enter into this Lease, and Tenant acknowledges, represents and warrants that Tenant has entered into this Lease under and by virtue of Tenant's own independent investigation. In addition, except as set forth in this Lease, Tenant hereby accepts the Property in an "as is" and "where is" condition, without warranty of any kind, express or implied, including, without limitation, any warranty as to title, physical condition or the existence or absence of Hazardous Materials, and if the Property is not in all respects entirely suitable for the use or uses to which the Property or any part thereof will be put, then it is the sole responsibility and obligation of Tenant to take such action as may be necessary to place the Property in a condition entirely suitable for such use or uses. **IN CONNECTION WITH THE ABOVE, TENANT HEREBY ACKNOWLEDGES AND REPRESENTS TO LANDLORD THAT TENANT HAS HAD OPPORTUNITY TO INSPECT AND EVALUATE THE PROPERTY AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT THEREON; THAT TENANT WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PROPERTY IN ITS CURRENT STATE IN PROCEEDING WITH THIS LEASE; THAT TENANT WILL ACCEPT THE PROPERTY IN ITS PRESENT CONDITION, AND THAT, TO THE EXTENT THAT TENANT'S OWN EXPERIENCE WITH RESPECT TO ANY OF THE FOREGOING IS INSUFFICIENT TO ENABLE TENANT TO REACH AND FORM A CONCLUSION, TENANT HAS ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATIONS, OR WARRANTIES MADE BY LANDLORD OR ITS REPRESENTATIVES, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS LEASE.** Tenant acknowledges and agrees that Tenant shall be solely responsible for any modifications

to the Property which are required to use the Property for the Permitted Use in compliance with the terms of this Lease.

**ARTICLE 2
RENT**

2.1 Rent. Tenant will pay (without demand, offset or deduction of any kind except as expressly provided herein) the rent set forth below in this Article 2 (“Rent”) in monthly installments to Landlord, in advance, beginning on the Commencement Date and thereafter on the first day of each and every calendar month during the Term. Tenant will make all Rent payments to Landlord’s address specified in the Basic Terms or at such other place as Landlord may from time to time designate in writing. The parties will prorate Rent, on a per diem basis, for any partial month within the Term.

2.1.1 Rent During Initial Term. The monthly Rent during the Initial Term will be as follows:

Applicable Portion of Initial Term	Monthly Rent	Annual Rent
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.1.2 Rent During Extension Periods. The monthly Rent during the Extension Periods will be as follows:

Applicable Portion of Extended Term	Monthly Rent	Annual Rent
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 Delinquent Rental Payments. If Landlord does not receive any payment of Rent within 10 days after the date on which Tenant has received written notice that such payment is delinquent, Tenant will pay Landlord interest on the delinquent payment calculated at the Maximum Rate from the date the payment was due through the date the payment is received by Landlord. Notwithstanding the foregoing, if, during any calendar year, Landlord gives Tenant written notice of Tenant’s failure to pay an installment of Rent when due, then during the remainder of such calendar year, if Tenant fails to pay any installment of Rent when due, such interest charge shall immediately become due from Tenant without Landlord having to give Tenant any written notice of non-payment.

2.3 Rent Tax. In addition to the Rent required above, Tenant will pay to Landlord all Rent Tax (if any) due in connection with the payment of Rent hereunder, which Rent Tax will be paid by Tenant to Landlord concurrently with each payment of Rent made by Tenant to Landlord under this Lease.

**ARTICLE 3
IMPOSITIONS**

3.1 Impositions. Tenant shall pay, as additional payments during the Term, without notice (except as specifically provided herein) and without abatement, deduction or setoff before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all of the Impositions.

**ARTICLE 4
USE OF PROJECT**

4.1 Use of Property. Tenant shall only use the Property for the Permitted Use. Landlord's prior written consent, which may be granted or withheld in the Landlord's sole discretion, is required in order for the Tenant to make any use of the Property other than the Permitted Use.

**ARTICLE 5
HAZARDOUS MATERIALS**

5.1 Tenant's Compliance with Hazardous Materials Laws. Tenant will not cause any Hazardous Materials to be brought upon, kept or used at the Property in a manner or for any purpose that violates any Hazardous Materials Laws. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws related to Tenant's use of the Property.

5.2 Tenant's Hazardous Materials Indemnification. To the fullest extent allowable under the Laws, Tenant releases and will indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, about or from the Property (including water tables and atmosphere). The obligations of Tenant under this Article survive the expiration or earlier termination of this Lease.

**ARTICLE 6
UTILITIES**

6.1 Tenant's Rights and Obligations; Cost of Utilities. With respect to all utilities serving the Property, (a) Tenant has the right to select the provider of such utility service, (b) Tenant will contact the applicable utility company or other service provider to arrange for such utility to be provided to the Property, and (c) Tenant is solely responsible for paying directly to such utility company or other service provider, prior to delinquency, all charges owed for such utility service. Tenant has the right to choose its own telephone service provider, internet service provider, data line service provider, and providers for any other similar services for the Property.

6.2 Other Provisions Relating to Utilities. If any utilities or other services to the Property are disrupted for more than 24 hours as a result of the acts of any of the Landlord Parties, Tenant will be entitled to a reasonable abatement of Rent based on the severity of the disruption.

ARTICLE 7 MAINTENANCE AND REPAIR

7.1 Maintenance. Tenant, at its sole cost and expense, throughout the term of this Lease, shall take good care of the Property (including the Buildings and Equipment), and shall keep the same in good order, condition and repair, and shall make and perform all routine maintenance thereof and all necessary repairs thereto, structural and non-structural, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. When used in this Article 7, "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. All repairs made by Tenant shall be at least equal in quality and cost to the original work and shall be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore or hereinafter enacted. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction, age and class, provided that Tenant shall in any event make all repairs necessary to avoid any structural damage or other damage or injury to the Tenant's Improvements.

7.2 Additional Maintenance and Equipment Replacement. Tenant, at its sole cost and expense, shall take good care of, repair and maintain all golf course areas, driveways, pathways, roadways, sidewalks, curbs, parking areas, loading areas, landscaped areas, entrances and passageways on the Property in good order and repair and shall promptly remove all accumulated debris from any and all golf course areas, driveways, pathways, roadways, sidewalks, curbs, parking areas, loading areas, entrances and passageways on the Property, and keep all portions of the Property, including areas appurtenant thereto, in a clean and orderly condition free of dirt, rubbish, debris and unlawful obstructions. Further, Tenant shall keep the Property safe for human occupancy and use. Any Equipment that becomes obsolete shall be replaced by Tenant at its sole cost and expense.

7.3 Tenant's Waiver of Claims Against Landlord. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in, about or to the Property or any improvements hereafter erected thereon. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Property and any improvements hereafter erected thereon, and Tenant hereby waives any rights created by law now or hereafter in force to make repairs to the Property or improvements hereafter erected thereon at Landlord's expense.

7.4 Prohibition Against Waste. Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Property, or any improvements hereafter erected thereon, or to the fixtures or equipment therein, or permit or suffer any overloading of the floors or other use of the Tenant's Improvements that would place an undue stress on the same or any portion thereof beyond that for which the same was designed.

7.5 Landlord's Right to Effect Repairs. If Tenant should fail to perform any of its obligations under this Article 7, then Landlord may, if it so elects, in addition to any other remedies provided herein, effect such repairs and maintenance. Any sums expended by Landlord in effecting such repairs and maintenance shall be due and payable, on demand, together with interest thereon at the rate of fifteen percent (15%) per annum from the date of each such expenditure by Landlord to the date of repayment by Tenant.

7.6 Misuse or Neglect. Tenant shall be responsible for all repairs to the Property which are made necessary by any misuse or neglect by: (i) Tenant or any of its officers, agents,

employees, contractors, licensees or subtenants; or (ii) any visitors, patrons, guests or invitees of Tenant or its subtenant while in or upon the Property.

ARTICLE 8 ALTERATIONS

8.1 Alterations. The Tenant will not alter any Buildings without the Landlord's prior written consent which may be granted or withheld in the Landlord's sole discretion.

8.2 Liens. Tenant will keep Landlord's interest in the Property free from any mechanics', materialmens', professional services, or other liens arising out of any work performed on the Property by Tenant. If any such lien is filed or recorded against the Property, Tenant will, within 15 days after being notified of such filing or recording, cause such lien to be released of record or provide Landlord with a bond or other security protecting Landlord against such lien. Landlord will keep the Property free from any mechanics', materialmens', professional services, or other liens arising out of any work performed by Landlord. If any such lien is filed or recorded against the Property, Landlord will, within 15 days after being notified of such filing or recording, cause such lien to be released of record.

ARTICLE 9 INSURANCE

9.1 Tenant's Liability and Other Insurance Coverage. Tenant, at its sole cost and expense, shall obtain and continuously maintain in full force and effect the following insurance coverages:

9.1.1 Commercial general liability insurance providing coverage at least as broad as the current ISO form on an "occurrence" basis, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 annual aggregate (which may include umbrella coverages). Tenant's liability insurance shall (a) name Landlord and its property manager as additional insureds with respect to all matters arising out of the occupancy or use of the Property by Tenant; (b) be primary to any other insurance maintained by Landlord; and (c) be placed and maintained with companies rated at least "A/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to Landlord.

9.1.2 A policy or policies of workers' compensation insurance with an insurance carrier and in amounts approved by the Industrial Commission of the State of Arizona and a policy of employer's liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00).

9.1.3 Such other insurance and in such amounts as may from time to time be reasonably required by Landlord, against other insurable hazards which at the time are commonly insured against in the case of similar premises and/or buildings or improvements including without limitation casualty insurance in an amount equal to the replacement value of the Buildings and Equipment.

The insurance set forth in this Section 9 shall be maintained by Tenant at not less than the limits set forth herein until reasonably required to be changed from time to time by Landlord, in writing, whereupon Tenant covenants to obtain and maintain thereafter such protection in the amount or amounts so required by Landlord.

9.2 Insurance Provisions. All policies of insurance to be procured by Tenant shall be issued by insurance companies rated not less than A:VIII in the most current available "**Best's Key Rating Guide**" and qualified to do business in the State of Arizona. All property policies shall be issued in the name of Tenant, and shall name Landlord and its representatives as "insureds as their interests may appear". All liability policies obtained by Tenant shall name Landlord and Landlord's management company and their respective Representatives as additional insureds. In addition, Tenant's liability insurance policies shall be endorsed as needed to provide cross-liability coverage for Tenant and Landlord and shall provide for severability of interests. Executed copies of the policies of insurance or such other evidence as may be reasonably acceptable to Landlord (collectively referred to in this Article 5 as "**Certificates**") shall be delivered to Landlord within thirty (30) days after the Effective Date and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy. All commercial general liability insurance policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under the policy for any loss occasioned to Landlord and its representatives by reason of the negligence of any Person. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy will give Landlord thirty (30) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written as primary policies and shall provide that any insurance which Landlord may carry is excess, secondary and non-contributing with any insurance carried by Tenant. The insurance requirements contained in this Article 9 are independent of Tenant's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Tenant's waiver, indemnification or other obligations or to in any way limit Tenant's obligations under this Lease.

9.3 Tenant's Waiver and Release of Claims and Subrogation. Tenant, on behalf of Tenant and its insurers, waives, releases and discharges Landlord from all Claims arising out of personal injury or damage to or destruction of the Property or Tenant's trade fixtures, other personal property or business, and any loss of use or business interruption, occasioned by any fire or other casualty or occurrence whatsoever (whether similar or dissimilar), regardless whether any such Claim results from the negligence or fault of Landlord or otherwise, and Tenant will look only to Tenant's insurance coverage (regardless whether Tenant maintains any such coverage, regardless whether any such insurance covers such Claims and regardless of any self-insured retention maintained by Tenant) in the event of any such Claim. Tenant's trade fixtures, other personal property and all other property in Tenant's care, custody or control, is located on the Property at Tenant's sole risk. Landlord is not liable for any damage to such property or for any theft, misappropriation or loss of such property. Tenant is solely responsible for providing such insurance as may be required to protect Tenant, its employees and invitees against any injury, loss or damage to persons or property occurring in the Property or at the Land, including, without limitation, any loss of business or profits from any casualty or other occurrence at the Land.

