

DRAFT DATED 5.16.16**MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (“Agreement”) is made and entered into as of _____, 2016, by and between the City of Portland, Oregon (“City”) and Kemper Sports Management, Inc., an Illinois corporation (“KSM”), collectively referred to as the “Parties”.

WITNESSETH:

WHEREAS, City owns certain real property and associated golf club facilities located in Portland, Oregon known as “Colwood Golf Center” and referred hereafter to as the “Course”; and

WHEREAS, City and KSM desire for KSM to operate and manage the Course subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the Parties hereto agree as follows:

ARTICLE 1**DEFINITIONS**

1.1 Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth on **Exhibit A** attached hereto.

ARTICLE 2**APPOINTMENT, TERM AND RESERVED RIGHTS**

2.1 Appointment. City hereby retains, engages and appoints KSM as City’s agent to perform the Management Services during the Term, as more fully described herein, and KSM hereby accepts said appointment upon and subject to the terms hereof.

2.2 Term. The initial term of this Agreement shall begin on _____, 2016 (the “Commencement Date”) and shall terminate on the fifth (5th) anniversary of the Commencement Date (the “Termination Date”), unless terminated or extended according to the provisions hereof (the “Term”). The Term may be extended for an additional five (5) year period upon the approval by City and KSM.

2.3 Reserved Rights. All rights not specifically granted to KSM hereunder are reserved to City, with said rights not to be exercised by City in a manner, which unreasonably interferes with KSM’s ability to comply with the terms and conditions of this Agreement.

ARTICLE 3**MANAGEMENT SERVICES**

3.1 Management of the Course. KSM shall perform the management services described in this Article 3 (collectively, the “Management Services”) on behalf of and for the

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account of City, subject to the terms hereof and at all times consistent with the Budgets and the Business Plans approved by City. City hereby delegates to KSM, subject to the terms, conditions and limitations imposed by this Agreement, the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and clubhouse maintenance, and other policies, rules, and regulations affecting the Course or the operation thereof, to implement all of same, and to perform any legal act on behalf of City deemed by KSM to be necessary or desirable for the operation and maintenance of the Course. Notwithstanding the provisions of this Section, subject to sufficient funding in the Budgets, KSM shall operate the Course consistently with the City's golf program and policies that have been provided in writing to KSM.

3.2 Use of the Property

3.2.1 City hereby grants to KSM the right to use and occupy the Property during the Term for the purposes set forth herein. KSM shall, upon the expiration or prior termination of the Term, vacate and surrender the Course and Property to City in as good condition as existed on the Commencement Date (subject to the Business Plans and sufficient funding in the Budgets over the Term), ordinary wear and tear excepted, and free and clear of any liens, claims or encumbrances not authorized by City. The parties agree that this Agreement is a contract for services only and under no circumstances shall it be deemed to be a conveyance of a real property interest in the Course.

3.2.2 The grant of use and occupancy rights are subject to KSM accepting the Course "AS IS", and making no demands on City for any repair, improvement or alteration thereof. Except as specifically provided herein, KSM acknowledges that neither City nor any representative, employee or agent of City has made any representation or warranty to KSM with respect to the conditions at or suitability of the Course, including, but not limited to warranties or representations relative to KSM business expectations associated with the Course. Furthermore, KSM accepts its rights to use and occupy the Course subject to valid existing rights of other parties, including but not limited to easements, leases and permits.

3.3 Scope of Services. KSM will manage all activities of the Course in a professional manner to high quality standards (subject to the Business Plans and sufficient funding in the Budgets), with said activities to include the following, at a minimum:

3.3.1 In consultation with City, complete an annual business plan (the "Business Plan") and associated Budgets (as described more specifically in Section 3.4 herein);

3.3.2 Manage the Course and use commercially reasonable efforts to achieve the objectives of the Business Plan within the limits of the Budgets;

3.3.3 Implement the policies and standards of the Course, as approved by City, to be included in the annual Business Plan;

3.3.4 Except as to Grounds Maintenance (as described in Sections 4.3 herein to be provided by City), manage and supervise all day-to-day operations of the Course, including tee time reservations (except those made through the City-maintained website), collecting green and cart fees, clubhouse

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operations, outside services, managing tournaments and events, payroll and benefits administration, accounting and financial reporting, etc;

- 3.3.5 Hire, pay, train, supervise and regularly evaluate all employees required to carry out KSM's responsibilities provided for herein. All employees performing the Management Services at the Course, shall be employees of KSM and not City;
- 3.3.6 Charge greens fee rates as determined by the City;
- 3.3.7 Manage the Starter Services at the Course, unless otherwise directed by City as provided for in Section 4.4 herein;
- 3.3.8 Subject to the other provisions of this Agreement, reasonably cooperate with City Roving Marshall as required by City. Such cooperation shall include, but not be limited to, providing a working two-way radio, up-to-date tee sheets, and requested information promptly.
- 3.3.9 In consultation with City, establish fair prices and fees for all goods and services (except greens fees) sold and/or provided by KSM at the Course, including but not limited to cart rentals, driving range supplies, pro shop merchandise, and food and beverage items. Said prices and fees will be consistent with the Business Plan and Budgets.
- 3.3.10 Except for Grounds Maintenance, as defined herein, manage payment of all Course expenses as identified in the Budgets;
- 3.3.11 In consultation with City, determine hours of operations, dress code requirements, establish outside services, establish handicap services, and golf instruction programs;
- 3.3.12 Acquire all goods and services necessary to carry out KSM's responsibilities within the limits of the Budgets;
- 3.3.13 Market the Course to achieve Business Plan objectives;
- 3.3.14 Obtain necessary licenses and other operating permits;
- 3.3.15 Comply with all insurance and legal requirements of the Course, at all times complying with minimum insurance requirements provided for herein, with said minimums subject to change based upon the reasonable request of City.
- 3.3.16 With the exception of Grounds Maintenance services to be provided by City as provided for below, maintain, repair and make improvements to keep the Course in good, clean and safe order (subject to the Business Plans and sufficient funding in the Budgets). Significant repairs and improvements will be made in consultation with City and in accordance with applicable laws and regulatory authorizations, as provided for herein.

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- 3.3.17 Provide for golf instruction by qualified instructors accredited by the PGA.
- 3.3.18 Coordinate with and promote the First Tee of Greater Portland Program as approved by the City. KSM shall conduct junior tournaments at reduced-rate entry fees.
- 3.3.19 If required by City, work with the City's Golf Director to implement a caddy program for youth at the Course. If a caddy program is implemented, the Business Plan and Budgets will be revised accordingly.
- 3.3.20 In consultation with the City's Golf Director, the Business Plan and Budgets will include development and implementation of outreach program(s) to reach, but not limited to, first time golfers, underserved populations and people of color in the City.
- 3.3.21 In consultation with the City's Golf Director, KSM will investigate potential clubhouse renovations that would enhance the Food and Beverage and banquet business. The City will approve any clubhouse renovation as part of the Business Plan and Budget approval process.
- 3.3.22 In consultation with City maintenance personnel, and unless directed otherwise by the City's Golf Director, KSM will decide when to temporarily suspend play on the Course due to inclement weather conditions, when to allow play to resume and when to allow golf carts on the Golf Course;
- 3.3.23 Promptly, after becoming aware of such conditions or practices, correct any unsafe condition of the Course, as well as any unsafe practices by persons reasonably under KSM control thereon. Promptly after becoming aware of the occurrence of damage to persons or property occurring on the Course, KSM shall submit to City a written report on the incident. KSM shall cooperate fully with City in the investigation of any damage to persons or property occurring on or about the Premises.
- 3.3.24 Not post outdoor signs at or on the Course without written authorization by City.
- 3.3.25 Conduct monthly meetings with the City to review performance of the Course, including updates from the KSM General Manager and KSM Regional Operations Manager (either in person or by phone).

