EXHIBIT A
LICENSE AGREEMENT

BETWEEN

TRUMP FERRY POINT LLC

AND

CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION

for

THE OPERATION, MANAGEMENT AND MAINTENANCE OF AN 18-HOLE JACK NICKLAUS SIGNATURE GOLF COURSE, LIGHTED DRIVING RANGE AND ANCILLARY FACILITIES AND THE DESIGN, CONSTRUCTION, OPERATION, MANAGEMENT AND MAINTENANCE OF A PERMANENT CLUBHOUSE AT FERRY POINT PARK,

THE BRONX, NEW YORK

X126-GC

DATED: February 21, 2012
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LICENSE AGREEMENT ("License," "License Agreement" or "Agreement") made this 21st day of February, 2012, between the City of New York (the "City") acting by and through the New York City Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065, and Trump Ferry Point LLC ("Licensee"), a Delaware limited liability company, whose address is c/o The Trump Organization, 725 Fifth Avenue, New York, NY 10022, Attention: Allen Weisselberg and Ron Lieberman. The Parks, City and Licensee are sometimes hereinafter referred to collectively as the "Parties" or individually as a "Party".

WHEREAS, Parks, pursuant to the City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

WHEREAS, Ferry Point Park in the Borough of the Bronx ("Ferry Point Park") is property under the jurisdiction and control of Parks; and

WHEREAS, the City is constructing certain improvements to its property at Ferry Point Park consisting of the Golf Course, the Practice Facility, which includes the Driving Range (each as defined in the Development Agreement (as hereinafter defined)); the Golf Course Snack Bar and the Park Snack Bar (each as defined in the Development Agreement, collectively, the "Snack Bars") and certain other improvements defined as the "City’s Work" in the Development Agreement, all as more particularly described in Schedule 2 to the Development Agreement (the Golf Course, the Practice Facility, Golf Course Snack Bar and other improvements constituting the City’s Work, other than the Park Snack Bar being hereinafter referred to as the "Golf Course Facilities"); and

WHEREAS, Parks and Licensee have entered into that certain Development Agreement dated as of the date hereof (the "Development Agreement"), a copy of which is attached hereto as Exhibit C and made a part hereof, relating to, among other things, the construction of the City’s Work by the City, the construction process and procedures and the conditions for the delivery of the Licensed Premises (as defined below) to Licensee; and

WHEREAS, the Commissioner desires to provide for the operation, management and maintenance of the Golf Course Facilities and the Park Snack Bar (when delivered to Licensee in accordance with the Development Agreement), and the design, construction, operation, management and maintenance of a permanent clubhouse with a food service facility and pro-shop (the "Clubhouse", such definition as used herein shall include any temporary clubhouse) within the Golf Course Facilities at Ferry Point Park for the accommodation and convenience of and use by the public; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") has authorized Parks to utilize a different procedure to enter into the Concession (as hereinafter defined) with Licensee; and

WHEREAS, Licensee desires to operate, manage and maintain the Golf Course Facilities and the Park Snack Bar, and design, construct, operate, manage and maintain the Clubhouse at Ferry Point Park for the benefit of the public in accordance with the terms set forth herein; and
WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the design, construction, operation, management and maintenance of the Licensed Premises (as defined herein).

NOW THEREFORE, in consideration of the premises and covenants contained herein, the Parties hereby do agree as follows:

1. **GRANT**

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks a license to operate, manage and maintain the Licensed Premises, including, without limitation, the Golf Course Facilities and the Park Snack Bar, which shall be constructed on the Licensed Premises by Parks in accordance with the Development Agreement, and to design, construct, operate, manage and maintain the Clubhouse at the Licensed Premises (the operation, management and maintenance of the Golf Course Facilities and the Park Snack Bar, and the design, construction, operation, management and maintenance of the Clubhouse collectively, the “*Concession*” for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner. Subject to the prior written approval of Parks, Licensee shall construct a temporary clubhouse to be open to the public at the Concession Commencement Date (as hereinafter defined). The City represents to Licensee that the area described as the Licensed Premises on Exhibit A attached hereto is the same area that is outlined in red on Exhibit A-1 attached hereto.

1.2 (a) Except for and without limiting the Licensee’s obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), the City and Parks shall obtain, at their sole cost and expense, any Governmental Approvals required for all of the City’s Work to be performed by the City and to develop the remainder of the Licensed Premises, except for the Clubhouse and any other structures (temporary or otherwise) constructed by Licensee at the Licensed Premises. The City and Parks shall comply with the Prior Determinations (as hereinafter defined) and other applicable Environmental Laws.

(b) Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall obtain, at its sole cost and expense, any Governmental Approvals required for the Grow-In and for the design, construction, operation, management and maintenance of the Clubhouse and any other structures (temporary or otherwise) constructed by Licensee at the Licensed Premises and for any City Work performed by Licensee pursuant to Section 10.8 of the Development Agreement. Parks, the Commissioner and the City shall cooperate with Licensee in obtaining any and all Governmental Approvals, if any, required for the Grow-In or any Capital Improvements to be performed by Licensee, including without limitation, any temporary maintenance facility, temporary clubhouse or temporary golf cart storage facility which may be constructed by Licensee. The Licensee agrees as a material term that the design and construction of the Clubhouse and any other work or construction at the Licensed Premises by Licensee (w) shall comply with applicable Environmental Laws, (x) shall be performed in accordance with the ULURP No. C00090 MCX determination dated December 22, 1999 and the SEQRA/CEQR assessment dated April 27, 2005 (as modified by all subsequent technical memoranda prepared pursuant to SEQRA/CEQR, including, the Technical Environmental Assessment for the Ferry Point Park Recreation Facility, dated February 11, 2002, as amended September 29, 2004; Technical Environmental Assessment for Ferry Point Recreation Facility, dated November 16, 2004; and Environmental Assessment Statement, dated September 30, 1999, as well as any subsequent technical memoranda prepared by
Parks with input from Licensee) for Ferry Point Park, subject to Section 12.19(c) (collectively, the “Prior Determinations”), as may be modified from time to time in accordance with applicable Legal Requirements, (y) will not otherwise require additional ULURP review, (z) will not otherwise require additional SEQRA or CEQR review, except to the extent applicable Legal Requirements require additional SEQRA or CEQR review with respect to Licensee’s operation of the Licensed Premises (including construction obligations), including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises (provided, that in the event any additional SEQRA or CEQR review is required, the City shall undertake such SEQRA or CEQR review at its sole cost and expense), and (aa) shall comply with the requirements of the Americans with Disabilities Act (“ADA”) and all other similarly applicable Legal Requirements with respect to the ADA. If Licensee fails in any material respect to (i) design and construct the Clubhouse or (ii) perform any other work or construction at the Licensed Premises, in each case in accordance with clauses (w), (x), (y), (z) and (aa) of this Section 1.2(b), such failure shall be deemed a material breach of this License Agreement; provided however, that notwithstanding the foregoing, any failure by Licensee to comply with clauses (x), (y), or (z) above in this paragraph shall not be a breach of this License Agreement if the representations of the City set forth below in Section 1.2(c) are not true, accurate and correct. Additionally, (i) the City agrees that Licensee is not required to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws to the extent Licensee’s non-compliance is caused by Licensee’s failure to comply with the statement contained in the SEQRA/CEQR assessment dated April 27, 2005 for Ferry Point Park that herbicides or pesticides will not be used at the Licensed Premises, that Parks acknowledges was made in error, and (ii) Licensee’s failure to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws for the reasons set forth in the previous clause (i) of this sentence shall not be a breach of this Agreement. Except as previously reviewed and approved through the Prior Determinations and except as provided in Section 1.2(b)(z), in no event shall Licensee cause any threshold of the major concession rules promulgated by the City Planning Commission, codified in 62 RCNY Chapter 7, to be exceeded, or take any action under this Agreement that would require the preparation of an Environmental Impact Statement under SEQRA or CEQR.

(c) The City represents that (i) the (x) construction of a Clubhouse of up to 31,000 square feet and golf cart storage facilities, and (y) the paving and finishing of the Supplemental Parking Lot (as defined in the Development Agreement) (consisting of approximately seventy-five spaces within the area designated “Clubhouse Area” on Exhibit A-1 to this License Agreement) shall be permissible under the Prior Determinations and will not require additional ULURP, SEQRA or CEQR review; (ii) based on the preliminary concept drawings provided by Licensee to the City for review by the New York City Department of City Planning (a copy of which is attached hereto as Exhibit U), the construction and operation of Licensee’s proposed Clubhouse and golf cart storage facilities and the paving and finishing of the Supplemental Parking Lot will not cause any threshold of the major concession rules promulgated by the City Planning Commission, codified in 62 RCNY Chapter 7, to be exceeded, or require the preparation of an Environmental Impact Statement under SEQRA or CEQR, is consistent with the Prior Determinations and will not require additional ULURP, SEQRA or CEQR review; (iii) to the best of the City’s knowledge, the Grow-In and the operation of the Licensed Premises (including Licensee’s construction obligations) in accordance with this Agreement and the Development Agreement will not require additional SEQRA or CEQR review, except if applicable Legal Requirements require additional SEQRA or CEQR review with respect to Licensee’s use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises (provided, that in the event any additional SEQRA or CEQR review is required, the City shall undertake such SEQRA or CEQR review at its sole cost and expense); (iv) except with respect to the additional SEQRA or CEQR review required as set forth in clause (iii) of this Section
1.2(c), the Grow-In and the operation of the Licensed Premises in accordance with this Agreement and the Development Agreement shall be permissible under the Prior Determinations and will not require additional ULURP review; and (v) except with respect to any additional work or construction that may be required in connection with the SEQRA or CEQR review as set forth in clause (iii) of Section 1.2(c), any other work or construction contemplated by this Agreement or the Development Agreement shall be permissible under the Prior Determinations and will not require additional ULURP, SEQRA or CEQR review. The City and Parks acknowledge that the drawings submitted by Licensee to the City and attached hereto as Exhibit U are preliminary concept drawings and may undergo substantial changes before being finalized, which finalized drawings shall be subject to approval by Parks and other government agencies having jurisdiction, as applicable, in accordance with the terms of this Agreement, (y) that in no event shall Licensee be required to construct the Clubhouse or any other improvements shown on such drawings in accordance with such drawings, and that (z) such drawings were submitted by Licensee for the purpose of aiding the City in making the representation provided in this paragraph.

(d) Notwithstanding the agreements and representations contained in this Section 1.2, the Parties acknowledge that the City has applied for a renewed and modified Part 360 permit ("New Permit") to succeed the DEC Part 360 Permit. In the event that Licensee proposes to engage in any activity prior to issuance of the New Permit that is inconsistent with the current DEC Part 360 Permit, the City agrees to promptly seek in good faith (taking into consideration any input from Licensee and Licensee agrees to reasonably cooperate with the City in such effort), informal written approval from DEC of such activity (and to diligently pursue such approval) and Licensees’ performance of such activity consistent with such DEC approval shall not be considered a breach of its representations under this Section 1.2 and the City shall be deemed to be in compliance with its representations under this Section 1.2. Licensee may not engage in any activity inconsistent with the current DEC Part 360 Permit prior to receipt by the parties of informal written approval from DEC or issuance of the New Permit.

(e) If the City requests that Licensee assist in a SEQRA or CEQR review undertaken by the City pursuant to this Section 1.2 and Licensee, in its sole discretion, agrees to provide assistance, then the City shall pay or reimburse Licensee for any reasonable costs and expenses actually paid or incurred by Licensee in connection with rendering such assistance (including the cost of any consultants) within sixty (60) days after demand, provided that documentation of such costs and expenses, satisfactory to Parks, is submitted to Parks. In the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and expenses and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon, as applicable, at the Interest Rate as set forth in Section 4.10 hereof, subject to the last sentence of Section 4.10.

1.3 The City and Parks shall construct the Golf Course, the Snack Bars and the other City’s Work at the Licensed Premises in accordance with the Development Agreement. The City shall deliver possession of the Licensed Premises to Licensee in accordance with and upon satisfaction of the conditions set forth in the Development Agreement. As set forth in the Development Agreement, the City shall deliver to Licensee a Jack Nicklaus Signature golf course. The City represents and Licensee acknowledges that delivery of the Licensed Premises as required by this Agreement and the Development Agreement and the satisfaction of all of the conditions to delivery set forth in Section 10.3 of the Development Agreement (including, without limitation, the delivery to Licensee of a certification from Nicklaus Design that the Golf Course as completed meets the design standards of a Jack Nicklaus Signature golf course) shall constitute delivery of a Jack Nicklaus Signature golf course. Notwithstanding anything to the contrary in this Agreement or the Development Agreement,
in the event that at any time any element of the Licensed Premises or the operation of the Licensed Premises (or any part thereof) does not meet the standards required under the Nicklaus Subcontract to the extent such deficiency is due to any element of the construction of the Licensed Premises performed by (or on behalf of) the City or any item of the City’s Work, Licensee shall not be responsible for the correction of such deficiency to such extent and any such required corrections to comply with the Nicklaus Subcontract shall be the responsibility of the City at its sole cost and expense.

1.4 Licensee shall obtain any and all Governmental Approvals which are or may become necessary for the lawful operation of the Licensed Premises in accordance with the terms of this License Agreement other than Governmental Approvals to be obtained by the City pursuant to this Agreement or the Development Agreement, including for all of the City’s Work (except if the City’s Work is performed by Licensee pursuant to Section 10.8 of the Development Agreement, as applicable, in which case Licensee shall be responsible to obtain such Governmental Approvals) and the development of the remainder of the Licensed Premises, except for the Clubhouse and any other structures (temporary or otherwise) constructed by Licensee at the Licensed Premises. Parks, the Commissioner and the City shall cooperate with Licensee in obtaining (x) Governmental Approvals required for the Capital Improvements performed by Licensee or (y) any Government Approvals that Licensee is required to obtain for the operation of the Licensed Premises or any part thereof. Parks, the Commissioner and the City shall also cooperate with Licensee in obtaining the agreement of the Triborough Bridge and Tunnel Authority and the New York State Department of Transportation to construct or cause to be constructed, at no cost to Licensee or the City, prior to the Concession Commencement Date, an exit ramp from the Bronx bound lanes of the Bronx-Whitestone Bridge to enhance access to the Licensed Premises.

1.5 (a) Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License Agreement, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative. Unless a different standard is specifically provided herein, whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License Agreement, the same shall not be unreasonably withheld, conditioned or delayed, and whenever this License Agreement provides that consent approval or permission shall not be unreasonably withheld, such provision shall be deemed to include that such consent, approval or permission shall not be unreasonably conditioned or delayed, and terms such as satisfactory and acceptable shall be deemed to mean reasonably satisfactory and reasonably acceptable. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner, Licensee or their respective agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative and the Licensee. As used in this Agreement, including all Exhibits and Schedules, the words “include”, “includes”, or “including” shall be deemed to be followed by the words “without limitation”.

(b) Notwithstanding anything to the contrary contained in this Agreement, (i) any references to any consent, approval or permission required of the City (without any reference to any City agency), Parks or the Commissioner under this Agreement (including documentation, parties and other matters requiring the satisfaction of or are required to be satisfactory to the City, Parks or the Commissioner, as applicable) shall be deemed a reference to Parks and any requests for such consent, approval or permission shall be submitted to Parks, (ii) any such consent, approval or permission granted pursuant to this Agreement to Licensee by Parks shall be deemed given by the City, Parks and/or the Commissioner, as applicable, (iii) any covenants, obligations, responsibilities,
acts or omissions of Parks under this Agreement shall mean the City acting by and through Parks, (iv) notwithstanding anything to the contrary contained in clause (iii) of this Section 1.5(b) and subject to Section 7.2 of the Development Agreement, any covenants, obligations, responsibilities or acts of Parks or the City, as they pertain to the City’s Work under this Agreement, shall mean the City acting by and through Parks or the DDC, as the case may be, or the City acting by and through any other appropriate City agency, and (v) where provision is made herein for notice or other communication to be given in writing or otherwise or for the submission of a document or other item, to the City (without any reference to any City agency), Parks or the Commissioner, the provision shall be deemed a reference to Parks, whose address is provided at the beginning of this Agreement.

1.6 It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, but that during the Term (as hereinafter defined) of this License Agreement, Licensee shall have the sole and exclusive use of the Licensed Premises for the purpose herein provided, subject to the rights of Parks and others to enter upon the Licensed Premises during the Term as set forth herein and in the Development Agreement. Except as provided in this License Agreement and/or the Development Agreement, Licensee has the right to occupy and operate the Licensed Premises so long as this License Agreement is not terminated in accordance with the terms of this License Agreement or the Development Agreement.

1.7 (a) Licensee represents that Donald J. Trump (“Trump”), the principal of the Licensee and the Guarantor, has the rights to the designation and trademark “Trump” and variations thereof, and all other trademarks of Trump, together with the goodwill that is symbolized by such trademarks, which are used in connection with the planning, construction, operation and management of golf courses, and certain other rights in the names, trademarks, service marks, designations, and identifications “Trump”, including, without limitation, the “Trump Marks”. The term “Trump Marks” shall mean those trademarks identified in the annexed Exhibit N, each a “Trump Mark”. The City represents that the City is the owner of the designation and trademark “Ferry Point” and “Ferry Point Park” and variations thereof, and all other designations and trademarks of Parks, including Parks signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications, including, without limitation, the “City Marks”. The term “City Marks” shall mean those trademarks identified in the annexed Exhibit O, each a “City Mark”. Licensee represents and warrants to the City that Trump has granted to Licensee the right to use and license the Trump Marks for the purposes set forth herein.

(b) Except as specifically approved herein, any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of Parks.

(c) The Licensed Premises, other than the Park Snack Bar, shall be operated, marketed and promoted, in each such case by Licensee, under the name “Trump Golf Links at Ferry Point Park” (the “Composite Mark”), and the Park Snack Bar shall be operated, marketed and promoted, in each such case by Licensee, under the name “Donald’s Joint!” (or similar name designated by Licensee and approved in advance in writing by Parks) (the “Snack Bar Mark”). The Composite Mark and the Snack Bar Mark are hereby approved by the Commissioner. Licensee shall not use (and shall not permit Trump or any of its or his Affiliates to use) the Composite Mark as the name of any other golf course other than the Licensed Premises; however, the foregoing shall not in any way restrict Trump, Licensee or any of his or its Affiliates’ rights to use the Trump Marks in any manner whatsoever or to use the word “Point”, “Ferry” or “Park” in any manner whatsoever so long as such
use is not likely to cause confusion with the City Marks and is not part of the phrase “Ferry Point” or “Ferry Point Park” and the foregoing shall not in any way restrict the City or any of its Affiliates rights to use “Golf” and “Links” in any manner whatsoever so long as such use is not likely to cause confusion with the Trump Marks and is not part of the Composite Mark.

(d) Upon expiration or sooner termination of this License Agreement, the Licensee shall immediately cease use of any Licensed City IP (as defined in Exhibit H) and the City and Parks shall immediately cease use of any Licensed Trump IP (as defined in Exhibit H) in identifying the Licensed Premises and the Park Snack Bar; however, the foregoing is not intended to restrict Trump, Licensee or any of his or its Affiliates, the City, Parks or any of their Affiliates from using their respective marks in any way. In addition, in the event Licensee elects to terminate this License Agreement with respect to the Park Snack Bar in accordance with Section 1.9, the City and Parks shall cease all use of the Snack Bar Mark and Snack Bar Logo (as defined in Exhibit H) and the Licensee shall cease all use of any City Marks for the Park Snack Bar.

(e) Additional rights and obligations of Trump, Licensee, Parks and the City with respect to the Licensed City IP and Licensed Trump IP are set forth on Exhibit H annexed hereto.

1.8 (a) Pursuant to that certain Nicklaus Design Golf Design Subcontract Agreement ("Nicklaus Subcontract") between the City, Sanford Golf Design and Nicklaus Design, LLC ("Nicklaus Design"), a copy of which is annexed hereto as Exhibit L, the City has the right to use the Endorsement (as defined in the Nicklaus Subcontract), including, without limitation, the names “Nicklaus Design”, “Jack Nicklaus Signature” and “Jack Nicklaus” and certain other intangible rights of Nicklaus Design. The City licenses its rights under Section 5 of the Nicklaus Subcontract to Licensee in connection with the operation, advertising, marketing and promotion of the Golf Course, provided that in no event shall Licensee be responsible for the payment of any fees and expenses payable under the Nicklaus Subcontract, provided, however that Licensee shall pay actual third party out-of-pocket expenses, such as shipping and postage costs, if any, incurred by Nicklaus Design in connection with any request for consent or approval of Nicklaus Design by Licensee pursuant to the Nicklaus Subcontract or this Agreement. The City represents that pursuant to the Nicklaus Subcontract, the City has a license to use the Endorsement and to sublicense the Endorsement to Licensee as provided herein. Licensee acknowledges receipt of a copy of the Nicklaus Subcontract, and agrees to conduct Licensee’s activities under this Agreement in accordance with (x) the applicable terms and conditions set forth in Section 5, Section 10, and Section 11 (but subject to Section 18.6 of this License Agreement), of the Nicklaus Subcontract and (y) any other Sections of the Nicklaus Subcontract that are applicable to Licensee’s operation of the Licensed Premises as contemplated by this License Agreement and within the control of Licensee, which for the sake of clarity, shall not include (without limiting terms and conditions that are not applicable to Licensee) any of the terms or conditions of the Nicklaus Subcontract that pertain to the construction of the Licensed Premises (or any part thereof) by (or on behalf of) the City (including the “Construction Work” as defined in the Nicklaus Subcontract and the City’s Work). Moreover, the foregoing in the prior sentence shall not limit the City’s or the Consultant’s (as defined in the Nicklaus Subcontract) obligations under the Nicklaus Subcontract. Wherever Licensee shall be required to obtain the consent of Nicklaus Design, if the City reasonably agrees to the substance of the matter for which Licensee is seeking consent, the City shall cooperate with Licensee in obtaining such consent.

(b) The City represents that it has given notice to Nicklaus Design of this license describing the authority of Licensee to use the Endorsement and the City shall otherwise comply with
the requirements of Section 5D of the Nicklaus Subcontract. The Licensee has provided Nicklaus Design with a written acknowledgement of its receipt of a copy of the Nicklaus Subcontract, which is attached hereto as Exhibit L, together with its written agreement to conduct its activities under this Agreement and the Development Agreement in accordance with the applicable provisions of the Nicklaus Subcontract, which is attached hereto as Exhibit L, and to maintain the integrity of the golf course at Ferry Point Park as designed by Nicklaus Design (such written acknowledgement, the “Nicklaus Acknowledgement”). Licensee shall not be required to comply with any amendments to the Nicklaus Subcontract attached hereto as Exhibit L without Licensee’s prior written consent to any such amendments (such consent not to be unreasonably withheld). The Parties acknowledge that Nicklaus Design has given its approval to Licensee acting under the terms of this Agreement as it pertains to the Endorsement and the Nicklaus Subcontract, such approval to be effective upon the commencement of the Term of this Agreement.

(c) Notwithstanding the provisions of Section 9.22, Licensee shall not use the Endorsement to advertise, publicize, market or promote the Concession, without in each instance either (i) having obtained the express prior written approval of Nicklaus Design, and providing Parks with evidence of such approval, or (ii) having obtained the express prior written approval of Parks, which approval shall be granted by Parks in the event that Nicklaus Design approves the use of the Endorsement. In the event Licensee requests the approval of Parks to use the Endorsement, Parks shall promptly submit such request to Nicklaus Design, shall use good faith efforts to cause Nicklaus Design to respond to such request within ten (10) business days in accordance with the Nicklaus Subcontract and shall approve such request within five (5) days after such request is approved by Nicklaus Design.

(d) Notwithstanding anything in Section 9.37 to the contrary, any agreement that Licensee proposes to enter into that would involve the use of the Endorsement must receive the prior written approval of Parks or Nicklaus Design in accordance with the terms of the Nicklaus Subcontract and Section 1.8(b).

(e) In the event Licensee uses the Endorsement in violation of Section 5 of the Nicklaus Subcontract or this Section 1.8, such use shall constitute a material breach of this License Agreement and Licensee shall cease such use of the Endorsement immediately upon notice from Parks. In addition, the City may elect to immediately terminate this License Agreement and/or the license given herein to Licensee to use the Endorsement if such violation is not cured within ten (10) days after notice from the City to Licensee. Such notice shall be given either by hand or by overnight courier and shall be deemed given when delivered if by hand or one day after mailing if sent by overnight courier.