9.4 Proceeds of Insurance. Subject to the provisions of Article 10, the proceeds of any insurance required to be maintained by the provisions of this Article 9 shall be payable to Tenant and shall be used to restore the Property, the Building and Tenant's Improvements to their original condition.

9.5 Replacement Insurance. If, notwithstanding the provisions of Section 5.3, any insurance which Tenant is required to obtain and maintain is cancelled, Tenant shall, before such cancellation is effective (or, if such cancellation is effective upon receipt of notice, within ten (10) business days after the date such notice is received), replace such insurance with other insurance providing essentially the same or better coverages and essentially the same or greater indemnity amounts. Tenant shall promptly deliver to Landlord evidence of such replacement insurance. If Tenant fails to obtain the replacement insurance as required by this Section 5.6, Landlord may (but shall not be required to) procure such replacement insurance on Tenant's behalf and charge Tenant the premiums for such insurance, as additional rent, together with a ten percent (10%) administrative charge, payable upon demand.

ARTICLE 10 DAMAGE OR DESTRUCTION

10.1 Tenant Repair and Restoration. In case of damage to or destruction of the Premises or the Building(s) by fire or other casualty, except as set forth in § 10.3 below, Tenant, at Tenant's sole cost and expense, shall restore, replace, rebuild or alter the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, repairs, replacements, rebuildings or alterations (sometimes referred to in this Article 10 as the "**Work**") shall be commenced within thirty (30) days after the occurrence of such fire or other casualty, shall be prosecuted with due diligence and in good faith and shall be completed within twelve (12) months after the occurrence of such fire or other casualty, subject to: any applicable governmental agency's issuance of the necessary permits and approvals for such restoration, repairs, replacements, rebuildings or alterations (for which Tenant agrees to timely and promptly file and diligently prosecute to completion the necessary applications to obtain the same). In the event of damage to or the destruction of the Premises and/or the Buildings, Tenant shall promptly give written notice thereof to Landlord.

10.2 Payment of Insurance Proceeds. All insurance proceeds received on account of such damage or destruction under the policies of insurance provided for in Article 9, less the reasonable cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to a depository institution acceptable to Landlord (herein sometimes referred to as the "**Depository**") in trust for the purpose of reimbursement of the costs of the demolition, restoration, repairs, replacements, rebuilding or alterations to the Premises and/or the Buildings. All insurance proceeds shall be applied by the Depository to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses in accordance with commercially reasonable requirements established by the Depository.

10.2.1 Sums Paid to Tenant. Upon receipt by the Depository of a lien release from every contractor and subcontractor working on the Work and such other evidence satisfactory to it that the Work is complete and paid for in full, and if Tenant is not then in default under this Lease or the Leasehold Deed of Trust of the senior Leasehold Beneficiary, the Depository shall pay to Tenant any remaining balance of said insurance proceeds.

10.2.2 Deficiency. If the insurance proceeds received by the Depository shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any deficiency. Under no circumstances shall Landlord be obligated to make any payment, reimbursement or contribution towards the cost of the Work

10.3 Substantial Damage at End of Term. If (a) any Building shall be damaged or destroyed by fire or other casualty within one (1) year prior to the expiration of the Lease Term, and the cost of restoration exceeds fifty percent (50%) of the then-insurable value of the Building, as estimated by a licensed architect reasonably mutually agreed upon by Landlord and Tenant or (b) any Building shall be damaged or destroyed by a cause not required to be insured against, and the cost of restoration exceeds ten percent (10%) of the then-insurable value of the Building, as estimated by a licensed architect reasonably mutually agreed upon by Landlord and Tenant, Tenant shall have the option of: (a) restoring, repairing, replacing, rebuilding or altering the Building as provided in this Lease; or (b) razing and removing the Building, and restoring the Premises to a clean, graded and landscaped (or "hardscaped") condition ("**Demolition Work**"), reasonably satisfactory to Landlord, at Tenant's cost and expense (subject to § 10.4 below), and thereafter terminating this Lease by written notice to Landlord given within ninety (90) days after such destruction or damage, which termination shall be effective on a date set forth in Tenant's notice to Landlord, which date shall be no sooner than thirty (30) days after delivery by Tenant to Landlord of such notice of termination.

10.4 Insurance Proceeds. In the event of a termination under § 10.3 above, the insurance proceeds, if any, payable on account of such damage or destruction under the policies of insurance provided for in Article 9, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof, and for the Demolition Work, shall be paid to Landlord.

10.5 Effect of Termination. At the time of a termination under § 10.3 above, Tenant shall at once surrender and deliver up the Property and shall remove all of its personal property from the Property and perform such other work as is expressly required by other sections of this Lease concerning termination. Tenant, upon such termination, surrender and removal, shall be released and discharged from any and all obligations that would have otherwise thereafter accrued had this Lease not been so terminated, except for any obligations of indemnity which shall survive such termination.

10.6 Failure to Restore. If Tenant does not commence repair and reconstruction of the damaged or destroyed Building on the Property within the time period set forth in § 10.1 or if Tenant does not complete reconstruction of the damaged or destroyed Building within the time period set forth in § 10.1, Landlord may, if it so elects (without waiving any other rights Landlord may have under this Lease, including, without limitation, taking action against Tenant for its failure to so repair), by delivering written notice to Tenant, terminate this Lease, which termination shall be effective sixty (60) days after delivery by Landlord of such notice of termination to Tenant, unless prior to the expiration of such sixty (60) day period, Tenant commences or completes, as the case may be, repair and restoration of the damaged or destroyed Building. Upon the effective date of such termination, the proceeds of insurance shall be disbursed to Landlord free and clear of any claim of Tenant, but subject to the rights of any Leasehold Beneficiary as herein set forth. Tenant shall remain liable to Landlord for any other damages which may be recoverable by Landlord for Tenant's breach of this Lease.

ARTICLE 11 EMINENT DOMAIN

11.1 Termination of Lease. If a Condemning Authority desires to effect a Taking of all of the Property, this Lease will terminate as of the date the Condemning Authority takes possession of same. If a Condemning Authority desires to effect a Taking of less than all of the Property, any entry into the Property which materially adversely affects access to the Property,

or materially adversely affects any queuing lanes for drop-off and pick-up of Tenant's students, then Tenant, at its option, by notifying Landlord not later than 60 days after the date the Condemning Authority takes possession of such property, may terminate this Lease effective on the date set forth such notice of termination, and if so requested by Landlord, Tenant shall demolish the damaged Buildings, remove all Personal Property and debris from the Property, and restore the surface of the affected portion of the Premises to a level condition. Tenant will pay Rent to the date of termination.

11.2 Adjustment of Rent. If this Lease does not terminate with respect to the entire Property under Section 11.1 and the Taking includes a portion of the Property, this Lease automatically terminates as to the portion of the Property taken as of the date the Condemning Authority takes possession of such portion, and the Rent will be reduced on such date to an amount equal to the product of the Rent provided for in this Lease multiplied by a fraction, the numerator of which is the land area of the Premises after the Taking, and the denominator of which is the land area of the Premises prior to the Taking.

11.3 Award. Tenant is entitled to receive and keep all damages, awards or payments resulting from or paid on account of the Taking of Tenant's Personal Property, and for moving expenses. Landlord is entitled to receive and keep all other damages, awards or payments resulting from or paid on account of such Taking. With respect to any claim Tenant is entitled to make based on a Taking, Tenant may interpose and prosecute such claim in any proceeding in respect of such Taking, either independent of any claim of Landlord or, if only a single award is made for such Taking, a part of Landlord's claim.

ARTICLE 12 TRANSFERS

12.1 Transfers Requiring Landlord's Consent. Tenant will not enter into any Transfer without obtaining Landlord's prior written consent, which consent may be granted or withheld in the Landlord's sole discretion. Tenant's request for Landlord's consent to a Transfer must describe the parties, terms, portion of the Property, and other circumstances involved in the proposed Transfer. Landlord will notify Tenant of Landlord's election to consent or withhold consent to such Transfer within 30 days of Landlord's receipt of such a written request for consent to the Transfer from Tenant. If Landlord does not properly respond to Tenant's request within such 30-day period, Landlord's consent to the Transfer will be deemed not to have been granted. No Transfer releases Tenant from any liability or obligation under this Lease.

ARTICLE 13 DEFAULTS; REMEDIES

13.1 Tenant's Default. Tenant will not be in default under this Lease unless one of the following events occurs (an "Event of Default"):

13.1.1 Failure to Pay Rent. Tenant fails to pay Rent or any other amount owed by Tenant under this Lease for a period of 10 days after Landlord has notified Tenant that such payment is delinquent.

13.1.2 Failure to Perform. Tenant breaches or fails to perform any of Tenant's non-monetary obligations under this Lease and such breach or failure is not cured within 30 days after Landlord notifies Tenant of Tenant's breach or failure; provided that if Tenant is not able through the use of commercially reasonable efforts to cure such breach or failure within

such 30-day period, Tenant's breach or failure is not an Event of Default if Tenant commences to cure such breach or failure within such 30-day period and thereafter diligently pursues the cure to completion, which cure in all events must be accomplished within 90 days after the Landlord notification.

13.1.3 Bankruptcy. The occurrence of any one or more of the following: (a) Tenant's filing of a petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted; or (b) the filing of an involuntary petition under any chapter of the Bankruptcy Code, or under any federal, state or foreign bankruptcy or insolvency statute now existing or hereafter enacted, by or against Tenant and such filing not being dismissed within 60 days.

13.2 Remedies. Upon the occurrence of any Event of Default, Landlord may notify Tenant that Landlord intends to exercise one or more of the remedies set forth below, and if such Event of Default is not cured within 15 days thereafter, Landlord may, at any time and from time to time, without further notice or demand and without preventing Landlord from exercising any other right or remedy, exercise any one or more of the following remedies:

13.2.1 Termination of Tenant's Possession/Re-entry and Reletting. Terminate Tenant's right to possess the Property by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Property to Landlord as provided in Article 15. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Property) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant's right to possess the Property, Landlord may re-enter the Property and remove all persons and property from the Property. Landlord may store any property Landlord removes from the Property in a public warehouse or elsewhere at the cost and for the account of Tenant, and if Tenant fails to pay the storage charges therefor, Landlord may deem such property abandoned and cause such property to be sold or otherwise disposed of without further obligation or any accounting to Tenant. Upon terminating Tenant's right to possess the Property, Landlord will use commercially reasonable efforts to relet the Property.

13.2.2 Termination of Lease. Terminate this Lease effective on the date Landlord specifies in Landlord's notice to Tenant. Upon such termination, Tenant will immediately surrender possession of the Property to Landlord as provided in Article 15. If Landlord terminates this Lease pursuant to this Section, Landlord may recover from Tenant and Tenant will pay to Landlord on demand: (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) an amount equal to the amount by which (i) the present value, as of the effective date of the termination, of the Rent for the balance of the Term remaining after the effective date of the termination (assuming no termination) exceeds (ii) the present value, as of the effective date of the termination, of a fair market Rent for the Property for the same period. For purposes of this Section, Landlord will compute present value by utilizing a discount rate of 8% per annum.

13.3 Landlord's Default. Landlord will not be in default under this Lease unless Landlord breaches or fails to perform any of Landlord's obligations under this Lease and the breach or failure continues for a period of 30 days after Tenant notifies Landlord in writing of Landlord's breach or failure; provided that if Landlord is not able through the use of commercially reasonable efforts to cure the breach or failure within such 30-day period, Landlord's breach or failure is not a default as long as Landlord commences to cure its breach or failure within the 30 day period and thereafter diligently pursues the cure to completion, which

cure in all events must be accomplished within 90 days of the Tenant notification. Upon the occurrence of default by Landlord, Tenant may at any time and from time to time, without further notice or demand, cure such default on behalf of Landlord or exercise any other right or remedy available to Tenant at law or in equity. Within 30 days after Tenant's request, Landlord will reimburse Tenant for any reasonable out-of-pocket costs incurred by Tenant to cure Landlord's default. If Tenant does not receive any payment owed by Landlord to Tenant within 30 days after Tenant notifies Landlord that such payment is delinquent, Tenant may deduct such amount from Rent and Landlord will pay Tenant interest on the delinquent payment calculated at the Maximum Rate from the date the payment was due through the date the payment is received (or deducted) by Tenant.