3.4 **Budgets.** The City of Portland's fiscal year begins July 1 and ends June 30. All budgets, as hereinafter set forth (collectively the "Budgets"), shall be prepared with the advice and counsel of City, based on what KSM believes to be reasonable assumptions and projections, and delivered to City for City's review and written approval. All Budgets shall be presented in reasonable detail. KSM shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the Budgets and the parties acknowledge that the Budgets are based solely upon KSM's judgment and the facts and circumstances known by KSM at the time of preparation.

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3.4.1 Operating Budget. No later than January 1 of each year, or as otherwise reasonably required by City, KSM shall submit to City, for City's review and written approval, an Operating Budget setting forth the forecasted revenues and expenses associated with the operations of the Course for the upcoming fiscal year or part thereof within the Term (the "Operating Budget"). In addition, KSM shall provide updated budget information to City two (2) other times during the year, such times to be reasonably determined by City. City will inform KSM of the deadlines for receipt of updated budgets no less than thirty (30) days prior to such deadlines.

3.4.2 Capital Expenditures Budget. No later than January 1 of each year, or as otherwise reasonably required by City, KSM shall submit to City, for City's review and written approval, a budget setting forth the proposed capital improvements (including equipment purchases and leases) within and to the Property for the upcoming fiscal year or part thereof within the Term (the "Capital Expenditures Budget"). In addition, KSM shall provide updated budget information to City two (2) other times during the year, such times to be reasonably determined by City. City will inform KSM of the deadlines for receipt of updated budgets no less than thirty (30) days prior to such deadlines.

3.4.3 City's Review and Approval of Budgets. The Budgets shall be for City's review and written approval, subject to the terms of this Agreement. City shall give its written comments and/or approval within thirty (30) days after KSM delivers the Budgets to City. In the event of disapproval of any Budgets, KSM shall continue operating the Course pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenues or (ii) other matters beyond the control of KSM, until such time as City and KSM agree upon the appropriate replacement Budgets.

3.4.4 Unanticipated Expenditures and Reallocation of Funds. City agrees that the Budgets are intended to be reasonable estimates, and, accordingly, KSM shall be entitled from time to time to revise the Budgets to cover any expenditures that were unanticipated at the time of preparation of the Budgets but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, KSM shall be required to obtain City's prior written approval of any expenditures which would result in the total budgeted expenditures being exceeded by more than five percent (5%). KSM is authorized to take all action reasonably deemed necessary by KSM to implement, perform, or cause the performance of the items set forth in the Budgets. City acknowledges that KSM has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenues or Operating Expenses to be generated or incurred from the operation of the Course.

3.4.5 Total Budget Amount. Except as otherwise approved in writing by City, KSM shall use its best efforts to limit total expenses (both budgeted and emergency) to the total approved budget for the fiscal year.

3.5 Accounting and Record Keeping. KSM will keep its books and records in a professional manner, in compliance with applicable laws and other terms and conditions of this Agreement, with said responsibilities to include the following, at a minimum:

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3.5.1 Financial Management, Accounting Records and Reporting. KSM will employ an on-site accountant or bookkeeper (the cost of which shall be an Operating Expense) for the Course whose duties shall include: (i) maintaining all books, records, and other data associated with the financial activities of the Course, (ii) preparing all operating budgets, cash flow budgets, and other financial forecasts, and (iii) being responsible for the day-to-day financial affairs of the Course. All accounting records shall be maintained in a format consistent (in all material respects) with generally accepted accounting principles.

3.5.2 Financial Reporting. During the Term, KSM shall provide the following financial statements in a format reasonably specified by City.

3.5.2.1 Subject to the City funding and approving of installation of an appropriate point of sale system at the Course that proves for the automated e-mailing of the requisite reports, KSM shall submit to City, within one (1) business day, a statement showing revenue generated for each day of Course operations, in the following categories at a minimum: (i) greens fees by round category, (ii) driving range, (iii) cart rentals by round category, (iv) pro shop merchandise, (v) club rentals, (vi) lessons, (vii) food and non-alcoholic beverages, (viii) beer and wine, and (ix) liquor.

3.5.2.2 KSM shall submit to City, within twenty (20) days after the close of each calendar month, a financial statement showing in reasonably accurate detail the financial activities of the Course for the preceding calendar month and the fiscal year to date.

3.5.2.3 KSM shall submit to City, within sixty (60) days after the close of each fiscal year, a financial statement showing in reasonably accurate detail the financial activities of the Course for the fiscal year then ended in compliance with GAAP.

3.5.2.4 KSM shall submit to City, within seven (7) days of receiving request, to the extent reasonably possible, any reasonable specific data of the Course required by City to analyze past or current operations.

3.5.3 Internal Control. KSM agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Course, such controls to be consistent (in all material respects) with generally accepted accounting principles.

3.5.4 Audits. The City or its representative may conduct random audits of KSM (but no more frequently than once every twelve (12) months) at the Course at reasonable times agreed to by the Parties, not to exceed ten (10) days from date of request by City. In the event that said audit identifies material deficiencies in KSM record keeping practices, said practices will be corrected as recommended by the audit. The City shall be responsible for the costs of any audit performed under this Section, except that, if such audit discloses an Event of Default in KSM's performance under this Agreement, and that default is not

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cured as provided herein, the City shall be entitled to recover the reasonable costs of such audit in any action for damages or to enforce the provisions of this Agreement.

3.5.5 Records and Inspection. KSM shall maintain a set of all financial, vendor, employee and operating records relating to the Course on site at the Course. At any time during the Term, City shall have the right, after one (1) day prior written notice to KSM, to inspect the books, records, invoices, deposits, canceled checks, or other financial data or transactions of the Course at reasonable times and during normal business hours; provided, however, City shall use its best efforts to not cause any disruptions in the operations of the Course in connection with such inspections. Except as relevant to KSM's operations at the Course, such inspection rights shall not extend to inspection of any KSM corporate records or any records relating to any other projects or locations. Upon expiration or termination of this Agreement, KSM will promptly turn over all such Course records to City.

3.6 Bank Accounts.

3.6.1 Revenue. City shall maintain, in City's name only, a deposit account for receipt of all Gross Revenues generated from operations at the Course. Without exception, KSM shall collect, receive, and deposit daily, or within one day of all holidays and Sundays, all Gross Revenues in said account. Such deposits shall be made by daily by KSM's Manager in Charge at the Course. Under no circumstances shall KSM deposit any revenues from Course operations into a non-City account or deduct any expenses, including Management Fees due, from Gross Revenues before deposit. If at any time KSM fails to deposit daily total Gross Revenues into the specified City revenue bank account, KSM must notify the City's Golf Director of the occurrence and the reason for such delay promptly upon its knowledge of such occurrence. If such delay continues for a third day after such notification, without the written approval of the City's Golf Director, such delay shall be an Event of Default by KSM. If KSM fails to pay any revenue due the City by the due date, a late charge will be assessed in accordance with Section 7.5.

3.6.2 Expenses. To the extent permitted by law, KSM shall establish, in KSM's name, an operating expense account (the "Operating Expense Account"). All Operating Expenses (including all payroll obligations) shall be handled and expended exclusively through the Operating Expense Account.

3.6.3 In the event that any applicable Law prevents all or portion of the banking arrangements provided for herein, the Parties will take whatever steps which are reasonably necessary to make substitute arrangements which conform to the intent of this provision.