1.9 Upon delivery of the Park Snack Bar to Licensee in accordance with the Development Agreement, the Licensed Premises shall include the Park Snack Bar. The conditions for delivery of the Park Snack Bar are set forth in the Development Agreement, and include, among other things, completion of the waterfront park to be constructed by the City adjacent to the Licensed Premises. The Parties acknowledge that the Park Snack Bar may not be delivered to Licensee until after the Concession Commencement Date and shall not be part of the Licensed Premises until possession thereof is delivered to Licensee in accordance with the Development Agreement. Licensee shall have the right to terminate this License Agreement with respect to the Park Snack Bar at any time, on one hundred eighty (180) days prior written notice to Parks, and upon the expiration of such one hundred eighty (180) day period the License will terminate with respect to the Park Snack Bar and Licensee shall have no further rights or obligations hereunder with respect thereto. In the event the
City receives such notice of termination, the City shall have the right to commence a process for a
new operator at the Park Snack Bar as of the date of such notice and to subsequently enter into an
agreement with a new operator. Licensee’s termination of this License Agreement with respect to
the Park Snack Bar shall not affect in any way Licensee’s rights and obligations under this License
Agreement with respect to the remainder of the Licensed Premises.

2. DEFINITIONS

2.1 As used throughout this License Agreement, the following terms shall have the meanings set
forth below:

(a) “Affiliate(s)” shall mean, with respect to any person or entity, any other person or entity that
such person or entity Controls, is Controlled by or is under common Control with such person or
entity. “Control” shall mean (a) the ownership, directly or indirectly, of more than fifty percent
(50%) of the equity interests in a person or entity, and (b) the possession, directly or indirectly, of the
power to direct or cause the direction of the management and policies of such person or entity,
whether through the ownership of equity interests, by statute, or by contract.

(b) “Capital Improvements” shall mean all construction, reconstruction or renovation of the
Licensed Premises, including, without limitation, architectural and engineering design services
necessary to implement such construction, reconstruction or renovation of the Licensed Premises.
Capital Improvements shall also include installation of all “Fixed and Additional Fixed
Equipment,” as that term is defined in this Section, which the Licensee installs or causes to be
installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and
repairs required to be performed in the normal course of management and operation of the Licensed
Premises.

(c) “Capital Improvements Costs” shall mean all reasonable hard and soft costs necessary for
the construction, reconstruction or renovation of the Licensed Premises, including, without
limitation, architectural and engineering design fees necessary to implement such construction,
reconstruction or renovation of the Licensed Premises. Hard costs shall include, without limitation,
all construction material and labor. Soft costs shall include, without limitation, architectural and
engineering design fees necessary to implement the Capital Improvements, cost of any and all New
York State and City of New York mandated environmental review procedures and studies, costs to
comply with all requirements of ULURP, SEQRA, CEQR and other applicable Legal Requirements
and Environmental Laws, costs to secure all approvals required by the City Charter and other
applicable laws, costs of inspection and testing, pre-development costs, including, but not limited to,
permitting costs, fixtures, furnishing and equipment, financing costs, insurance, brokers, legal,
accounting and development fees and the value of the time of Licensee’s in-house construction,
operations and management staff expended in connection with the Capital Improvements provided
that detailed records, satisfactory to the City, showing the time expended by such staff members with
respect to the Capital Improvement are provided to the City and further provided that the cost of such
staff time in connection with the Required Capital Improvements does not exceed the amount
allocated for such item in the Preliminary Capital Budget attached hereto as Exhibit K (as the same
may be amended from time to time) without the consent of Parks. Capital Improvements Costs shall
also include the costs of all Fixed and Additional Fixed Equipment and the cost of installation thereof
which the Licensee installs or causes to be installed on the Licensed Premises. Capital
Improvements Costs shall not include cost of routine maintenance and repairs required to be
performed in the normal course of management and operation of the Licensed Premises and shall not include costs incurred prior to the date of issuance of the Registration Notice.

(d) “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.

(e) “Comptroller” shall mean the Comptroller of the City of New York.

(f) “Consumer Price Index” (“CPI”) shall mean the Consumer Price Index for all urban consumers; all items indexed (CPI-U) for the New York, New York/Northeastern New Jersey area, by the United States Department of Labor, Bureau of labor Statistics. In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the increase shall be made with the use of conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics. In the event the index shall cease to be published, then for the purpose of this License Agreement there shall be substituted for the index such other index as Parks and Licensee shall agree upon.

(g) “CPI Adjustment” means an adjustment made by multiplying the dollar amount to be adjusted by a fraction, the numerator of which shall be the CPI for the calendar month prior to the month in which the adjustment is to occur, and the denominator of which shall be the CPI for the calendar month prior to the date of this Agreement. In no event shall any CPI Adjustment result in a downward adjustment.

(h) “Environment” shall mean all air, water vapor, surface water, groundwater, drinking water supply or land, including land surface or subsurface, and includes all fish, wildlife, biota and all other natural resources.

(i) “Environmental Conditions” shall mean (i) any land settlement that is significantly more extensive than settlement that typically occurs at new golf courses or adversely affects playability of the Golf Course, (ii) the presence of leachate, landfill gases, municipal solid waste, or Hazardous Substances in, on, under or about the Licensed Premises, or (iii) the failure of the Licensed Premises to comply with Environmental Laws at the time of or at any time prior to the Concession Commencement Date or during the Term of the License.

(j) “Environmental Laws” shall mean all federal, state or local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances, rules, regulations and codes, as in effect on the date hereof or promulgated hereafter, relating to the protection of the Environment and/or governing the discharge of pollutants or the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Resource Conservation and Recovery Act of 1976 as amended (“RCRA”), the Clean Air Act as amended, the Clean Water Act as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (“CERCLA”), the Toxic Substances Control Act, as amended, and federal, state or local laws, ordinances, rules or regulations similar to or based upon the foregoing, as the same are in effect on the date hereof or promulgated hereafter.

(k) “Expendable Equipment” shall mean all equipment, other than Fixed Equipment, provided by Licensee.
“Final Completion” or “Finally Complete” shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and no further work is required pursuant to this License Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee and/or the City, as applicable, shall be liable for any claims arising out of such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this License Agreement.

“Fixed Equipment” shall mean any property affixed to the Licensed Premises in such a way that removal of said equipment would materially damage the Licensed Premises.

(i) “Additional Fixed Equipment” shall mean Fixed Equipment affixed to Licensed Premises subsequent to the Interim Period.

(ii) “Fixed and Additional Fixed Equipment” shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

“Force Majeure” shall mean (i) circumstances beyond the reasonable control of the Party claiming Force Majeure, including acts of God, weather, war, enemies or hostile government actions, revolutions, terrorism, insurrection, riots, civil commotion, strikes, lockouts, labor unrest, disturbances or job actions, governmental restrictions, Environmental Conditions and/or the effects of Environmental Conditions, fire or other casualty, condemnation, or delays in granting or a failure to grant approvals, licenses or permits by governmental agencies which delays are not caused by the Party claiming Force Majeure, or (ii) any other circumstances beyond the reasonable control and without the fault or negligence of the Party claiming Force Majeure. For the purposes of Force Majeure, a Party’s failure to submit a complete application, as applicable, for any permit, license or approval required by an applicable agency shall not constitute a circumstance beyond the reasonable control of such Party. Additionally, unless a Party is challenging in good faith any actions, determinations, denials or conditions of any agency charged with granting any license, permit or approval charged with granting any such license, permit or approval shall not constitute a circumstance beyond the reasonable control of such Party; provided that the denial by a governmental agency of a required license, permit or approval beyond any right of appeal shall terminate the Force Majeure unless such agency prohibits the construction of a particular Capital Improvement regardless of Licensee’s compliance with agency conditions. Notwithstanding the foregoing, a Force Majeure shall be deemed to have occurred (x) only to the extent that despite the reasonable efforts of the applicable Party, such Party has been unable to prevent or mitigate such Force Majeure; provided that the foregoing in this clause (x) shall not be deemed to limit a Party’s right to challenge any agency actions, determination, denials or conditions in good faith and any such challenge shall not be deemed to end a Force Majeure until the denial by a governmental agency of a required license, permit or approval beyond any right of appeal (unless such agency prohibits the construction of a particular Capital Improvement regardless of Licensee’s compliance with agency conditions); and (y) in each case the Party claiming Force Majeure shall have notified the other Party in writing within a reasonable period of time after the claiming Party first had any knowledge of the occurrence of the Force Majeure. In addition, it is understood and agreed that (i) Licensee’s or the City’s financial condition or inability to obtain financing shall not constitute a Force Majeure and (ii) any delays by a City contractor or consultant as a result of a force majeure event pursuant to such contractor’s or consultant’s agreement with the City as they exist on the date that this Agreement is executed shall constitute a Force Majeure.
“Governmental Approvals” shall mean, collectively: (a) any and all approvals, permits, inspections, reviews and licenses required by federal, state and local laws, rules, regulations and orders, including, without limitation, all applicable Environmental Laws, which are or may become necessary for the design, development, construction and operation of any portion of the Licensed Premises, including, without limitation, any Certificate of Occupancy or Place of Assembly permit required for the use and operation of any portion of the Licensed Premises; (b) any and all environmental tests, reviews and studies required by any applicable Environmental Law or zoning regulations, including without limitation, the Uniform Land Use Review Procedure (“ULURP”), the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”) required in conjunction with the design, development and construction of any portion of the Licensed Premises, and (c) any and all approvals, permits, inspections, reviews and licenses required by federal, state and local laws, rules, regulations and orders by reason of the use of the Licensed Premises as a Landfill.

“Gross Receipts” shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind, provided that Gross Receipts shall exclude (A) the amount of any federal, state or City sales taxes, which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales, (B) Sublicense Gross Receipts (as hereinafter defined), (C) the items described in subsection (ix) of this definition, and (D) any other items excluded from Gross Receipts pursuant to this definition of Gross Receipts. Gross Receipts shall include all funds received by Licensee for orders placed with Licensee or made at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all funds received by Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. For example, should Licensee receive a one thousand dollar ($1,000) deposit for services to be rendered at a later date, the deposit must be reported at the time of payment, not when the service is provided. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises. Gross Receipts shall include the wholesale value of any goods and services received in lieu of cash as Greens Fees.

Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities. Gross Receipts shall include the net (but only the net) income received by Licensee in connection with the direct, live or taped broadcasting, in the United States and internationally, of on-site golf tournaments at the Licensed Premises, whether by network, cable, time delayed broadcast, pay per view or other device or system for contemporaneous viewing of on-site golf tournaments at the Licensed Premises (provided, however, the following shall not be included within Gross Receipts (a) any pass-through fees or costs collected by Licensee on behalf of a third-party broadcaster and (b) any income received by Licensee in connection with broadcasts of “The Apprentice” or any similar successor television show).

Gross Receipts shall not include any funds received by any other operator or operators (“Sublicensed Operators”) using the Licensed Premises under a properly authorized sublicense or subcontract agreement in accordance with Section 18 hereof (“Sublicense Gross Receipts”). However, subject to Section 4.1, Licensee shall pay or cause to be paid to the City, three percent (3%) of such Sublicense Gross Receipts. Notwithstanding anything to the contrary in this
Section 2.1(p)(iii). Sublicensee Gross Receipts shall not include any funds received by an operator or operators who are sublicensees under a properly authorized sublicense, in accordance with Section 18 hereof, of the food service facility in the Clubhouse and any such funds shall be considered Gross Receipts (and, for the sake of clarity, any funds received by an operator or operators, who are sublicensees under a properly authorized sublicense of any food service facility that comprises or is part of the banquet or catering facility, even if connected to or part of the Clubhouse, shall be considered Sublicense Gross Receipts and not Gross Receipts). Gross Receipts shall include income from rental and sublicense or subcontracting fees and commissions received by Licensee from any Sublicensed Operator in connection with all services provided by any Sublicensed Operator (“Sublicense Fees”). For example, if Licensee sub-licenses the rental of golf clubs (or otherwise contracts with a third party to rent golf clubs) and receives Sublicense Fees of $1,000 and the funds received by such Sublicensed Operator total $5,000, Gross Receipts shall include the Sublicense Fees of $1,000 and three percent (3%) of the Sublicense Gross Receipts of $5,000 would be payable to the City in the form of License Fees subject to the terms of this License Agreement.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the Parties that all sums due to be received by Licensee from all sources from the operation of this License Agreement shall be included in Gross Receipts, provided however that any Gratuities (as herein defined) shall not be included within Gross Receipts. For purposes of this subsection (iv):

(A) With respect to non-catered restaurant services, a “Gratuity” shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law §652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee.

(B) With respect to catered events, a “Gratuity” shall be an amount no greater than twenty percent (20%) of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, busing personnel, and similar staff. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee.

(v) Gross Receipts shall include all funds received for services rendered by the Licensee, including any non-refundable down payments or partial payments made in relation to said services.
(vi) Notwithstanding any other provision in subsection (i) of this definition of Gross Receipts to the contrary, any third party service charges billed by Licensee for the convenience of the patrons of the Licensed Premises and paid directly to such third party service provider (such as charges for entertainment, videos, photographs, bands, floral arrangements, transportation, awards, trophies, outside maintenance, security personnel, etc.) shall not be included in Gross Receipts except to the extent such charges are retained by Licensee, provided only that such third party charges shall be included as Gross Receipts if Licensee owns any interest in such third party service provider.

(vii) Gross Receipt shall include the net (but only the net) income received by Licensee in connection with services provided by golf instructors. For clarity, if Licensee charges a student fifty dollars ($50.00) for a lesson, and subsequently pays the golf instructor thirty dollars ($30.00), the amount to be reported with the Gross Receipts is the net amount of twenty dollars ($20.00).

(viii) Gross Receipts shall include only net revenues received by Licensee from vending machines for the sale of food, drink, or other items as approved by Parks.

(ix) Gross Receipts shall not include (1) cash and credit refunds, (2) income generated from Parks Sponsored Special Events (including income from all food service connected to said Parks Sponsored Special Events) as defined in Section 16 herein, (3) proceeds of the sale of any other asset of Licensee not sold in the ordinary course of business, or (4) the proceeds of any loans or financings.

(q) “Grow-In” shall have the meaning ascribed thereto in the Development Agreement.

(r) “Guarantor” shall mean Donald J. Trump.

(s) “Guaranty” shall mean a written agreement executed by Guarantor in the form set forth in Exhibit V to this Agreement.

(t) “Hazardous Substances” shall mean, without regard to amount or concentration (i) any element, compound, gas or chemical that is defined, listed or otherwise classified as a toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous material, hazardous waste, medical waste, biohazardous or infectious waste, or special waste under any Environmental Laws; (ii) petroleum, petroleum-based or petroleum-derived products; (iii) any substance that poses a present or potential hazard to human health or the Environment, including, without limitation, any substance containing polychlorinated biphenyls, asbestos, lead, urea formaldehyde, radon gas; methane or other gases or leachate, (iv) any other substance that by law, rule or regulation, whether federal, state or local, requires special handling in its collection, storage, treatment or disposal; or (v) any highly combustible substance, provided, however that all chemicals and other material used in the ordinary course of maintenance of a golf course will not be considered Hazardous Substances.

(u) “Interest Rate” shall mean the Prompt Payment Act interest rate as certified by the Bureau of the Public Debt from time to time and posted at https://www.treasurydirect.gov/govt/rates/tcir/tcir_201001_opdirsemi.htm.

(v) “Legal Requirements” shall mean all laws, statutes, ordinances, orders, rules and regulations, directives and requirements of all federal, state, county, regional, local or municipal governments (including any agency or political subdivision of any of the foregoing), any
governmental or quasi-governmental agency, authority (including stamp and registration authorities), board, public utility, bureau, commission, department, instrumentality, or public body, and any person with jurisdiction exercising executive, legislative, judicial (including any court or tribunal), regulatory or administrative functions of or pertaining to government or quasi-governmental issues, which are or may be applicable to the Licensed Premises or any part thereof or related thereto, whether now or hereafter in force including building codes and zoning regulations and ordinances.

(w) “License Fee Credit” shall mean any credit against License Fees and other amounts payable by Licensee pursuant to this License Agreement that Licensee is entitled to pursuant to certain provisions of this License Agreement or the Development Agreement for amounts paid or incurred by Licensee pursuant to such provisions.

(x) “Licensed Premises” shall mean the area in Ferry Point Park, Borough of the Bronx described on Exhibit A annexed hereto and shown on Exhibit A-1, annexed hereto (the City representing to Licensee that the area shown on Exhibit A-1 is the same area described in Exhibit A) and the Park Snack Bar as shown on Exhibit A-3 and shall include the Golf Course, the Golf Course Snack Bar, the Park Snack Bar (when delivered in accordance with the Development Agreement), the Practice Facility, the Maintenance Building (as defined in the Development Agreement), and the remainder of the City’s Work and any other improvements constructed thereon, provided that if the Licensed Premises are delivered to Licensee in phases as more particularly described in Section 10 of the Development Agreement, the Licensed Premises shall, at any time prior to delivery of all of the Licensed Premises to Licensee, consist of only those portions or phases that are delivered to Licensee pursuant to the provisions of the Development Agreement. Licensed Premises shall also include the Clubhouse upon construction pursuant to this Agreement.

(y) “Substantial Completion” or “Substantially Complete” shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been substantially completed in accordance with the Designs and Plans (as defined in Section 10.2) approved by Parks and that such improvement is ready to be occupied and used for its intended purpose by the public, as expressed in the Designs and Plans, notwithstanding that some incomplete elements remain to be finished and punch list work determined in accordance with Section 10.19 remains to be completed.

(z) “Year” or “Operating Year” shall mean the period commencing on the Concession Commencement Date or the anniversary of the Concession Commencement Date in any calendar year and ending on the day before the anniversary of the Concession Commencement Date in the following calendar year.

2.2 Capitalized terms used in this License Agreement but not otherwise defined shall have the meaning ascribed thereto in the Development Agreement. The foregoing recitals are made a part of this Agreement. All Exhibits and Schedules hereto are incorporated herein and expressly made a part hereof.

3. TERM

3.1 (a) The Term of this License Agreement shall begin upon written notice from Parks to Licensee (the “Registration Notice”) that the License Agreement is registered with the Comptroller of the City of New York.
(b) The term of the Concession shall commence upon written Notice to Proceed from Parks (such date, the “Concession Commencement Date”), which shall occur on the earlier of (A) the date the Golf Course Facilities and the Clubhouse are ready to be opened for play to the public as determined by Licensee and approved by Parks or (B) the fourteen (14) month anniversary of the date that the last Hole (as defined in the Development Agreement) is delivered to Licensee pursuant to and in accordance with the Development Agreement (such fourteen (14) month anniversary date, the “14 Month Date”), provided that the 14 Month Date shall be extended on a day for day basis, as applicable (i) for the length of any Force Majeure, (ii) for the length of any delays from the Estimated Completion Dates, as defined in the Development Agreement (other than any delays from the Estimated Completion Dates with respect to the delivery of the Holes) that materially and adversely impact the Grow-In, except to the extent that such delay is attributable to Licensee pursuant to any of the reasons set forth in clauses (ii) – (v) of Section 4.3 of the Development Agreement, (iii) for the length of any interference with the Grow-In caused by Environmental Conditions (except to the extent such Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnities) and/or any repairs, replacements or remediation conducted on the Licensed Premises by the City which materially and adversely interfere with the Grow-In; (iv) for the length of any interference with the Grow-In caused by City’s Reconstruction Activities (as hereinafter defined) which materially and adversely interfere with the Grow-In; or (v) for the length of time until the City has delivered possession of the entire Licensed Premises (other than the Park Snack Bar) to Licensee in accordance with the provisions of the Development Agreement if such delivery has not occurred by the 14 Month Date; provided further that if the 14 Month Date would otherwise be between the period of September 1st and the following March 31st, then the 14 Month Date would be extended until the April 1st date that immediately follows, subject to any further extension pursuant to Section 3.3(c), as applicable, and provided further that in no event shall the 14 Month Date, as extended pursuant to this Section 3.1(b), occur before the expiration of the five (5) month period after delivery of the Practice Facility to Licensee pursuant to and in accordance with the Development Agreement (such five month period, the “5 Month Practice Facility Date”). In the event that (x) the 14 Month Date, as extended pursuant to this Section 3.1(b), occurs after the 5 Month Practice Facility Date but before the expiration of the twelve (12) month period after delivery of the Practice Facility to Licensee pursuant to and in accordance with the Development Agreement and (y) the Grow-In of the Practice Facility is not yet complete on the 14 Month Date (as extended pursuant to this Section 3.1(b)), then in such event the 14 Month Date shall occur and the Concession Commencement Date shall occur, but Licensee shall continue to have the responsibility to conduct the grow-in of the Practice Facility as though it had the Grow-In obligation under the Development Agreement and the costs of such grow-in incurred by Licensee for the remainder of such twelve (12) month period shall be treated as though they were Grow-In Costs under the Development Agreement.

(c) In the event the Concession Commencement Date occurs after June 30th but prior to November 1st of the applicable calendar year, Licensee shall be entitled to a License Fee Credit (with interest thereon at the Interest Rate as set forth in Section 4.10 hereof) in Operating Year 5 in an amount equal to the Minimum Annual Fee payable in Operating Year 5, multiplied by a fraction, the numerator of which is the number of days between April 1st and the Concession Commencement Date, and the denominator of which is 214. Licensee shall not be entitled to any License Fee Credit pursuant to this Section 3.1(c), if the Concession Commencement Date occurs between November 1st of the applicable calendar year and June 30th of the following year.

(d) The Concession Period and the Term of the License shall terminate upon the earlier of twenty (20) years from the Concession Commencement Date (the “Full Term”) or upon
expiration or termination of this License Agreement pursuant to any provision hereof ("Termination Date"). The period between the Concession Commencement Date and Termination Date shall be the Concession Period ("Concession Period"). The period between the Registration Notice and Termination Date shall be the Term of the License Agreement ("Term"). The period between the Registration Notice and the Concession Commencement Date shall be referred to as the "Interim Period". Licensee shall not commence Concession operations at the Licensed Premises under this License Agreement until it has received Notice to Proceed from Parks. Upon expiration or sooner termination of this License Agreement, Licensee shall reasonably cooperate with the City and, as directed by the City, any entity approved by the City to achieve an orderly transition of operations in order to avoid disruption of services to the general public and minimize transition expenses, provided, however, Licensee shall not be required to expend more than a deminimus amount in connection with the foregoing set forth in this sentence. Licensee shall not divert any potential patrons intending to make reservations at the Licensed Premises to other facilities owned or operated by the Licensee or its Affiliates; provided that, for the sake of clarity, the foregoing shall not limit Licensee’s right to advertise or promote other facilities owned or operated by Licensee or its Affiliates.

(e) After the Registration Notice but prior to the Concession Commencement Date, Licensee shall have all of the rights of Licensee under this Agreement, provided, however, that Licensee shall not commence Concession operations at the Licensed Premises under this License Agreement until it has received Notice to Proceed from Parks. All of the obligations of Licensee with respect to the Licensed Premises after the Registration Notice but prior to the Concession Commencement Date shall be set forth in the Development Agreement, including, without limitation, any of the provisions of this License Agreement incorporated by reference in the Development Agreement. From and after the Concession Commencement Date, Licensee shall have all of the rights and shall perform all of the obligations of Licensee under this Agreement.

3.2 (a) Notwithstanding any language to the contrary contained herein, this License Agreement (including both the License and the Concession) is terminable at will by the Commissioner in his sole and absolute discretion, at any time; however, such termination shall not be arbitrary or capricious. For purposes hereof, Parks and Licensee agree that termination by the Commissioner will not be considered arbitrary or capricious where a determination is made by the Commissioner that the Licensed Premises is needed for an alternative park-related use other than golf. The Commissioner shall not so terminate solely for the purpose of issuing a new license to another party (including, without limitation, to another party at a higher license fee) for the operation of a golf course and/or banquet facility. However, the above is not an exhaustive list of the arbitrary or capricious reasons to terminate by the Commissioner. Such termination shall be effective twenty-five (25) days after the date such written notice is received by Licensee. Except as set forth in Section 3.2(b) below, the Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event of termination by Commissioner in accordance with the terms of this License Agreement.