13.4 No Waiver. No failure by either Landlord or Tenant to insist upon the performance of any provision of this Lease or to exercise any right or remedy upon a breach or default hereof constitutes a waiver of any such breach or default. Any such waiver may be made only in a writing signed by the party providing the waiver. One or more waivers by a party is not to be construed as a waiver by that party of a subsequent breach or default of the same provision. In no event are any of the Landlord Parties or the Tenant Parties liable to any person for consequential, indirect, special or punitive damages.

ARTICLE 14 CREDITORS; ESTOPPEL CERTIFICATES

14.1 No Existing Mortgages. Landlord represents and warrants to Tenant that, on the date of this Lease, there are no Mortgages encumbering the Premises.

14.2 Subordination to Future Mortgages. Any Mortgage granted by Landlord after the date of this Lease is herein referred to as a "Future Mortgage". Subject to the following provisions of this Section 14.2, this Lease is subordinate to each Future Mortgage. The automatic subordination to each Future Mortgage provided for in this Section is expressly conditioned upon the Mortgage holder's agreement that as long as no Event of Default is in existence under this Lease, the holder of such Future Mortgage will not disturb Tenant's rights of possession of the Property under this Lease or terminate this Lease. Tenant will, upon Landlord's request with respect to any Future Mortgage, execute and deliver to Landlord a subordination, nondisturbance and attornment agreement in the form of EXHIBIT "E" or such other form as is reasonably acceptable to Landlord, Tenant and the holder of such Future Mortgage. The lien of any Future Mortgage will not encumber the Tenant Improvements or Tenant's Personal Property.

14.3 Attornment. Upon the purchase of the Premises at a foreclosure sale under a Future Mortgage, Tenant will attorn to and recognize such purchaser as Landlord under this Lease.

14.4 Estoppel Certificates. Upon either party's written request, the other party will execute and deliver to the requesting party a written statement certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications); (b) the last date of payment of Rent and the time period covered by such payment; (c) whether, to the best of such party's actual knowledge, there are then existing any breaches or defaults by the other party under this Lease, and, if so, specifying the same; and (d) such other matters as the requesting party may reasonably request. The party from whom such statement is requested will deliver the statement to the requesting party within 20 Business Days after the request for such statement.

14.5 Landlord's Lien. If Tenant obtains financing for all or any portion of the Tenant Improvements or Tenant's Personal Property, Landlord will execute and deliver to any such secured creditor and/or equipment Landlord an instrument subordinating its statutory landlord's lien to the lien of any such secured creditor and/or equipment Landlord; provided, however, that Landlord will not subordinate its fee title interest in the Premises.

14.6 Leasehold Mortgage. Tenant has the right, without Landlord's consent, to grant one or more mortgages, deeds of trust or similar encumbrances or liens (individually, a "Leasehold Mortgage") with respect to Tenant's interest in this Lease, its interest in the Premises, and its interest in the Tenant Improvements or any part thereof, and to assign such interests and any sublease as collateral security for such Leasehold Mortgage, upon the condition that all rights acquired under a Leasehold Mortgage will be subject to the terms and provisions of this Lease and to all rights and interests of Landlord herein, none of which terms and provisions will be modified by reason of the right given to Tenant to enter into Leasehold Mortgages, except as may be expressly provided in this Section 14.6. If Tenant enters into a Leasehold Mortgage, and if the holder of the Leasehold Mortgage (the "Leasehold Mortgagee") sends Landlord a true copy of the Leasehold Mortgage, together with written notice specifying the name and address of the Leasehold Mortgagee and the recording data with respect to the Leasehold Mortgage, then Landlord agrees that so long as the Leasehold Mortgage remains in effect, the following provisions will apply:

14.6.1 Notice to Leasehold Mortgagee. If Landlord notifies Tenant of any breach or default by Tenant under this Lease, Landlord will concurrently send a copy of such notice to the Leasehold Mortgagee. The Leasehold Mortgagee will then have the same period as is given to Tenant under this Lease to cure such breach or default on behalf of Tenant, in which event Landlord will accept such cure by the Leasehold Mortgagee as if such breach or default had been cured by Tenant. Notwithstanding the foregoing, if Landlord is permitted by the terms of this Lease to terminate this Lease based on a breach or default by Tenant under this Lease, and if Landlord desires to exercise such right to terminate this Lease, Landlord will notify the Leasehold Mortgagee of same, in which event the Leasehold Mortgagee may notify Landlord, within 30 days after the date of its receipt of Landlord's notice, that it will cure such breach or default on behalf of Tenant. Upon Landlord's receipt of such notice from the Leasehold Mortgagee, Landlord will have no right to terminate this Lease based on such breach or default as long as the Leasehold Mortgagee commences to cure such breach or default within such 30-day period and diligently pursues such cure to completion.

14.6.2 Conveyance by Leasehold Mortgagee. Notwithstanding anything to the contrary contained in this Lease, upon the foreclosure of a Leasehold Mortgage (whether by judicial proceeding or by non-judicial action) or an agreement in lieu of such foreclosure, the Leasehold Mortgagee may assign Tenant's interest in this Lease and convey Tenant's interest in the Premises, the Tenant Improvements and Tenant's Personal Property without Landlord's consent.

14.6.3 Bankruptcy of Tenant. Landlord agrees that in the event of termination of this Lease by reason of the bankruptcy or insolvency of Tenant, Landlord will, upon the request of the Leasehold Mortgagee, enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee for the remainder of the Term (as if this Lease had not been terminated) effective as of the date of such termination, upon the terms and provisions as are contained in this Lease, and subject only to the same conditions of title to which this Lease is subject on the date of this Lease, together with any exceptions to title created by or at the request of Tenant, provided:

14.6.3.1 the Leasehold Mortgagee or its nominee makes written request upon Landlord for the new lease within 30 days after the date of such termination;

14.6.3.2 the Leasehold Mortgagee or its nominee pays to Landlord, at the time of the execution and delivery of the new lease, any reasonable expenses which Landlord has incurred by reason of such new lease;

14.6.3.3 the Leasehold Mortgagee or its nominee cures any remaining breach or default by Tenant under this Lease which is reasonably capable of being cured by the Leasehold Mortgagee or its nominee and for which Landlord has previously given notice to the Leasehold Mortgagee;

14.6.3.4 the tenant under the new lease will have all right, title and interest in and to the Premises, the Tenant Improvements and Tenant's Personal Property as Tenant had under this Lease; and

14.6.3.5 the Leasehold Mortgagee or its nominee or assignee will bear the cost of recording a new memorandum of lease with respect to the new lease if the Leasehold Mortgagee desires recordation thereof.

14.6.4 No Obligation to Cure. Nothing contained herein will require the Leasehold Mortgagee or its nominee or assignee to cure any breach or default of Tenant under this Lease. Notwithstanding anything to the contrary contained herein, in the event of an incurable breach or default by Tenant under this Lease, the Leasehold Mortgagee will not be required to cure such breach or default in order to prevent a termination of this Lease by Landlord based on such breach or default, and upon the transfer of Tenant's interest in this Lease in connection with a foreclosure of the Leasehold Mortgage (whether by judicial proceeding or non-judicial action) or an agreement in lieu of such foreclosure (or upon the execution of a new lease as set forth in this Section 14.6, Landlord will not be entitled to exercise any rights or remedies against the new Tenant under this Lease (or its successors) or under a new lease based on such incurable breach or default.

14.6.5 Proceeds. The proceeds from any insurance policies relating to the Property or any condemnation proceeds to which Tenant is entitled pursuant to this Lease are to be held by the Leasehold Mortgagee and distributed pursuant to the provisions of this Lease.

14.6.6 Separate Instrument. Landlord will, upon request, execute, acknowledge and deliver to the Leasehold Mortgagee a separate instrument containing all of the provisions of this Section 14.6, which instrument will identify the Leasehold Mortgagee and will specifically state that all of the provisions of such instrument are for the benefit of the Leasehold Mortgagee. Such instrument will be prepared by the Leasehold Mortgagee and will contain such other provisions as are reasonably acceptable to Landlord, Tenant and the Leasehold Mortgagee.

ARTICLE 15 SURRENDER; HOLDING OVER

15.1 Surrender of Property. Tenant will surrender possession of the Property to Landlord at the expiration or earlier termination of this Lease. Tenant will at such time remove all of Tenant's Personal Property from the Premises. As long as Tenant repairs any damage to the Property caused by such removal, Tenant will also have the right to remove all or any

portion of the Tenant Improvements. Any of the Tenant Improvements or Tenant's Personal Property not removed on or before the last day of the Term is deemed abandoned.

15.2 Holding Over. If Tenant remains in possession of the Property after the Term expires or is otherwise terminated, Tenant will be deemed to be occupying the Property as a tenant from month-to-month, subject to all provisions of this Lease applicable to a month-to-month tenancy, provided that the Rent during the holdover period will equal 150% of the Rent payable by Tenant in the last year of the Term.

**ARTICLE 16
[RESERVED]**

**ARTICLE 17
SECURITY DEPOSIT**

17.1 Security Deposit. The parties acknowledge that no security deposit is being required under this Lease.

**ARTICLE 18
MISCELLANEOUS PROVISIONS**

18.1 Notices. All Notices must be in writing and must be sent by personal delivery, by United States registered or certified mail (postage prepaid), or by an independent overnight courier service, addressed to the addresses specified in the Basic Terms or at such other addresses as either party may designate to the other party by written notice given in accordance with this Section. Notices given by mail are deemed delivered within four Business Days after the party sending the Notice deposits the Notice with the United States Post Office. Notices delivered by courier are deemed delivered on the next Business Day after the day the party delivering the Notice timely deposits the Notice with the courier for overnight (next day) delivery. Any Notice given by an attorney or agent acting on behalf of a party shall be effective as Notice from such party.

18.2 Landlord's Conveyance of Premises. If Landlord conveys fee title to the Premises, the transferor Landlord will remain liable for the obligations of the "Landlord" under this Lease that arose prior to the date of such conveyance, but will have no liability for the obligations of the "Landlord" that arise on and after the date of such conveyance. Upon such conveyance, the new Landlord will be deemed to have assumed all obligations of the "Landlord" that arise on and after the date of such conveyance.

18.3 Successors. Subject to the express provisions of this Lease, this Lease is binding on and inures to the benefit of the parties hereto and their respective successors and assigns.

18.4 Captions and Interpretation. The captions of the articles and sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular.

18.5 Relationship of Parties. This Lease does not create, between the parties to this Lease, the relationship of principal and agent, or of partnership or joint venture, or any other association or relationship, other than that of landlord and tenant.

18.6 Entire Agreement; Amendment. The Basic Terms and all exhibits, addenda and schedules attached to this Lease are incorporated into and made a part of this Lease as though fully set forth in this Lease and together with this Lease contain the entire agreement between the parties with respect to the Property. All prior and contemporaneous negotiations, including, without limitation, any letters of intent or other proposals and any drafts and related correspondence, are merged into and superseded by this Lease. No subsequent alteration, amendment, change or addition to this Lease is binding on Landlord or Tenant unless it is in writing and signed by Landlord and Tenant.

18.7 Severability. If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

18.8 Attorneys' Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease, the prevailing party in any such litigation or judicial action or appeal thereon is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' fees, costs and expenditures) from the non-prevailing party.