3.7 Environmental Remediation. Throughout the Term, if KSM becomes aware of the presence of any Hazardous Material in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under the Property or if KSM, City, the Course, or the Property becomes subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up the Property, KSM shall, at City's request and sole expense, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification,

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decontamination or other cleanup of the Property; provided that such remediation activities shall be at KSM's expense if such activities are required as a direct consequence of Hazardous Material being present in, on or under the Property solely as a result of grossly negligent actions undertaken by KSM. City acknowledges and agrees that City shall be solely responsible for any legal or other liability arising out of the presence of any Hazardous Material in, on or under the Property, except to the extent such Hazardous Material is present in, on or under the Property solely as a result of the grossly negligent acts or omissions of KSM.

3.8 Contracts. KSM shall negotiate, consummate, enter into, and perform, in the name of City, such agreements as KSM may deem necessary or advisable for the furnishing of all food, beverages, utilities, concessions, golf carts, entertainment, operating supplies, equipment, repairs and other materials and services as KSM determines are needed from time to time for the management and operation of the Course, as long as such contracts are in the best financial interest of the City. Notwithstanding the above, any contract which exceeds Twenty Five Thousand Dollars (\$25,000) in total payments over the term of such contract or which has a term of over one (1) year shall require the prior written consent of City, which consent shall be deemed to have been given if City neither consents nor disapproves within ten (10) business days after KSM's written request for approval.

3.9 Licenses, Permits, and Accreditations. KSM shall apply for and use its commercially reasonable efforts to obtain and maintain, in City's name (or, if otherwise required by applicable law, in KSM's name), all licenses, permits, and accreditations required in connection with the management and operation of the Course, the cost of which shall be an Operating Expense. City will cooperate with KSM in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations. Prior to commencing work under this Agreement, KSM shall obtain a City of Portland business license, and shall maintain that license throughout the term of this Agreement. KSM's business license fee payments shall not be operating expenses reimbursable by the City.

3.10 Legal Action. KSM may not institute any legal action by or on behalf of City or the Course without the prior written consent of City and City may not institute any legal action by or on behalf of KSM without the prior written consent of KSM.

3.11 Emergency Expenditures. In the event, at any time during the Term, a condition should exist in, on, or about the Property of an emergency nature which, in KSM's reasonable discretion, requires immediate action to preserve and protect the Course, to better assure the Course's continued operation, or to protect the Course's customers, guests, or employees, KSM is authorized to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such condition, whether or not provisions have been made in the applicable Budgets for any such expenditures. KSM shall notify the City's Golf Director and/or Course Maintenance Supervisor of the need for, and estimated amount of, any such emergency expenditures the same calendar day KSM becomes aware of the condition, to the extent reasonably practicable.

3.12 Compliance with Laws. KSM shall (i) comply with all federal, state and local laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively "Laws")

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applicable to the use, operation, and management of the Course, whether or not compliance therewith shall interfere with the use and enjoyment of the Course; and (ii), except for those which are the obligation of City or City's separate contractors, procure, maintain and comply with all licenses and other authorizations required for any use of the Course then being made, and for the operation and management of the Course or any part thereof, the costs of which shall be Operating Expenses. Notwithstanding the foregoing, City acknowledges and agrees that City or its construction contractors shall be responsible for procuring, maintaining and complying with all licenses and other authorizations relating to design, construction, zoning, erection, installation and similar matters relating to any construction at the Course, except as specifically agreed otherwise in writing. If at any time during the Term KSM is notified or determines that repairs, additions, changes, or corrections in the Property of any nature shall be required by reason of any Laws, KSM shall notify City and request City's consent to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such repairs, additions, changes, or corrections whether or not provisions have been made in the applicable Budgets for any such expenditures, the costs of which shall be Operating Expenses. If City withholds such consent, KSM shall not be liable for any failure of the Property to be in compliance with such Laws. KSM shall comply with the City of Portland's Equal Benefits Ordinance ("Equal Benefits Ordinance") and the administrative rules pertaining thereto, all of which are incorporated by this reference. KSM understands that failure of KSM to comply with the Equal Benefits Ordinance may permit the City to impose sanctions or require remedial actions as provided in Section 13.1 of the administrative rules. KSM shall comply with all applicable requirements of federal and state civil rights and rehabilitations statutes, rules and regulations, including, without limitation, the Americans With Disabilities Act and ORS 659.425, and all applicable regulations and administrative rules established pursuant to those laws.

3.13 Liens. KSM shall keep the Course free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of KSM. If any lien is filed against any portion of the Course or other City property used in connection with this Agreement as a result of the acts or omissions of KSM, or of KSM's employees, agents or contractors, KSM shall discharge, bond or otherwise secure the same to City's reasonable satisfaction within thirty (30) days after KSM has notice that the lien has been filed. If KSM fails to discharge, bond or secure any lien within such thirty (30) day period, then, in addition to any other right or remedy of City, City may, at its election, upon five (5) days' prior written notice to KSM, discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding. If such failure is due to KSM's gross negligence, KSM shall pay on demand any amount so paid by City for the discharge or satisfaction of any lien, and all reasonable attorneys' fees and other legal expenses of City incurred in defending any such action or in obtaining the discharge of such lien, together with all necessary reasonable disbursements in connection therewith. All costs incurred in connection with the discharge of any such liens shall be Operating Expenses of the Course, except to the extent caused by the negligence or willful misconduct of KSM.

3.14 Other Duties and Prerogatives. Subject to limitations imposed herein, KSM shall use commercially reasonable efforts to perform any act that is necessary to operate and manage the Course during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, KSM shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of

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proceeds from the operation of the Course, the incurring of trade debts in City's name (other than mortgage indebtedness), the approval and payment of obligations, and the negotiating and signing of leases and contracts. KSM shall not be obligated to advance any of its own funds to or for the account of City or to incur any liability, unless City shall have furnished KSM with funds necessary for the full discharge thereof. Further, KSM shall not be obligated to sign any leases, contracts or other agreements in KSM's name. However, if for any reason KSM shall have advanced funds in payment of any budgeted or reasonably necessary emergency expense in connection with the maintenance and operation of the Course or the Property, City shall reimburse KSM within thirty (30) days after invoice for the full amount of such payments.

3.15 KSM Purchases. In connection with any purchases made by KSM or an Affiliate of KSM for the account of City, it is understood that KSM or such Affiliate may receive the benefits of lower costs, and that any resulting savings shall be passed on to City, including representatives' fees. In addition, all trade discounts, rebates and refunds pertaining directly to purchases for the Course shall accrue to the benefit of City. If any purchases of goods or services for the Course are made from or through an Affiliate of KSM, the charges to the Course for such goods or services shall be on the same terms as those of like purchases made to other golf courses and country clubs operated by KSM and such charges shall not exceed the market prices for such goods and services.

3.16 Surety Bond. KSM performance provided for herein will be guaranteed through a surety bond in a form reasonably acceptable to City in the amount of \$100,000. The costs associated with procuring and maintaining such surety bond during the Term of the Agreement shall be the sole responsibility of KSM.

3.17 Employees. As part of the Operating Budget, KSM shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and Course incentive programs, provided such incentives shall be subject to the approval of City. KSM shall hire, promote, discharge, and supervise all employees performing services in and about the Course, except Grounds Maintenance personnel. All of the employees of the Course, except Grounds Maintenance personnel, shall be employees of KSM. Upon commencement of this Agreement, KSM shall individually assess all current Colwood Golf Center staff and their job functions and determine whether to continue to employ them.