(b) In the event (i) that the Commissioner shall exercise its right to terminate this License Agreement at will (i.e., not for an Event of Default under this License by Licensee which remains uncured after all applicable notice and cure periods have expired) or (ii) this License Agreement is terminated in certain other circumstances specifically provided for in this License Agreement or the Development Agreement and in those circumstances the respective provision applicable to termination provides for a Termination Payment, then, in each such case, Parks shall pay to Licensee a termination payment (the "Termination Payment") equal to the sum of (A) the Capital
Improvement Costs expended by Licensee for Capital Improvements and the Grow-In Costs (as defined in the Development Agreement) expended by Licensee in connection with the Grow-In pursuant to the Development Agreement (less amortization as described below), provided that documentation of such costs, satisfactory to Parks, is submitted to Parks, plus (B) (x) with respect to any contracts or orders for services or materials which were made prior to the receipt of written notice of termination by Licensee but not yet received, that cannot be canceled, any amounts due under such contracts or orders, and (y) for contracts or orders for services or materials that can be canceled, the payment of a cancellation fee or penalty related to such early cancellation, provided that Licensee makes prompt attempts to mitigate such costs and provides documentation of such attempts by Licensee, which shall be subject to audit and review by Parks, and provided further that the cancellation fee or penalty as mitigated is not greater than payment of the amount due, plus (C) any License Fee Credits to which Licensee is entitled, with interest thereon at the Interest Rate as set forth in Section 4.10 hereof, plus (D) the amount on deposit in the Capital Reserve Fund. For the purpose of determining the Termination Payment, the Capital Improvement Costs and Grow-In Costs (prior to amortization) shall not exceed the amounts stated in the Preliminary Capital Budget attached hereto as Exhibit K (which Preliminary Capital Budget shall be updated from time to time, subject to Parks approval, which approval shall not be unreasonably withheld, conditioned or delayed, to reflect actual Grow-In Costs expended by Licensee, any costs related to the washout of a Hole after it has been delivered to Licensee in accordance with the Development Agreement and the estimated costs of Capital Improvements reasonably approved by Parks). The unamortized portion of such costs shall be derived from a twenty (20) year, straight line amortization schedule, which amortization shall begin on the Concession Commencement Date. Parks shall use reasonable good faith efforts to pay the Termination Payment within sixty (60) days after the Termination Date. Interest on the unpaid portion of the Termination Payment at the Interest Rate shall begin to accrue sixty (60) days after the Termination Date, provided, however, that: (A) to the extent Licensee is required to provide documentation of costs to Parks, interest shall not accrue until the later of sixty (60) days after the Termination Date or thirty (30) days after Parks’ receipt of documentation satisfactory to Parks, and (B) in the event of a dispute as to the amount of the Termination Payment, the City shall pay interest only on the actual amount of the Termination Payment determined to be due to Licensee, if any, upon resolution of such dispute.

(c) Notwithstanding the provisions of Section 3.2(b), no payment (including, without limitation, the Termination Payment) shall be required (1) in the event that this License Agreement is terminated pursuant to Section 3.3 of this License Agreement; (2) in the event that this License Agreement is terminated by operation of law (other than as a result of any acts or omissions of the City or Parks); and (3) in the event that this License Agreement is terminated because Parks is unable to obtain a new permit from the New York State Department of Environmental Conservation (“DEC”), or to extend or renew that certain permit required under the Environmental Conservation Law issued by the DEC on November 18, 2005 under DEC Permit No. 2-6006-00014/00013, as attached as Schedule 9 to the Development Agreement, as amended, modified, renewed or replaced (the “DEC Part 360 Permit”) that is required in order to complete construction of the City’s Work, by reason of the negligence or willful misconduct of any of the Licensee Indemnitees. The City agrees to use good faith efforts to obtain any renewals or extensions of the DEC Part 360 Permit required to complete construction of and operate the Licensed Premises.

(d) Subject to the remainder of this Paragraph, the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, paid in relation to any termination of this License pursuant to this Section 3.2 shall be in full and final settlement of any claim of the Licensee against Parks and the City for such termination and the
Licensee shall be excluded from all other rights and remedies in respect of any such termination where such Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, is paid to Licensee pursuant to this Section 3.2. Other than the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof and any damages attributable to Claims for personal injury, death, property damage or Claims described in Sections 5(a) and 6(a) of Exhibit H for which the City is obligated to indemnify, (which damages, in each case, shall not include any lost sales or profit or any indirect, consequential, special, exemplary or incidental damages) regardless of whether such damages are attributable to the event that led to the termination of this License Agreement in accordance with its terms or otherwise, the City shall not be responsible for any other damages of any kind (including, without limitation, actual, special or consequential, exemplary or incidental or any other form of damages or lost sales or profit of Licensee or other expenditures of Licensee) or any other fees or expenses; provided that for the sake of clarity, the foregoing in this paragraph is not intended to abrogate the City’s obligations under this Agreement to indemnify, defend, protect and hold harmless the Licensee Indemnities in accordance with the terms of this Agreement, as applicable, to the extent that such obligations relate to third-party claims.

(e) This Section 3.2 and any other section of this License Agreement pursuant to which the City is required to pay or Licensee is entitled to receive the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, shall survive the termination of this License Agreement.

3.3 (a) The occurrence of any of the following events, and the expiration of any applicable notice, grace and cure period set forth herein, shall constitute an “Event of Default” under this License Agreement:

(i) (a) If Licensee defaults in the payment of License Fees, deposits to the Capital Reserve Fund or other amount payable by Licensee under this License Agreement (except for payments of any unpaid portion of the premiums due for all insurance policies required to be procured and maintained by Licensee under this License Agreement which are addressed below in the proviso to this Section 3.3(a)(i)) and such default shall continue for more than ten (10) business days after Parks has delivered notice thereof to Licensee; provided, however, that with respect to a default in payment of any unpaid portion of the premiums due for all insurance policies required to be procured and maintained by Licensee under this License Agreement, no notice by Parks shall be required and an Event of Default shall occur upon the failure to pay the amount due to the applicable insurance company prior to expiration of the period of time before the cancellation of the applicable insurance policy (unless such policy is replaced prior to such time).

(b) If Licensee uses the Endorsement in violation of Section 5 of the Nicklaus Subcontract or Section 1.8 of this License Agreement and Licensee fails to cure such violation within ten (10) days after notice from City to Licensee;

(c) If Licensee fails to maintain the Golf Course to a quality level consistent with the reasonable standards of a Jack Nicklaus Signature golf course, and such failure shall continue for more than twenty-five (25) days after Parks has delivered a Default Notice (as defined below) to Licensee, provided, however, that notwithstanding the foregoing if such failure cannot reasonably be cured within such twenty-five (25) day period, Licensee shall have such additional time as may be reasonably necessary to cure such default, provided that Licensee shall have commenced curing such default within such twenty-five (25) day period and Licensee thereafter
diligently prosecutes such cure, to the reasonable satisfaction of Parks and Nicklaus Design, to completion;

(ii) Should Licensee materially breach or fail to substantially comply with any of the other material provisions of this License Agreement and such default shall continue for more than twenty-five (25) days after Parks has delivered notice thereof to Licensee (such notice a “Default Notice”), provided, however, that notwithstanding the foregoing if such default cannot reasonably be cured within such twenty-five (25) day period, Licensee shall have such additional time as may be reasonably necessary to cure such default, provided that Licensee shall have commenced curing such default within such twenty-five (25) day period and Licensee thereafter diligently prosecutes such cure to completion and, provided, further that, notwithstanding the foregoing, if a Default Notice alleges a material breach or failure to substantially comply with any of the material provisions of this License Agreement relating to an alleged failure of Licensee to comply with any Legal Requirements and Licensee challenges (through administrative or judicial process, as applicable) such alleged breach or failure in good faith, Licensee shall not be deemed to have breached or failed to comply with this License Agreement until such time as Licensee’s challenge is denied beyond any right of appeal, and if denied (beyond any right of appeal), Licensee shall have the cure periods stated in this paragraph which shall run from the date of such denial, provided, however, that Licensee shall comply with all applicable legal orders requiring action or discontinuance of action during the pendency of such challenge. For purposes of this provision, a “material breach or failure to substantially comply” shall be those breaches or failures specifically identified as such in this License Agreement, any time any of Licensee’s representations contained in this Agreement are found to be materially untrue, inaccurate or incorrect, or such other breaches or failures as are material under the circumstances;

(iii) (1) the appointment of any receiver, without the express written consent of Parks, of Licensee’s assets; (2) Licensee making a general assignment for the benefit of creditors without the express written consent of Parks; (3) the occurrence of any act, which results in the permanent deprivation of Licensee’s rights, powers and privileges necessary for the conduct and operation of the License; or (4) the levy of any attachment or execution which substantially interferes with Licensee’s operations under this License Agreement, which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days;

(iv) if a material breach or failure to substantially comply with any provisions of this License Agreement by Licensee occurs and is corrected within the time periods specified in Sections 3.3(a)(i) or (a)(ii) hereof, and a repeated violation of the same provision occurs more than two (2) additional times in any twelve (12) month period;

(v) if the Development Agreement is terminated by the Commissioner pursuant to Section 16.2(i), Section 16.2(ii) or Section 16.2(iii) thereof; or

(vi) if, (x) upon the occurrence and during the continuance of an Event of Default under this License Agreement or the Development Agreement and (y) after Parks has provided written notice to Guarantor that Parks intends to pursue its rights under the Guaranty in accordance with the terms of the Guaranty, Guarantor shall default, beyond any applicable notice or cure periods, in his obligations under that certain Guaranty.

(b) Upon the occurrence and during the continuance of an Event of Default, the Commissioner may in addition to any other remedy which the City may have under this Agreement,
including but not limited to pursuing any rights the City may have under the Guaranty (provided, however, that for the sake of clarity, as set forth in the Guaranty, the Guaranty may not be enforced until the expiration of any applicable notice and cure periods and then only in accordance with the terms of the Guaranty), give notice, in writing, to Licensee terminating this License Agreement, and this License Agreement shall terminate ten (10) days after receipt by Licensee of such termination notice from the Commissioner. Notwithstanding the foregoing, in the event that the Event of Default underlying the termination notice is a default in payment of any unpaid portion of the premiums due for all insurance policies required to be procured and maintained by Licensee under this License Agreement, then in such event, and in such event only, Licensee may cure such Event of Default within such 10 day period. For the purposes of the foregoing sentence, "cure" shall mean (i) payment of all unpaid portions of premiums due, and (ii) the unconditional agreement to defend, indemnify, and hold the City harmless (and the subsequent defense, indemnification, and holding the City harmless) for all Claims that Licensee must indemnify the City for under the terms of Article 23 (even if such Claims arose during any period where Licensee did not have all insurance required pursuant to this Agreement).

(c) Notwithstanding anything to the contrary contained in this Agreement or the Development Agreement, where the Licensee’s failure to fulfill any of its obligations under this License Agreement (including operating a first class, tournament quality daily fee golf course) is the result of Force Majeure or any of the other reasons set forth in Section 12.19(g) of this Agreement (where such reasons set forth in Section 12.19(g) are not caused by the fault of Licensee), Licensee’s obligation to perform shall be extended for a reasonable period of time commensurate with the nature of the event causing the failure of Licensee to fulfill its obligations and no breach or default shall exist and no liquidated or other damages shall be payable with respect to such extended period. In addition, if a Force Majeure event described in Section 2.1(n) results in a delay after Notice to Proceed, subject to compliance with applicable laws, the Concession Period shall be extended for a reasonable period of time commensurate with the nature of the event causing the delay, as reasonably determined by the Commissioner.

(d) Upon the occurrence and during the continuation of an Event of Default resulting from Licensee’s failure to perform its repair, maintenance and construction obligations hereunder, Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may reasonably repair and reasonably alter any portion(s) of the Licensed Premises in such manner as Parks may deem reasonably necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability.

(e) Licensee shall have the right to appeal the termination of this License Agreement pursuant to Section 3.3(b) to the Commissioner as follows: for any termination with respect to Section 3.3(a)(i)(b), regarding the Endorsement (an “Endorsement Termination”), Licensee shall have the right to appeal such termination within five (5) days of service of a notice of termination on Licensee. For any termination other than an Endorsement Termination, Licensee shall have the right to appeal such termination with ten (10) days of service of notice of termination on Licensee. All appeals shall be in writing, detailing the grounds for appeal together with relevant documentation, and shall be addressed to the Commissioner, The Arsenal, 830 Fifth Avenue, New York, NY 10021 and sent by overnight courier or by hand delivery to such address. The filing of any such appeal shall stay termination of this License Agreement and any actions by the City to enforce such termination or recover possession of the Licensed Premises until ten (10) days (or five (5) days with respect to an Endorsement Termination) after Licensee is served with a final determination from the Commissioner with respect to such appeal. Upon receipt of the appeal, the Commissioner may, in
Commissioner’s sole discretion, schedule a hearing with respect to such appeal, to be held within thirty (30) days (or five (5) days with respect to an Endorsement Termination) after receipt of the notice of appeal. Licensee shall have the right to present witnesses and other evidence at any such hearing. The Commissioner shall review the claims addressed in Licensee’s appeal and, within thirty (30) days (or five (5) days with respect to an Endorsement Termination) after receipt of the notice of appeal or the hearing, if any, issue a final determination, which shall have a rational basis. Such determination by the Commissioner shall be deemed a final determination for purposes of Article 78 of the New York Civil Practice Laws and Rules (the “CPLR”) and Licensee shall have the right to challenge any such final determination by a proceeding under Article 78 of the CPLR. In the event that Licensee does not appeal to the Commissioner pursuant to this subdivision, the termination pursuant to Section 3.3(b) shall be the final agency action.

3.4 Except as provided in Section 3.2(b), or as otherwise specifically set forth in this License Agreement or the Development Agreement, upon expiration or sooner termination of this License Agreement by Commissioner in accordance with the terms of this Agreement, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City.

3.5 In the event Commissioner terminates this License Agreement in accordance with Section 3.3(b) above, any property of the Licensee on the Licensed Premises, other than leased property, may be held and used by Commissioner in order to operate the Licensed Premises during the balance of the calendar year and may be held and used thereafter until all indebtedness, if any, of the Licensee hereunder, at the time of termination of this License Agreement, is paid in full. At the time of such termination: Licensee shall have the right to remove its personalty (whether owned or leased) once such indebtedness has been satisfied.

3.6 Subject to Section 3.3(e) and Section 3.7, Licensee agrees that upon the expiration or sooner termination of this License Agreement, it shall immediately cease all operations pursuant to this License Agreement and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Subject to Section 3.3(e), upon the expiration or sooner termination of this License Agreement, City reserves the right to take possession of the Licensed Premises.

3.7 Subject to Section 3.3(e), Section 3.5 and Section 13.3 hereof, Licensee shall, within thirty (30) days following the expiration or sooner termination of this License Agreement (“Removal Period”), remove all personal possessions from the Licensed Premises. All of the provisions of this License Agreement, including but not limited to the insurance and indemnification provisions, shall apply during the Removal Period. Licensee acknowledges that any personal property remaining on the Licensed Premises after the Removal Period is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including the cost of removal or disposal of property, should Licensee fail to cease operations, vacate the Licensed Premises or remove all possessions from the Licensed Premises during the time prescribed in this Agreement. Pursuant to Section 4.4 herein, City may seize the Security Deposit to recover such damages in part or in whole. If all or any part of the Security Deposit remains unexpended, the City agrees to return such balance to Licensee within sixty (60) days following the Removal Period, provided Licensee is otherwise in compliance with the provisions of this License Agreement.

3.8 Subject to Section 3.3(e), if this License Agreement is terminated as provided in Section 3.3 of this License Agreement, Parks may, without notice, re-enter and repossess the Licensed Premises.
using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.9 (a) If this License Agreement is terminated for an Event of Default as provided in Section 3.3 hereof:

(i) Parks may draw down on the Security Deposit in accordance with Section 4.4;  

(ii) Licensee shall pay to Parks all License Fees and any other fees then due and payable under this License Agreement by Licensee to Parks prior to the Termination Date (but, for the sake of clarity, not subsequent to the Termination Date); and 

(iii) (A) Without limiting Licensee’s right to receive License Fee Credits to which it is entitled pursuant to this Agreement or the Development Agreement, and all interest accrued thereon at the Interest Rate as set forth in Section 4.10 hereof, Licensee shall pay to the City, as agreed upon and negotiated liquidated damages, the amount set forth in Section 3.9(a)(iii)(B) commencing on the later of (w) the first day of the month following the month in which the Termination Date occurs or (x) the fifth (5th) anniversary of the Concession Commencement Date and ending on the earlier of (i) the date that City finds a replacement operator for the Licensed Premises (irrespective of the Park Snack Bar), or a substantial portion thereof, or otherwise re-opens the Licensed Premises (irrespective of the Park Snack Bar), or a substantial portion thereof, for use by the general public on a non-temporary basis (such date as set forth in this clause (i), the “Replacement/Reopening Date”); or (ii) the date that is three (3) years from the Termination Date (the “Three Year End Date”); or (iii) twenty (20) years from the Concession Commencement Date. The date on which payment of liquidated damages commences, as applicable, under clauses (w) and (x) of this Section 3.9(a)(iii)(A), shall be referred to herein as the “Liquidated Damages Commencement Date”. The date on which payment of liquidated damages terminates in accordance with clauses (i), (ii) or (iii) of this Section 3.9(a)(iii)(A), as applicable, shall be referred to herein as the “Liquidated Damages Termination Date”. For the sake of clarity, upon the occurrence of any of the events set forth in clauses (i), (ii) or (iii) of this Section 3.9(a)(iii)(A), Licensee shall no longer be obligated to pay any further liquidated damages. 

(B) Subject to the remainder of this Section 3.9(a)(iii), the amount of liquidated damages that would be payable between the Liquidated Damages Commencement Date and the Liquidated Damages Termination Date shall be equal to Twenty-Five Thousand Dollars ($25,000) per month, due on or before the first day of each calendar month from and after the Liquidated Damages Commencement Date until the Liquidated Damages Termination Date. 

(C) Notwithstanding the foregoing in Section 3.9(a)(iii)(B), for the Operating Year in which the Termination Date occurs, if any liquidated damages are due to the City in accordance with this Section 3.9(a)(iii), the amount of the liquidated damages that would be due for the remainder of the Operating Year shall be reduced for such Operating Year on a dollar-for-dollar basis by the amount of any License Fees paid by Licensee for the period prior to the Termination Date for such Operating Year (and the amount of liquidated damages to be paid for such Operating Year shall be spread out in equal monthly installments over the remainder of such Operating Year and each monthly installment shall be payable on the first
day of each calendar month for the remainder of such Operating Year or until the Liquidated Damages Termination Date, if earlier).

(D) For the last installment of liquidated damages due in accordance with this Section 3.9(a)(iii), the amount due shall be prorated based on a thirty (30) day month in the event that the Liquidated Damages Termination Date falls in the middle of a month.

(E) Notwithstanding anything to the contrary contained in this Section 3.9(a)(iii), for clarity, if this Agreement is terminated prior to the fifth (5th) anniversary of the Concession Commencement Date and the Replacement/Reopening Date or the Three Year Extension Date occurs prior to the fifth (5th) anniversary of the Concession Commencement Date, then Licensee shall not be obligated to pay any liquidated damages.

(F) The liquidated damages set forth in this Section 3.9(a)(iii) are hereby stipulated and agreed by the Parties to be the City’s liquidated damages in the event the License Agreement is terminated due to an Event of Default, it being fully understood and agreed by the Parties that it is or would be difficult to estimate or otherwise determine the total amount of damages that would be incurred by the City or Parks should Licensee default in its obligations under this Agreement or Guarantor default in its obligations under the Guaranty. Other than (x) the liquidated damages under this Section 3.9(a)(iii) and (y) the fees due and payable under Section 3.9(a)(i) and (ii) and (z) any damages attributable to any Claims for personal injury, death, property damage or Claims described in Sections 5(a) and 6(b) of Exhibit H for which Licensee is obligated to indemnify (which damages, in each case, shall not include any lost sales or profit or any indirect, consequential, special, exemplary or incidental damages) regardless of whether such damages are attributable to the default that led to the termination of this License Agreement in accordance with its terms or otherwise, Licensee shall not be responsible for any other damages of any kind (including, without limitation, actual, special or consequential, exemplary or incidental or any other form of damages or lost sales or profit of the City or Parks or other expenditures of the City or Parks) or any other fees or expenses, including, without limitation, License Fees; provided that for the sake of clarity, the foregoing in this paragraph is not intended to abrogate Licensee’s obligations under this Agreement to indemnify, defend, protect and hold harmless the Indemnitees in accordance with the terms of this Agreement, as applicable, to the extent that such obligations relate to third-party claims.

(G) The Development Agreement shall terminate upon the Replacement/Reopening Date if it has not yet been terminated in accordance with its terms.

(b) For the sake of clarity, the License Agreement shall terminate upon the Replacement/Reopening Date if it has not yet been terminated in accordance with its terms.

3.10 Unless expressly agreed otherwise by the Parties hereto, no receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive
and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee’s liability hereunder.

3.11 If the Development Agreement is terminated in accordance with its terms for any reason other than for a default by Licensee thereunder, Licensee shall have the right to terminate this License Agreement on ten (10) days notice to the City. If Licensee terminates this Agreement pursuant to this Section 3.11, the City shall pay the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, to Licensee, provided, however, that the City shall not owe the Termination Payment in the event the License Agreement is terminated in accordance with its terms as a result of the default of Licensee or in the event the Development Agreement is terminated pursuant to Sections 3.9(a)(iii)(G), 3.9(b), 6.3 or 9.40 hereof or Section 16.3 of the Development Agreement.

3.12 Without limiting Licensee’s rights set forth in this Agreement or in the Development Agreement, the following shall constitute a default by the City and Parks under this License Agreement, in the event that: (a) the Nicklaus Subcontract is terminated (except if such termination is due to the actions of or failure to act by any of the Licensee Indemnitees); or (b) the City or Parks materially breach or fail to substantially comply with any of the other material provisions of this Agreement and such default shall continue for more than twenty-five (25) days after Licensee has delivered notice thereof to the City, provided, however, that notwithstanding the foregoing if such default cannot reasonably be cured within such twenty-five (25) day period, Parks and the City shall have such additional time as may be reasonably necessary to cure such default, provided that Parks and the City shall have commenced curing such default within such twenty-five (25) day period and Parks and the City thereafter diligently prosecutes such cure to completion, and provided further that, notwithstanding the foregoing, if such notice alleges a material breach or failure to substantially comply with any of the material provisions of this License Agreement relating to an alleged failure of the City or Parks to comply with any Legal Requirements and City or Parks challenges (through administrative or judicial process, as applicable) such alleged breach or failure in good faith, the City and Parks shall not be deemed to have breached or failed to comply with this License Agreement until such time as the City’s or Park’s challenge is denied beyond any right of appeal, and if denied (beyond any right of appeal), City and Parks shall have the cure periods stated in this paragraph which shall run from the date of such denial (provided, however, that City and Parks shall comply with all applicable Legal Requirements during the pendency of such challenge). If the City or Parks shall default under this License Agreement pursuant to clause (a) or (b) above under this Section 3.12, then in any such case, Licensee shall have the right to seek all appropriate legal and equitable remedies and the City shall be liable to Licensee for such amounts to which Licensee may be entitled in law or equity in any action brought by Licensee against the City on account of any of the foregoing in this Section 3.12 and Licensee shall have the right to (in addition to any other remedy which Licensee may have under this Agreement) give notice to the City, in writing, terminating this License Agreement, and this License Agreement shall terminate ten (10) days after receipt by the City of such termination notice from Licensee. For purposes of this provision, a “material breach or failure to substantially comply” shall either be those breaches or failures specifically identified as such in this License Agreement or such other breaches or failures as are material under the circumstances.
4. PAYMENT TO CITY

4.1 (a) Commencing in Operating Year 5 through the end of the Concession Period, Licensee shall pay the City license fees (“License Fees”) for such Operating Years in an amount equal to the greater of (1) the minimum annual fee (“Minimum Annual Fee”) set forth below or (2) (i) the annual percentage of Gross Receipts derived from the operation of the Licensed Premises (the “Percentage Fee”), set forth below, plus (ii) three percent (3%) of Sublicense Gross Receipts (the “Sublicense Percentage Fee”) for such Operating Year:

<table>
<thead>
<tr>
<th>Operating Year</th>
<th>Minimum Annual Fee</th>
<th>Percentage Fee and Sublicense Percentage Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>$300,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>6</td>
<td>$310,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>7</td>
<td>$320,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>8</td>
<td>$330,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>9</td>
<td>$340,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
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<tr>
<td>10</td>
<td>$360,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>11</td>
<td>$370,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>12</td>
<td>$380,000</td>
<td>7% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
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<tr>
<td>13</td>
<td>$390,000</td>
<td>8% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>14</td>
<td>$400,000</td>
<td>8% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>15</td>
<td>$410,000</td>
<td>8% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
<tr>
<td>16</td>
<td>$420,000</td>
<td>10% of Gross Receipts plus 3% of Sublicense Gross Receipts</td>
</tr>
</tbody>
</table>
Licensee shall make deposits to a Capital Reserve Fund (as hereinafter defined) in accordance with Section 10.29 herein.

4.2 (a) The Minimum Annual Fee payable during each Operating Year shall be paid to the City in six (6) equal installments on or before the first (1st) day of each month between May and October of Operating Years 5 to 20, subject to any License Fee Credits, with accrued interest thereon at the Interest Rate as set forth in Section 4.10 hereof, to which Licensee may be entitled pursuant to this License Agreement or the Development Agreement.

(b) The amount, if any, by which the Percentage Fee and the Sublicense Percentage Fee for any Operating Year calculated in accordance with Section 4.1(a) based upon Gross Receipts and Sublicense Gross Receipts for such Operating Year exceeds the Minimum Annual Fee for such Operating Year, shall be paid to the City within forty five (45) days after the end of each Operating Year, subject to any License Fee Credits, with accrued interest thereon at the Interest Rate as set forth in Section 4.10 hereof, to which Licensee may be entitled pursuant to this License Agreement or the Development Agreement.