18.9 Brokers. Tenant shall be solely responsible for the payment of any broker fee or commission due to the Broker specified in the Basic Terms. Landlord and Tenant each represents and warrants to the other that it has not had any dealings with any realtors, brokers, finders or agents in connection with this Lease (other than the Broker(s) specified in the Basic Terms), and each releases and agrees to indemnify the other from and against any Claims based on the failure or alleged failure to pay any realtors, brokers, finders or agents (other than any Broker(s) specified herein) and from any cost, expense or liability for any compensation, commission or charges claimed by any realtors, brokers, finders or agents (other than the Broker(s) specified in the Basic Terms) claiming by, through or on behalf of it with respect to this Lease or the negotiation of this Lease.

18.10 Governing Law. This Lease is governed by, and must be interpreted under, the internal laws of the state in which the Property is located without reference to any choice of law provisions or principles. Any suit against Landlord or Tenant relating to this Lease must be brought in the county in which the Property is located or, if the suit is brought in federal court, in any federal court appropriate for suits arising in such county; Landlord and Tenant waive the right to bring suit against each other elsewhere.

18.11 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. All time periods which are contemplated under this Lease to be measured in "days" shall be measured in calendar days unless expressly stated to be measured in "Business Days".

18.12 Memorandum of Lease. Tenant will not record this Lease. However, concurrently with the execution of this Lease, Landlord and Tenant will execute a Memorandum of Lease in the form of EXHIBIT "D", and Tenant may record such instrument.

18.13 Construction of Lease and Terms. The terms and provisions of this Lease are the result of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by legal counsel and/or other advisors of its own choosing, and neither of which has acted under

any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Lease are to be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party who drafted the same. This Lease will be a binding agreement between Landlord and Tenant only when it has been executed by both parties.

18.14 Traffic Control. For events held by Tenant on the Property where, due to the size or nature of the event, traffic in the area may be impacted, Tenant shall be responsible for providing traffic control, as required by the Wellton Police Department ("WPD"). Tenant shall notify WPD in writing at least thirty (30) days in advance of the event, providing its nature, size, and potential traffic impacts, and shall comply with Town traffic control requirements and bear all reasonable costs associated with providing such traffic control. If thirty days' notice is not possible, notice shall be provided as soon as possible before the event.

18.15 Compliance With The Law. Tenant shall not use the Property or allow any use or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Property, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether either Landlord is a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlords and Tenant.

18.16 Human Resources. Tenant shall be the employer of all employees at the Property, and shall be solely responsible for all human resource issues, including but not limited to wages, payroll taxes, tax withholding, worker's compensation, hiring and firing, compliance with applicable federal occupational, health, and safety laws and regulations, and all other matters. Tenant shall be responsible for any employment-related liability, fine, penalty or award (including the cost of defense and attorney fees) with respect to claims, demands, arbitration or litigation brought by an employee or employees of Tenant at the Property resulting from violations of federal, state or local laws, ordinances or regulations governing the employment or working conditions of the employees at the Property by Tenant's corporate office, and/or Property supervisory staff. Tenant shall not be entitled to any reimbursement by Landlord for such damages unless such damages were the result of a policy or procedure which was required in writing by Landlord.

(signatures appear on following page)

Landlord and Tenant have each caused this Lease to be executed and delivered by their duly authorized representatives.

Landlord:

THE TOWN OF WELLTON

By: _____

Name: _____

Title: _____

Dated: _____, 2018

Clubhouse Owner:

By: _____

Name: _____

Title: _____

Dated: _____, 2018

Tenant:

By: _____

Name: _____

Title: _____

Dated: _____, 2018

EXHIBIT "A" **DEFINITIONS**

"Affiliate" means, with respect to any person or entity, any other person or entity that, directly or indirectly, controls, is controlled by or is under common control with such person or entity. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management and policies of the entity.

"Alterations" means any changes, alterations, additions or improvements made to the Premises by Tenant after Tenant initially opens its school from the Property.

"Bankruptcy Code" means the United States Bankruptcy Code as the same now exists and as the same may be amended, including any and all rules and regulations issued pursuant to or in connection with the United States Bankruptcy Code now in force or in effect after the date of this Lease.

"Basic Terms" means the terms of this Lease identified as the "Basic Terms" located before Article 1 of this Lease.

"Buildings" has the meaning set forth in the Basic Terms.

"Business Days" means any day other than Saturday, Sunday or a legal holiday in the state in which the Property is located.

"Casualty" means any physical loss, destruction or damage to property which is caused by fire, windstorm, hail, lightning, vandalism, theft, explosion, collision, accident, flood, earthquake, collapse, or any other peril (including, without limitation, malfunctions or failures of equipment, machinery, sprinkling devices, or air conditioning, heating or ventilation apparatus; occurrences or presence of water, snow, frost, steam, gas, sewage, sewer backup, odors, noise, hail or excessive heat or cold; broken or falling plaster, ceiling tiles, fixtures or signs; broken glass; or the bursting or leaking of pipes or plumbing fixtures). "Casualty" does not include (a) any waste or excessive or unreasonable wear and tear, or (b) any loss, destruction or damage arising or resulting from the placement, disposal or release of Hazardous Materials in, on, under, about or from the Property by either Landlord or Tenant.

"Claims" means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses including, without limitation, reasonable attorneys' fees and the costs and expenses of enforcing any obligation under this Lease.

"Commencement Date" has the meaning set forth in the Basic Terms.

"Condemning Authority" means any person or entity with a statutory or other power of eminent domain.

"County" means Yuma County, Arizona.

"Event of Default" has the meaning set forth in Article 13 of this Lease.

"Future Mortgage" has the meaning set forth in Article 14.2 of this Lease.

“Hazardous Materials” means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of “hazardous substances,” “hazardous wastes,” “Hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “solid waste,” or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the date of this Lease as the same may be interpreted by government offices and agencies, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) oil or any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) radioactive materials and waste, and (viii) infectious waste; provided, however, that notwithstanding all of the foregoing, for all purposes of this Lease the term “Hazardous Materials” does not and is not intended to include fungus, mold or mildew of any type or kind, or any spores, secretions, or other substances or odors emanating from or relating to any fungus, mold or mildew of any type or kind.

“Hazardous Materials Laws” means any federal, state or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority, existing now or in the future, which classify, regulate, list or define Hazardous Materials.

“Impositions” means all sums, impositions, costs, expenses and other payments and all taxes including real property and personal property taxes, government property lease excise taxes, and taxes on rents, leases or occupancy, if any, assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which, at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on or encumbering, the Property or any part thereof, or any appurtenances thereto, any use or occupation of the Property, or such franchises as may be appurtenant to the use of the Property.

“Landlord Parties” means Landlord and its officers, directors, partners, shareholders, members and employees.

“Laws” means any law, regulation, rule, order, statute or ordinance of any governmental entity in effect on or after the date of this Lease and applicable to the Property or the use or occupancy of the Property, including, without limitation, Hazardous Materials Laws.

“Lease” means this Ground Lease, as the same may be amended or modified after the date of this Lease.

“Maximum Rate” means interest at a rate equal to the lesser of (a) 12% per annum, or (b) the maximum interest rate permitted by law.

“Mortgage” means any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of Landlord’s interest in the Premises and any replacements, renewals, amendments, modifications, extensions or refinancing thereof,

and each advance (including future advances) made under any such instrument, excluding Leasehold Mortgages.

“Notices” means all notices, deliveries, demands or requests that may be or are required to be given, provided, demanded or requested by either party to the other as provided in this Lease.

“Premises” has the meaning set forth in the Basic Terms.

“Property” has the meaning set forth in the Basic Terms.

“Rent” means the rent payable by Tenant under this Lease in the amounts specified in Section 2.1.

“Rent Tax” means any rental taxes, gross receipt taxes, transaction privilege and sales taxes which are levied or assessed by any governmental authority on the Rent received by Landlord under this Lease; provided, that “Rent Tax” does not include any federal, state or local income tax or other tax, however denominated, which is applied to the net income of Landlord.

“Taking” means the exercise by a Condemning Authority of its power of eminent domain on all or any part of the Property, either by accepting a deed in lieu of condemnation or by any other manner.

“Tenant Parties” means Tenant and, to the extent applicable, its officers, directors, partners, shareholders, members and employees.

“Tenant’s Personal Property” means any trade fixtures, furniture, equipment, signage, office audio/video equipment, or other personal property of any type or kind located at or about the Property which is owned or leased by the Tenant Parties.

“Term” means the Initial Term of this Lease specified in the Basic Terms and, if applicable, any exercised Extension Period then in effect.

“Town” means the Town of Wellton, Arizona.

“Transfer” means an assignment of this Lease by Tenant or any subletting of the Premises by Tenant. The term “Transfer” does not include any assignment, transfer, mortgage, deed of trust, pledge or other encumbrance of (a) Tenant’s interest in this Lease, its interest in the Premises, or its interest in the Tenant Improvements as security for one or more loans, or (b) any membership or equity interest in the entity which constitutes Tenant.

EXHIBIT "B"
DESCRIPTION OF PREMISES

EXHIBIT "C"
DESCRIPTION OF THE EQUIPMENT

EXHIBIT "D"

When recorded, return to:
Nicholle Harris
Gust Rosenfeld P.L.C.
One East Washington, Suite 1600
Phoenix, AZ 85004-2553

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is by and between _____ ("Landlord"), and _____ ("Tenant").

1. Landlord is the owner of that certain real property described on Exhibit "A" attached hereto (the "Premises").

2. Landlord and Tenant have entered into that certain Ground Lease dated _____, 20__ (the "Lease"), pursuant to which Landlord has leased the Premises to Tenant.

3. The Lease provides that Landlord will not convey fee title to the Premises without first giving Tenant the right of first refusal to acquire fee title to the Premises pursuant to the Lease. Any such conveyance in violation of such right of first refusal will be void.

4. In order to give record notice to the public of the Lease, Landlord and Tenant have executed this Memorandum. All terms and provisions of the Lease are incorporated herein by reference as if fully set forth herein.

Landlord and Tenant have each caused this Memorandum to be executed and delivered by their duly authorized representatives.

Landlord:

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

Tenant:

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

EXHIBIT "A"
TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

{TO BE ATTACHED}

EXHIBIT "E"

When recorded, return to:
Nicholle Harris
Gust Rosenfeld P.L.C.
One East Washington, Suite 1600
Phoenix, AZ 85004-2553

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**") is entered into as of _____, 20____, by and among _____ ("**Landlord**"), _____ ("**Tenant**"), and _____ ("**Beneficiary**").

RECITALS

A. Landlord and Tenant entered into that certain Lease dated _____, 20____, for the lease by Landlord to Tenant of certain Premises described therein (the "**Lease**").

B. Landlord executed that certain Deed of Trust in favor of Beneficiary dated _____, 20____, and recorded on _____, 20____, in the Official Records of _____ County, _____, as Instrument No. _____ (the "**Deed of Trust**").

C. The parties desire to establish certain rights, obligations, and priorities with regard to their respective interests by means of this Agreement.

AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Beneficiary hereby consents and approves the Lease, amendments and the terms thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of rights, remedies and options therein contained shall not constitute a default under the Deed of Trust. Tenant acknowledges that, pursuant to the Deed of Trust, the Lease and all rights of Landlord under the Lease have been assigned to Beneficiary as collateral security for the loan that the Deed of Trust secures, and Tenant hereby consents to such assignment, notwithstanding any other provisions or requirements set forth in the Lease.

2. The Lease is, and shall remain, subject and subordinate to the lien of the Deed of Trust and to any extensions, modifications, consolidations or renewals thereof.

3. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "**Landlord's Default**"), Tenant shall: (a) provide Beneficiary with a copy of Tenant's notice to Landlord of such Landlord's Default (each a "**Default Notice**"), and (b) allow Beneficiary not less than the same number of days from the date of Beneficiary's receipt of such Default Notice to cure such Landlord's Default to which Landlord would be entitled to cure such Landlord's Default pursuant to the Lease. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Beneficiary fails to cure same within the time period specified above.