ARTICLE 4

AUTHORITIES AND RESPONSIBILITIES OF CITY

4.1 Expenditures. City acknowledges that it is solely responsible for all Operating Expenses of the Course and all KSM expenditures under this Agreement provided that such expenditures are made in accordance with the approved Budget or otherwise in accordance with the terms of this Agreement. Except as otherwise expressly provided in this Agreement, City shall be responsible for all other expenditures and obligations in connection with the Course, including without limitation, all federal, state and local taxes and all principal and interest payments on indebtedness. The City shall not reimburse KSM for any interest charges, penalties or late fees

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imposed on KSM on account of late payment of any expenses, bills, taxes or fees if caused by the negligence or willful misconduct of KSM. The City has ultimate approval authority for all Operating Expenses, which approval shall not be unreasonably withheld and will not be withheld if the Operating Expenses are within the Approved Budgets.

4.2 City's Advances. City shall advance funds to the bank account described in Section 3.6.2 to conduct the affairs of the Course and maintain the Property (the "City's Advances") as set forth below. Such City's Advances may be paid by check or wire transfer. City acknowledges and agrees that it has sole responsibility for providing City's Advances and KSM shall have no responsibility to provide funds for the payment of any Operating Expenses, debts or other amounts payable by or on behalf of the Course, the Property or City.

4.2.1 Operating Expense Account. No later than fifteen (15) days after the Commencement Date (and in any event, prior to KSM's incurrence of any Operating Expenses), City shall deposit into the Operating Expense Account, City's Advances equal to the first month's estimated Operating Expenses, including all payroll obligations (as specified in the approved Budget). KSM shall use the funds in the Operating Expense Account to pay the Operating Expenses of the Course. No later than fifteen (15) days before the start of any subsequent month, KSM shall provide City with a statement describing the anticipated Operating Expenses for the next month. Within ten (10) days after City's receipt of such statement from KSM, City shall remit to the Operating Expense Account the amount set forth in such statement. City and KSM shall work together to reconcile estimates to actual expenses and deduct or add calculated difference from subsequent advances.

4.3 Grounds Maintenance.

4.3.1 City shall be responsible for all maintenance services associated with the golf courses, cart paths, walkways, fencing and gateways, landscaping and grounds (the "Grounds Maintenance"). In connection therewith, City shall be required to make all repairs and corrections that may be needed from time to time in the areas described above.

4.3.2 Notwithstanding anything to the contrary herein, in the event that the grounds are damaged as a result of KSM gross negligence, City will repair the damage and invoice KSM for the cost of said repair. KSM payments for the repairs will not be considered Operating Expenses. Such gross negligence shall constitute an Event of Default by KSM.

4.4 Starter Services/Roving Marshall.

4.4.1 City reserves the right to take over starter and/or marshal services with thirty (30) days written notice to KSM.

4.4.2 City reserves the right to employ a Roving Marshal who will have the right to audit KSM directed Starter & Marshall Services and whether KSM is collecting greens fees in accordance with this Agreement at any time without advanced notice; provided however, that such Roving Marshall shall not cause any disruptions in the operations of the Course in connection with such audits. KSM employees and KSM directed Starter Services shall reasonably cooperate in any unannounced audit by the City of the Starter

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Service and greens fees collections. City shall ensure that any such Roving Marshall will act in a professional and courteous manner consistent with a position of this type at other high quality golf courses and will reasonably cooperate with KSM in connection with his or her activities at the Course.

4.5 Right of Entry. City and its employees and contractors, including the Golf Program's Roving Marshal, shall have a right of entry to the Course at all times for any purposes, including, without limitation: to determine whether the Course is in good condition and whether KSM is complying with its obligations under this Agreement; to do any necessary Grounds Maintenance and to make any restoration to the Course that City has the right to perform; and to serve, post or keep posted any notices required or allowed under the provisions of this Agreement; provided, however, that City shall use its best efforts to ensure that any such right of entry shall cause no unreasonable disruptions in the operations of the Course.

4.6 Sponsorship Agreements and Contracts. City reserves the right to have sponsorship and purchasing contracts outside this Agreement to maximize revenue opportunities generated by the business operations at the Course. KSM agrees to reasonably comply with the provisions of any such sponsorship or purchasing contract that City negotiates on behalf of the business operations at the Course, provided, that KSM receives prior written notice of such provisions. Revenue generated by such sponsorship and purchasing contracts negotiated by City will not be included in the calculation of Gross Revenues of the Course.

ARTICLE 5

FEES, EXPENSES AND RECEIPTS.

5.1 Operations Management Fee. During the Term, City shall pay KSM an annual operations management fee (the "Management Fee") calculated as follows:

5.1.1 The Management Fee shall be composed of a Fixed Management Fee, paid monthly, and an Incentive Management fee, paid annually.

5.1.2 The Management Fee shall be equal to an annual Fixed Management Fee of \$60,000 paid in twelve (12) monthly installments of \$5,000, plus an Incentive Management Fee equal to ten percent (10%) of positive Net Operating Income from Food and Beverage operation.

5.1.3 The Fixed Management Fee shall be paid monthly, no later than the fifteenth day of each calendar month. The Incentive Management Fee shall be due and payable annually, within thirty (30) days of City's receipt of fiscal year-end audited financial statements as provided for in Section 3.5.2.2 of this Agreement. Payment of the Management Fee may be made directly from the Operating Expense Account.

5.2 Travel and Incidental Expenses. All travel and incidental expenses of KSM's corporate and regional personnel incurred by KSM in the performance of this Agreement shall be the sole responsibility of KSM.

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5.3 Late Fees. City shall pay to KSM all of the fees described above, and any other sums due KSM, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by City or KSM to the other Party pursuant to the terms hereof shall become overdue for a period of thirty (30) days, a “late charge” may be charged for the purpose of defraying the expense incident to handling such delinquency. The late charge shall be equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the highest amount allowed to be charged by applicable law. In the event any portion of this Section violates any state or federal law or regulation, this Section shall be deemed void and shall have no other effect or make invalid any other provision of this Agreement. Further, nothing herein shall be construed as waiving any rights of either Party arising out of any Events of Default by the other Party by reason of assessing or accepting any such late payment or late charge; the right to collect the late charge is separate and apart from any rights relating to remedies after default by either Party in the performance or observance of the terms of this Agreement.

ARTICLE 6**COVENANTS AND REPRESENTATIONS**

6.1 City’s Covenants and Representations. City makes the following covenants and representations to KSM, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.1.1 Corporate Status. City is a municipality in good standing under the laws of the State of Oregon, with full power and authority to enter into this Agreement.

6.1.2 Authorization. The making, execution, delivery, and performance of this Agreement by City has been duly authorized and approved by all requisite action, and this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms.

6.1.3 Effect of Agreement. Neither the execution and delivery of this Agreement by City nor City’s performance of any obligation hereunder (a) shall constitute a violation of any law, ruling, regulation, or order to which City is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which City is a party or is otherwise bound, or (ii) to which the Course, the Property or any part thereof is subject.

6.1.4 Ownership Rights. City shall obtain and retain the property interests in the Course and the Property necessary to enable KSM to perform its duties pursuant to this Agreement peaceably and quietly. City represents and warrants that KSM’s performance of the services required by this Agreement shall not violate the property rights or interests of any other Person. Notwithstanding this provision, KSM acknowledges that the City has an agreement with First Tee of Greater Portland (First Tee) respecting the operation of the First Tee program at the Course, and KSM’s performance of the services required by this Agreement include, as provided in Section 3.3.18 hereof, coordination with and promotion of First Tee’s program, subject to First Tee’s rights and responsibilities to the City under that existing agreement.

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6.1.5 Documentation. If necessary to carry out the intent of this Agreement, City agrees to execute and provide to KSM, on or after the Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which KSM may reasonably request in connection with the operation of the Course.

6.2 KSM's Covenants and Representations. KSM makes the following covenants and representations to City, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.2.1 Corporate Status. KSM is a corporation duly organized, validly existing, and in good standing under the laws of Illinois, and authorized to transact business in Oregon, with full corporate power to enter into this Agreement and execute all documents required hereunder.