(c) On or before the thirtieth (30th) day following the end of each quarter of each Operating Year, Licensee shall submit to Parks, in a format acceptable to Parks, a report of rounds of golf played at the Golf Course during the preceding quarter, signed and verified by an officer of Licensee.

4.3 Late charges shall be assessed on any payment which is overdue for more than ten (10) days. In the event that payment of License Fees or any other charges shall become overdue for ten (10) days following the date on which such fees are due and payable as provided in this License Agreement, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty day month) from the date such payments were due and payable until the date such amounts have been paid, shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee’s failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late charges and all arrearages (including prior two percent (2%) late charges) are not paid by the tenth (10th) day of the month following the month in which such late charges became due, an additional charge of two percent (2%) of the total of such late charges and arrearages shall be added thereto and shall be payable and collectable with the next monthly License Fee installment. The failure to pay License Fees resulting in the imposition of late charges pursuant to this Section 4.3 three (3) times in any twelve (12) month period shall be presumed to be a failure to substantially comply with the
terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Section. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Section is enacted, the rate of interest set forth in this Section shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Licensee shall, upon signing this License Agreement, deposit with the City, the amount of one hundred thousand dollars ($100,000) as its security deposit (“Security Deposit”). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License Agreement to be observed and performed by Licensee. The Security Deposit shall remain with the City throughout the Term of this License Agreement.

(b) The Security Deposit shall consist of cash, a certified check payable to the City of New York or a negotiable instrument (other than a letter of credit) payable to bearer or the City of New York which the Comptroller shall approve as being of equal market value with the sum so required. The Security Deposit shall be held by the City, without liability for interest thereon, as security for the full and faithful performance by Licensee of each and every term and condition of this License Agreement on the part of Licensee to be observed and performed. Licensee may submit to the City an interest bearing or non-interest bearing bond (with a minimum market value sufficient to cover the amount of the required Security Deposit) to serve as said Security Deposit. In such event, Licensee shall collect or receive annually any interest or income earned on such negotiable instrument. In connection with any security deposited by Licensee with the City pursuant to this Section 4.4, Licensee shall be charged annual maintenance and transaction fees which the City is or may hereafter be entitled or authorized by law to charge in connection with such deposit. Currently, the annual account maintenance fee is $300.00 per year combined with a separate $20 fee for each deposit, substitution and release transaction, which fees may be adjusted by the Office of the Comptroller. The City shall not be obligated to place or to keep any cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of Licensee, or should Licensee fail to perform any of the terms of this License Agreement, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days’ notice, apply the Security Deposit, or as much thereof as may be necessary to compensate the City, toward the payment of License Fees, late charges, liquidated damages or other sums due from Licensee in accordance with the terms of this License Agreement or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, Licensee shall restore the Security Deposit to the original sum deposited within ten (10) days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License Agreement and pay all License Fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee, along with any accrued interest thereon, if applicable, following the surrender of the Licensed Premises by Licensee in compliance with the provisions of this License Agreement.

4.5 (a) On or before the thirtieth (30th) day following the end of each quarter of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated at the
Licensed Premises during the preceding quarter. Licensee shall also submit a summary report of Gross Receipts for each Operating Year within forty five (45) days of the end of each Operating Year of this License Agreement. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the categories as specified on Exhibit B and Exhibit B-1 (the “Quarterly Gross Receipts Forms”), including, without limitation, the following categories:

- **Greens Fees**
  Gross Receipts from rates and charges made at the point of sale related to the rounds of golf played at the Licensed Premises; and

- **Golf Cart Rentals**
  Gross Receipts from rates and charges made at the point of sale related to the rental of golf carts at the Licensed Premises; and

- **Golf Club Rentals**
  Gross Receipts from rates and charges made at the point of sale related to the rental of golf clubs at the Licensed Premises; and

- **Lessons**
  Net Receipts from rates and charges made at the point of sale related to golf lessons at the Licensed Premises less expenses for such lessons; and

- **ID Cards**
  Gross Receipts from rates and charges made at the point of sale related to the sale of resident ID cards at the Licensed Premises; and

- **Club Repair**
  Gross Receipts from rates and charges made at the point of sale related to the repair of golf clubs at the Licensed Premises; and

- **Locker Rentals**
  Gross Receipts from rates and charges made at the point of sale related to the rental of lockers at the Licensed Premises; and

- **Pro Shop**
  Gross Receipts from rates and charges made at the point of sale related to the Pro Shop at the Licensed Premises; and

- **Golf Reservations**
  Gross Receipts from rates and charges made at the point of sale related to golf reservations at the Licensed Premises; and

- **Secured Parking**
  Gross Receipts from rates and charges made at the point of sale related to secured parking at the Licensed Premises; and

- **Food Service Facility**
  Gross Receipts from rates and charges made at the point of sale related to the food service facility at the Licensed Premises; and

- **Vending Machines**
  Net Receipts from placement and operation of vending machines at the Licensed Premises; and

- **Driving Range**
  Gross Receipts from rates and charges made at the point of sale related to the buckets of balls provided at the Driving Range at the Licensed Premises; and

- **Snack Bar**
  Gross Receipts from any snack bar(s) (reported separately) at the Licensed Premises operated in addition to the main food service facility; and

- **Permitted Sponsorship Activity**
  Gross receipts from any sponsorship activity; and

- **Broadcasting**
  Net Receipts from the broadcasting of on-site golf tournaments at the Licensed Premises (provided, however, the following shall not
be included within Net Receipts (a) any pass-through fees or costs collected by Licensee on behalf of a third-party broadcaster and (b) any income received by Licensee in connection with broadcasts of “The Apprentice” or any similar successor television show).

Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License Agreement.

In the event Licensee sublicenses any operations to a Sublicensed Operator in accordance with Section 18 hereof, Licensee shall not report and include in the Gross Receipts on which payment of the Percentage Fee is based, the Sublicense Gross Receipts, but shall include the Sublicense Fees payable by the Sublicensed Operator to Licensee pursuant to such sublicense agreement and shall separately report Sublicense Gross Receipts.

4.6 On or before the ninetieth (90th) day following the end of each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License Agreement, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in such format as Parks shall reasonably approve.

4.7 (a) Licensee, during the Term of this License Agreement, shall maintain adequate internal control systems and shall keep complete and accurate records, books of account and data, including daily sales and receipt records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom and the Grow-In Costs. This internal control system must include maintaining detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a point-of-sale system, and must include details on each sales transaction, including the item(s) sold, time, date of sale and price of the item sold. Licensee must also document each Licensee Special Event (as hereinafter defined) via signed sequentially pre-printed, pre-numbered contracts that capture event information, including the time and date of the event, a range of the number of attendees, if available, and required payment. Licensee must also establish a dedicated bank account for all deposits related to this Concession’s revenue. All accounting and internal control related records, including the detailed sales information described above, shall be maintained for a minimum of six (6) years from the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips,
daily dated point of sale system receipts, and sales books; and duplicate bank deposit slips and bank
statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as are reasonably acceptable to Parks and/or the Comptroller. Parks acknowledges that, subject to the prior approval of Parks, the Licensee’s point of sales system may be modified to accommodate the fact that internet, cable TV and telephone service will not be provided to the Snack Bars; nonetheless, Licensee agrees that such modified point-of-sale system shall provide the sales information required for the point-of-sales system under Section 4.7(a). Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the Term of this License Agreement, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year’s records, books of account and data for a minimum of six (6) years from the date of creation of the record.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Section within thirty (30) days after notice, the failure or refusal of the Licensee to maintain adequate internal controls within thirty (30) days after notice (or such longer period as may be reasonably determined by Parks to be necessary to implement such internal controls provided that Licensee commences actions to implement such controls within thirty (30) days after notice), or to keep any of the records as required by this Section or the existence, more than two (2) times in any five (5) Year period, of any unexplained discrepancy in the amount of fees required to be paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent (5%) in any two out of three consecutive months or more than ten percent (10%) in one month (except in the case of lost or missing months), shall be presumed to be a failure to substantially comply with the terms and conditions of this License Agreement and a default hereunder, which shall entitle Parks, at its option, to terminate this License Agreement in accordance with and subject to the terms of Section 3.3. The failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors reasonably deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of gross receipts payments during a period with missing or lost records, Parks shall have the right to use the highest grossing month over the past five years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year’s month is the same month for which records are missing. For example, if April 2007’s gross receipts are missing and the highest April gross receipts occurred in April 2004, then April 2007’s “revised” gross receipts shall be calculated using April 2004’s figures multiplied by the applicable CPI increases during that period.

Licensee shall pay any assessment based upon such reasonable projections, net of any previous payments made by Licensee, within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License Agreement and a default hereunder.

4.8 In the event Parks determines that Licensee or Licensee’s employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.5 through Section 4.7 hereinabove Licensee may be subject to a charge of $500.00 with respect to each incident of breach
as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty (30) days of such notice.

4.9 License Fees and other amounts payable hereunder shall be made payable (notwithstanding anything to the contrary herein in this Agreement) to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation, Revenue Division
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10065
Attn: Director of Concessions

4.10 Licensee shall be entitled to License Fee Credits as set forth in this License Agreement and the Development Agreement. In the event that Licensee shall be entitled to any License Fee Credits, Licensee shall be entitled to interest on the amount of such License Fee Credits at the Interest Rate, compounded monthly, from the date that Licensee first becomes entitled to such License Fee Credit until the date that Licensee is first able to apply such License Fee Credit against License Fees or other amounts payable under this License Agreement, provided, however, to the extent Licensee is required to provide documentation of costs to Parks, interest shall not accrue until thirty (30) days after Parks’ receipt of documentation satisfactory to Parks. To the extent that at any time the License Fee Credit that Licensee is entitled to exceeds the License Fees payable hereunder during the next sixty (60) days, amounts in the Capital Reserve Fund shall be paid to Licensee, up to the amount of the License Fee Credit, and all License Fees and other amounts thereafter payable under this License Agreement shall be applied to replenish the Capital Reserve Fund, up to the amount of Capital Reserve Funds paid to Licensee on account of the License Fee Credit. Upon expiration or termination of this Agreement for any reason, the City shall pay all outstanding License Fee Credits, and all accrued interest thereon, if any, to Licensee within sixty (60) days after such termination or expiration.

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right, upon reasonable notice and during business hours, to examine, audit or photocopy the records, books of account and data of the Licensee for the purpose of examination, audit, review or any purpose they reasonably deem necessary. Licensee shall also permit upon reasonable notice, and at reasonable times, the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, point of sale equipment, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee’s books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors representing the City, conducting such examination or audit at said location.

5.2 The failure or refusal of the Licensee, after Parks has given reasonable notice, to permit, during reasonable business hours, Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee’s books and records, books of account and data, or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to
substantially comply with the terms and conditions of this License Agreement and a default hereunder which shall entitle Parks to terminate this License Agreement subject to and in accordance with the provisions of Section 3.3 of this License Agreement.

5.3 Notwithstanding anything in this License Agreement, the Parties acknowledge and agree that the powers, duties and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised or abridged in any way.

6. GUARANTY; ORDER OF APPLICATION OF PAYMENT; CREDITOR-DEBTOR PROCEEDINGS

6.1 Simultaneous with the execution of this Agreement, Licensee shall have secured and delivered to the City a Guaranty executed by Guarantor which shall have been authorized, executed and delivered by the Guarantor.

6.2 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the Guarantor, if any, subject to the requirements and limitations set forth under the United States Bankruptcy Code, as well as New York State’s debtor-creditor laws, the Security Deposit shall be deemed to be applied first to the payment of License Fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City’s damages hereunder.

6.3 Without limiting Licensee’s other rights or remedies under this Agreement, if for any reason through no fault of Licensee, construction of the Required Capital Improvements or Additional Capital Improvements other than the Clubhouse or operation of the Licensed Premises is no longer reasonably economically feasible for Licensee and/or it is not reasonably possible for Licensee to operate the Licensed Premises as a first class, tournament quality daily fee golf course for a profit, and Licensee has completed the Grow-In and construction of the Clubhouse, Licensee shall provide Parks with written documentation of same, and thereafter Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution. While the Parties shall use good faith efforts to agree to an equitable solution as quickly as possible, Parks shall provide its proposed solution no later than fifteen (15) business days from the Parties’ meeting in accordance with the preceding sentence. Without limiting the scope of potential equitable solutions, the Parties recognize that an equitable solution may, depending on the circumstances and subject to compliance with applicable Legal Requirements, include, among other things, modifying the Guaranty to limit Guarantor’s obligations thereunder, providing reimbursements to Licensee, providing License Fee Credits, reducing the Minimum Annual Fee, and allowing Licensee to operate and/or maintain the Licensed Premises to a standard lower than that required under the License Agreement; provided that an equitable solution shall not include lowering the standard of operation or maintenance below that of a “first class” golf course facility unless Parks and Licensee mutually agree to such reduction in each such party’s sole discretion. Nothing in this Section shall in and of itself create a cause of action for Licensee, provided, however, that in the event Parks does not use good faith efforts to agree to an equitable solution, as set forth above, Licensee shall have the right to seek all appropriate legal and equitable remedies arising from such failure to cooperate. In the event that the Parties, acting in good faith, are unable to reach an equitable solution, Parks agrees that it will, at Licensee’s sole option, use good faith efforts to resolicit for the Concession (or substantial portion thereof) or for another use by the
general public of the Licensed Premises (or substantial portion thereof) provided however that Licensee shall continue to perform the Concession obligations during the Term that are applicable to Licensee as set forth in this Agreement and the Development Agreement until such time as a new operator of the Licensed Premises (or substantial portion thereof) is selected by Parks. Upon selection of a new operator, this License Agreement and the Development Agreement shall immediately terminate and Licensee shall be released from all obligations hereunder other than (x) for License Fees and any other fees then due and payable under this License Agreement by Licensee prior to the date of termination (but, for the sake of clarity, not subsequent to the date of termination) and (y) any damages attributable to any Claims that accrued prior to the Termination Date for personal injury, death, property damage or Claims described in Sections 5(a) and 6(b) of Exhibit H for which Licensee is obligated to indemnify (which damages, in each case, shall not include any lost sales or profit or any indirect, consequential, special, exemplary or incidental damages); provided that for the sake of clarity, the foregoing in this paragraph is not intended to abrogate Licensee’s obligations under this Agreement to indemnify, defend, protect and hold harmless the Indemnitees in accordance with the terms of this Agreement, as applicable, to the extent that such obligations relate to third-party claims.

7. UTILITIES

7.1 Except as otherwise provided for herein, including without limitation in Section 7.3 relating to the payment of water and sewer charges, and Section 7.6, beginning on the Concession Commencement Date, Licensee shall directly pay for all utility costs associated with the operation and maintenance of the Golf Course Facilities (and the Park Snack Bar after it is delivered to Licensee pursuant to and in accordance with the Development Agreement) and the construction, operation and maintenance of the Clubhouse at the Licensed Premises. For the avoidance of doubt, except for the Licensee’s responsibility for the cost of temporary utility connections and use of Temporary Utilities during the Interim Period as set forth in Section 9.1 of the Development Agreement, Licensee shall not be responsible for Utilities prior to the Concession Commencement Date, and subject to the terms set forth in Section 9.1 of the Development Agreement, Parks shall directly pay for all Utilities prior to the Concession Commencement Date. “Utilities”, as described in this License Agreement, shall include, but shall not be limited to, electricity, natural gas, telephone, water and sanitary and storm sewer.

7.2 Licensee shall have the right to provide separate metering for its sublicensees, and upon notice to the City of such separate metering, City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs in accordance with this License Agreement.

7.3 Except for water and sewage costs associated with the construction and operation of any banquet or catering facility that may be constructed by Licensee at the Licensed Premises, in Licensee’s sole discretion (which costs shall be the sole responsibility of Licensee), Parks shall be responsible for payment of all water and sewage costs incurred at the Licensed Premises during the Term.

7.4 (a) Except for and without limiting Parks’ and the City’s obligations for maintenance, repair and replacement of utility systems, connections, and equipment or any other materials or items under the Development Agreement, if any, and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee, at its sole cost and expense, shall maintain, repair and replace as needed (i) all utility systems, connections and equipment or any other materials or items
located at or above the surface of the Licensed Premises, and (ii) based upon and subject to the City’s compliance with the covenants of this Section 7.4 and the representations of the City set forth in this Section 7.4 being true, accurate and correct, (x) the irrigation and related systems and any other golf related utility system, connection or equipment or any other golf related materials or items located below the surface of the Licensed Premises and above the layer of municipal solid waste, so long as such maintenance, repairs and replacement can be performed using ordinary means and methods without having to disturb or excavate the layer of municipal solid waste (provided however that Licensee shall perform such maintenance, repairs and replacement even when such work requires the disturbance or excavation of the layer of municipal solid waste (and in such cases Licensee shall additionally dispose of the municipal solid waste, as applicable, in compliance with applicable Legal Requirements, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and all applicable Environmental Laws) to the extent it becomes necessary to disturb or excavate the layer of municipal solid waste due to the negligence or willful misconduct of the Licensee in performing its obligations under this Agreement or the Development Agreement), and (y) the electric conduits, wires, connections and equipment associated with the irrigation and related systems and any other golf related utility system, connection or equipment, which may be within or partially within the municipal solid waste, so long as such maintenance, repairs and replacement can, in each case, be performed using ordinary means and methods without having to disturb or excavate the layer of municipal solid waste (provided however that Licensee shall perform such maintenance, repairs and replacement even when such work requires the disturbance or excavation of the layer of municipal solid waste (and in such cases Licensee shall additionally dispose of the municipal solid waste, as applicable, in compliance with applicable Legal Requirements, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and all applicable Environmental Laws) to the extent it becomes necessary to disturb or excavate the layer of municipal solid waste due to the negligence or willful misconduct of the Licensee in performing its obligations under this Agreement or the Development Agreement).

(b) The City represents and warrants to Licensee that (i) all irrigation and related systems and all utility systems (other than electric conduits and wires) are located above the level of the municipal solid waste, except that certain connections and equipment associated with the utility systems may be partially within the municipal solid waste, but are in all cases located within and accessible by vaults so that maintenance of such connections and equipment will not require any disturbance or excavation of municipal solid waste; (ii) all electric conduits and wires are accessible by manholes and maintenance of such electric conduits and wires will not require any disturbance or excavation of municipal solid waste; and (iii) orange snow fencing has been installed over the layer of municipal solid waste in all areas of the Licensed Premises where the fill over the layer of municipal solid waste is less than five feet.

(c) Prior to the Concession Commencement Date, the City shall provide to Licensee “as built” plans certified by the Engineer (as defined in the Development Agreement) which the City agrees shall show the underground location of the irrigation and related systems, connections and equipment and all other utility systems, connections and equipment and the level of fill over the layer of municipal solid waste throughout the Licensed Premises. Licensee’s maintenance, repair and replacement obligations required pursuant to Section 7.4(a) above for any items below the surface of the Licensed Premises shall not commence until the City has delivered and Licensee has received the “as built” plans pursuant to this Section 7.4 and such maintenance, repair and replacement obligations shall remain with the City until such time, provided, however, prior to receipt of the “as built” plans, Licensee shall have the right but shall not have the obligation to perform such maintenance, repairs and replacements in Licensee’s sole discretion.
(d) Licensee shall not be deemed negligent for purposes of this Agreement or the Development Agreement if (x) Licensee causes or exacerbates an Environmental Condition and/or the effects of Environmental Conditions or (y) disturbs the municipal solid waste, in each case of the foregoing clauses (x) or (y) based upon its reliance upon the City’s representations contained in, or the “as built” plans delivered by the City, pursuant to this Section 7.4, and in each case of the foregoing clauses (x) and (y), the City shall be responsible for such Environmental Condition and/or the effects of Environmental Conditions and for the municipal solid waste which has been disturbed or excavated and, in each case, any liability with respect thereto. Notwithstanding anything to the contrary contained in this Agreement and without limiting the City’s obligations under this Agreement, the City shall be responsible for maintaining, repairing and replacing any irrigation or related systems, connections or equipment or any other utility systems, connections or equipment or any other materials or items (i) that cannot be maintained, repaired or replaced by Licensee based on the “as built” plans delivered by the City pursuant to this Section 7.4 without going into the municipal solid waste, unless Licensee otherwise has the obligation to so maintain, repair or replace under this Agreement regardless of the presence of such systems, connections or equipment in the municipal solid waste; or (ii) which Licensee is unable to locate based on the “as built” plans delivered by the City pursuant to this Section 7.4 despite Licensee’s reasonable efforts, unless the City locates it for Licensee in which case Licensee will have all of the obligations applicable to Licensee as set forth in this License Agreement.

(e) If in connection with Licensee’s construction of the Clubhouse, (i) Licensee disturbs or excavates the layer of municipal solid waste or (ii) Licensee relocates any portions of any utility system, connection or equipment to an area that requires work within the layer of municipal solid waste, then Licensee shall perform such activities in compliance with all applicable Legal Requirements, which includes the disposal of municipal solid waste, as applicable, in compliance with applicable Legal Requirements, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable), and all applicable Environmental Laws.

(f) In no event shall Licensee be responsible for any maintenance, repairs or replacements of any utility systems, connections or equipment or any other materials or items located below the surface of the Licensed Premises that are operated and/or controlled by any governmental agency or authority other than Parks, including the Emerson Avenue concrete sewer operated by the DEP (as hereinafter defined).

7.5 Licensee shall comply with all Department of Environmental Protection (“DEP”) directives and restrictions concerning droughts or water conservation. In the event that by reason of such drought or water conservation directives or restrictions, Licensee shall incur any costs and expenses in excess of thirty one thousand two hundred fifty dollars ($31,250.00) to prevent material damage to the Golf Course or to protect the tees and greens, Licensee shall be entitled to use amounts in the Capital Reserve Fund to pay such costs and expenses and all License Fees and other amounts thereafter payable under this License Agreement shall be applied to replenish the Capital Reserve Fund, up to the amount of Capital Reserve Funds paid to Licensee on account of such costs and expenses. If amounts in the Capital Reserve Fund are insufficient to reimburse Licensee for such costs and expenses, Licensee shall be entitled to a License Fee Credit in an amount equal to such costs and expenses, with interest thereon at the Interest Rate as set forth in Section 4.10 hereof. In the event that any portion of the Golf Course is unplayable as a result of the drought or the inability to irrigate the Golf Course because of any drought or water conservation restrictions or if play during such drought would result in material damage to the Golf Course, then, subject to compliance with applicable laws, the Concession Period shall be extended on an equitable basis to allow Licensee to
recoup the reasonable value of any such interruption of Licensee’s business operations as contemplated herein and realize the full value of its twenty (20) year Concession Period. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure in accordance with the foregoing.

7.6 Parks agrees to use good faith efforts to obtain electricity for the Licensed Premises from NYS Power Authority ("PASNY") and to bill Licensee for the electricity costs at the rates payable by Parks to PASNY.

8. INFLAMMABLES

8.1 Except for gasoline or diesel fuel properly stored in accordance with permits issued by the FDNY (as hereinafter defined) or de minimus amounts or painting and cleaning substances and other substances which are required for the daily operation of the Licensed Premises, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

9. OPERATIONS

9.1 (a) During the Concession Period, Licensee, in accordance with this License Agreement, shall operate the Concession for the use and enjoyment of the general public during such seasons and times of day and in such manner as set forth herein and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee shall be permitted, in its sole discretion and without the approval of Parks and/or the City, to close the Licensed Premises, or any part thereof, (i) at any date or time, between December 1st and March 1st of each Year; (ii) at any date or time in connection with adverse weather conditions (i.e., if the temperature is under forty (40) degrees or the weather may cause damage to the Golf Course in Licensee’s reasonable discretion), (iii) at any date or time in connection with required course maintenance, (iv) in the event of Force Majeure that affects the Licensed Premises. In the event of an emergency, Licensee may close the Licensed Premises, or any part thereof, without prior notice to or approval of Parks and/or the City, but shall give Parks reasonably prompt notice of such closing. Nothing in this Section 9.1(a) shall limit the Licensee's other obligations under the License Agreement, including maintenance obligations and the obligation to pay the License Fees.

(b) Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary equipment and consumable supplies and shall perform or cause to be performed the following services at the Licensed Premises:

(i) Operate and maintain the Golf Course Facilities (and the Park Snack Bar after it is delivered to Licensee pursuant to and in accordance with the Development Agreement);

(ii) Design, construct, operate and maintain the Clubhouse;

Perform such ongoing and preventive maintenance activities reasonably necessary to maintain the Licensed Premises in good order and repair (and consistent with a first class, tournament quality daily fee golf course and to a quality level consistent with the reasonable standards of a Jack Nicklaus Signature golf courses), and in conformance with any and all Environmental Laws as they relate to general
maintenance and care of the Licensed Premises (except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement)) and, as applicable, in conformance with the Maintenance Guidelines (as hereinafter defined) and the Grow-In Standards (as defined in the Development Agreement).