4. So long as Tenant is not in default in the performance of any terms, covenants and conditions to be performed on its part under the Lease beyond any applicable cure period, then in such event:

(a) Tenant shall not be joined as a party defendant in any foreclosure proceeding which may be instituted by Beneficiary (unless Tenant is a necessary party under applicable law); and

(b) Tenant's leasehold estate under the Lease shall not be terminated, barred, cut off, or otherwise disturbed by reason of any default under the Deed of Trust or any foreclosure proceeding instituted by Beneficiary.

5. If Beneficiary shall succeed to the interest of Landlord in and to the Lease, whether through possession, foreclosure proceeding, or delivery of a deed in lieu of foreclosure, Tenant shall attorn to and recognize Beneficiary or any other purchaser at a foreclosure sale as Tenant's landlord under the Lease. Upon and after such attornment, the Lease shall continue in full force and effect as a direct lease between Beneficiary or such purchaser and Tenant upon all of the terms, conditions and covenants as are set forth in the Lease, except that Beneficiary or such purchaser shall after such attornment:

(a) be liable for any previous act or omission of any previous landlord arising directly from such landlord's responsibilities and duties pursuant to the Lease; provided, Beneficiary has received appropriate notice of such default, and has an opportunity to cure (having no obligation to so cure) same, all pursuant to the terms and conditions of the Lease and this Agreement;

(b) be subject to any offset or counterclaim which Tenant might be entitled to assert against any previous landlord, including deductions from rent arising pursuant to the Lease; provided, Beneficiary has received appropriate notice of such default, and has an opportunity to cure (having no obligation to so cure) same, all pursuant to the terms and conditions of the Lease and this Agreement;

(c) Not be bound by any previous prepayment of more than one month's fixed rent, unless such prepayment shall have been expressly approved in writing by Beneficiary;

(d) Be bound by any modification of the Lease; and

(f) Not be personally liable to Tenant in excess of Beneficiary's interest in the Premises and any proceeds therefrom.

6. At any time before the rights of the Landlord shall have been forfeited or adversely affected because of any default on its part, or within the time permitted the Landlord to cure any default under the Lease as there provided, Beneficiary may, at its option, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the Landlord by the terms of the Lease, and all payments so made and all things so done and performed by Beneficiary shall be as effective to prevent the rights of the Landlord from being forfeited or adversely affected because of any default under this Lease as the same would have been if done and performed by the Landlord.

7. In the event that Beneficiary notifies Tenant of any default under the Deed of Trust and demands that Tenant pay rent and all other sums due under the Lease to Beneficiary, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Beneficiary's notice) shall pay rent and all other sums due under the Lease directly to Beneficiary. Any payments made to Beneficiary by Tenant shall not affect or impair the other rights and remedies of Beneficiary under the Deed of Trust or otherwise against Landlord. Any and all payments made to Beneficiary by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Beneficiary had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord, and Landlord hereby irrevocably authorizes and instructs Tenant to make any payments referred to in this paragraph directly to Beneficiary, as directed by Beneficiary.

8. (a) Any required notices to Beneficiary shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, at the address of Beneficiary as hereinabove set forth or at such other address as Beneficiary may designate by notice.

(b) During the period of any postal strike or other interference with the mail, personal delivery shall be substituted for registered or certified mail.

9. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

10. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

Landlord, Tenant and Beneficiary have each caused this Agreement to be executed and delivered by their duly authorized representatives.

Landlord:

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

Tenant:

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

Beneficiary:

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

EXHIBIT E
TO
NOTICE AND REQUEST FOR PROPOSALS
OPERATION OF GOLF COURSE PURSUANT TO LEASE OR CONCESSIONAIRE
AGREEMENT

[Concessionaire Agreement]

See following pages.

**LICENSE AGREEMENT
AND
GOLF COURSE CONCESSION AGREEMENT**

Contract No. _____

THIS LICENSE AND GOLF COURSE CONCESSION AGREEMENT (this “Agreement”) is made _____, 20__, by and between the Town of Wellton, an Arizona municipal corporation (the “Town”), G-12, LLC, an Arizona limited liability company (“G-12”) (Wellton and G-12 are collectively referred to herein as the “Owners”), and _____, a(n) _____ (“Concessionaire”).

RECITALS

A. G-12 warrants and represents that it owns (i) that certain real property consisting of approximately 4.45 acres of real property, which is depicted and legally described on Exhibit A, attached hereto and incorporated herein by this reference, and the clubhouse building and cart barn facilities located thereon (the “Clubhouse Facilities”) and (ii) that certain real property consisting of approximately 21.13 acres of real property, which is depicted and legally described on Exhibit B, attached hereto and incorporated herein by this reference, and the driving range and shop area located thereon (the “Driving Range”). The Clubhouse Facilities and the Driving Range are collectively referred to herein as the “Clubhouse Premises.”

B. The Town warrants and represents that it owns that certain real property consisting of approximately 155.02 acres of real property, which is depicted and legally described on Exhibit C, attached hereto and incorporated herein by this reference, upon which the Coyote Wash “Links” Golf Course (the “Golf Course”) is located (the “Golf Course Premises”).

C. The “Golf Facility” that is the subject of this Agreement includes the Clubhouse Premises, the Golf Course Premises, and all buildings and fixtures located thereon.

D. Owners desire to utilize the services and experience of Concessionaire to manage and operate the Golf Facility, and Concessionaire desires to render such services, upon the terms and conditions set forth in this Agreement (the “Permitted Use”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, G-12 and the Concessionaire hereby agree as follows:

1. License Agreement.

1.1 Grant of License. The Owners hereby grant to the Concessionaire a temporary, non-exclusive license (the “License”) on, over, through and across the Golf Facility

for the Permitted Use. This License shall be for the benefit and use of the Concessionaire, its employees, subcontractors and assigns (including without limitation employees, officers and agents) and no others.

1.2 Term of License. This License shall be effective from the date first set forth above and shall remain in effect until terminated or canceled as set forth below (the "License Period"). The License Period is intended to run conterminously with the term of the Agreement. In the event of termination of the Agreement for any reason, the License shall immediately terminate without further act of the parties.

1.3 Manner of Use of the Golf Facility. Concessionaire shall use due care and diligence in the use of the Golf Facility for the duration of the License Period and in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by the Owners and will not cause (i) any interference with the business operations (if any) of the Owners on the Golf Facility, (ii) any interference with the Owners' customary access to or from the Golf Facility, or (iii) any damage or injury to the Golf Facility, or to any agents, employees or invitees of the Owners, ordinary wear and tear excepted. Additionally, Concessionaire, at its sole expense, without reimbursement from the Owners, shall:

A. Property Protection. Ensure that all physical improvements on or near the Golf Facility are protected from damage by Concessionaire's use of the Golf Facility. If Concessionaire's use of the Golf Facility results in damage to the improvements thereon, Concessionaire shall repair or replace such damages to the satisfaction of the Owners, at no cost to the Owners. Prior to first utilizing the Golf Facility pursuant to this Agreement, Concessionaire shall provide photographic evidence to the Owners of all existing damage to improvements to the Golf Facility, if any. Photographs will clearly show the location of existing damage to the Golf Facility.

B. Property Restoration. Restore or cause to be restored the portions of the Golf Facility accessed or utilized by Concessionaire pursuant to this License to substantially its original condition prior to the completion of the License Period, ordinary wear and tear excepted.

C. No Hazardous Materials. Not release, discharge or deposit any toxic, hazardous or petroleum products onto the Golf Facility or emit any obnoxious or offensive odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other similar matter that is detrimental to the public health, safety or general welfare.

D. Limitations on Use; Security. Not use any portion of the Golf Facility for staging or storage of materials or equipment other than those necessary for operation of the Golf Facility. Upon exiting the Golf Facility, and at the end of each day during the License Period, Concessionaire shall secure the Golf Facility to prevent access by unauthorized persons.

1.4 Changes to Owner Property. In no event shall Concessionaire make any alterations or improvements to any portion of the Golf Facility except as directed by Owners, in

writing, or as expressly permitted under this Agreement. The Owners, in their sole discretion, may modify the Golf Facility to accommodate the Concessionaire's use or development of the Golf Facility. If the Owners make improvements to the Golf Facility to accommodate the Concessionaire's use thereof, the Concessionaire shall pay a pro rata portion of the cost of any such improvements.

1.5 Permits; Compliance with Laws. The Concessionaire shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for Concessionaire's use of the Golf Facility during the License Period. Concessionaire shall comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment, and the employment of workers. In exercising any rights and privileges under this License, the Concessionaire shall comply fully with all applicable permits, authorizations, approvals and other requirements.

1.6 Liens and Encumbrances. The Concessionaire represents and warrants that it will maintain the Golf Facility free and clear from any liens or encumbrances of any nature whatsoever in connection with the Concessionaire's use of the Golf Facility.

1.7 Reservation of Rights. The Owners hereby reserve all such rights and privileges in the Golf Facility as may be used and enjoyed by the Owners without interfering with or abridging the rights conveyed to the Concessionaire.

1.8 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Golf Facility to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third party person, nor shall any third party person be deemed to be a beneficiary of any of the provisions contained herein.

1.9 No Rights to Golf Facility. Concessionaire acknowledges that it is acquiring no rights whatsoever in the Golf Facility, or any portion thereof (including the Golf Course), except a nonexclusive and revocable license, during the Term, to enter upon the Golf Facility to carry out its obligations pursuant to this Agreement. In acknowledging that Concessionaire is acquiring no rights whatsoever in the Golf Facility, Concessionaire further agrees that it will not assert, in any legal action or otherwise, any right or interest in the Golf Facility, or any portion thereof.

2. Concessionaire Agreement.

2.2 Grant of Concession; Purpose. Owners grant to Concessionaire the privilege of a concession for the purpose of managing the Golf Facility, including golf course operations, cart rentals, restaurant/clubhouse, pro shop administration and operation, golf course membership administration and relations with members, marketing, golf course maintenance, and administrative services for day-to-day management and for special events held at the Golf Course.

2.3 Location of Concession. The Concession shall be operated at the Golf Course, which is located within the Golf Facility. The restaurant and pro shop shall be located within the clubhouse or as otherwise agreed in writing by the parties. The cart barn shall be used for cart storage, maintenance, and other associated activities.

2.4 Performance Standards; Relationship between the Parties. Concessionaire accepts the relationship of trust and confidence established between Concessionaire and Owners by the terms of this Agreement. Concessionaire covenants with Owners to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times provide such consulting, operational and managerial services in a manner that maintains the good name and business reputation of Owners and the Golf Facility. Concessionaire shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the best interests of the Owners, in accordance with the standards followed by Concessionaire in its role as manager of similarly-situated golf facilities operated by Concessionaire, in such manner so as to maximize all gross revenues and minimize all Golf Facility expenses and otherwise in connection with operation and maintenance of the Golf Facility.

A. Alcoholic Beverages.

(1) Licenses. Concessionaire shall be solely responsible for taking all steps necessary with the Arizona Department of Liquor Licenses and Control to allow Concessionaire to sell spirituous liquor at the Golf Facility. All spirituous liquor for sale must be purchased and consumed on the premises of the Golf Facility.

(2) Fines, Penalties or Liabilities. Concessionaire shall reimburse the Owners for any fines, civil penalties or other liabilities incurred because of Concessionaire's use of a liquor license at the Golf Facility.

(3) Regulatory Requirements. Concessionaire shall comply with all state and local laws, rules and regulations governing the purchase and sale of spirituous liquor. Concessionaire shall complete all required police incident reports that may be requested. Upon notice of any license violation or receipt of any warning, complaint or order issued by the Arizona State Liquor Board or the Director of the Arizona Department of Liquor Licenses and Control (the "Regulatory Authorities"), Concessionaire shall take immediate corrective action and, within three business days thereafter, give the Owners written notice of the actions taken to cure such violation and future actions to be taken to avoid the reoccurrence of such violations. The Owners shall have the right to revoke this designation of Concessionaire as its manager in the event that Concessionaire (a) fails to take immediate corrective action as required by this subsection, (b) has received more than three warnings, complaints or orders in any three-month period from the Regulatory Authorities or (3) has had more than three alcohol-related incidents at the Golf Facility which caused a response from the Town's police department. The Owners' revocation rights under this subsection shall not be subject to the notice and cure provisions set forth below. Upon revocation as set forth in

this subsection, Concessionaire shall no longer be allowed to sell spirituous liquor at the Golf Facility, but the privilege to sell other concession items shall remain in effect unless otherwise terminated.