6.2.2 Authorization. The making, execution, delivery, and performance of this Agreement by KSM has been duly authorized and approved by all requisite action of the board of directors of KSM, and this Agreement has been duly executed and delivered by KSM and constitutes a valid and binding obligation of KSM, enforceable in accordance with its terms.

6.2.3 Effect of Agreement. Neither the execution and delivery of this Agreement by KSM nor KSM's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which KSM is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which KSM is a party or is otherwise bound.

ARTICLE 7

INSURANCE

7.1 Course Insurance. During the Term, KSM shall secure, the cost of which shall be an Operating Expense, the following insurance covering its on-site activities under this Agreement. All such insurance shall name the City and its officers, directors, employees, agents and representatives as additional insureds. KSM shall deliver to City certificates of insurance evidencing the above-required policies. All policies of insurance shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to City. If such endorsement is not obtainable from the insurer(s), KSM shall provide to City the required 30-day prior written notice in the manner set forth in this Section.

(A) Property Insurance covering loss or damage to the buildings, structures or other Improvements, contents, equipment and supplies. City shall provide KSM with the appropriate written specifications for all property to be insured under such policy. City understands that coverage for flood, earthquake or wind damage shall be excluded from coverage and damages connected with such events shall be an Operating Expense. Upon City's written request, KSM will attempt to obtain coverage for flood, earthquake and/or wind damage and, if available, such coverage shall be an Operating Expense. Such

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Property Insurance shall include a waiver of all right of recovery by way of subrogation against KSM and City in relation to any damage covered by such policy.

(B) Commercial General Liability and/or Umbrella/Excess Liability Insurance providing coverage for bodily injury and property damage arising in connection with the operation of the Course or on the Property and including coverage for contractual liability providing limits of not less than:

Bodily Injury and Property Damage Liability -	\$5,000,000 each occurrence
Personal Injury and Advertising Liability -	\$5,000,000 per person or per organization
General Policy Aggregate -	\$5,000,000
Products Liability/Completed Operations Aggregate -	\$5,000,000

(C) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000.

(D) Commercial Liquor Liability including coverage for damages arising out of the selling, serving or furnishing of any alcoholic beverage with a limit of \$5,000,000 per occurrence/\$5,000,000 aggregate limit or the minimum limits required by statute if higher.

Special Note: the limits of liability specified in A, B, C, and D above can be satisfied through a combination of primary, umbrella or excess liability policies, provided that the coverage under such umbrella or excess liability policies is at least as broad as the primary coverage.

(E) Business Interruption, Loss of Income and Extra Expense Insurance that will reimburse City and KSM for direct and indirect loss of earnings attributable to six months of business interruption and for the actual loss sustained until the structures are substantially rebuilt after an insured property loss.

(F) Workers' Compensation Insurance in such amounts that comply with applicable statutory requirements, and Employer's Liability limits, including Umbrella Liability Insurance, if necessary, of not less than \$1,000,000 per accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease each employee.

(G) Fidelity Bond or Fidelity Insurance at \$250,000 per occurrence, covering all employees who have access to or responsibility for or who handle City funds.

The expenses for all the coverages outlined in (A) through (G) above shall be Operating Expenses.

7.2 City's Option to Provide Insurance. Upon City's prior written notification to KSM, City may procure and maintain, at City's sole cost and expense, through self-insurance or through policies with insurance companies rated at least A- by Best's Key Rating Guide, and licensed to do business in Oregon, sufficient insurance fully covering the Property and operation of the

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Course, in at least the amounts specified in Section 8.1 (A) through (E) above. To the extent obtainable all such insurance shall name KSM and its shareholders, officers, directors, employees, agents and representatives as additional insureds. City shall deliver to KSM certificates of insurance evidencing the above-required policies. Property insurance shall include a waiver of all recovery by way of subrogation against KSM and City in relation to any damage covered by such policy.

Within fifteen (15) days after receipt of such written notification from City, along with appropriate certificates of insurance, KSM shall no longer secure the coverage specified in Section 8.1 (A) through (E) above; provided, however, that KSM shall continue to secure the coverage specified in Section 8.1 (F) and (G) above plus insurance covering premises damage and legal liability for City's property even though under the care, custody and control of KSM. The expenses for the coverages provided by KSM shall be Operating Expenses. Any cost savings resulting from City's decision to provide insurance shall reduce the total Approved Budget by the same amount.

7.3 Waiver of Subrogation. Notwithstanding anything else contained in this Agreement, City and KSM each hereby waive all rights of recovery against the other and their Affiliates, and against each of their officers, employees, agents and representatives, on account of loss by or damage to the waiving party's property or the property of others under its control, to the extent that such loss or damage is (i) insured against under any insurance policy, or self-insurance, which either may have in force at the time of the loss or damage; or (ii) is required to be insured against in accordance with this Agreement; or (iii) given the facts and circumstances surrounding the Property and the Course, should reasonably be insured against by the City (in any case, regardless of whether or not such insurance policy is in effect). KSM and City shall, upon obtaining any policies of insurance required under this Agreement, give notice to their respective insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement. This waiver of subrogation shall survive the expiration or termination of this Agreement.

ARTICLE 8

DAMAGE AND CONDEMNATION

8.1 Substantial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements are damaged or destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to such effective date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Course).

8.2 Partial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements, or any portion thereof, is damaged or destroyed by fire or other casualty and

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such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, City, subject to receipt of insurance proceeds or other available funding, shall have the obligation to repair the damaged Real Property, Tangible Personal Property, and/or Improvements as nearly as practicable to the condition the same were in prior to such damage. City shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

8.3 Substantial Condemnation. In the event (i) all or substantially all of the Real Property is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or (ii) a substantial portion of the Real Property is so taken, but the result is that it is unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, then either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the conclusion of the condemnation proceedings. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both parties shall pay all amounts due to the other party up to the date of termination (or, with respect to amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Course).

8.4 Partial Condemnation. In the event a portion of the Real Property shall be taken by any of the events described in Section 9.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, this Agreement shall not terminate. It is further agreed that any portion of any award, damages or other compensation paid to City on account of such partial taking, condemnation, or sale as is necessary to render the Property equivalent to its condition prior to such event shall be used for such purpose.

ARTICLE 9

INDEMNIFICATION

9.1 City's Indemnification Obligations. To the fullest extent permitted by law and except as provided in Section 9.4, City shall defend, indemnify and hold KSM and its Affiliates and each of their shareholders, members, officers, directors, managers, employees, agents, and representatives (the "KSM Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to (i) the performance of the Management Services or the Development Management Services on behalf of City, and (ii) the ownership, leasing, organization, development or construction of the Course, the Property or the Clubhouse Project; and (iii) Hazardous Materials or other conditions existing at the Course or the Property, except to the extent KSM's responsibility pursuant to Section 3.7; and (iv) the use by KSM of Course trade names, trademarks, logos or other intellectual property used in connection with the Course; and (v) the Grounds Maintenance (as described in Section 4.3) and the employees performing the Grounds Maintenance services, as well as the Golf Course Roving Marshall; and (vi) the starter and marshal services and the employees performing the starter and marshal services in the event that City elects to take over the

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starter and/or marshal services (as described in Section 4.4.1); and (vii) any acts or omissions of City (or its officers, directors, agents, employees, representatives, contractors and others for whom City is responsible); and (viii) any activities in connection with the transition of the management of the Course to KSM; and (ix) the relationship between City or any of City's Affiliates and the prior management company of the Course or any acts or omissions of the prior management company; except to the extent such liabilities were caused by KSM's willful or criminal misconduct, gross negligence or fraud. Except as otherwise provided for in this indemnification, City's duty to defend and indemnify KSM and the KSM Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term.