9.2 Subject to Licensee’s rights to close the Licensed Premises, or any part thereof, in accordance with Section 9.1(a), Licensee shall provide an adequate number of staff members possessing the appropriate qualifications to conduct all its operations at the Licensed Premises seven (7) days a week for such hours as the Commissioner shall reasonably approve. Licensee’s employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner.

9.3 (a) (i) Licensee shall be entitled, in each case without prior notice to or the approval of either Parks and/or the City, to conduct tournaments, outings, league play and junior or youth programs at the Licensed Premises; provided that (A) with respect to tournaments and outings only (i.e. not league play and junior or youth programs), not more than twenty percent (20%) of the amount of available starting times on Mondays thru Fridays in any Operating Year may be used for such tournaments and/or outings without Parks prior written approval, (B) Licensee shall obtain Parks’ prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed: (i) for complete day closures of the Golf Course to the public on any day for tournaments, outings, league play and junior or youth programs and (ii) for the closure of the Golf Course to the public at any time on Saturdays or Sundays for tournaments, outings, league play and junior or youth programs. Notwithstanding the foregoing, no prior notice to or the approval of either Parks and/or the City shall be required for professional or amateur tournaments or tournaments sponsored by the City or Parks.

(ii) During (x) hours and days that the Golf Course is not ordinarily open to the public, or (y) hours and days that the Golf Course is open to the public, so long as some food service facility is available to the public, Licensee shall be entitled to conduct special events in any banquet or other catering facility (“Licensee Special Events”), in each case without prior notice to or the approval of either Parks and/or the City, except that (A) Licensee shall provide notice to Parks of all events of five hundred (500) guests or more; and (B) if there are more than five (5) Licensee Special Events of five hundred (500) guests or more in any month, Licensee shall obtain the approval of Parks for any such Licensee Special Events in excess of five (5) occurring in such month.

(iii) In the event that Parks’ approval is required in connection with this Section 9.3(a), Parks shall respond to any approval request from Licensee within five (5) business days of receipt of such request or such request shall be deemed approved.

(b) Subject to Licensee’s rights to conduct certain events without notice to or approval of the City and/or Parks under Section 9.3(a), Licensee shall notify the Commissioner within five (5) business days after Licensee tentatively schedules any Licensee Special Event at the Licensed Premises (e.g., private parties) that would completely close the Golf Course or all of the food service facilities to the general public during hours that the Licensed Premises would ordinarily be open to the public. Except as permitted in this License Agreement, including, without limitation, Section 9.3(a), in no event shall Licensee completely close the Golf Course or all of the food service facilities to conduct Licensee Special Events during public hours of use except when such activities are specifically approved by Parks. Parks shall respond to any approval request from Licensee within
five (5) days of receipt of such request or such request shall be deemed approved. Except as provided in Section 9.1(a), any complete closure of the Golf Course or all of the food service facilities which Licensee seeks to schedule during public hours of use must be announced to the public, by posting notification of such closure, at the Licensed Premises at least one (1) week in advance. In addition, Parks may make use of the Licensed Premises, as provided in Section 16 herein. Notwithstanding the foregoing, Licensee may close any banquet or other catering facility at the Licensed Premises to conduct a Licensee Special Event during public hours of use without notification to the Commissioner, Parks’ or the City’s approval or announcement to the public.

(c) Any and all banquet or catering use of the food service facility must be booked for events primarily related to dining and/or sporting activities. Events for which dining is merely incidental to the primary activities during the event is prohibited. For example, and without limiting permissible events, the events listed on Exhibit J are permitted but a training seminar for business people featuring only a light lunch and other food service is prohibited.

9.4 (a) The City shall deliver to Licensee all Certificates of Occupancy that may be required for the Golf Course, the Maintenance Building (as defined in Schedule 2 of the Development Agreement) and the Golf Course Snack Bar and all other portions of the Golf Course Facilities constructed by the City or Parks prior to and as a condition of the Concession Commencement Date and all Certificates of Occupancy that may be required for the Park Snack Bar promptly upon completion thereof. Except as set forth in the prior sentence, Licensee shall, at its sole cost and expense, obtain all licenses and permits, including any necessary Certificate(s) of Occupancy, that may be required to operate the Clubhouse and any other structures (temporary or otherwise) constructed by Licensee at the Licensed Premises in accordance with applicable law.

(b) Without otherwise limiting the City’s or Parks’ obligations under this License Agreement and the Development Agreement and subject to Section 9.41, Licensee shall operate and occupy the Licensed Premises in accordance with all applicable laws and, as applicable, the provisions of the DEC Part 360 Permit (including any declaration of covenants and restrictions recorded against the Licensed Premises pursuant to the DEC Part 360 Permit, as applicable (such declaration, the “DEC Deed”)), any informal approval from DEC as described in Section 1.2(d), the New Permit, and any other licenses or permits required by Legal Requirements.

(c) In the event that, at the completion of the Clubhouse, the Licensee does not have a Certificate of Occupancy for the Clubhouse because one is not legally required, then Licensee shall obtain a “Letter of No Objection” from the Department of Buildings. Furthermore, in the event that, at the completion of the Clubhouse, or at any time thereafter during the Concession Period, the Licensee does not have a Certificate of Occupancy for the Clubhouse, where required, and does not have a “Letter of No Objection”, Licensee may conduct its operations in temporary structures that have been approved by Parks in its reasonable discretion. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations in such structures. However, if in such situation, the Licensee nonetheless chooses not to conduct operations of the Clubhouse in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or “Letter(s) of No Objection”. In the event that, at the Concession Commencement Date with respect to the Golf Course Facilities or the completion date with respect to the Clubhouse, or at any time thereafter during the Concession Period, the Department of Buildings rescinds any Letter of No Objection through no fault of Licensee, Parks and Licensee shall attempt in good faith to negotiate a mutually
acceptable solution. Nothing in this Section 9.4 shall limit the Licensee's other obligations under the License Agreement, including maintenance obligations and the obligation to pay the License Fees.

(d) The City represents and warrants that (i) attached as Schedule 9 to the Development Agreement is an accurate and complete copy of the DEC Part 360 Permit and that as of the date of this Agreement, the DEC Part 360 Permit has not been modified or amended in any way, (ii) it has submitted a timely application to renew and modify the current DEC Part 360 Permit, which expired on November 30, 2008, (iii) the application is being reviewed by the DEC, and (iv) notwithstanding the expiration of the existing DEC Part 360 Permit, since Parks has submitted an application to renew and modify the existing DEC Part 360 Permit, the existing DEC Part 360 Permit remains in full force and effect. The City agrees to provide to Licensee drafts of the renewed, modified or amended DEC Part 360 Permit and any DEC Deed prior to finalizing each such document with the DEC and with sufficient time to allow Licensee to review each such document. Licensee shall have the right (but not the obligation) to propose revisions to be included in the final renewed, modified or amended DEC Part 360 Permit and/or any DEC Deed, and the City shall reasonably consider such proposed revisions and, in the City’s reasonable discretion, propose such revisions to the DEC and/or include such proposed revisions in the renewed, modified or amended DEC Part 360 Permit and/or any DEC Deed, subject to the approval of the DEC. In addition, subject to Sections 1.2(c)(iii), 1.2(c)(iv), 1.2(c)(v) and 1.2(d), the City and Parks represent that the execution and delivery of this Agreement and the Development Agreement by the City and Parks, and compliance with the provisions thereof, do not and will not conflict with or constitute a violation of or default under any provision of applicable law, charter, ordinance or regulation or, to the extent of the City’s and Parks’ knowledge, of any material agreement, judgment, injunction, order, decree or other instrument binding upon the City or Parks or result in the creation or imposition of any lien or encumbrance on any asset of the City or Parks. The City acknowledges that Licensee is relying upon the truth, accuracy and correctness of the City’s representations contained in this Section 9.4(d). If at any time any of the City’s representations contained in this Section 9.4(d) are found to be materially untrue, inaccurate or incorrect, such occurrence shall be deemed a material breach or failure to substantially comply with this Agreement and Licensee shall be entitled to its rights and remedies pursuant to Section 3.12 of this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, in the event that any agreements, permits, licenses, judgments, injunctions, charters, orders, decrees or other instruments binding upon the City, Parks, or the Licensed Premises (or any part thereof) in effect as of the date of this Agreement have not been disclosed to Licensee by the City, adversely affects Licensee’s Grow-In or operation of the Licensed Premises or Licensee’s construction of the Required Capital Improvements (including adverse economic effects), Licensee shall provide Parks with written documentation of the same, and thereafter Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution to minimize such adverse effect, it being acknowledged and agreed by the Parties that Licensee is not assuming the risk with respect to such undisclosed items. While the Parties shall use good faith efforts to agree to an equitable solution as quickly as possible, Parks shall provide its proposed solution no later than fifteen (15) business days from the Parties’ meeting in accordance with the preceding sentence. Without limiting the scope of potential equitable solutions, the Parties recognize that an equitable solution may, depending on the circumstances and subject to compliance with applicable Legal Requirements, include, among other things, providing License Fee Credits, reducing the Minimum Annual Fee, and allowing Licensee to operate and/or maintain the Licensed Premises to a standard lower than that required under the License Agreement; provided that an equitable solution shall not include lowering the standard of operation or maintenance below that of a
“first class” golf course facility unless Parks and Licensee mutually agree to such reduction in each such Party’s sole discretion. If Licensee acts in good faith to reach an equitable solution and the Parties are unable to reach an equitable solution, Licensee shall have the right to seek all appropriate legal and equitable remedies.

9.5 Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the current approved schedule of operating days, hours, fees and rates. Annexed hereto and made a part hereof as Exhibit D are the Schedules of Operating Hours and Fees for the first Operating Year in which the Licensed Premises is open to the general public. Notwithstanding anything to the contrary contained herein, should Licensee choose not to charge the maximum allowable prices, this shall in no way be interpreted as a waiver of Licensee’s right to charge such maximum allowable prices at any other time. Any discounts on Greens Fees for a particular category, as set forth on Exhibit D, shall apply uniformly to all persons seeking to play in such category. Licensee is permitted to increase Greens Fees annually as set forth on Exhibit D. Any other changes in such approved Schedules of Operating Hours and Fees at any time during the Concession Period must be previously approved in writing by the Commissioner. In addition, Licensee shall give the Commissioner prior written notice and obtain approval of any plans to alter approved operating hours due solely to unprofitable operations. If the request is granted by the Commissioner, the Licensee will continue to be responsible for all other obligations under the License Agreement, including maintenance obligations and the payment of all License Fees.

9.6 Licensee acknowledges that pursuant to Section 4(A) of the Nicklaus Subcontract, Nicklaus Design has the right, at Nicklaus Design’s cost, to have the Golf Course inspected by Nicklaus Design’s staff agronomist or an independent agronomist selected by Nicklaus Design at any time and from time to time during the Term in order to review and assist in resolving agronomic issues which, in the reasonable opinion of Nicklaus Design, may adversely affect the proper grow-in of turf surfaces or otherwise impact the ability to maintain the quality of the Golf Course as required under the Nicklaus Subcontract. In order to effectuate this provision, Licensee agrees that it shall provide access to the Licensed Premises upon reasonable notice during normal business hours to such staff agronomist and/or independent agronomist. City shall use good faith efforts to cause such staff agronomist and/or independent agronomist to conduct its activities so as to avoid interference with Licensee’s operations at the Licensed Premises.

9.7 Licensee warrants that all services provided, merchandise sold and vending operations provided pursuant to this License Agreement shall be of high grade and good quality. Licensee shall operate the Golf Course Snack Bar (and the Park Snack Bar after it is delivered to Licensee in accordance with the Development Agreement) and any other food service facility at the Licensed Premises in such a manner as to maintain a passing health inspection rating of the NYC Department of Health and Mental Hygiene (“DOHMH”). Licensee shall maintain an adequate inventory to assure a constant supply of food, beverages, and merchandise. The food service facility and any staff assigned by Licensee to sell food must possess all required federal, state, and City authorizations and possess, and at all times display, all appropriate DOHMH permits. The price of all food and beverage items is subject to Parks’ prior written approval.

9.8 Licensee shall not use or permit the use of any polystyrene foam products in connection with services or merchandise offered under this License Agreement.

9.9 Licensee shall employ an operations manager(s) (“Manager(s)”) possessing appropriate experience to manage operations at the Licensed Premises in accordance with this License
Agreement. The Manager must be available by telephone during all hours of operation, and Licensee shall notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sub-licensee whenever reasonably demanded by Commissioner for cause only. Any such demand shall be in writing and shall state the reason for such termination.

9.10 Licensee shall provide security equipment for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee’s banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License Agreement.

9.11 Except as may be set forth in the Development Agreement or this License Agreement (including, without limitation, Section 12.19 and Section 9.39 of this License Agreement) Licensee shall, at its sole cost and expense provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the Licensee’s operations contemplated in this License Agreement, including but not limited to:

(a) collecting and safeguarding all monies generated under this License Agreement;

(b) maintaining the Licensed Premises;

(c) conducting and supervising all activities to be engaged in at the Licensed Premises including but not limited to the provision of qualified food service personnel and cashier(s); and

(d) securing the Licensed Premises in accordance with the provisions of Section 9.15.

9.12 Except as provided in the Development Agreement as part of the City’s Work, Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary for its operations under this License Agreement. Licensee shall operate and play such sound equipment and music in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq., and only at a sound level and at times reasonably acceptable to the Commissioner. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as they may require for such music or music programming in connection with its operation of the Licensed Premises.

9.13 Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the prior written approval of the Commissioner. Said approval shall not be unreasonably withheld. This applies to all Concession components, including the lighted Driving Range.

9.14 (a) Without otherwise limiting Licensee’s obligations under this License Agreement and the Development Agreement, Licensee shall provide a Clubhouse with facilities, in accordance with this License Agreement and the Development Agreement, which meet the ADA requirements and all City, State and Federal codes and regulations, including but not limited to, providing ADA compliant restrooms for men and women on each floor. Parks shall provide the two Snack Bars and related bathroom facilities in full compliance with ADA requirements, all City, State and Federal codes and regulations, and in accordance with the Development Agreement. Licensee shall comply with all
City, State and Federal laws relating to access for persons with disabilities to the Clubhouse, and to the Golf Course Facilities and the Park Snack Bar to be constructed by Parks upon delivery to Licensee in accordance with the Development Agreement, provided however that to the extent the Golf Course Facilities and the Park Snack Bar constructed by Parks do not comply with the ADA or any City, State and Federal codes and regulations, it shall not be Licensee's responsibility to remediate such deficiency or operate in compliance with the ADA or any City, State and Federal codes and regulations with respect to such deficiency to the extent that the Golf Course Facilities or the Park Snack Bar do not comply with the ADA or any City, State and Federal codes and regulations.

(b) In addition to the foregoing provisions set forth in Section 9.14(a) above, Licensee shall:

(i) provide safe and accessible recreational opportunities for everyone, including persons with disabilities;

(ii) post signs which clearly indicate accessibility at the Licensed Premises;

(iii) provide an ADA liaison (i) knowledgeable about the services/programs available at the Licensed Premises, and (ii) to assist patrons with disabilities who may require additional accommodation;

(iv) provide brochures formatted with dark/light contrast and large font for patrons with visual impairments;

(v) post ADA compliance information prominently on Licensee’s Website (as hereinafter defined);

(vi) provide at least one accessible golf cart;

(vii) provide accessible customer service counters at the pro-shop, Clubhouse, Snack Bars and all other customer service counters at the Licensed Premises;

(viii) provide designated accessible seating in the grill room, Snack Bars and any banquet/catering facility;

(ix) provide accessible access to all public areas of the Clubhouse. Level changes shall be accommodated with accessible ramps, elevators or lifts;

(x) provide the required number of accessible parking, ensuring that the number, placement and specifications of all accessible spaces comply with ADA guidelines as well as with all City, State and Federal regulations, including striping and signage specifications;

(xi) provide accessible restrooms on all floors of the Clubhouse and requisite ADA signage; and
make reasonable accommodations and designing accessible work areas throughout the facility for employees.

Notwithstanding the foregoing in this Section 9.14, to the extent any of the construction related requirements referred to in this Section 9.14 conflict with the ADA requirements and/or any City, State and/or Federal codes and regulations, then the provisions of the ADA requirements and/or such City, State and/or Federal codes and regulations shall govern and control.

9.15 The City shall construct and maintain until City’s Final Completion of the City’s Work (as such terms are defined in the Development Agreement) (other than the Park Snack Bar) a security fence around the entire perimeter of the Licensed Premises (other than the Park Snack Bar) and other than the West Parking Lot (as defined in the Development Agreement) in accordance with the Development Agreement, which fence shall be maintained by Licensee during the Concession Period. Upon the City’s Final Completion of the City’s Work (other than the Park Snack Bar, where the City’s obligation for security at the Park Snack Bar shall continue until the City’s Final Completion of the City’s Work with respect to the Park Snack Bar), Licensee shall be responsible for security at the Licensed Premises at all times, including locking and securing the fence during off-hours of operation. In addition, in connection with its construction of the Clubhouse, Licensee shall, at its sole cost and expense, install in the Clubhouse an alarm system for the Clubhouse approved by Parks. Upon the City’s Final Completion of the Park Snack Bar, Licensee shall be responsible for security at the Park Snack Bar at all times, including locking and securing the facility during off-hours of operation.

9.16 Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring at the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which is asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person’s name and address.

9.17 Licensee shall promptly notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License Agreement such as, but not limited to, fire, flood, casualty and substantial damage of any character, but excluding the existence of methane gases or settlement, which Parks is responsible for monitoring under this License Agreement.

9.18 Intentionally Omitted.

9.19 Licensee shall cooperate with Parks in conducting free and discounted community outreach programs and in providing use of the Licensed Premises for programs conducted by or arranged for by Parks in accordance with Section 16.

9.20 Licensee shall maintain close liaison with Parks' Enforcement Patrol (“PEP”), the New York City Police Department (“NYPD”) and other police officials, and shall reasonably cooperate with all efforts to remove illegal vendors from the Licensed Premises. Licensee shall use commercially reasonable efforts to prevent illegal activity on the Licensed Premises.

9.21 The Commissioner shall have the right to approve the days and times on which deliveries to Licensee may be made. The Commissioner shall not unreasonably deny such access and any rules
regarding deliveries shall not be inconsistent with the rights of Licensee to operate the Concession at the Licensed Premises.

9.22 (a) Subject to Sections 1.8 and 9.22(b) and (c), Licensee may establish a reasonable advertising and promotion program and shall have the right to advertise and promote the Concession in a manner that is usual and customary in the golf course industry. The Commissioner shall have prior approval as to design, content and distribution of all advertising and promotional materials, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall have the right to print or to arrange for the printing of promotional materials for events containing any advertising matter, except advertising matter which, in the Commissioner’s reasonable discretion, is indecent, in obvious bad taste, demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner in his reasonable discretion, however, finds any releases to be unacceptable because they are indecent, in obvious bad taste, demonstrate a lack of respect for public morals or conduct, or adversely affects the reputation of the Licensed Premises, Parks or the City of New York, then Licensee shall cease or alter such releases as reasonably directed by the Commissioner. Parks agrees to use its reasonable efforts to cooperate with Licensee in obtaining authorizations from other agencies having jurisdiction for posting signs designed to inform the public of the operations conducted at the Licensed Premises.

(b) Upon the approval of the Commissioner or his designee, Licensee shall have the right to erect signs related to its operations at the Licensed Premises. Such signs, including any commercial sponsorship information or signs identifying products available for sale at the Licensed Premises, which may contain appropriate sponsor recognition or identification or identification of those products available for sale at the Licensed Premises, are subject to the approval of Parks. However, no tobacco sponsorship or identification will be allowed. Except for signs identifying the Licensed Premises as Trump Golf Links at Ferry Point Park and those required for directional or instructional purposes, all signs must face inward towards the Golf Course and not out towards the other areas of Ferry Point Park. The Commissioner may require removal of such signs if the Commissioner, in his reasonable discretion, finds any such sign or material to be unacceptable because they are indecent, in obvious bad taste or demonstrate a lack of respect for public morals or conduct. Licensee shall not advertise any product brands without Parks’ prior approval. Licensee is not permitted to place advertisements in the Licensed Premises or on the exterior of any building or structure on the Licensed Premises without Parks’ prior written approval. Nothing contained herein shall be deemed to require Licensee to obtain approval from Parks for the display of items for sale at the Licensed Premises. The display or placement of tobacco advertising shall not be permitted. The advertising of alcoholic beverages shall not be permitted within 250 feet of any school, day care center, or house of worship. In the event advertising is allowed, the following standards will apply: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks.

(c) A sample of each new proposed sign and/or advertisement that requires approval of Parks in accordance with the terms of this License Agreement shall be sent for Parks’ approval to Parks’ Revenue Division, 830 Fifth Avenue, Central Park, New York, NY 10065. Parks shall respond to any request for approval under this Section 9.22 within five (5) business days of its
receipt of such request, and the failure of Parks to respond within such (5) business day period shall be deemed approval.

(d) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License Agreement, at locations determined through consultation with the Licensee. Parks shall cooperate with Licensee in connection with Parks and City related advertising on the Licensed Premises, with respect to design, location, and quantity of such advertising within the Licensed Premises to ensure that such advertising does not materially interfere with Licensee operating in a first class standard.

(e) Licensee shall have the right to erect a flag pole and flag and place a clock on the Licensed Premises in each case in Licensee's reasonable discretion and subject to any applicable Legal Requirements.

9.23 (a) Licensee shall display at the Licensed Premises, in an appropriate manner, all permits and licenses required to operate the Licensed Premises.

(b) Licensee shall prominently display signage at the Licensed Premises listing all prices, rates and hours and days of operations. The placement, design and content of all such signage are subject to Parks' prior written approval.

(c) Subject to Sections 1.8 and 9.22(b) and (c), any sign posted by Licensee at the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner. One sign posted conspicuously at the entrance to the Licensed Premises shall state that the Licensed Premises is a New York City municipal concession operated by Licensee, and such a statement shall be included on other signs at the Licensed Premises if requested by Parks. In addition, Licensee may display signage for the purpose of advertising upcoming events at the Licensed Premises, the design, location, size and type of which shall be aesthetically appropriate and subject to the approval of Parks and, if required, the Public Design Commission of the City of New York (the “PDC”).

9.24 Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be reasonably necessary to direct patrons to its services and facilities. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee’s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. Parks and the City understand that signs announcing the location of the Golf Course on all highways in the vicinity of the Licensed Premises and providing directions to the Golf Course from all the exits from such highways are critical to the success of the Concession and shall cooperate with Licensee in obtaining any necessary approvals or permits for such signs as reasonably requested by Licensee. The design and content of all such signs are subject to Commissioner's reasonable prior approval.

9.25 The sale or advertising, or, to the extent prohibited by law, smoking, of cigarettes or any other tobacco product, is strictly prohibited at the Licensed Premises. Licensee shall adhere to and enforce this policy which may include the placement of signage as may be necessary to comply with this provision.

9.26 The sale of beverages in glass bottles for consumption outside of the snack bar / food service facility seating area and the use of styrofoam are both strictly prohibited. All beverages for
consumption outside the snack bar / food service facility shall be in non-glass, shatter-proof containers.

9.27 Intentionally omitted.

9.28 Licensee, or a sublicensee approved by Parks to operate the parking facility, may charge for parking in the parking area at the Licensed Premises at such rates as may be approved in advance in writing by Parks. Annexed hereto as Exhibit D is the Schedule of Operating Hours and Fees for the commencement of operations hereunder.

9.29 (a) Licensee shall, at its sole cost and expense, provide the link to the “Licensee Website” (as herein defined) for the Licensed Premises to the City’s Website (as defined herein) and shall be the exclusive owner of the domain names as displayed in the URL addresses used in connection with the business conducted by and through an internet website created and maintained by Licensee during the Term and identified in Exhibit P attached hereto (the “Licensee Website”). The Licensee Website shall be accessible from the “City Website” identified in Exhibit R (the “City Website”) and the City shall provide access from the “City Website” to the Licensee Website through one of the hoplinks listed in Exhibit Q and attached hereto (the “Hoplinks”). For purposes of clarity, Licensee shall acquire no trademark rights in any City Marks contained in the domain names identified in Exhibits P, Q or R. Licensee shall operate and maintain, or participate in (in Licensee’s discretion) a computerized, online reservation system, accessible via the internet and telephone. At all times during the Term of this License Agreement, Licensee shall have the right, but not the obligation, to use its own golf reservation system. All reservations and tee times shall be made through the golf reservation system in use by Licensee. Without limiting Licensee’s rights under this Section 9.29(a), Licensee shall participate in any centralized reservation system that the City may develop solely by reasonably cooperating with the City to provide a link, links or other means to access the golf reservation system in use by Licensee from the City’s Website and the City shall ensure that the Licensee’s golf reservation system is accessible through the centralized reservation system. The City and Parks agree that Licensee shall have the right to use Licensed City IP on any Licensee Website established by Licensee for the Licensed Premises in a manner preapproved in writing by Parks and pursuant to Section 1.7 and Exhibit H, and Licensee agrees that the City and Parks shall have the right to use the Licensed Trump IP on the City Website and City social media pages or posts to indicate, refer to or promote the Licensed Premises in a manner preapproved in writing by Licensee and pursuant to Section 1.7 and Exhibit H. Any Licensee Website or Hoplink reflected on Exhibit Q and/or Exhibit P that includes the word “club” shall be used exclusively as a reserved name to prevent confusingly similar domain name registrations by third parties, but shall in no event be used to publicly identify or refer to the Licensed Premises or to refer individuals to the Licensee Website or the City Website.