B. Quality of Service.

(1) Quality Standards. It is the intention of the Owners that the Golf Facility concession service be of the highest quality attainable. All concession service areas shall be kept clean, orderly and sanitary at all times and in strict accordance with all applicable laws, ordinances, rules and regulations.

(2) Regulatory Requirements. All refreshments sold or kept for sale shall be first quality, wholesome and pure and shall conform in all respects to federal, state, county and municipal food and other laws, ordinances, and regulations and shall be comparable in quality to similar items sold in other golf facilities in the Yuma County area. No imitation, adulterated or misbranded article shall be sold or kept for sale. All refreshments kept on hand shall be stored and handled with due regard for sanitation. In the event that the Owners notify the Concessionaire that the quality of a food or beverage item is below the standard outlined herein, Concessionaire shall forthwith cease the sale of such item and the parties shall negotiate in good faith regarding the matter.

(3) Health Department Rating. Concessionaire shall maintain a rating with the Yuma County Health Department which will permit the continuous sale of refreshments in accordance with the Yuma County Health Code at all times during the Term of this Agreement and shall provide the Owners with a copy of any inspection report within three business days after receipt thereof.

(4) Inspections. All Refreshments kept for sale by Concessionaire shall be subject to inspection and approval or rejection by the Owners and duly authorized representatives of appropriate governmental agencies in the reasonable discharge of their governmental responsibilities.

(5) Prohibited Practices. The Owners shall have the right to require that practices of Concessionaire or its employees and agents which are prohibited or unauthorized by this Agreement be discontinued or remedied. Failure of Concessionaire to take appropriate corrective action after notification from the Owners shall constitute a breach of this Agreement.

(6) Sanitary Conditions. Concessionaire shall be responsible for the sanitary condition and cleaning of all food service production, storage, and service areas including equipment, floors, walls, ceilings, and shelving within the control of Concessionaire. Concessionaire shall also be responsible for the cleaning of counter tops and floors, within the Golf Facility, and other related sanitation functions during events, and following each event within the Golf Facility.

(7) Waste Removal. Concessionaire shall provide a complete and proper arrangement for the adequate and sanitary handling of all garbage and trash and other refuse caused as a result of the operation of the Golf Facility and shall provide for its timely removal from the concession areas to a central point designated for removal from the Golf Facility. Concessionaire shall provide and use suitable covered, leak-proof receptacles for all trash and barrels, or other similar items when trash is in view of the public. Concessionaire shall keep any areas for trash and garbage storage prior to removal from Golf Facility in a clean and orderly condition so as not to attract rodents, pests, or birds and shall have all trash and refuse transferred to collection areas designated by Owners. In transporting garbage, trash, and refuse from the Golf Facility, Concessionaire shall use only carts, vehicles, or conveyances that are leak-proof.

C. General Operating Requirements.

(1) Opening Date. Concessionaire shall be open and ready for business (able to receive golfers) at the Golf Facility not later than September 1, 2018.

(2) Non-Interference. The public's right to reasonably enjoy the event for which it is in attendance shall not be infringed upon by any activity of Concessionaire or any of its employees or agents. The activities of Concessionaire shall be such as to render service to the public in a dignified manner and no pressure, coercion or persuasion shall be used by Concessionaire in an attempt to influence the public to use the services or product of Concessionaire. All concession sales shall be conducted and operated in such a manner so as to not interfere with the orderly operation of any event. Neither Concessionaire nor its employees shall distribute campaign or political literature or any literature of any kind at any time in or on the Golf Facility.

(3) No Owner Responsibility for Inventory. The Owners shall not be responsible for any inventory of refreshments, merchandise, supplies or concession equipment or other assets used or stored by Concessionaire in the Golf Facility, nor will they be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes. However, the Owners will use all reasonable efforts to reestablish power in the event of a loss.

(4) Owner Entry. Representatives of the Owners shall have the reasonable right to enter upon, and inspect all spaces occupied by Concessionaire during the time events are in operation and at all other times when Concessionaire's employees are present, as long as they do not interfere with the operations of Concessionaire. The Owners, upon reasonable notice to Concessionaire and in the company of a Concessionaire employee, shall have the right to inspect all locked areas of the Golf Facility and storage areas used by Concessionaire.

D. Employees. Concessionaire shall be the employer of all employees at the Golf Facility, and shall be solely responsible for all human resource issues, including but not limited to wages, payroll taxes, tax withholding, worker's compensation, hiring and firing, compliance with applicable federal occupational, health,

and safety laws and regulations, and all other matters. Concessionaire shall be responsible for any employment-related liability, fine, penalty or award (including the cost of defense and attorney fees) with respect to claims, demands, arbitration or litigation brought by an employee or employees of Concessionaire at the Golf Facility resulting from violations of federal, state or local laws, ordinances or regulations governing the employment or working conditions of the employees at the Golf Facility (“Damages”) by Concessionaire’s corporate office, and/or Golf Facility supervisory staff. Concessionaire shall not be entitled to any reimbursement by the Owners for such Damages unless such Damages were the result of a policy or procedure that was required in writing by Owners.

(1) Sufficient Personnel. Concessionaire shall employ and supervise such personnel as shall be necessary for the efficient performance of its obligations under this Agreement.

(2) Employee Appearance. Concessionaire’s non-management employees shall be neatly attired in clean, commercially-attractive uniforms.

E. Observance of Laws, Rules and Regulations, Permits. Concessionaire shall, at all times, observe and comply, at its own expense, with all statutes, ordinances, orders, regulations and requirements of all governmental authorities (including without limitation, the requirements of Title I of the Americans With Disabilities Act) that may be applicable to this Agreement. Concessionaire shall use the Golf Facility only for the Permitted Use and for no unlawful purposes whatsoever.

F. Payment of Impositions. Concessionaire shall pay when they become due and payable, all assessments, excises, license and permit fees, real and personal property taxes, transaction privilege (“sales”) taxes and other governmental levies of any kind whatsoever (collectively, “Impositions”) which may be assessed or levied by a governmental agency against Concessionaire or grow or become due and payable by Concessionaire out of or caused by this Agreement or any activity or use of the Golf Facility by Concessionaire, its employees, contractors, agents and invitees.

G. Nondiscrimination. Concessionaire shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. Concessionaire will take action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Concessionaire further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

H. Compliance with Immigration Reform and Control Act of 1986 (IRCA). Concessionaire understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA in performing under this Agreement.

Concessionaire warrants that verification checks have been put into effect by Concessionaire. Concessionaire agrees to indemnify the Owners against damages arising from any verification violations or violations arising from the hiring of undocumented workers.

I. Golf Facility Operational Requirements. Concessionaire shall operate and maintain the Golf Facility and all its amenities, including but not limited to, the Golf Course, Clubhouse (wherein the Restaurant and Pro Shop shall be located), and the Cart Barn, in a manner and on a schedule that is substantially similar to that of other similar facilities.

(1) Restaurant/Clubhouse. The Concessionaire shall, at a minimum, serve breakfast and lunch in the restaurant/clubhouse on all days the Golf Course is open for play. Concessionaire may, in its discretion, use the restaurant/clubhouse for banquets and/or private parties at times it is not required to be open to the public pursuant to this subsection, provided that Owners are named as additional insureds in accordance with this Agreement on all license or rental agreements for banquets and/or private parties.

(2) Cart Barn/Pro Shop. The Concessionaire shall, at a minimum, offer the following services at the Cart Barn/Pro Shop: (a) a payment location for the Golf Course; (b) sales of golf equipment, tees, balls, golf apparel and other golf-related items; (c) golf lessons to the general public, including children and seniors; (d) services of a golf professional who is a member of the PGA or LPGA; and (e) golf equipment for rent for individual rounds.

(3) Maintenance. Concessionaire shall be responsible for regular and continuous maintenance of the Golf Facility, including but not limited to, the interior and exterior of all structures, the grounds, the Golf Course and other amenities, netting (if any), and all equipment and fixtures. Subject to Town approval, Concessionaire will implement a Golf Course and landscape maintenance plan, and shall thereafter regularly and continuously maintain the Golf Course and all landscaped areas, including irrigation systems up to the water meter connection, in accordance with the approved plan.

(4) Inspections. Concessionaire shall consent to and provide access for Town inspection of the Golf Course and landscaped areas of the Golf Facility, to confirm continued compliance with the approved maintenance plan, as well as the interior of all structures, to confirm proper maintenance. Said inspections shall, if possible, be timed so as not to interfere with the regular operation of the Golf Facility.

(5) Costs and Expenses. Concessionaire shall be solely responsible for all costs and expenses incurred in the operation, management, and maintenance of the Golf Facility, including, but not limited to, (a) all expenditures incurred by Concessionaire in the performance of its obligations under this Agreement; (b) the costs and expenses of re-ordering, restocking, maintaining, repairing and/or

replacing equipment and supplies; (c) the costs and expenses of ordering/reordering foodstuffs and beverages for the restaurant/clubhouse; and (d) all other related expenses.

(6) Price Setting. Concessionaire shall, prior to August 1, 2018, submit to the Town the Concessionaires fees for golf tee times and memberships offered at the Golf Facility; provided, however, that said rates shall be competitive with those at similar facilities in Yuma County. The Town shall, after complying with the notice and hearing process required by applicable law, adopt the fees in its sole and absolute discretion. Not more frequently than once each year, Concessionaire may recommend to the Town that the fees for golf tee times and memberships offered at the Golf Facility be modified beginning in the subsequent Town fiscal year. If Concessionaire elects to make such a request in a year, it shall be submitted to the Town on or before February 1 of that year. After complying with the notice and hearing process required by applicable law, the Town may adopt such modified fees effective July 1 of the next-preceding fiscal year.

(7) Financial Reporting. Within 30 days after the end of each calendar quarter, Concessionaire shall deliver to Town the following information, in a form reasonably acceptable to Town: (a) a profit and loss statement, balance sheet, cash flow statement, and budget variance report showing the results of operation of the Golf Facility for such quarter and for the operational year to date, which statement shall include sufficient detail to reflect all gross revenues and Golf Facility expenses, and which shall further breakdown revenues and expenses between the Golf Course, restaurant/ clubhouse, pro shop sales, rentals and lessons, and other categories as appropriate and/or as reasonably required by Town; and (b) a report indicating the number of golfers who used the Golf Course, the number of general public patrons who took lessons, the number of children and seniors who took lessons, the number of rentals of the Golf Facility or any portion thereof, and the number of golf tournaments held at the Golf Facility.

(8) Marketing. Concessionaire shall be responsible for the development of all marketing materials, including brochures, promotional fliers, scorecards, etc., and shall be responsible for all advertising and marketing, including but not limited to website, internet and/or email marketing efforts. The parties agree that the Town may use Concessionaire's marketing and advertising materials on the Town's website, billboards, publications and in other promotional materials.

(9) Utilities. Concessionaire shall be responsible for establishing and paying for all utilities at the Golf Facility, including, but not limited to, electricity, gas, water (subject to Section 3.2 below), and waste management services. Concessionaire shall keep all utility services active and current at all times during the term of this Agreement. Water shall be provided by Town as set forth in Section 3.2 below.

(10) Signs. Concessionaire shall provide a minimum of two signs on the Clubhouse Premises identifying the Concessionaire as managing the Golf

Facility. The signs shall list a telephone number and website address where the Concessionaire may be reached. Concessionaire shall erect no advertising signs on the Golf Facility except with the written consent of the Town Manager.

J. Taxes, Compensation Insurance, Licenses. Concessionaire shall pay promptly all taxes and excise or license fees of whatever nature, applicable to this concession, and obtain and keep current all licenses required for the conduct of this concession. Concessionaire shall not permit any of said taxes, or excise or license fees to become delinquent. Concessionaire shall at all times maintain adequate Workers Compensation Insurance and insure the payment of compensation to all employees engaged in the operation of said concession.