9.2 KSM's Indemnification Obligations. Except as provided in Section 9.4, KSM shall, to the fullest extent permitted by law, defend, indemnify and hold City and City's shareholders, officers, directors, employees, agents, and representatives (the "City Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to KSM's or KSM Related Parties' willful misconduct, fraud, or negligent acts or omissions, except to the extent such acts or omissions were directed or approved by City, or such liabilities were caused by City's willful or criminal misconduct, gross negligence or fraud. KSM's duty to defend and indemnify City and the City Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place prior to, during, or after the Term. Notwithstanding anything else contained herein, City acknowledges that KSM shall not be responsible for any damage to property under its care custody and control, to the extent that KSM has covered such damage by appropriate insurance coverage as described herein.

9.3 Survival. The defense and indemnification obligations contained in this Article 11 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 10

RIGHT TO CURE

10.1 Performance. If, after the expiration of any permitted grace period or notice and cure period, a party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other party. Notwithstanding the above, in the case of an emergency, either party may, after notice to the other party, so reasonably perform in the other party's stead prior to the expiration of any applicable grace period; provided, however, the other party shall not be deemed in default under this Agreement.

10.2 Reimbursement. If, pursuant to this Article, either party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such party, with all interest,

cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

ARTICLE 11

EVENTS OF DEFAULT

The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an “Event of Default”):

11.1 Failure to Pay Sums Due – Revenue. KSM’s act of depositing any Course revenue into a non-City bank account, or KSM’s failure to deposit daily total Gross Revenues from the Course into the specified City bank account, with such failure continuing for more than three (3) consecutive days after written notice of such failure from City, without written approval from the City's Golf Director.

11.2 Failure to Pay Sums Due – Non-revenue. Either party’s failure to pay any non-revenue sums payable under this Agreement (including, without limitation, City’s failure to make payments in connection with the Loan or repayment of the Loan), when and as the same shall become due and payable and such failure shall continue for a period of five (5) business days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

11.3 Failure to Comply. Either party’s material failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

11.4 Bankruptcy. If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing.

11.5 Reorganization; Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment,

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or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE 12**REMEDIES**

12.1 City's Remedies. Upon the occurrence of an Event of Default by KSM, City may:

12.1.1 Seek specific performance of KSM's obligations or injunctive relief, as applicable;

12.1.2 Offset the amount due from Management Fees due KSM hereunder. Demand and receive payment of all amounts due City under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of City arising due to KSM's Event of Default;

12.1.3 Proceed to remedy the Event of Default, and in connection with such remedy, City may pay all expenses and employ counsel. All sums so expended or obligations incurred by City in connection therewith shall be paid by KSM to City, upon demand by City, and on failure of such reimbursement, City may, at City's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to KSM from City under the terms of this Agreement; and

12.1.4 Terminate this Agreement by written notice of termination to KSM. Upon proper termination of this Agreement, KSM shall surrender occupancy of the Property to City.

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

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS AND LOSS OF GOODWILL) EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 KSM's Remedies. Upon the occurrence of an Event of Default by City, KSM may:

12.2.1 Seek specific performance of City's obligations or injunctive relief, as applicable;

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12.2.2 Demand and receive payment of all amounts due KSM under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of KSM due to City's Event of Default;

12.2.3 Proceed to remedy the Event of Default, and in connection with such remedy, KSM may pay all expenses and employ counsel. All sums so expended or obligations incurred by KSM in connection therewith shall be paid by City to KSM, upon demand by KSM, and on failure of such reimbursement, KSM may, at KSM's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to City from KSM under the terms of this Agreement; and

12.2.4 Terminate this Agreement by KSM's written notice of termination to City. In such event, City shall pay to KSM within forty-five (45) days of termination an amount equal to the total unpaid Management Fees that KSM would have earned had the Agreement remained in effect until the Termination Date, up to a maximum of \$100,000.

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

12.3 Litigation. In the event of any litigation under or respecting this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs through all pretrial, trial, appellate, administrative, and post-judgment proceedings.

ARTICLE 13

TERMINATION AND SUSPENSION

13.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the events set forth below:

13.1.1 An Event of Default by KSM, and City sends to KSM a notice of termination for cause (after the expiration of any applicable cure period);

13.1.2 An Event of Default by City, and KSM sends to City a notice of termination for cause (after the expiration of any applicable cure period);

13.1.3 Both parties agree in writing to terminate this Agreement;

13.1.4 Upon the expiration or termination of this Agreement according to its terms.

13.2 Payments upon Termination. Upon expiration or termination of this Agreement, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination.

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13.3 Transition to New Manager Upon Termination. In the event that KSM is in full compliance with the terms and conditions of the Agreement at the time of termination and a new manager has not been selected to replace KSM, City, at its sole discretion, may authorize continuation of KSM services provided for herein in accordance with an interim management agreement to be negotiated between the Parties and approved by City Council.

13.4 Suspension of Activities. In the event of Unavoidable Delays, as provided for herein, KSM will take reasonable and customary actions to suspend its management activities under this Agreement as KSM deems necessary or appropriate, including, but not limited to, possible temporary work force reductions. Notwithstanding this requirement, the terms and conditions of this Agreement shall remain in full force and effect.

13.5 Termination for Convenience. Whenever the City determines, in its sole discretion, that termination of this Agreement is in the best interests of the City, the City may terminate this Agreement by providing at least ninety (90) days prior written notice of such termination for convenience, and shall pay KSM the lesser of (i) One Hundred Thousand Dollars (\$100,000); or (ii) the remaining Management Fees that KSM would have earned had the Agreement remained in effect until the Termination Date. However, the City may terminate this Agreement upon the third anniversary of the Commencement Date, without penalty or cause, upon written notice to KSM given ninety (90) days before such third anniversary. If this Agreement is extended for an additional five (5) year period pursuant to Article 2.2 of this Agreement, the same termination for convenience terms will apply as in the first five (5) year period.

ARTICLE 14

NOTICES

14.1 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, postage prepaid (“Mail”), or sent by nationally-recognized overnight mail or courier service (“Overnight Courier”), addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. Any notice will be deemed received (A) upon the date personal delivery is made, (B) three (3) business days after the date it is deposited in the Mail, (C) one (1) business day after it is deposited with an Overnight Courier, or (D) the date upon which attempted delivery of such notice, whether by Mail, Overnight Courier or personal delivery, is refused or rejected.

If to City:

Portland Parks & Recreation
1120 SW Fifth Avenue, Suite 1302
Portland, OR 97204
Attention: John Zoller, City's Golf Director

with a copy to:

Portland Parks & Recreation
1120 SW Fifth Avenue, Suite 1302

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Portland, OR 97204
 Attention: Todd Melton, Golf Financial
 Analyst

with a copy to:

Harry Auerbach
 Chief Deputy City Attorney
 430 City Hall
 1221 SW Fourth Ave.
 Portland OR 97204

If to KSM:

Kemper Sports Management, Inc.
 500 Skokie Boulevard, Suite 444
 Northbrook, Illinois 60062
 Attention: Mr. Steven K. Skinner, Chief
 Executive Officer

with a copy to:

Kemper Sports Management, Inc.
 500 Skokie Boulevard, Suite 444
 Northbrook, Illinois 60062
 Attention: Corporate Counsel

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

ARTICLE 15

MISCELLANEOUS

15.1 Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and dated and initialed by the parties.