(b) The Licensee Website and the Hoplinks shall be acquired in the name of, and shall be owned by, Licensee, and may be used by Licensee during the Term. Except for the “Transfer Websites” (as hereinafter defined), the Licensee Website and Hoplinks shall not be used by either Party or any Affiliate thereof after the expiration or sooner termination of this License Agreement. The term “Transfer Websites” shall mean the domain names as displayed in the URL addresses identified in Exhibit S attached hereto. Licensee shall own and direct all copyrights in and to the content of the Licensee Website, to the extent that such content does not consist of any copyrightable material owned by the City or Parks. Upon the expiration or sooner termination of this License Agreement, Licensee shall discontinue use of any Licensee Website and disable any Hoplinks, unless the continued use of such domain name and URL shall be approved by the City or Parks in writing.
Within ten (10) business days from the expiration or sooner termination of this License Agreement, Licensee shall transfer ownership of the Transfer Websites to the City.

(c) Additional domain names to be registered by Licensee or Trump and used as links or redirects to the Licensee Website, other than those listed in Exhibit P and Exhibit Q, shall be mutually agreed upon by the Parties in writing and in advance of use or registration of any additional domain names.

9.30 Subject in all cases to Article 16, Parks, acting on behalf of the City, reserves the right to host a number of annual events at the Licensed Premises, including but not limited to benefits and other non-profit and public events.

9.31 (a) Except for and without limiting the City’s and Park’s obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall, in each Operating Year throughout the Concession Period, provide a safe environment for the public at the Licensed Premises, including but not limited to:

(i) Installing snow fencing around all bodies of water thereon no later than December 1, subject to weather conditions and removing all such snow fencing no earlier than March 20, subject to weather conditions;

(ii) Providing sufficient numbers of rescue ladders within appropriate proximity of any water bodies on the Licensed Premises;

(iii) Erecting and maintaining warning signs, as necessary, warning against ice conditions, prohibition of swimming at water bodies, and any other hazardous conditions; and

(iv) Complying with all national safety guidelines, Environmental Laws and Legal Requirements related to the renovation, operation, and maintenance of the Golf Course.

(b) Licensee agrees to employ reasonable preventative maintenance techniques to discourage errant golf balls outside of the Licensed Premises.

Failure to comply with this Section 9.31 shall be deemed a material breach of this License Agreement.

9.32 (a) Licensee shall promote a junior development or youth program with scholarship and fee-based membership (including, but not be limited to the following components: teaching programs, special tournaments, exhibitions, clinics and league play), in each case, by providing use of the Golf Course for such programs. In connection with such programs, Licensee shall provide free course access for up to twenty-five (25) foursomes (for one (1) round each) for Parks-sponsored youth instruction and development programs; such access shall be after 3:00 p.m. on Mondays thru Thursdays during the months of July and August of each Operating Year.

(b) Licensee shall accommodate school athletic programs on a reasonable basis after 3:00 p.m. on Mondays thru Thursdays. In addition, Licensee shall develop and promote a Junior Golf Program for high school and college students. Parks encourages the Licensee to cooperate with school golf coaches and athletic directors to establish a schedule to accommodate school athletic programs.
(c) Licensee shall submit to Parks an annual report of such community and youth programs within thirty (30) days of the end of each Operating Year.

9.33 The greens fees listed in Exhibit D apply to residents of the five (5) boroughs of New York City and may be adjusted as provided in Exhibit D. Licensee may institute a surcharge for non-residents, which shall be subject to the prior written approval of Parks if such non-resident fees are more than the amounts permitted on Exhibit D. In addition, Licensee may issue New York City resident ID cards (“Resident ID Cards”), which Resident ID Cards may be used at City owned golf courses citywide, for a fee listed on Exhibit D, which fees are subject to change upon the reasonable prior written approval of the Commissioner, which approval shall be granted if such fees are consistent with other City golf courses.

9.34 Licensee recognizes that the City has developed Citywide Beverage Vending Machines Standards (“Standards”), which are attached to this License Agreement as Exhibit E. In the event that Licensee, or any properly authorized sublicensee, installs vending machines on the Licensed Premises, Licensee will be required to comply (and shall ensure that its sublicensee complies) with these Standards. Food standards for vending machines may be implemented by the City during the Term of this License Agreement. In addition, the City’s beverage and/or food vending standards may be changed during the Term of this License Agreement. In the event that Licensee, or any properly authorized sublicensee, operates vending machines on the Licensed Premises, Licensee will be required to comply (and shall ensure that its sublicensee complies) with any new and/or changed food or beverage standards in the operation of vending machines at all vending machine locations in the Licensed Premises. If Licensee fails to comply with any new and/or changed food or beverage standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises.

9.35 Licensee may serve alcoholic beverages at Licensed Premises, provided that it obtains the appropriate license from the State Liquor Authority as well as any other required licenses or permits. Licensee shall use commercially reasonable efforts to ensure that alcoholic beverages served on the Licensed Premises are consumed in designated areas approved by Parks and are not removed from the Licensed Premises. Licensee shall use commercially reasonable efforts to keep alcohol consumption discrete.

9.36 Licensee’s operations shall include the sale of golf merchandise, supplies and equipment from a well-stocked pro shop, the size and location of which are subject to Parks’ prior written approval.

9.37 Licensee shall obtain the written approval of Parks prior to entering into any marketing or sponsorship agreement which grants rights to use the name of or association with the Golf Course in marketing its products, (such as, for example, an agreement allowing a golf ball manufacturer to advertise that its golf ball are used at the Golf Course), which approval shall not be unreasonably withheld, conditioned or delayed. Parks shall use its best efforts to respond to Licensee within five (5) business days of receipt of any approval request and the failure of Parks to respond within such five (5) business day period shall be deemed approval. This provision shall not in any way affect Licensee’s rights to enter into exclusive purchasing or sales agreements (such as for example, an agreement to sell only Taylor Made Golf Clubs at the Licensed Premises), so long as such agreements do not contain marketing, promotional or sponsorship rights, other than the right to display the product at the Licensed Premises. In the event Licensee breaches this provision, Licensee shall take any reasonable action that the City may deem necessary to protect the City’s interests.
9.39 Licensee shall address geese population related to the Licensed Premises according to the following:

(a) In connection with the City's goose mitigation efforts at the Licensed Premises, Licensee agrees solely to (a) cause one (1) member of Licensee's staff to be trained in wildlife hazard management, (b) post and maintain "no feeding" signs at the Clubhouse, the Maintenance Building, the parking areas at the Licensed Premises, and the Golf Course Snack Bar and (c) cause one (1) representative of Licensee to attend any bi-annual wildlife meeting between Parks, the Department of Environmental Protection and the FAA (as hereinafter defined) where Parks has provided Licensee with reasonable advance written notice of such meeting (the foregoing activities, collectively the "Licensee Goose Related Activities"). Parks acknowledges and agrees that Licensee shall not be required to bear more than a minimal expense in connection with the Licensee Goose Related Activities. The City shall promptly provide to Licensee a copy of any Wildlife Hazard Management Plan that the City or Parks develops with the FAA and any amendments thereto.

(b) Except as provided in Section 9.39(a), the City acknowledges and agrees that the City shall be responsible at its cost and expense for all wildlife hazard mitigation and monitoring measures, including without limitation, the monitoring and mitigation of geese populations at the Licensed Premises (and any lethal removal of geese), in each case, in accordance with all Legal Requirements (including, without limitation, any requirements of the Federal Aviation Administration (the "FAA")).

9.40 Without limiting Licensee's other rights or remedies under this Agreement, in the event that:

(x) compliance by Licensee with Legal Requirements applicable to the Licensed Premises (including, without limitation, any conditions of a renewed, modified or amended DEC Part 360 Permit, any DEC Deed, and/or any conditions imposed by the DEC and/or any SEQRA or CEQR review with respect to Licensee's operation of the Licensed Premises, including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises) will have a material adverse effect on Licensee's Grow-In, construction of the Required Capital Improvements or operation of the Licensed Premises (including adverse economic effects), (y) Licensee reasonably believes that any condition of any agency granting any license, permit or other approval is commercially unreasonable (provided however that the Parties agree that Licensee must comply with all Legal Requirements) and compliance with such condition will have a material adverse effect on Licensee's Grow-In, construction of the Required Capital Improvements or operation of the Licensed Premises (including materially adverse economic effects), (z) Licensee reasonably believes that any condition of any agency granting any license, permit or other approval is commercially unreasonable (provided however that the Parties agree that Licensee must comply with all Legal Requirements) and compliance with such condition will have a material adverse effect on Licensee's Grow-In, construction of the Required Capital Improvements or operation of the Licensed Premises (including materially adverse economic effects), which would include any condition that would reasonably be expected to cause Licensee to spend in excess of an additional five percent in Capital Improvement Costs, in the aggregate, to Finally Complete the Required Capital Improvements or (z) Licensee's Grow-In is adversely and materially interrupted, impacted or restricted due to repairs, alterations, improvements, additions or maintenance work or City's Reconstruction Activities being performed by or on behalf of the City and/or Parks pursuant to Section 19.3; then, in each case of clauses (x), (y) and (z), Licensee shall provide Parks with written documentation of same, and thereafter Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution to minimize such adverse effect. While the Parties shall use good faith efforts to agree to an equitable solution as quickly as possible, Parks shall provide its proposed solution no later than fifteen (15) business days from the Parties' meeting in accordance with the preceding sentence. Without limiting the scope of potential equitable solutions, the Parties recognize that an equitable solution may, depending on the circumstances and subject to compliance with applicable Legal Requirements, include, among other
things, providing License Fee Credits, directly reimbursing Licensee for reasonable costs and expenses actually paid or incurred by Licensee, reducing the Minimum Annual Fee, and allowing Licensee to operate and/or maintain the Licensed Premises to a standard lower than that required under the License Agreement; provided that an equitable solution shall not include lowering the standard of operation or maintenance below that of a “first class” golf course facility unless Parks and Licensee mutually agree to such reduction in each such parties sole discretion. Nothing in this Section shall in and of itself create a cause of action for Licensee, provided, however, that in the event Parks does not use good faith efforts to agree to an equitable solution, as set forth above, Licensee shall have the right to seek all appropriate legal and equitable remedies arising from such failure to cooperate. In the event that the Parties, acting in good faith, are unable to reach an equitable solution, Parks agrees that it will, at Licensee’s sole option, use commercially reasonable efforts to resolicit for the Concession (or substantial portion thereof) or for another use by the general public of the Licensed Premises (or substantial portion thereof) provided however that Licensee shall continue to perform the Concession obligations during the Term that are applicable to Licensee as set forth in this Agreement and the Development Agreement until such time as a new operator of the Licensed Premises (or substantial portion thereof) is selected by Parks. Upon selection of a new operator, this License Agreement and the Development Agreement shall immediately terminate and Licensee shall be released from all obligations hereunder other than (x) for License Fees and any other fees then due and payable under this License Agreement by Licensee to Parks prior to the Termination Date (but, for the sake of clarity, not subsequent to the Termination Date) and (y) any damages attributable to any Claims that accrued prior to the Termination Date for personal injury, death, property damage or Claims described in Sections 5(a) and 6(b) of Exhibit H for which Licensee is obligated to indemnify (which damages, in each case, shall not include any lost sales or profit or any indirect, consequential, special, exemplary or incidental damages); provided that for the sake of clarity, the foregoing in this paragraph is not intended to abrogate Licensee’s obligations under this Agreement to indemnify, defend and hold harmless the Indemnities in accordance with the terms of this Agreement, as applicable, to the extent that such obligations relate to third-party claims. The Parties hereby agree that Licensee shall not be considered in breach of this License Agreement if Legal Requirements applicable to the Licensed Premises (including, without limitation, any conditions of a renewed, modified or amended DEC Part 360 Permit, any DEC Deed and/or any conditions imposed by the DEC and/or any SEQRA or CEQR review with respect to Licensee’s operation of the Licensed Premises, including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises) have a material adverse effect on Licensee’s Grow-In, construction of the Required Capital Improvements or operation of the Licensed Premises (including adverse economic effects) and Licensee complies with such Legal Requirements and/or conditions. Notwithstanding anything to the contrary contained in this Agreement, in the event that conditions imposed by Legal Requirements applicable to the Licensed Premises (including, without limitation, any conditions of a renewed, modified or amended DEC Part 360 Permit, any DEC Deed and/or any conditions imposed by the DEC and/or any SEQRA or CEQR review with respect to Licensee’s operation of the Licensed Premises, including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises) require any City’s Reconstruction Activities, Licensee shall not be responsible for any such work and the City shall perform such work at its sole cost and expense.

9.41 If Licensee incurs any costs or expenses that are required for Licensee’s activities contemplated by this Agreement or the Development Agreement to be in compliance with the DEC Part 360 Permit, any conditions of a renewed, modified or amended DEC Part 360 Permit, any DEC Deed and/or any conditions imposed by the DEC and/or any SEQRA or CEQR review with respect to Licensee’s operation of the Licensed Premises, including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises (in each case other than in connection with Licensee’s
construction of the foundation of the Clubhouse or in the course of Licensee performing its responsibilities pursuant to Section 12.16(b) of this Agreement), then the City shall pay or reimburse Licensee for such costs and expenses actually paid or incurred by Licensee within sixty (60) days after demand, provided that documentation of such costs and expenses, satisfactory to Parks, is submitted to Parks and provided further, to the extent such costs and expenses are Grow-In Costs, the City shall reimburse Licensee for all of these Grow-In Costs incurred by Licensee to the extent that Licensee has otherwise expended seven hundred and fifty thousand dollars ($750,000), in the aggregate, for Grow-In Costs. Except as otherwise provided in Section 5.2 of the Development Agreement, in the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and expenses and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon, as applicable, at the Interest Rate as set forth in Section 4.10 hereof, subject to the last sentence of Section 4.10.

10. CAPITAL IMPROVEMENTS

10.1 Licensee shall, during the Term, at its sole cost and expense, perform and complete or cause to be performed and completed, the Capital Improvements described conceptually on the Schedule of Capital Improvements annexed hereto as Exhibit F (the “Required Capital Improvements”). Subject to the last sentence of this Section 10.1, Licensee shall spend or cause to be expended Capital Improvement Costs of at least Ten Million Dollars ($10,000,000) (the “Minimum Capital Improvement Cost”) for the construction of the Required Capital Improvements. The Minimum Capital Improvement Cost shall not include the Design Review Fee, as defined in Section 10.3, but shall include the cost of any temporary Clubhouse. All Additional Fixed Equipment and Expendable Equipment installed in connection with the Required Capital Improvements and included in satisfying the Minimum Capital Improvement Cost shall become the property of Parks upon installation, at Parks’ option. Notwithstanding Licensee’s obligation to expend the Minimum Capital Improvement Cost for the construction of the Required Capital Improvements, in the event that all of the Required Capital Improvements are Finally Complete and Licensee has expended less than Ten Million Dollars ($10,000,000) in Capital Improvement Costs for the Required Capital Improvement in the aggregate, Licensee shall remit to the Capital Reserve Fund the amount that equals the difference between Ten Million Dollars ($10,000,000) and the amount that Licensee has expended on Capital Improvement Costs for the Required Capital Improvements.

10.2 (a) Licensee shall perform and complete all Capital Improvements in accordance with all plans, designs, specifications, schematics, working and mechanical drawings (the “Designs and Plans”) approved by Parks and other government agencies having jurisdiction, as applicable (the Designs and Plans as so approved, the “Approved Designs and Plans”). Parks acknowledges that time is of the essence in connection with its approval of Designs and Plans of the construction of Capital Improvements so as not to delay the construction of Capital Improvements, and Parks will act reasonably and use its best efforts to approve or disapprove Licensee’s Designs and Plans within thirty business (30) days of receipt thereof, and if disapproved shall state the reason for such disapproval and the changes required by Parks.

(b) Parks and Licensee acknowledge that (x) Licensee does not intend to spend in excess of Ten Million Dollars ($10,000,000) for Capital Improvement Costs in the aggregate for the Required Capital Improvements and (y) the Designs and Plans for the Required Capital Improvements to be submitted by Licensee to Parks are intended to set forth Designs and Plans for the Required Capital
Improvements that can reasonably be built to Final Completion for Ten Million Dollars ($10,000,000) in Capital Improvement Costs or less in the aggregate. In exercising Parks’ approval rights over Licensee’s Designs and Plans for the Required Capital Improvements as set forth in this Agreement, Parks agrees (i) it shall not require any modifications to the Designs and Plans that would reasonably cause the Capital Improvement Costs to Finally Complete such Required Capital Improvements, in the aggregate, to increase by more than five (5) percent (any such increase a “Parks Required Increase”) (the measured value estimated at the time Licensee’s Designs and Plans are submitted for approval by Parks), and (ii) that it would be unreasonable for Parks to disapprove Licensee’s Designs and Plans for the Required Capital Improvements if the changes required by Parks would reasonably be expected to cause Licensee to spend in excess of Ten Million Dollars ($10,000,000) (the measured value estimated at the time Licensee’s Designs and Plans are submitted for approval by Parks) for Capital Improvement Costs in the aggregate on the Required Capital Improvements. In the event of any Parks Required Increase, Licensee shall be entitled to a credit against amounts to be deposited in the Capital Reserve Fund under Section 10.29(a), commencing in Operating Year 5, in the dollar amount of such Parks Required Increase. Parks shall cooperate with Licensee in obtaining Governmental Approvals from other City agencies (including the PDC) that may have jurisdiction for approval over Licensee’s Designs and Plans for the Required Capital Improvements (if such Designs and Plans are approved by Parks), which cooperation shall include supporting Licensee’s submissions to other applicable City agencies (including the PDC).

10.3 A fee will be charged to Licensee for design review by Parks personnel (the “Design Review Fee”). The Design Review Fee shall be a onetime charge of one hundred thousand dollars ($100,000) and shall be deposited by Licensee into the Capital Reserve Fund upon the earlier of (i) the date that Licensee has expended amounts equal to seven hundred fifty thousand dollars ($750,000) in connection with the Grow-In pursuant to the Development Agreement, or (ii) the Concession Commencement Date. Licensee shall be entitled to draw down on the Capital Reserve Fund in accordance with the terms of this License Agreement, including, without limitation, for the avoidance of doubt, in connection with the Grow-In pursuant to the Development Agreement.

10.4 Capital Improvement Costs, including the Capital Improvement Costs of the Required Capital Improvements to determine if the Minimum Capital Improvement Costs have been expended, shall be reasonably determined by the Commissioner based upon construction documents, invoices, labor time sheets, cancelled checks, credit card receipts, bank statements and such other supporting documents or other data as the Commissioner may reasonably require. In making the determination of the Capital Improvements Costs, Commissioner may request any information the Commissioner reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon Commissioner’s request. Licensee may appeal the Commissioner’s determination of the Capital Improvements Costs within thirty (30) business days of receipt of such determination. Such appeal shall be in writing, detailing the grounds for appeal together with relevant documentation, and shall be addressed to the Commissioner, 830 Fifth Avenue, New York, NY 10065. Upon receipt of the appeal, the Commissioner shall review the claims addressed in Licensee’s appeal and, within thirty (30) business days, issue a final determination, which shall be reasonable. Licensee reserves its rights to challenge any such final determination via an appropriate legal proceeding.

10.5 (a) Licensee shall pay all applicable fees in connection with its Designs and Plans, which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer, who will oversee the entire construction project (the “Architect/Engineer”). All Designs and Plans shall be in such detail as Parks shall reasonably require. All work shall be undertaken in
accordance with the Designs and Plans approved in writing in advance by Parks. The Architect/Engineer shall be engaged by Licensee at Licensee’s sole cost and expense to ensure that all construction conforms in all material respects to the Designs and Plans approved by Parks and all City, state and federal agencies having jurisdiction. Licensee shall submit the Architect’s/Engineer’s qualifications to Parks for prior approval. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his reasonable satisfaction; provided that the Commissioner agrees to comply with the procedures set forth in Section 10.19 of this Agreement.

(b) Intentionally omitted.

(c) To the extent required by Environmental Laws, an independent environmental monitor (“IEM”) shall be present during Licensee’s Grow-In and/or construction of Required or Additional Capital Improvements. In the event that the IEM hired by Parks is required to be onsite at such times in any event, because of other obligations of the City under the DEC Part 360 Permit, then Licensee shall be entitled to utilize the services of such IEM. Licensee shall reimburse Parks for the incremental cost of the IEM attributable to the IEM's activities in relation to work performed on behalf of Licensee described in the two immediately preceding sentences, provided that documentation of such costs, satisfactory to Licensee, is submitted to Licensee. In the event the IEM hired by Parks is not onsite as described, if required by applicable Environmental Law, Licensee shall engage, at Licensee’s sole cost and expense, an IEM to monitor the work described above in this Section 10.5(c). Notwithstanding the foregoing, Licensee shall have the right, at any time, to employ its own IEM that satisfies the requirements of the applicable Environmental Laws. Any cost of an IEM to Licensee in connection with Licensee’s construction of the foundation of the Clubhouse shall be a Capital Improvement Cost that is credited against the Minimum Capital Improvement Cost to be expended by Licensee under the License Agreement to the extent such cost is incurred in connection with Licensee’s construction of the foundation of the Clubhouse. If Licensee is required to have an IEM present pursuant to applicable Environmental Law for any reason other than (x) the Licensee’s construction of the Clubhouse or (y) in connection with Environmental Condition and/or effects of Environmental Conditions that are, in each case, caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees, then the City shall pay or reimburse Licensee in an amount equal to the costs and expenses of the IEM actually paid or incurred by Licensee within sixty (60) days after demand, provided that documentation of such costs and expenses, satisfactory to Parks, is submitted to Parks. In the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and expenses and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon, as applicable, at the Interest Rate as set forth in Section 4.10 hereof, subject to the last sentence of Section 4.10.

10.6 Upon approval by Parks of drawings submitted by Licensee, Licensee may commence the construction of the Required Capital Improvements. Subject to Section 3.3(c), Licensee shall complete or cause to be completed all Required Capital Improvements within the time periods set forth in Exhibit F. In the event Licensee is delayed or prevented from completing all Required Capital Improvements within the time periods set forth in Exhibit F due to any of the conditions set forth in Section 3.3(c) or unreasonable delays attributable to Parks, the Licensee shall propose for the Commissioner’s reasonable approval a revised completion schedule and if approved, Licensee shall complete the Required Capital Improvements in accordance with such approved revised schedule. The number of days by which performance may be extended shall be reasonably determined by the Commissioner after consultation with Licensee.
10.7 Licensee shall use commercially reasonable efforts to minimize the extent to which the public use of Ferry Point Park is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Premises.

10.8 Intentionally Omitted.

10.9 Intentionally Omitted.

10.10 Licensee, within three (3) months of certification of Final Completion of the Capital Improvements or as soon as reasonably practicable thereafter, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks, all to the extent applicable. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, or shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks and/or the New York City Comptroller upon request.

10.11 Intentionally Omitted.

10.12 At Parks’ request, after certification by the Commissioner of Final Completion by Licensee of the Capital Improvements hereunder, Licensee shall provide Parks with one complete set of final, approved plans (where such plans are applicable in connection with such Capital Improvement, it being understood that not all Capital Improvements entail the development of plans) in a format acceptable to Parks. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 0.4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. CADD generated PDF files in electronic form (CD or DVD) and one set of paper drawing shall satisfy the requirements of this Section 10.12. Drawings produced by diazo4, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. Each drawing shall contain the name, address and telephone number of the Architect/Engineer and the Contractor. Each drawing shall also include the Parks property number, Block and Lot numbers for the Parks facility in which the work was performed, and, if applicable, the Department of Buildings approval / application number.