2.5 Restricted Activities of Concessionaire. Without the prior, written consent of Owners, which consent may be granted or withheld in Owners' sole discretion, Concessionaire shall not do, or cause or permit to be done, any of the following throughout the Term:

A. Borrow or Lend. Borrow or lend money in the name of the Golf Facility or Owners.

B. Leases or Agreements. Enter into any lease, license, management or other agreement or contract relating, directly or indirectly, to occupancy or operation of the Golf Facility, other than license or rental agreements related to banquets and/or private parties.

C. Assignment of Interests. Make, execute or deliver in Owners' name, or with respect to any of Owners' assets or the Golf Facility assets, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.

D. Guaranty. In the name of or on behalf of Owners, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.

E. Legal Action. Commence or maintain in the name of or on behalf of Owners any action or proceeding, whether judicial, administrative or otherwise.

F. Protected Marks. Use any trade names, trademarks, logos, emblems or similar identifying marks of Owners.

2.6 Not a Lease. Concessionaire shall not by virtue hereof be deemed to have become the tenant of Owners; provided, however, that as to the location of the concession as described below in this Agreement, Concessionaire is entitled to use such premises and shall be deemed merely to be a licensee entitled to enter therein for the purpose of exercising the rights and privileges granted by the concession. Upon any termination of this Agreement, Owners shall have the right through such means as they see fit to remove and exclude therefrom

Concessionaire and any of Concessionaire's employees without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.

3. Owner Obligations.

3.1 Condition of Golf Course. At the time Owners turn over possession and control of the Golf Facility to Concessionaire, all portions of the Golf Course shall be fully functional and operational, including but not limited to greens, which shall be in a condition that comports with industry standards, fairways, tee boxes, sand traps, and ancillary aesthetic landscaping (including, but not limited to trees and shrubs), with the exception of flags, yardage markers and tee markers, which shall be purchased and/or provided by Concessionaire.

3.2 Water. Town shall provide water for Golf Course and landscape maintenance to Concessionaire at the Town's cost plus 10%. Concessionaire shall be responsible for the cost of delivery of the water to the Golf Course, including but not limited to the cost of electricity to power the pumps for irrigation and maintenance of those pumps.

3.3 Capital Improvements. It is expressly understood and agreed by the parties that all capital improvement projects are solely in the Owner's control and discretion. All costs and expenses of capital improvement projects shall be paid from Owners' funds, unless otherwise agreed in writing by the parties. Ownership of all capital improvements shall remain with the Owners at all times during and after the term of this Agreement.

4. Term; Renewal. The term of this Agreement shall be for a period of ____ years commencing on _____, 20__ and terminating on _____, 20__, unless sooner terminated as hereinafter provided. The Agreement may be renewed for up to ___ (__) additional ___-year terms upon mutual agreement of the parties. Any renewal shall be in writing and shall expressly state the prices for the services during the renewal term.

5. Compensation; Invoices: ***[COMPENSATION SHALL BE DETERMINED PURSUANT TO THE PROPOSAL IN RESPONSE TO THE OWNERS' REQUEST FOR PROPOSALS AND AS SUBSEQUENTLY AGREED UPON BY THE PARTIES. THE TEXT HEREIN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS SUBJECT TO CHANGE].*** Concessionaire shall receive a "Management Fee" in an amount equal to the difference between the gross revenues and the Golf Facility expenses. The parties acknowledge and agree that the Management Fee shall be funded exclusively by revenue generated from operating the Golf Facility and that under no circumstances shall Owners incur any liability for or obligation to pay the Management Fee or any portion thereof. If during the Term or any portion thereof the Golf Facility Expenses exceed the gross revenues, the Management Fee for such period shall be zero.

6. Default; Termination; Cancellation.

6.1 Default; Cure Period.

A. Default and Cure Process. Failure or delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within 30 days after written notice is received from the non-breaching party, shall constitute a default under this Agreement, provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the breaching party shall have such additional time as may be necessary to perform or comply so long as the breaching Party commences performance or compliance within said 30-day period and diligently pursues such cure to completion; provided, however, that no "Cure Period" shall exceed 90 days. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The 30-day period shall not apply where an ordinance or statute requires the Town to perform or otherwise act in a period in excess of 30 days.

B. Parties' Remedies. In the event of a default, the non-defaulting party may, in that party's sole discretion, terminate this Agreement. Upon such termination, all rights and obligations under this Agreement shall become null and void (except for those rights and obligations designated in this Agreement to survive the termination of this Agreement), and the defaulting party shall be liable to the non-defaulting party for any damages resulting from the breach.

6.2 Termination For Cause by Owners. Owners shall have the right to terminate this Agreement following the Cure Period if any of the following events shall occur:

A. Insolvency. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

B. Court Order. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders or partners, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any State thereof.

C. Petitions Against Concessionaire. A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed or stayed within 30 days after the filing thereof.

D. Default. Concessionaire shall be in breach of any of its material obligations (other than the obligation to pay money) hereunder and such breach continues beyond the Cure Period.

E. Unauthorized Assignment. Concessionaire, without having obtained the consent of Owners as required in this Agreement, Assigns (as such term is defined below) any interest requiring the consent of the Owners.

F. Health Conditions Failure. Concessionaire, as a result of Concessionaire's actions or inaction within the Concessionaire's control, fails to maintain a rating in accordance with the Yuma County Health Code that would permit continued sale of refreshments at the Golf Facility and after finally exhausting all of the Concessionaire's rights to appeal before the Yuma County Health Department, Concessionaire has failed to cure such default with a time, period acceptable to the Yuma County Health Department.

G. Continued Operation by Owners. In the event this Agreement is terminated pursuant to any of the provisions of this Section 6, the Owners shall have the right to operate the Golf Facility or to separately contract with an entity to provide services at the Golf Facility; Concessionaire shall have no right to any revenues therefrom.

6.3 Due to Work Stoppage. This Agreement may be terminated by the Owners upon 30 days' written notice to Concessionaire in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, Concessionaire shall immediately surrender to the Owners any proceeds existing from the Golf Facility operations as of the termination date.

6.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a contractors to any other party of this Agreement with respect to the subject matter of this Agreement.

6.5 Gratuities. The Town may, by written notice to the Concessionaire, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Concessionaire or any agent or representative of the Concessionaire to any officer, agent or employee of the Town or G-12 for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Concessionaire an amount equal to 150% of the gratuity.

6.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep the Concessionaire and G-12 informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Concessionaire and G-12 hereby waive any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

6.7 Transition to New Management Company or Operator. Subsequent to Concessionaire receiving written notification of the termination or expiration of this Agreement as set forth above, Concessionaire shall cooperate reasonably with Owners in the transition of management responsibility to a new management company or operator. In connection therewith, Concessionaire shall provide reasonable training, assistance, and direction to the new management company or operator, and shall, in good faith, endeavor to facilitate a smooth, seamless and efficient transition of management responsibility. Concessionaire's failure to comply with this Section shall constitute a material default of this Agreement.

6.8 Right to Exclude Concessionaire. In the event of any breach of any of the terms and conditions of this Agreement, Owners shall have, in addition to any other recourse, the right to terminate this Agreement and remove and exclude any and all persons from the premises and to remove and exclude all property of Concessionaire therefrom.

7. Limitations on Assignment of Agreement.

7.1 Prior Consent Required. Concessionaire shall not have the right to "Assign" this Agreement, without having first obtained prior, written consent thereto from the Owners. Such consent may be based, in part, on whether the proposed purchaser, assignee or transferee (A) is capable of meeting the Concessionaire's obligations, and (B) has acknowledged in a form satisfactory to the Owners that it shall assume all obligations hereunder of the seller, assignor or transferor. For purposes of this Agreement, "Assign" (or as the context may require, "Assignment") shall be defined as (A) transferring, assigning or conveying any interest in, or transferring or delegating responsibilities under, this Agreement, or (B) the occurrence of a merger, change of control, or transfer of substantially all the assets of a party, whether by operation of law or otherwise.

7.2 Effect of Denial of Consent. If the Owners decide to withhold their consent, then Concessionaire's only remedy shall be to terminate this Agreement by giving 90 days' prior written notice thereof to the Owners. Such termination shall be effective at the end of the then-current Town fiscal year.

7.3 Assignment to Affiliate. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to assign, transfer or convey this Agreement to an affiliate of Concessionaire, provided that Concessionaire shall guarantee thereafter the payment and performance obligations of such affiliate. Such guarantee shall be given in a form that is satisfactory to Owners.

7.4 Subcontracts. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to enter into subcontracts for vendors to provide any portion or all of the concession services set forth above; provided, however, that such subcontract shall not act as an assignment of this Agreement and Concessionaire shall remain solely responsible for the obligations set forth in this Agreement.

8. Indemnification. To the fullest extent permitted by law, the Concessionaire shall indemnify, defend and hold harmless the Owners and each council member, officer, employee or agent thereof (the Owners and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Concessionaire, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

9. Insurance.

9.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Concessionaire, Concessionaire shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Owners. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Owners' option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Owners do not represent that coverage and limits will be adequate to protect Concessionaire. The Owners reserve the right to review any and all of the insurance

policies and/or endorsements cited in this Agreement, but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Concessionaire from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Owners, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement. Concessionaire shall ensure all necessary endorsements are executed related to the Additional Insured coverage.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Owners, unless specified otherwise in this Agreement.

E. Primary Insurance. Concessionaire's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Owners as Additional Insureds.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Owners, their agents, representatives, officials, officers and employees for any claims arising out of the work or services of Concessionaire. Concessionaire shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Owners. Concessionaire shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Concessionaire shall execute written agreements with its

subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Owners and Concessionaire. Concessionaire shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance and endorsements verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Concessionaire will provide the Owners with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Concessionaire's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages (including necessary endorsements), conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Owners shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Concessionaire's responsibility to forward renewal certificates and declaration page(s) to the Owners 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Owners, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Concessionaire's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the Owners, their agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Concessionaire under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

9.2 Required Insurance Coverage.

A. Commercial General Liability. Concessionaire shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Owners, their agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Concessionaire shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Concessionaire's owned, hired and non-owned vehicles assigned to or used in the performance of the Concessionaire's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Owners, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Concessionaire engages in any professional services or work in any way related to performing the work under this Agreement, the Concessionaire shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Concessionaire, or anyone employed by the Concessionaire, or anyone for whose negligent acts, mistakes, errors and omissions the Concessionaire is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If Concessionaire employs anyone who is required by law to be covered by Workers' Compensation Insurance, Concessionaire shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Concessionaire's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

9.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Owners.

10. Miscellaneous.

10.1 Independent Contractor.

A. Business Operations. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Concessionaire is not an agent or employee of Owners, for all purposes including the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, the withholding of income tax under the Income Tax Act, the Arizona Workers Compensation Act, the Arizona Economic Security Act, and any and all other applicable Federal or State statutes, rules or regulations. The Concessionaire acknowledges and agrees that the services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Owners. Concessionaire is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Owners and Concessionaire do not intend to nor will they combine business operations under this Agreement.

B. Concessionaire Employees. Concessionaire, its employees and subcontractors are not entitled to workers' compensation benefits from the Owners. The Owners do not have the authority to supervise or control the actual work of Concessionaire, its employees or subcontractors. The Concessionaire, and not the Owners, shall determine the time of its performance of the services provided under this Agreement so long as Concessionaire meets the requirements of this Agreement.