15.2 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

15.3 Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either

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party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

15.4 Proprietary Information. The trade names, trademarks and logos of City (collectively, the “City Marks”) shall be used by KSM only in connection with the performance of the services provided under this Agreement and as otherwise provided in this Agreement or as agreed upon by City; provided, however, that City agrees that KSM may use the City Marks in its marketing and promotional materials as a course managed by KSM. All specifically identifiable information and programs developed by KSM for City at the expense of City shall be the property of the City and such information may continue to be used by City at the Course beyond any expiration or termination of this Agreement. All of KSM’s proprietary information, including (i) trade names, trademarks and logos as well as programs that have been or may be developed by KSM not at the expense of the City, and (ii) software and technology procured and developed not at the expense of the City, shall remain the exclusive property of KSM and neither City nor any of its affiliates or successors may use or, except as required by law, disclose such proprietary information without the advance written consent of KSM. The obligations and restrictions contained in this Section shall survive the expiration or termination of this Agreement for any reason.

15.5 No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of independent contractor.

15.6 Restrictions as to Employees.

15.6.1 During the Term and for a period of two (2) years after the end of the Term, it is agreed that City or its agents and contractors shall not seek to contact, entice, or discuss employment with any Key Employee of KSM nor shall City employ or seek to employ any such employee, without first obtaining the written consent of KSM. For purposes hereof, a “Key Employee” of KSM shall mean any individual holding any of the following positions at any time during the Term: the general manager, accountant/bookkeeper or head golf professional of the Course, or any employee of KSM’s corporate office. In the event that KSM does not agree to renew the term of this Agreement at the end of the Term on substantially the same terms and conditions as provided herein, then the restrictions of this Section 15.6.1 shall not apply.

15.6.2 During the Term, it is agreed that KSM shall not seek to employ any City maintenance staff employees, without first obtaining the written consent of City or as allowed by the City Charter.

15.7 Assignment, Successors and Assigns. KSM acknowledges that City is entering into this Agreement in reliance on the unique skills, reputation, experience and business philosophy of

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KSM and the personal qualifications of the officers and employees whom KSM has designated to implement this Agreement. Consequently, KSM shall not assign all or any part of its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld or conditioned in the reasonable discretion of the City. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

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

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

15.10 Accord and Satisfaction; Allocation of Payments. No payment by City or receipt by KSM of a lesser amount than that which is owed to KSM or City shall be deemed to be other than on account of such amounts owed to KSM or City, nor shall any endorsement or statement on any check or letter accompanying any check or payment to City or KSM be deemed an accord and satisfaction, and City and KSM may accept such check or payment without prejudice to their respective rights to recover the balance of the amounts owed to KSM or the City, or pursue any other remedy provided for in this Agreement or as otherwise provided at law or in equity. In connection with the foregoing, City and KSM shall have the absolute rights, without consulting the other party, to apply any payment received from the other party, regardless of that party's designation of such payments, to any outstanding amount of KSM or City then not current and due or delinquent, in such order and amounts as City or KSM may elect.

15.11 Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of Oregon. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

15.12 Forum. Any legal action or proceeding with respect to this Agreement may be brought only in any of the courts of the State of Oregon located in Multnomah County, Oregon, or in the United States District Court located in Multnomah County, Oregon having subject matter jurisdiction.

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

15.14 Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

15.15 Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall City or KSM have any right to share or participate in any such other businesses or investments of the other party.

15.16 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement. Facsimile signature shall be as effective as an original signature.

15.17 Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions beyond the reasonable control of the party obligated to perform. If either party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent the delay is occasioned by such event. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

15.18 No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

15.19 Certain Services Excluded. Notwithstanding anything else contained in this Agreement, the Parties acknowledge that KSM is not providing City with any architectural, engineering, design or general contracting services.

15.20 Disputes. The Parties will make a good faith effort to resolve disputes in a commercially reasonable manner and will work with each other in good faith in attempting to resolve any such disputes prior to resorting to litigation.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

KEMPER SPORTS MANAGEMENT, INC.

CITY OF PORTLAND, OREGON

By: _____
Its: _____

By: _____
Its: _____

**EXHIBIT A
DEFINITIONS**

All capitalized terms referenced or used in the Management Agreement (the “Agreement”) and not specifically defined therein shall have the meaning set forth below in this Exhibit A, which is attached to and made a part of the Agreement for all purposes.

- Affiliate(s). The term “Affiliate(s)” shall mean a Person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the Person in question and any officer, director, or trustee, and any stockholder or partner of any Person referred to in the preceding clause owning fifty percent (50%) or more of such Person. For purposes of this definition, the term “control” means the ownership of fifty percent (50%) or more of the beneficial interest of the voting power of the appropriate entity.
- Architect. The term “Architect” shall mean the project architect(s) with whom KSM shall engage for the Clubhouse Project.
- Architect’s Contract. The term “Architect’s Contract” shall mean the contract between the Architect and KSM relating to the Clubhouse Project, the form of which must be approved by City.
- City. The term “City” means the City of Portland, Oregon and its Bureau of Parks and Recreation, as well as the City’s successors, legal representatives, and permitted assigns.
- City’s Advances. The term “City’s Advances” shall have the meaning described in Section 4.2 of the Agreement.
- Clubhouse Project. The term “Clubhouse Project” shall mean the City’s project to evaluate existing club house to determine if renovation of the existing club house and other related improvements are necessary, design and construct improvements as described more fully in Article 5.
- Clubhouse Project Completion Date. The term “Clubhouse Project Completion Date” shall mean the date that the Clubhouse Project has been substantially completed in accordance with the Plans and Specifications and the final certificate of occupancy shall have been issued for the clubhouse.
- Commencement Date. The term “Commencement Date” shall have the meaning described in Section 2.2 of the Agreement.
- Construction Consultants. The term “Construction Consultants” shall mean the parties providing consulting services in relation to the Clubhouse Project.

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- Construction Contracts. The term “Construction Contracts” shall mean the Design Build Contract and any other construction agreements between KSM and any Contractor relating to the Clubhouse Project.
- Contractors. The term “Contractors” shall mean collectively, the Design Build Contractor, the Subcontractors and other consultants with whom KSM enters into a contract in connection with the Clubhouse Project.
- Course. The term “Course” shall mean the golf course to be operated as “Colwood Golf Center” and it’s associated Improvements, including, but not limited to the original clubhouse and its replacement, the cart barn and parking lots.
- Deposit Account. The term “Deposit Account” shall have the meaning described in Section 3.5.2 of the Agreement.
- Design Build Contract. The term “Design Build Contract” shall mean the design build agreement between KSM and the Design Build Contractor using a contract substantially similar to the standard design build contract approved and used by City for similar projects.
- Design Build Contractor. The term “Design Build Contractor” shall mean the design build contractor retained by KSM in connection with the Clubhouse Project.
- Development Budget. The term “Development Budget” shall mean the total development budget for the Clubhouse Project, which shall include all costs for all components of the Clubhouse Project (including, without limitation, design and permits, clubhouse construction, site work, other site improvements, furniture, fixtures and improvements and pre-opening operations) approved by City, as amended from time to time with the approval of City.
- Development Documents. The term “Development Documents” shall mean the following documents (as they may be amended from time to time with the consent of City): (i) the Architect’s Contracts, (ii) the Plans and Specifications, (iii) the Development Budget, (iv) the Construction Contracts, and (v) this Agreement.
- Development Expenses. The term “Development Expenses” shall have the meaning described in Section 5.4 of this Agreement.
- Development Management Fee. The term “Development Management Fee” shall mean the fee payable to KSM pursuant to Section 5 of this Agreement. This fee includes all incidental and travel expenses for KSM corporate and regional employees.
- Development Schedule. The term “Development Schedule” shall mean a development schedule for all components of the Clubhouse Project approved by City, as amended from time to time with the approval of City.