10.13 (a) For any Capital Improvements commenced under this License Agreement by Licensee, Licensee shall apply for applicable licenses from the Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the Department of Buildings if required by applicable laws. Further, all designs for the Clubhouse to be constructed at the Licensed Premises will require prior approval from Parks (which approval shall be subject to Section 10.2(b)) and the PDC, and any other agencies having jurisdiction. Licensee shall notify Commissioner of the specific date on which construction shall begin.

(b) Licensee shall not commence any Capital Improvements unless and until (i) Licensee shall have obtained and delivered to Parks copies of all permits, consents, certificates and approvals of all governmental authorities, if any, which are necessary for the work to be done, certified by Licensee or the Architect/Engineer, and (ii) Licensee shall have delivered to Parks certified copies of the policies of insurance required to be carried pursuant to the provisions of Section 25 hereof.
(c) Licensee shall obtain the permits, consents, certificates and approvals required for the Capital Improvements performed by Licensee and any necessary utility easements, and Parks shall not unreasonably withhold its consent to signing any accurate application made by Licensee required to obtain such permits, consents, certificates, approvals and easements and shall otherwise cooperate with Licensee in obtaining the required permits, consents, certificates, approvals and easements.

(d) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any construction, reconstruction, renovation or Alteration of the Licensed Premises with an estimated cost exceeding two hundred fifty thousand dollars ($250,000), Licensee shall post a payment bond or other form of undertaking in the amount of one hundred percent (100%) of the cost of each phase of such construction, reconstruction, renovation or Alteration in a form acceptable to Parks before commencing each phase of such work.

10.14 No temporary storage or other ancillary structures may be erected and maintained at the Licensed Premises without a permit obtained from Parks’ Construction Division, Permit Office, except that Licensee shall be permitted to construct a temporary maintenance facility and a temporary clubhouse in accordance with the provisions of the Development Agreement.

10.15 Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), (i) during the Term, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements being performed by Licensee against any damage, loss or injury in the performance of Capital Improvements, and up to the date of Final Completion thereof and (ii) in the event of such damage, loss or injury up to the date of Final Completion, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

10.16 Licensee shall perform all of Licensee’s Capital Improvements in accordance with Legal Requirements, and industry standards, and with materials as set forth in the Approved Designs and Plans. All equipment and materials installed as part of Licensee’s Capital Improvements shall be new, free of material defects, of a quality suitable for the purpose intended and furnished in sufficient quantities to prevent delays. Licensee shall obtain all manufacturer’s standard warranties and guarantees for all such equipment and materials in the name of the Licensee and shall assign same to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this License Agreement except to the extent that Licensee retains the obligation to maintain such work or components and systems under the License Agreement. In furtherance of the preceding sentence, as applicable, Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City’s rights and title and interest in and to said manufacturers’ warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

10.17 As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License Agreement and which are subject to the provisions of the New York City Noise Control Code (the “Code”) shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.
10.18 Licensee shall choose the means and methods of completing the Capital Improvements, unless, Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements in accordance with the Schedule of Capital Improvements on Exhibit F. Specific work plans and actions that pertain to the construction of the Clubhouse foundation shall be submitted to Parks for review and approval (and Parks shall act reasonably and use its best efforts to approve or disapprove such plans and actions within thirty business (30) days of receipt thereof, and if disapproved shall state the reason for such disapproval and the changes required by Parks, and in accordance with Section 10.2(a)).

10.19 (a) Licensee shall provide written notice to the Commissioner when a Capital Improvement is Substantially Complete. Within five (5) business days after receiving such notice, the Commissioner shall promptly inspect such Capital Improvement. Within five (5) business days of such inspection, the Commissioner shall either (x) certify to Licensee in writing that the applicable Capital Improvement is Substantially Complete or (y) provide notice to Licensee that the Commissioner does not reasonably find the applicable Capital Improvement to be Substantially Complete (such notice a “Substantial Completion Deficiency Notice”). Any Substantial Completion Deficiency Notice shall contain a reasonably detailed list of items concerning work to be completed to the reasonable satisfaction of the Commissioner in order to achieve Substantial Completion. Following Licensee’s receipt of any Substantial Completion Deficiency Notice, when Licensee reasonably believes that a Capital Improvement has achieved Substantial Completion, Licensee shall provide notice to the Commissioner. Within five (5) business days after receiving such notice, Commissioner shall promptly re-inspect such Capital Improvements. The Commissioner and Licensee shall follow the notice and inspection procedures and applicable time periods set forth above in this Section 10.19(a) until the Commissioner provides the certification of Substantial Completion, whereby the Commissioner certifies in writing that the Capital Improvement has been Substantially Completed to his reasonable satisfaction. The City and Parks acknowledge and agree that as long as a Capital Improvement (x) is constructed in compliance with the Approved Designs and Plans for such Capital Improvement (notwithstanding that some incomplete elements that do not prevent legal use and occupancy and punch list work determined in accordance with Section 10.19(b) below remain to be completed) in all material respects and (y) is ready to be occupied and used for its intended purpose by the public, it would be unreasonable for Commissioner to withhold, condition or delay Commissioner’s certification of Substantial Completion.

(b) When Licensee reasonably believes that a Capital Improvement has achieved Final Completion, Licensee shall provide notice to the Commissioner and within five (5) business days after receiving such notice, Commissioner shall promptly inspect such Capital Improvements. Within five (5) business days of such inspection, Commissioner shall either (x) certify to Licensee in writing that the applicable Capital Improvement is Finally Complete or (y) provide notice to Licensee that the Commissioner does not reasonably find the applicable Capital Improvement to be Finally Complete (such notice a “Final Completion Deficiency Notice”). Any Final Completion Deficiency Notice shall contain a reasonably detailed “punch list” of items concerning work to be completed to the reasonable satisfaction of the Commissioner in order to achieve Final Completion. Following Licensee’s receipt of any Final Completion Deficiency Notice, when Licensee reasonably believes that a Capital Improvement has achieved Final Completion, Licensee shall provide notice to the Commissioner. Within five (5) business days after receiving such notice, Commissioner shall promptly re-inspect such Capital Improvements. The Commissioner and Licensee shall follow the notice and inspection procedures and applicable time periods set forth above in this Section 10.19(b) until the Commissioner provides the certification of Final Completion, whereby the Commissioner
certifies in writing that the Capital Improvement has been Finally Completed to his reasonable satisfaction; provided that notwithstanding anything to the contrary in this Agreement, the City and Parks acknowledge and agree that as long as a Capital Improvement is constructed in compliance with the Approved Designs and Plans for such Capital Improvement in all material respects, it would be unreasonable for Commissioner to withhold, condition or delay Commissioner’s certification of Final Completion.

10.20 Licensee shall provide Parks with discharges for any and all liens which may be levied against the Capital Improvements performed by Licensee during construction of such improvements. Licensee shall use commercially reasonable efforts to discharge such liens within forty five (45) days of receipt of lien by Licensee.

10.21 Licensee shall promptly repair, replace, restore, or rebuild as the Commissioner reasonably may determine, items of Capital Improvements performed by Licensee in which material defects of materials, workmanship or design may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the Final Completion of such Capital Improvements.

10.22 Neither Parks, nor the City, its agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License Agreement by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of any individual Capital Improvement, from showing that such Capital Improvement or any part thereof does not in fact conform to the requirements of this License Agreement and, in addition to any other remedies available to Parks or the City under this Agreement or the Development Agreement, at law or in equity, from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee’s failure to perform each and every material part of this License Agreement in accordance with its terms (subject to all applicable notice and cure periods), unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 10.22 signed by the Commissioner or his authorized representative. For purposes of this paragraph, the following shall be considered an authorized representative of the Commissioner: the First Deputy Commissioner and any other Deputy Commissioners, the Assistant Commissioner for Revenue and the Director of Revenue.

10.23 Licensee warrants that it is financially solvent and sufficiently experienced and competent to perform, or cause to be performed, the Capital Improvements required pursuant to this License Agreement.

10.24 Intentionally omitted.

10.25 Licensee shall keep Parks reasonably informed of Licensee’s progress in the performance of all Capital Improvements. Upon request of Parks, Licensee shall promptly provide Parks with copies of all materials normally or actually provided to a construction lender including, but not limited to, scheduling of payments and projections on a monthly basis, and all construction documents and all plans and specifications reasonably specified by Parks to assist Parks in monitoring said progress by Licensee.
10.26 All risks of construction and development of the Capital Improvements constructed by Licensee are hereby expressly assumed by Licensee except as may be specifically provided otherwise in this License Agreement or in the Development Agreement. Except as set forth in this License Agreement and in the Development Agreement, all development of the Capital Improvements constructed by Licensee will be designed, constructed, maintained, secured and insured entirely at Licensee’s expense without reimbursement by Parks or credit or offset of any kind for cost overruns or otherwise, and Licensee shall pay all municipal and any other fees and impositions in connection therewith.

10.27 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises and to all Fixed and Additional Fixed Equipment (which shall specifically exclude equipment leased by Licensee) accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City’s option, which may be exercised at any time after the Substantial Completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises by Licensee, it shall be the responsibility of Licensee, during the Removal Period, to remove such items and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee. For avoidance of doubt the Parties agree that Licensee shall not under any circumstances be required to remove completed buildings, heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures. The City shall provide to Licensee a “Contractor Exempt Purchase Certificate” in connection with the construction, renovation and improvements, made to or fixtures installed at the Licensed Premises by Licensee.

10.28 Subject to Section 3.3(c) and Section 10.6 and the remainder of this Section 10.28, in the event the Licensee fails to Finally Complete a particular Required Capital Improvement by the date specified for Final Completion, in accordance with Exhibit F (except for immaterial or punch list items), Licensee may be required to pay the City liquidated damages of one hundred dollars ($100) per day until the outstanding Required Capital Improvement is completed. In the event Licensee is unable to comply with any phase of the schedules for the Required Capital Improvements for a period of thirty (30) days following written notice from Commissioner, subject to the provisions of Section 3.3(c) and Section 10.6 herein, and provided that Licensee is diligently performing such Capital Improvements, the Licensee may propose for the Commissioner’s reasonable approval a revised completion schedule for such phase and if approved, Licensee shall complete such phase of the Capital Improvements in accordance with such approved revised schedule. The number of days by which performance may be extended shall be reasonably determined by the Commissioner after consultation with Licensee.

10.29 (a) Licensee shall establish a dedicated account (the “Capital Reserve Fund”) with an institutional lender (“Depository”) selected by Licensee and satisfactory to Parks that shall be available exclusively to pay directly, or to reimburse Licensee for its payment of costs of Capital Improvements, major repairs and replacements of and purchases of new improvements or equipment for or at the Licensed Premises approved by Parks (if required pursuant to this License Agreement) (“Eligible Work”), but not for ordinary repair and maintenance. The Design Review Fee payable pursuant to Section 10.3 shall be deposited into the Capital Reserve Fund. For purposes of insuring that the provisions of this Section 10.29 are complied with, Licensee’s agreement with Depository shall be subject to the prior written approval of Parks. Commencing in Operating Year 5, Licensee shall make deposits to the Capital Reserve Fund calculated in accordance with the following table:
Operating Year | Reserve Fund Deposit
--- | ---
5 – 12 | 3% of Gross Receipts
13 – 15 | 2% of Gross Receipts

On or before the thirtieth (30th) day after the end of each quarter of each Operating Year commencing in Operating Year 5 and until the end of Operating Year 15, Licensee shall deposit to the Capital Reserve Fund an amount equal to the applicable Reserve Fund Deposit for the prior quarter. Such Capital Reserve Fund deposits shall not be deducted from total Gross Receipts. Licensee shall use commercially reasonable efforts to ensure that the Capital Reserve Fund is expended to depletion during the Term of this License Agreement for the purposes outlined herein and for Concession projects mutually agreeable to Parks and Licensee. It is expressly understood that neither Parks, nor Licensee, shall unreasonably withhold its consent to the undertaking of any reasonable project aimed at or intended to enhance the Licensed Premises.

(b) Licensee shall not be entitled to use the Capital Reserve Fund without obtaining Park’s written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except where Licensee has the right to use the Capital Reserve Fund as expressly provided in this Agreement, including without limitation, Sections 4.10, 12.3, 12.18 and 19.1(b) (where no consent shall be required). Except as otherwise set forth in this Agreement, all Eligible Work that constitutes additional Capital Improvements at the Licensed Premises shall be subject to Parks’ reasonable approval. In the event that prior to Operating Year 5, Licensee incurs Capital Improvement Costs in excess of the Minimum Capital Improvement Cost, Licensee shall be entitled to a credit against amounts to be deposited into the Capital Reserve Funds under Section 10.29(a) commencing in Operating Year 5 to reimburse Licensee for any such Capital Improvement Costs in excess of the Minimum Capital Improvement Cost.

(c) Disbursements from the Capital Reserve Fund shall be made as follows:

(i) Subject to Section 10.29(b) above, Parks shall instruct Depository to pay to Licensee promptly (but in any event no later than five (5) business days after Licensee has submitted all information necessary to qualify for a disbursement) such amounts out of the Capital Reserve Fund as necessary to pay for amounts paid or then payable by Licensee for Eligible Work, upon application to be submitted by Licensee to Parks showing the cost of labor and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Eligible Work since the last previous application and paid for or then payable by Licensee, or (B) not been incorporated in the Eligible Work but have been purchased since the last previous application and paid for or then payable by Licensee.

(ii) It shall be a condition precedent to each disbursement of the Capital Reserve Fund, that Licensee submit to Parks, a certificate of the Architect/Engineer, if applicable, or a certificate signed and verified by the managing member or other duly authorized officer of Licensee, stating that:

(A) The sum then requested to be withdrawn either has been paid by Licensee or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated), who will render or furnish or have rendered or
furnished services or materials for the work, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such persons with respect thereto, and stating, in reasonable detail, the progress of the Eligible Work up to the date of the certificate;

(B) The costs for which sums have been requested have not yet been paid or covered in any previous requisition for Capital Reserve Funds;

(C) The sum then requested does not exceed the cost of the services and materials described in the certificate; and

(D) The materials, fixtures and equipment, for which payment is being requested, to the extent applicable, are equal in quality to the items being restored or replaced and in substantial accordance with the approved plans for the Eligible Work (if such plans are required pursuant to this License Agreement).

(d) Licensee shall provide to Parks, an annual report detailing the deposits and balance of the Capital Reserve Fund. In addition, the reports shall include all disbursements from the Capital Reserve Fund as well as the Eligible Work financed by such disbursements.

(e) Upon the expiration or earlier termination of this License Agreement, Licensee shall not be entitled to retain the remainder of the Capital Reserve Fund except as otherwise specifically provided herein. Such remaining funds shall be disbursed to Parks immediately following the expiration or earlier termination of this License Agreement.

11. IMPROVEMENT AND/OR CORRECTION IN OPERATIONS

11.1 Subject to Section 3.3(c), should the Commissioner reasonably decide that Licensee is not operating the Licensed Premises in accordance with this License Agreement in all material respects, Commissioner may give notice in writing to Licensee to correct such conditions as Commissioner may reasonably deem unsatisfactory. In the event that Licensee fails to substantially comply with such written notice or respond in a manner reasonably satisfactory to the Commissioner within twenty-five (25) days from the receipt of said notice, or, if compliance cannot reasonably be completed within such twenty-five (25) day period, if Licensee does not commence cure within such twenty-five (25) day period and thereafter diligently prosecute such cure to completion, Commissioner may terminate this License Agreement subject to and in accordance with the provisions of Section 3.3 hereof.

11.2 (a) Subject to Section 11.2(b), should Commissioner, in Commissioner’s reasonable judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, after written notification to Licensee, Licensee shall have twenty-four (24) hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If such unsafe or emergency condition cannot be corrected within said twenty-four (24) hour period, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition can be corrected. Commissioner may, in Commissioner’s reasonable discretion, extend such period of time in order to permit Licensee to cure, under such terms and conditions as are reasonably appropriate. Such consent shall not be unreasonably withheld.
(b) Notwithstanding the foregoing in this Section 11.2, to the extent that any such unsafe or emergency condition is caused by any condition that the City or Parks is responsible for under the License Agreement or the Development Agreement, Licensee shall have no obligation to cure such condition and the City shall cure such condition in accordance with the provisions of the respective agreement. For the avoidance of doubt, the City shall not be responsible for any Environmental Condition and/or effects of Environmental Conditions to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees.

11.3 Licensee shall provide access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction for any lawful purpose or inspection purposes. Inspectors from Parks may visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue written notices to Licensee regarding deficiencies, and except where the City shall be obligated to remedy such deficiency pursuant to the terms of this Agreement (including, without limitation, Section 12.19(a)), Licensee shall be obligated to rectify such deficiencies within the time specified in such notices, which in no event shall be less than fourteen (14) days, plus such additional time as shall be reasonably required to cure such deficiency, provided, however, that prior to issuing any such notice, Parks and Licensee shall have informal discussions to attempt to resolve any such deficiencies. Subject to Section 3.3(c) or delays by Parks or the City, if Licensee fails to cure any deficiency for which it is responsible under the term of this Agreement within the timeframe set forth in the notice, Parks may, at its option and in addition to any other remedies available to it, require Licensee to pay as liquidated damages five hundred dollars ($500) per day from the date of the notice, with respect to each violation of the License Agreement, until the deficiencies have been corrected. If any liquidated damages due in accordance with this Agreement are not paid promptly by Licensee, Parks may deduct the amount thereof from the Security Deposit.

12. MAINTENANCE, SANITATION AND REPAIRS

12.1 (a) Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including without limitation, Section 12.19(a) of this Agreement), Licensee shall:

(i) on a year-round basis, at its sole cost and expense (or through third party arrangements) and to the reasonable satisfaction of Commissioner, maintain, repair and keep the Licensed Premises in a good and safe condition and in accordance with industry standards and in conformance with any and all applicable Legal Requirements as they relate to general maintenance and care of the Golf Course and the remainder of the Licensed Premises;

(ii) at all times, at its sole cost and expense, keep the Licensed Premises clean, litter free, neat and, with respect to the food service operations, fumigated, disinfected, deodorized and sanitary;

(iii) at its sole cost and expense, provide regular cleaning and maintenance services for the Licensed Premises, collect and remove all waste, refuse, rubbish, litter, debris and garbage therefrom and remove snow from paved areas of the Golf Course Facilities during such days that the Golf Course is open to the public; and
(iv) provide for the regular cleaning and maintenance of the perimeter of the Licensed Premises, including but not limited to the timely removal of all litter, debris and garbage, tree pruning, dead tree and dead tree limb removal, and perimeter fence maintenance and repair.

For avoidance of doubt, except as set forth on Exhibit A-2, the Parties agree that Licensee shall only be responsible for the cleaning, maintenance and repair of the area on the inside of the perimeter fence of the Licensed Premises to be constructed by the City in accordance with the Development Agreement and all roadways, parking lots, perimeter landscaping and perimeter sidewalks and all other portions of Ferry Point Park outside the perimeter fence shall be cleaned, maintained and repaired by the City and/or Parks. In the event the City dumps snow or ice on the Licensed Premises, Parks will, within a reasonable time after notice from Licensee, remove any debris from the Licensed Premises left behind by the melting of the dumped snow or ice. In addition, with respect to the Park Snack Bar, Licensee shall only be responsible for the cleaning, maintenance and repair of the interior and exterior of the Park Snack Bar and shall not be responsible for any area outside the Park Snack Bar, except as set forth on Exhibit A-2.

(b) Except for and without limiting the City’s and Parks’ repair and maintenance obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall (i) repair and maintain in good working order any and all equipment installed at the Licensed Premises necessary for the operation of this License Agreement; (ii) provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises; and (iii) use commercially reasonable efforts to adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment.

(c) To ensure Parks’ satisfaction with Licensee’s compliance with this Section 12.1, Licensee will provide Parks with access to the Licensed Premises.

12.2 Licensee shall maintain the Licensed Premises in accordance with this License Agreement to the reasonable satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner. In part to secure Licensee’s obligation to maintain and repair the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4(a).

12.3 (a) Subject to the availability of funding, Parks shall maintain and repair and keep in good order and repair or cause the maintenance and repair and keeping in good order and repair of (x) roads that are under the jurisdiction of Parks, as more particularly shown on Exhibit T, (y) grass areas, trees, shrubs, signs and other landscaping leading to and from the Licensed Premises that are under the jurisdiction of Parks, and (z) the areas of Ferry Point Park immediately surrounding the Licensed Premises (except for the areas immediately surrounding the Park Snack Bar).

(b) In the event that Parks fails to perform such repairs and/or maintenance specified in Section 12.3(a) within sixty (60) days after written notice, and the Parties reasonably agree that the failure to perform such repairs and/or maintenance materially adversely affects the use or appearance of the entrance to the Licensed Premises, the roads leading to the Licensed Premises or any other portion of the Licensed Premises, Licensee shall have the right, but not the obligation, to perform any and all such repairs and/or maintenance, subject to the prior written approval of Parks, provided that
the failure of Parks to perform any such repairs and/or maintenance shall not be a default by the City hereunder or give rise to any termination rights on the part of Licensee.

(c) Licensee shall have the right to submit bids to Parks for any work which Licensee proposes to perform under Section 12.3(b), and Parks shall approve or reject any such bids within ten (10) days after receipt and Parks’ failure to respond within such ten (10) day period shall be deemed approval. To the extent that such work outside the Licensed Premises constitutes “public work” within the meaning of Section 220 of the Labor Law, the Licensee and its contractors will be required to pay prevailing wages and otherwise comply with the requirements of Section 220 of the Labor Law, according to prevailing wage rate schedules prepared by the New York City Comptroller (copies of which may be obtained from Parks), as such schedules may be amended. All reports mandated by Section 220 of the Labor Law shall be provided to Parks. To the extent Licensee pays prevailing wages for the performance of such work, such work shall be considered Capital Improvements and Licensee shall be entitled to use Capital Reserve Funds to pay for such work. To the extent that Capital Reserve Funds are used to pay for such repairs and/or maintenance, all License Fees and other amounts thereafter payable under this License Agreement shall be applied to replenish the Capital Reserve Fund, up to the amount of Capital Reserve Funds paid to Licensee on account of such work. If Licensee performs such repairs and/or maintenance and the Capital Reserve Funds are not sufficient to pay or reimburse Licensee for such repairs and/or maintenance, the City shall pay or reimburse Licensee in an amount equal to the reasonable cost of the repairs and/or maintenance actually paid or incurred by Licensee (which costs shall be deemed reasonable if approved or deemed approved by Parks as set forth herein), provided that documentation of such costs, satisfactory to Parks, is submitted to Parks. In the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon, as applicable, at the Interest Rate as set forth in Section 4.10 hereof, which, subject to the last sentence of Section 4.10 and the following sentence, will be the sole remedy of Licensee hereunder for the cost of such repairs and/or maintenance. Alternatively, Licensee, in its discretion, may propose and submit for the Commissioner's approval a plan to equitably address the cost to Licensee for performing such repairs and/or maintenance.

(d) Licensee shall have the right, but not the obligation, at its sole option, to maintain and repair or cause the maintenance and repair of the roads and signs, if any, leading to and from the Licensed Premises that are not within the jurisdiction of Parks, provided Licensee obtains all necessary approvals, including but not limited to approvals of any federal, state and City agencies having jurisdiction over such work. If Licensee performs such repairs, Licensee shall be entitled to reimbursement from the Capital Reserve Fund equal to the reasonable cost of the repairs actually paid or incurred by Licensee, provided that documentation of such costs, satisfactory to Parks, is submitted to Parks. To the extent that Capital Reserve Funds are used to pay for such repairs, all License Fees and other amounts thereafter payable under this License Agreement shall be applied to replenish the Capital Reserve Fund, up to the amount of Capital Reserve Funds paid to Licensee on account of such work. If Licensee performs such repairs and the Capital Reserve Funds are not sufficient to pay or reimburse Licensee for the cost of such repair, the City shall pay or reimburse Licensee in an amount equal to the reasonable cost of the repairs actually paid or incurred by Licensee. In the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon at the Interest Rate as set forth in Section 4.10 hereof, which, subject to the last sentence of Section 4.10 and the following sentence, will be the sole remedy of Licensee hereunder for the cost of such repairs. Alternatively,
Licensee, in its discretion, may propose and submit for the Commissioner's approval a plan to equitably address the cost to Licensee for performing such repairs.

12.4 (a) Licensee shall provide adequate waste and recycling receptacles approved by Parks at the Licensed Premises and have these receptacles emptied on a regular basis and removed by a private carter. All debris, waste, garbage, refuse, rubbish and litter which collect upon the Licensed Premises and within the area described on Exhibit A-2 hereto, without regard for its source (other than debris, waste, garbage, refuse, rubbish and litter resulting from any work being performed by the City or Parks under the terms of this License Agreement or the Development Agreement), shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises at a frequency satisfactory to the Commissioner, all at the Licensee’s sole cost and expense. In performing its duties under this Section 12.4, Licensee shall comply with all applicable Legal Requirements regarding recycling.