Owners shall not be responsible for the wages or salaries of any employee or representative of Concessionaire, nor for any debts, liabilities or other obligations of Concessionaire. Concessionaire's employees shall not be considered as Owners' employees and shall not be eligible for the benefits incident to Owners' employees or subject to supervision by Owners officials; provided that Owners reserve the right to require Concessionaire to employ in and about the operation of this concession only persons who in appearance, character, general manner and conduct are suitable to employment in the capacities in which they are engaged, and to require Concessionaire to promptly discharge any employee who in the judgment of the Owners is not suitable for the work in which such employee is engaged, or does not conduct himself in a manner suitable and appropriate to the concession. The Town shall have the right through its officers and agents, including its police officers, to eject from the premises any employee of Concessionaire whose conduct is improper, inappropriate or offensive, and Concessionaire for itself and for such employee or employees waives any and all claims for damages against the Owners, their officers and agents on account thereof.

10.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the Yuma County, Arizona.

10.3 Laws and Regulations. Concessionaire shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Concessionaire is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

10.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Owners and the Concessionaire.

10.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

10.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

10.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and

superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

10.8 Subcontracts. No subcontract shall be entered into by the Concessionaire with any other party to furnish any of the material or services specified herein without the prior written approval of the Owners. The Concessionaire is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Concessionaire.

10.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Owners of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Owners to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Owner's acceptance of and payment for services, shall not release the Concessionaire from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Owners to insist upon the strict performance of this Agreement.

10.10 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

10.11 Liens. All materials or services shall be free of all liens and, if the Owners requests, a formal release of all liens shall be delivered to the Owners.

10.12 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Concessionaire any amounts Concessionaire owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Concessionaire any amounts Concessionaire owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

10.13 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Owners: Town of Wellton
 28634 Oakland Avenue
 Wellton, Arizona 85356
 Attn: Town Manager

With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

If to Concessionaire: _____

 Attn: _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

10.14 Confidentiality of Records. The Concessionaire shall establish and maintain procedures and controls that are acceptable to the Owners for the purpose of ensuring that information contained in its records or obtained from the Owners or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Concessionaire's duties under this Agreement. Persons requesting such information should be referred to the Town. Concessionaire also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Concessionaire as needed for the performance of duties under this Agreement.

10.15 Records and Audit Rights. To ensure that the Concessionaire and its subcontractors are complying with the warranty under subsection 10.16 below, Concessionaire's and its subcontractors' books, records, correspondence, accounting procedures and practices, and

any other supporting evidence relating to this Agreement, including the papers of any Concessionaire and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Concessionaire's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Concessionaire's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 10.16 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Concessionaire and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Concessionaire pursuant to this Agreement. Concessionaire and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Concessionaire or its subcontractors reasonable advance notice of intended audits. Concessionaire shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

10.16 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Concessionaire and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Concessionaire's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

10.17 Israel. Concessionaire certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

10.18 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Town's Request for Proposal issued in connection herewith, or the Concessionaire's Proposal, the documents shall govern in the order listed herein.

10.19 Equal Treatment of Workers: Concessionaire shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the concession operations. Concessionaire shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Fair Labor Standards Act. Concessionaire shall protect and

indemnify Owners and its representatives against any claim or liability arising from or based on the violation of such, whether by Concessionaire or its employees.

10.20 Subcontractor Solicitation; Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Concessionaire for services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Concessionaire of Concessionaire's obligations under this Agreement and any regulations relative to nondiscrimination on the grounds of race, color or national origin.

10.21 Examination of Records: Concessionaire agrees that duly authorized representatives of Owners shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of Concessionaire involving transactions related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

“Town”

TOWN OF WELLTON, an
Arizona municipal corporation

Cecilia C. McCollough, Mayor

ATTEST:

Larry Killman, Town Clerk

APPROVED AS TO FORM:

Nicholle Harris, Town Attorney
Gust Rosenfeld, PLC

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

“G12”

G-12, LLC
an Arizona limited liability company

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

On _____, 2018, before me personally appeared _____
_____, the Manager of G-12, LLC, an Arizona limited liability company,
whose identity was proven to me on the basis of satisfactory evidence to be the person who
he/she claims to be, and acknowledged that he/she signed the above document on behalf of the
limited liability company.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
LICENSE AGREEMENT
AND
GOLF COURSE CONCESSION AGREEMENT

[Clubhouse Facilities]

See following page.

Clubhouse Facilities 4.45 acres



EXHIBIT B
LICENSE AGREEMENT
AND
GOLF COURSE CONCESSION AGREEMENT

[Driving Range]

See following page.

Driving Range – 21.13

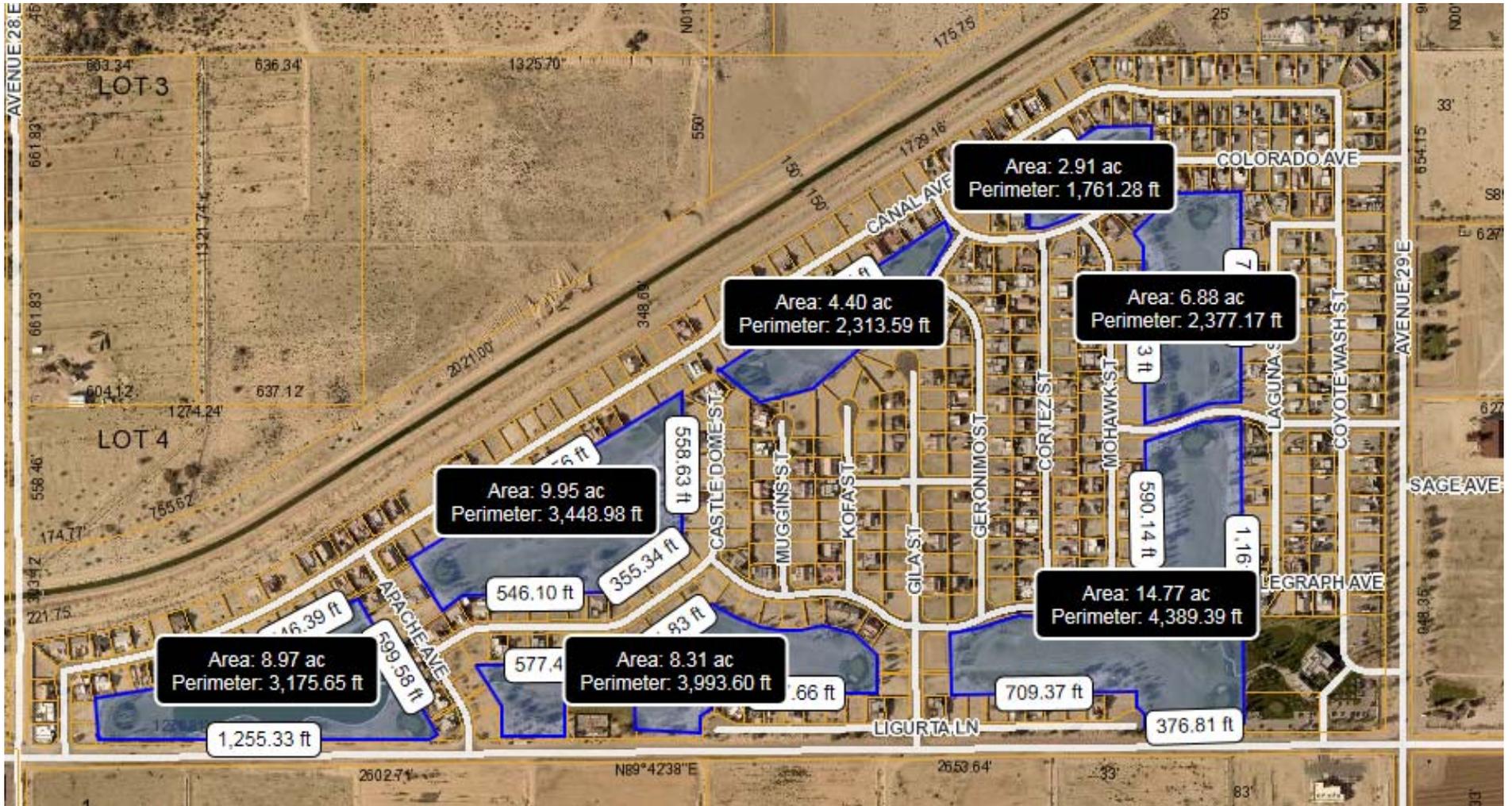


EXHIBIT C
LICENSE AGREEMENT
AND
GOLF COURSE CONCESSION AGREEMENT

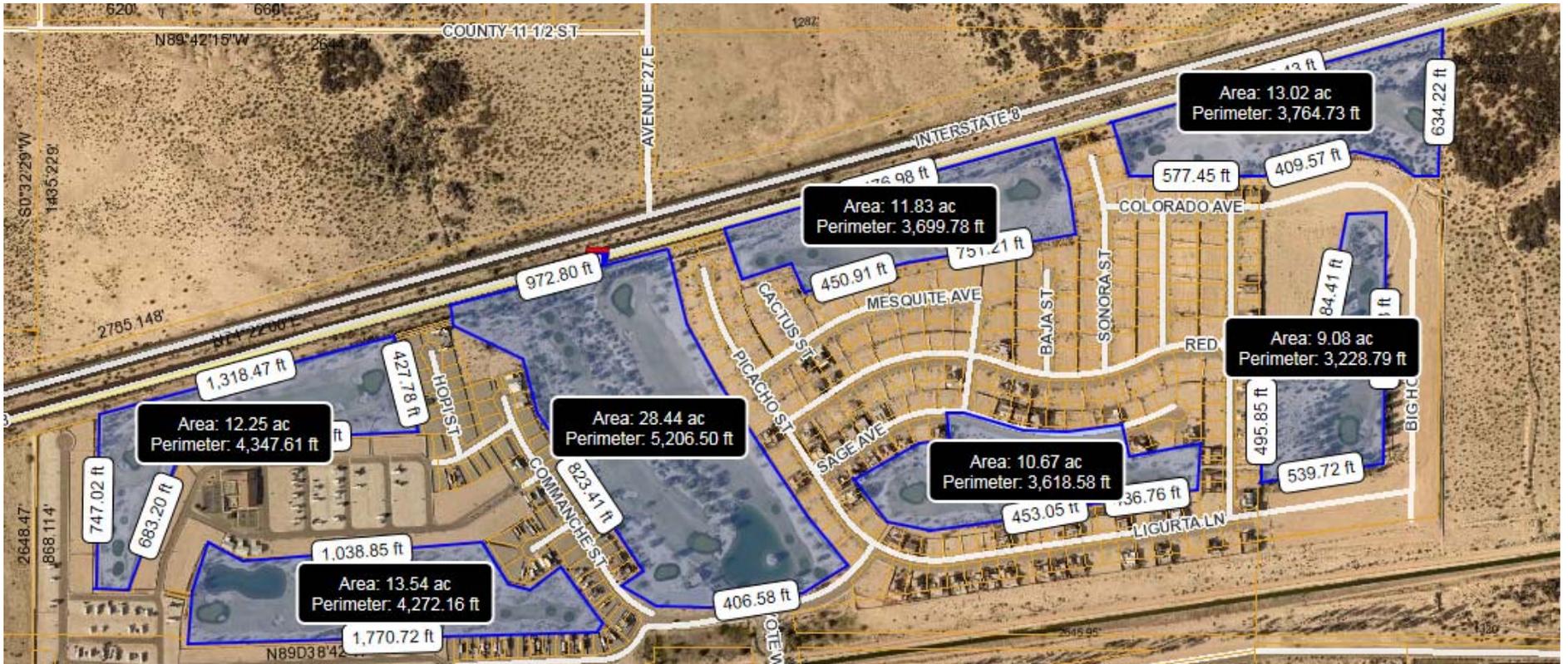
[Golf Course Premises]

See following pages.

Coyote Wash Golf Course Front 9
56.19 acres



Coyote Wash Golf Course Back 9
98.83 acres





Town of Wellton

28634 Oakland Avenue • P.O. Box 67 • Wellton, Arizona 85356 • (928) 785-3348 • Fax (928) 785-4374

Request for Proposal Fact Sheet

Links at Coyote Wash Golf Course

Three (3) Year Annual Average Costs

Water	\$17,000
Electric	\$52,000

Previous rounds, etc Not Available

Previous rental income paid to the Town:

\$35,000 (\$7,000 per month over the 5-month season)