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- Draw Request. The term “Draw Request” shall mean a monthly submission prepared by KSM containing a detailed list of expenses that KSM has been notified as incurred in connection with the Work and the Clubhouse Project over the preceding one-month period.
- Engineer. The term “Engineer” shall mean one or more engineer(s) retained by KSM in relation to the Clubhouse Project.
- Environmental Laws. The term “Environmental Laws” shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.
- Event of Default. The term “Event of Default” shall have the meaning described in Article 12 of the Agreement.
- Gross Revenues. The term “Gross Revenues” shall mean all monthly receipts related to or derived from the operation of the Course from cash or credit transactions recognized during the Term, computed on an accrual basis, including, but not limited to, greens fees, cart rental fees, guest fees, golf lessons, the amount of all sales (wholesale or retail) of food, beverages, goods, wares, or merchandise on, at, or from the Course, the Course’s share of package fees which include the Course as one of several courses being played by the customer, or for services of any nature performed on, at, or from the Property, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by KSM or City in the course of obtaining such Gross Revenues.

Gross Revenues shall not include:

- Applicable gross receipts taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services;
- Service charges, which are defined to mean percentage gratuities added to billings as compensation to employees of the Course;
- Proceeds of borrowings by City;

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- Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss;
- Interest or investment income earned on the Bank Accounts;
- Cost of goods returned to suppliers;
- Bad debts;
- Credit card carrying charges;
- Revenues generated by sponsorship or purchasing contracts negotiated by City; or
- City's Advances.

Any of the above provisions resulting in a double exclusion from Gross Revenues shall be allowed as an exclusion only once.

- Hazardous Material. The term "Hazardous Material" shall take on that meaning provided for in ORS 465.200, as it may hereafter be amended, and any implementing regulations, as well as any other applicable Environmental Law.
- Improvements. The term "Improvements" shall mean the improvements, structures, and fixtures placed, constructed, or installed on the Real Property for the Course, and any additions or subsequent modifications thereto.
- Intangible Personal Property. The term "Intangible Personal Property" shall mean all intangible property or rights owned or held by City in connection with the Course, including, but not limited to, security deposits, prepaid rents, liquor and operating licenses, and all trademarks related to the Course.
- Key Employee. The term "Key Employee" shall have the meaning described in Section 16.6 of the Agreement.
- KSM. The term "KSM" means Kemper Sports Management, Inc., an Illinois corporation, and its successors, legal representatives, and permitted assigns.
- Loan and Loan Documents. The terms "Loan" and "Loan Documents" shall have the meanings described in Section 6 of the Agreement.
- Grounds Maintenance. The term "Grounds Maintenance" shall have the meaning described in Section 4.3 of the Agreement.
- Management Fee. The term "Management Fee" shall have the meaning described in Section 7.3 of the Agreement.
- Management Services. The term "Management Services" shall mean the services provided by KSM pursuant to Article 3 of the Agreement.

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- Net Operating Income from Food & Beverage. The annual gross income generated from food and beverage operations, less all operating expenses incurred from food and beverage operations.
- Operating Budget. The term “Operating Budget” shall have the meaning described in Section 3.4.1 of the Agreement.
- Operating Expense Account. The term “Operating Expense Account” shall have the meaning described in Section 3.5.2 of the Agreement.
- Operating Expenses. The term “Operating Expenses” shall mean all operating expenses of the Course incurred or paid on behalf of City during the Term, computed on an accrual basis, including, but not limited to, the following items:
 - Salaries, wages, employee benefits, and payroll expenses, including without limitation, payroll service bureau fees, payroll taxes, course level bonus programs, and insurance for all employees employed on-site in the direct operation of the Course, excluding, however, service charges, which are defined as percentage gratuities added to billings and paid to employees (collectively, the “Gross Payroll”);
 - Marketing, advertising, and promotional expenses;
 - Purchase and replacement, as necessary, of inventories of maintenance parts and supplies, food stores and bar supplies;
 - Purchase and replacement, as necessary, of silver, chinaware, glassware, cooking utensils, and other similar items of equipment;
 - Purchase and replacement, as necessary, of office supplies, computers, printers, facsimile machines, photocopiers, postage, printing, routine office expenses, and accounting services incurred in the on-site operation of the Course;
 - The costs of IT consultants and other consultants utilized for the Course;
 - Reasonable travel expenses of on-site employees incurred exclusively in connection with the business of the Course;
 - Accrual of a reserve for insurance (including workers’ compensation) and property taxes each month in an amount or at a rate that is sufficient to pay such insurance premiums or taxes when they become due and payable;
 - Insurance premiums and taxes, to the extent not provided for in the reserve established therefore and any deductible amounts required to be paid pursuant to Course insurance coverage;

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- Accounts receivable previously included within Gross Revenues, to the extent they remain unpaid ninety (90) days after the first billing;
- Auditing, accounting costs, computer fees, and legal fees incurred in respect of the operation of the Course, including any reasonable financial management and reasonable accounting fees paid to third party accounting firms, if included in the Budgets, and including the costs associated with the annual audit of the Course financial statements;
- Costs incurred for utilities, including, but not limited to, all electric, gas, and water costs, and any other private utility charges incurred in connection with the operation of the Course;
- Ordinary maintenance and repairs, exclusive of any capital improvements or capital replacements, which are hereby excluded;
- Expenses, including legal fees, damages or other costs, involved in defending any employment-related lawsuits, charges or claims involving personnel of the Course (including without limitation, any starters and marshals that may be under the control of City), except to the extent such expenses are incurred in connection with lawsuits, charges or claims arising out of the gross negligence or willful misconduct of KSM;
- Monthly principal and interest payments due on the Loan; and
- All expenses set forth in the approved Budgets;

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

Operating Expenses shall not include (i) depreciation or amortization, (ii) principal or interest payments on indebtedness, (iii) rental or lease payments for major items of furniture, fixtures, or equipment which, in accordance with generally accepted accounting principles, are purchased and capitalized as fixed assets, (iv) federal, state and local income taxes of any nature or kind incurred by City or KSM, (v) any costs associated with KSM's performance surety bond, (vi) any travel expenses for KSM corporate or regional employees.

- Person. The term "Person" shall mean any individual, partnership, corporation, association, or other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits; and, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa.
- Personal Property. The term "Personal Property" shall mean the Intangible Personal Property and the Tangible Personal Property.

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- Plans and Specifications. The term “Plans and Specifications” shall mean the drawings and specifications for the Clubhouse Project prepared by the Construction Consultants and Architects pursuant to their respective Construction Contracts and approved by City.
- Property. The term “Property” shall mean (i) the Improvements, (ii) the Personal Property, and (iii) the Real Property.
- Real Property. The term “Real Property” shall mean that certain parcel of land upon which the Course is located, the map is attached hereto as Exhibit B.
- Roving Marshal. The term “Roving Marshal” shall mean a person employed by the City as further described in Section 4.4.2.
- Subcontractor. The term “Subcontractor” shall mean a Person who has a contract with the Design Build Contractor or a Contractor to perform a portion of the Work.
- Tangible Personal Property. The term “Tangible Personal Property” shall mean all equipment, machinery, fixtures, furnishings, accessories, and other tangible personal property placed or installed, or to be placed or installed, on or about the Real Property and used as a part of or in connection with the operation of the Course.
- Term. The term “Term” shall have the meaning described in Section 2.2 of the Agreement.
- Termination Date. The term “Termination Date” shall have the meaning described in Section 2.2 of the Agreement.
- Unavoidable Delay. The term “Unavoidable Delay” shall have the meaning described in Section 17.16 of the Agreement.
- Work. The term “Work” shall mean the design, development, construction, furnishing and equipping of the Clubhouse Project.
- Working Capital. The term “Working Capital” shall mean an amount sufficient to pay Operating Expenses for any given month.

EXHIBIT B

MAP OF REAL PROPERTY

- Colwood Property: dark & light green
- Colwood Golf Center (the Course): light green