(b) Where feasible, Licensee shall provide for its patrons’ use appropriately sized and well-positioned blue plastic recycling bins or receptacles for bottles and cans, and green bins or receptacles for papers, catalogs and magazines. These containers shall be properly labeled with recycling logos and the containers, and the areas around them, shall be maintained in a clean, sanitary, and graffiti-free state.

(c) Licensee shall bundle and/or separate, as required, for pickup pursuant to City, State, and Federal law, all corrugated cardboard, magazines and catalogs, newspapers, high grade office paper and envelopes, computer paper, phone books, paper bags, cardboard boxes, pizza boxes, non-styrofoam egg cartons, milk and juice cartons, aluminum products (including foil and trays), metal cans, plastic and glass bottles, detergent bottles, glass jars, milk jugs, metals (pans, irons), aerosol cans, wire hangers, and paint cans. These recyclables must be rinsed or rid of all food products, as necessary.

12.5 Licensee shall be responsible for regular pest control inspections and extermination. To the extent Licensee applies pesticides to any property owned or leased by the City, Licensee or any subcontractor hired by Licensee shall comply with Chapter 12 of Title 17 of the Administrative Code and limit the environmental impact of its pesticide use.

12.6 Intentionally Deleted.

12.7 At its sole cost and expense, Licensee shall keep all signs and structures on the Licensed Premises in good condition and shall remove any and all graffiti which may appear on the signs, buildings and structures on the Licensed Premises. Such graffiti removal shall be commenced within twenty-four (24) hours following discovery of same, and shall continue until such graffiti is removed.

12.8 Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall maintain the Licensed Premises including, but not limited to, cleaning, restoration, repair and maintenance necessary to maintain the Licensed Premises in a first class condition, preserving its character and significance. Maintenance shall also include the horticulture at and the cleaning of the Licensed Premises.

12.9 Under no conditions shall Licensee cut down, remove, replant, or move any tree, living or dead, in conjunction with Licensee’s Capital Improvements, or with any other of Licensee’s rights or
duties under this License Agreement, without the express written permission of Parks. Moreover, Licensee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Licensee’s rights or duties detailed herein. Attachments to trees, such as lights, are not permitted. Notwithstanding the foregoing, Licensee shall prune trees on the Licensed Premises as needed with Parks’ prior written approval.

12.10 At its sole cost and expense, Licensee shall maintain and keep the parking areas and driveways in the Licensed Premises clean, neat, and free of litter and debris. Such maintenance shall include snow removal, pavement repairs, curb repair, and removal of all litter, debris, and garbage.

12.11 (a) Licensee hereby acknowledges that the Fire Department of New York City (“FDNY”) has issued a fuel tank variance to Ferry Point Golf Course permitting the dispensation of petroleum from an above ground tank protected by a fuel containment system. The City shall install two above ground tanks and fire suppression system in accordance with the Development Agreement (including, Section 6.6 and Schedule 2 of the Development Agreement), and the requirements of the FDNY variance, a copy of which is attached hereto as Exhibit G and any other applicable Legal Requirements.

(b) Licensee shall operate, inspect and properly maintain the tanks provided by the City referenced in Exhibit G, and as set forth in Section 12.11(a) above, in accordance with (i) the FDNY variance, if applicable, (ii) any applicable amendments thereto, and (iii) any other applicable Legal Requirements.

(c) Any changes, removals or additions of tanks must be pre-approved by Parks and FDNY.

12.12 Licensee shall clean and maintain all exhaust vents, screens, grease traps and exhaust on a regular basis.

12.13 During the hours of operation of the Licensed Premises, Licensee shall clean and maintain the public restrooms located thereon. The restrooms shall be cleaned and maintained in accordance with the manner approved by Parks.

12.14 Licensee shall provide adequate staff in order to maintain the Golf Course as a first class, tournament quality daily fee golf course. Licensee shall maintain the Golf Course and implement turf care programs, such as aerification, fertilization, fungicide, seeding and sodding as well as year-round maintenance schedules in compliance with the turf management guidelines for the Golf Course set forth in Exhibit M, attached hereto (the “Maintenance Guidelines”). If pursuant to the Nicklaus Subcontract, a turf management program for the Golf Course is to be developed at the City’s expense by a qualified agronomist approved by Nicklaus Design, the City shall make good faith efforts to cause such agronomist to consult with and coordinate its activities with Licensee’s golf course superintendent; Licensee shall be required to maintain the Golf Course in compliance with such turf management program to the extent that it is consistent with the reasonable standards of a Jack Nicklaus Signature golf course. For the avoidance of doubt, the Parties agree that Licensee must maintain the Golf Course as a first class, tournament quality daily fee golf course and to the quality level consistent with a Jack Nicklaus Signature golf course notwithstanding Licensee’s compliance with the Maintenance Guidelines and subject to Section 3.3(a)(i)(c) and Section 11.1 of this Agreement, as applicable.
12.15 (a) Except for and without limiting the City’s and Parks’ obligations for maintenance, repairs or replacements under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), and subject to the provisions of Section 7.4:

(i) Licensee shall, at its sole cost and expense, operate and maintain the irrigation system in good repair and working order, including but not limited to: the repair and replacement of all equipment and material as needed, including the booster pump system, lake lift pump system, electrical system, weather station, radio system, computer system, control, decoder and/or satellite system, irrigation heads and lines, pump house structure and all other associated equipment and materials substantially in accordance with operation and maintenance manuals;

(ii) each fall, Licensee shall winterize the entire irrigation system, and each spring Licensee shall start up, pressurize and fill the system;

(iii) Licensee shall repair any leaks, replace any damaged or missing irrigation heads, and maintain all equipment and pump houses in a clean and orderly manner; and

(iv) Licensee shall maintain the grounds and overflow structures, keeping them free from algae, debris and trash, and making repairs as needed.

For the avoidance of doubt, the Parties agree that except for and without limiting the City’s and Parks’ obligations for maintenance, repairs or replacements under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee must maintain the irrigation system in good repair and working order notwithstanding Licensee’s compliance with the operation and maintenance manuals.

(b) Licensee shall, at its sole cost and expense, retain the services of qualified technicians and/or service firms to fully comply with all provisions of the irrigation system’s operation and maintenance manual, as issued by the manufacturer of the irrigation system.

12.16 (a) Notwithstanding anything to the contrary contained herein or in the Development Agreement, neither the City nor Parks shall be responsible to remediate or remove any Environmental Conditions and/or effects of Environmental Conditions or indemnify, protect, defend or hold harmless any of the Licensee Indemnitees with respect to any Environmental Conditions and/or effects of Environmental Conditions or any liability with respect thereto to the extent that such Environmental Condition and/or effects of Environmental Conditions is caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees.

(b) If changes to the Golf Course requested by Licensee that are required to obtain a professional PGA tournament at the Licensed Premises would require the disturbance or excavation of the municipal solid waste below the surface of the Licensed Premises, Licensee shall be responsible for the performance of such work and the cost of such work with respect to any municipal solid waste that may be excavated or disturbed by such work being performed by Licensee, including the cost of disposing of such municipal solid waste, if required, in compliance with applicable Legal Requirements, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and all applicable Environmental Laws, provided, however, that Licensee shall not be responsible for any Environmental Conditions and/or effects of Environmental Conditions or any
liability with respect thereto arising from Licensee’s work unless caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees.

12.17 Licensee shall, at its sole cost and expense, provide normal maintenance for the greens, tees, fairways and sand bunkers, which shall include but not be limited to the following:

- Greens: Provide for the cutting and the applications of appropriate fungicides, herbicides and insecticides as part of a complete treatment and prevention program.

- Tees: Provide normal maintenance which will include cutting, fertilizing and applications of appropriate chemicals.

- Fairways: Provide normal maintenance including cutting, application of appropriate chemicals, and spot seeding where necessary.

- Sand Bunkers: Provide normal maintenance including raking, weeding, and keeping proper sand levels.

12.18 (a) Licensee’s obligation to make or cause to be made, major repairs or Capital Improvements are limited by the monetary levels established herein. Except as set forth in Section 12.18(b) or 12.18(c), in no event shall Licensee be obligated to spend amounts or perform any major repairs or Capital Improvements that are not Required Capital Improvements (collectively “Additional Capital Improvements”) in excess of (i) the ten million dollars ($10,000,000) that Licensee is required to spend on Required Capital Improvements pursuant to Section 10.1, plus any additional amounts that may be required to complete the Required Capital Improvements described on Exhibit F, plus (ii) amounts set aside in the Capital Reserve Fund pursuant to Section 10.29. For the avoidance of doubt, the cost of any temporary Clubhouse shall be applied to the Minimum Capital Improvements Costs to be expended by Licensee hereunder.

(b) In no event shall Licensee be responsible for Additional Capital Improvements that are required by reason of Environmental Conditions and/or effects of Environmental Conditions (except Licensee shall be responsible for Additional Capital Improvements and shall perform such Additional Capital Improvements at its sole cost and expense pursuant to Section 12.19(a) to the extent that such Additional Capital Improvements are required by Environmental Conditions and/or effects of Environmental Conditions that are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees), which Additional Capital Improvements shall be performed by Parks at its sole cost and expense, pursuant to Section 12.19(a).

(c) In addition to the Required Capital Improvements to be made by Licensee pursuant to Section 10.1 of this License Agreement (or Additional Capital Improvements required pursuant to Section 12.18(b), as applicable), Licensee agrees to make Additional Capital Improvements at the Licensed Premises which may be required at the Licensed Premises (and such work shall be governed by the terms of this Agreement) under the terms of this Agreement to be made by Licensee, provided that the cost of such Additional Capital Improvements shall not exceed $100,000 in any Operating Year in the aggregate for such Operating Year, in excess of amounts available in the Capital Reserve Fund. In the event the cost of all such Additional Capital Improvements in any Operating Year shall exceed $100,000 in the aggregate, in excess of amounts available in the Capital Reserve Fund, Licensee shall have no obligation to perform same, provided, however, in the event any Additional Capital Improvements are critical to the continued operation of the Licensed
Premises, as determined by the Parties, and the estimated cost thereof exceeds $100,000 but is less than or equal to $500,000 in such Operating Year in the aggregate, in each case in excess of amounts available in the Capital Reserve Fund, and the Parties cannot reasonably agree on how to share the expenses or effect the Additional Capital Improvements, Licensee shall perform such Additional Capital Improvements and the City shall pay or reimburse Licensee in an amount equal to the reasonable cost of such Additional Capital Improvements in excess of $100,000 in any Operating Year in the aggregate for such Operating Year, in excess of amounts available in the Capital Reserve Fund, actually paid or incurred by Licensee, provided that documentation of such costs, satisfactory to Parks, is submitted to Parks. In the event the City fails to pay or reimburse Licensee such amount within sixty (60) days after receipt of satisfactory documentation of such costs and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon at the Interest Rate as set forth in Section 4.10 hereof, which, subject to the last sentence of Section 4.10, will be the sole remedy of Licensee hereunder for such costs of Additional Capital Improvements. In the event the estimated cost of such Additional Capital Improvements exceed $500,000 in any Operating Year in the aggregate for such Operating Year, in excess of amounts available in the Capital Reserve Fund, either the City shall pay the cost of such Additional Capital Improvement in excess of $500,000 over the amounts available in the Capital Reserve Fund, or Licensee shall have the right to terminate this License Agreement on thirty (30) days notice to the City. If Licensee terminates this License Agreement pursuant to this Section 12.18(c), the City shall pay the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, to Licensee in accordance with the provisions of Section 3.2.

(d) Beginning in Operating Year 5 of this License Agreement, the amounts stated in Section 12.18(c) (for the aggregate Additional Capital Improvements) shall increase every Operating Year in accordance with increases in the CPI. For purposes of calculating any increase in the amounts of individual and aggregate Additional Capital Improvements as a result of an increase in the CPI, the CPI for the Operating Year 5 shall be considered the base year. In no event shall such amounts be adjusted downward.

12.19 (a) Notwithstanding anything to the contrary in this Agreement, the City, at its sole cost and expense, shall:

(i) (x) perform all maintenance and make all repairs, replacements and Capital Improvements to the Licensed Premises, including, without limitation, all utility systems and connections, including but not limited to, underground utility lines located within the Licensed Premises, that are required by reason of Environmental Conditions and/or effects of Environmental Conditions (except to the extent the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees, in which case Licensee, at its sole cost and expense, shall be responsible for the maintenance, repairs, replacements and Capital Improvements that are required by reason of such negligence or willful misconduct of any of the Licensee Indemnitees), and (y) subject to Section 11.3(b) of the Development Agreement, repair, replace, restore or rebuild any of the City’s Work or any other Capital Improvements performed by or on behalf of the City in which material defects of design, manufacture, construction or installation may appear or to which damage may occur because of such defects up to the one (1) year anniversary of the date of Substantial Completion with respect to any applicable item of the City’s Work or other Capital Improvement, or in each case such longer period of time that the applicable item of the City’s Work or Capital Improvement may be under warranty or guarantee. If Licensee discovers or becomes aware of (without any obligation to investigate) any material defects of design, manufacture, construction or installation or damage that has occurred because of such
defects, then Licensee shall send a written notice to the City in accordance with Section 12.19(e)(i) of this Agreement.

(ii) promptly undertake and diligently complete the removal and/or the remediation of Environmental Conditions and/or effects of Environmental Conditions (except to the extent the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees, in which case Licensee, at its sole cost and expense, shall be responsible for the removal and/or remediation that is required by reason of such negligence or willful misconduct of any of the Licensee Indemnitees) at the Licensed Premises which require remediation or removal under applicable Environmental Laws or which materially and adversely interfere with the Grow-In or which materially and adversely interfere with the use of the Licensed Premises for any of the purposes or uses permitted hereunder, so that such Environmental Conditions and/or effects of Environmental Conditions no longer materially and adversely interfere with the Grow-In or the use of the Licensed Premises, if applicable, and in all events in accordance with all applicable Environmental Laws, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a first class, tournament quality daily fee golf course and a Jack Nicklaus Signature golf course, provided, however, that without limiting any of Licensee’s, City’s or Parks’ rights or remedies under this Agreement (as the case may be), the City or Licensee (as the case may be) shall not be responsible to undertake such removal and/or remediation until it has received DEC approval for such removal and/or remediation, if required, provided that City or Licensee (as the case may be) shall use commercially reasonable efforts to obtain DEC approval for such removal and/or remediation, if required, as expeditiously as reasonably practicable and further provided that any of Licensee’s submissions to DEC shall require the prior approval of Parks in accordance with Section 12.19(e).

(iii) maintain, repair and replace as needed the irrigation and related systems and any other utility systems, connections or equipment or any other materials or items at depths at or below the municipal solid waste layer and/or where the maintenance, repair and/or replacement thereof will disturb or require excavation of the layer of municipal solid waste located below the surface of the Licensed Premises, except to the extent that Licensee has such obligations under Section 7.4;

(iv) be responsible for (i) the operation, maintenance and repair, if any, of the Licensed Premises as a site for the disposal of solid, hazardous or other waste materials by burial (a “Landfill”) in compliance with applicable Legal Requirements, including, without limitation all applicable Environmental Laws, including compliance with the DEC Part 360 Permit and the DEC Deed, (ii) any Environmental Conditions and/or the effects thereof with respect to the Licensed Premises and/or resulting liability, which are caused by the Landfill, whether such Environmental Conditions and/or the effects thereof and resulting liability is presently existing or arises after the execution of this Agreement, (iii) any Environmental Condition and/or effects of Environmental Conditions that result from any conduct or condition that occurred or existed prior to the Concession Commencement Date, whether such Environmental Condition and/or effects of Environmental Conditions are presently existing or arises after the Concession Commencement Date, except to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees, in which case Licensee, at its sole cost and expense, shall be responsible for such Environmental Conditions and/or effects of Environmental Conditions caused or exacerbated by reason of such negligence or willful misconduct of any of the Licensee Indemnitees, and (iv) obtaining any required
Governmental Approvals relating to Environmental Conditions, except that Licensee, at its sole cost and expense, shall be responsible for obtaining such Governmental Approvals to the extent required by Environmental Conditions that are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees;

(v) subject to the provisos in the next to last sentence of this Section 12.19(a)(v), provide and install all required methane monitoring equipment and equipment required for the monitoring of settlement, provide staff to conduct the monitoring and reporting activities necessary for monitoring methane and settlement issues related to the Landfill and operate the methane monitoring equipment and settlement monitoring equipment installed by or on behalf of Parks, and be solely responsible for the management of such staff and the operation of such equipment and for reporting the results of such monitoring, in each case, in accordance with all applicable Environmental Laws, applicable Governmental Approvals, the DEC Part 360 Permit and the DEC Deed. For the sake of clarity, and without limiting the City’s or Parks’ obligations under this Agreement, applicable Legal Requirements, the DEC Part 360 Permit or the DEC Deed, the City and/or Parks shall conduct all inspections, maintenance, repair and monitoring activities of all on and off-site portions of the monitoring wells, gas venting trenches, active and passive gas venting systems, and piezometers required by the DEC Part 360 Permit, the DEC Deed and applicable Legal Requirements. Except as specifically provided in the provisos at the end of this sentence, Licensee shall have no responsibility for installing, affixing, replacing, operating, repairing, preserving or maintaining any equipment for the monitoring of methane and other gases, settlement and other Environmental Conditions and/or effects of Environmental Conditions at the Licensed Premises and the active and passive gas venting systems, provided, however, Licensee shall be responsible at its cost and expense solely (i) for the removal of bio growth for the portion of the venting trench within the Licensed Premises; (ii) for the portion of the venting trench within the Licensed Premises, for the annual replacement of mulch and the prompt replacement of mulch following any soil washouts of the mulch cover and (iii) for promptly repairing and/or replacing any such monitoring equipment at the Licensed Premises that is damaged due to the operations or activities of Licensee (ordinary wear and tear excepted); provided further that (x) if Licensee actually becomes aware of (without any obligation to investigate) any overgrowth of bio growth or that a soil washout of the mulch has occurred to a portion of the venting trench within the Licensed Premises, and Licensee cannot reasonably remove the bio growth or replace the mulch within forty-eight (48) hours of discovery, as the case may be, then Licensee shall promptly report such damage to Parks in writing and Licensee shall remove the bio growth or replace the mulch, as the case may be, within two weeks of discovery by Licensee, and (y) for the portion of the venting trench within the Licensed Premises, if Parks discovers the overgrowth of bio growth or that a soil washout of the mulch has occurred, Parks shall promptly notify Licensee and the IEM (as required by the DEC Part 360 Permit) in writing and Licensee shall remove the bio growth or replace the mulch, as the case may be, within two (2) weeks of receipt of such notification from Parks. In the event of any damage due to Licensee’s operations or activities as set forth in clauses (ii) and (iii) of the preceding sentence, such damage shall be promptly reported to Parks in writing. Any work conducted or performed by Licensee at the Licensed Premises shall be in accordance with all applicable Environmental Laws, applicable Legal Requirements, applicable Governmental Approvals, the DEC Part 360 Permit (as applicable), the DEC Deed (as applicable) and any other licenses or permits required by applicable Legal Requirements; and

(vi) perform any reconstruction of, additional construction to, repair or renovation of the City’s Work or any element of the Licensed Premises (including the installation of Fixed and Additional Fixed Equipment) required by Legal Requirements applicable to the Licensed Premises.
(including, without limitation, any conditions of a renewed, modified or amended DEC Part 360 Permit, any DEC Deed and/or any conditions imposed by the DEC and/or any SEQRA or CEQR review with respect to Licensee’s operation of the Licensed Premises, including the use of pesticides and fertilizers in the Grow-In and/or the operation of the Licensed Premises) (each, a “City’s Reconstruction Activity”), provided, that the City will not be required to perform any reconstruction of, additional construction to, repair or renovation of the Required Capital Improvements unless otherwise required to pursuant to this License Agreement and the Development Agreement, and provided further, that the City will not be required to perform any reconstruction of, additional construction to, repair or renovation of the City’s Work or any element of the Licensed Premises to the extent that the need for such reconstruction, construction, repair or renovation has arisen as a result of Licensee’s negligence, willful misconduct, or default or failure to perform under this License Agreement or the Development Agreement. Licensee shall not be responsible for any of City’s Reconstruction Activities, which shall be performed by the City at the City’s sole cost and expense. The City shall be responsible, at its sole cost and expense, for the restoration of any Hole or any portion of the Licensed Premises to the condition prior to the commencement of the City’s Reconstruction Activities after the completion of the City’s Reconstruction Activity on such Hole or portion of the Licensed Premises.

(b) Parks and the City hereby represent, warrant and covenant to the Licensee that (i) no portion of the Licensed Premises are actively being used for or during the Term will be used for the disposal of municipal solid waste, (ii) (1) no disposal of Hazardous Substances are currently permitted at Ferry Point Park and (2) during the Term and the term of the Development Agreement, no disposal of Hazardous Substances will be permitted at Ferry Point Park, (iii) any soil or other fill material brought to the Licensed Premises for the purpose of providing cover for the Landfill (except as brought by the Licensee in accordance with this Agreement and the Development Agreement) (x) shall not contain any Hazardous Substances in amounts that would result in a violation of Environmental Laws, the DEC Part 360 Permit or the DEC Deed or pose a threat to the safety or health of persons or the Environment, and (y) shall not compromise the integrity of the Golf Course or any building foundations, and (iv) the City will only undertake disposal of any solid waste that is in compliance with DEC Part 360 Permit, the DEC Deed and all applicable Environmental Laws and Legal Requirements.

(c) Notwithstanding anything to the contrary set forth in this License Agreement, the City shall indemnify, protect, defend and hold harmless Licensee, its members, partners, officers, directors, employees, agents, Affiliates, successors and assigns (“Licensee Indemnitees”) from and against any and all claims, demands, losses, liabilities, obligations, fines, damages, penalties, lawsuits, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and disbursements (collectively, “Claims”), relating to or in connection with: (i) a default or breach by Parks or the City under this License Agreement, including a breach of the representations set forth in this Agreement; (ii) the operation, maintenance, repair or regulatory compliance of the Landfill required under any Environmental Laws, (iii) the existence, exposure or disturbance of municipal solid waste at the Licensed Premises and the failure of the City to properly dispose of and/or remediate such municipal solid waste in accordance with applicable Legal Requirements (except to the extent that Licensee is required to dispose of and/or remediate such municipal solid waste pursuant to the terms of this Agreement or the Development Agreement) or pursuant to this Agreement or the Development Agreement (except to the extent such waste is exposed or disturbed by the negligence or willful misconduct of any of the Licensee Indemnites, including but not limited to the negligence or willful misconduct of any of the Licensee Indemnites in the course of performing Licensee’s responsibilities pursuant to Section 7.4 or Section 12.16(b) of this Agreement.
or Section 11.4 or Section 12.1 of the Development Agreement), (iv) Environmental Conditions and/or effects of Environmental Conditions, whether such Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the date hereof, except to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees, (v) the ownership or operation of the Licensed Premises (or any part thereof) prior to the turnover of such portion of the Licensed Premises to Licensee pursuant to the Development Agreement or this Agreement (except if Licensee performs any Capital Improvement or other activities on any portion of the Licensed Premises prior to the turnover of such portion of the Licensed Premises to Licensee pursuant to this Agreement or the Development Agreement, then subject to the terms of this Agreement and without limiting Parks’ or the City’s obligations under this Agreement and the Development Agreement, Licensee shall assume the risk for such Capital Improvement or activity); (vi) in connection with the City’s Work (except to the extent that such City’s Work was performed by Licensee in accordance with Section 10.8 of the Development Agreement; provided that even where the City’s work is performed by Licensee in accordance with Section 10.8 of the Development Agreement, the foregoing indemnity shall apply to the extent any Claim is related to or in connection with Environmental Conditions and/or effects of Environmental Conditions except to the extent such Environmental Conditions and/or the effect of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees) and/or the City’s Reconstruction Activities; (vii) wildlife hazards to nearby airports or air navigation resulting from geese and/or other wildlife at the Licensed Premises and/or any other City property within the vicinity of the Licensed Premises (including Ferry Point Park) and/or the City’s control and/or mitigation of geese and/or other wildlife populations at any of the foregoing areas (including the lethal removal of geese) (except to the extent any such Claims set forth in this clause arise from the negligence or willful misconduct of any of the Licensee Indemnitees in performing any of the Licensee Goose Related Activities); (viii) Licensee’s failure to comply with SEQRA/CEQR, the DEC Part 360 Permit or any other applicable laws to the extent Licensee’s non-compliance is caused by Licensee’s failure to comply with the statement contained in the SEQRA/CEQR assessment dated April 27, 2005 for Ferry Point Park that herbicides or pesticides will not be used at the Licensed Premises, that Parks acknowledges was made in error, (ix) any payment obligations under the Nicklaus Subcontract, except for remedies due to Nicklaus Design, if any, arising from the breach of this License Agreement by any of the Licensee Indemnitees or the negligence or willful misconduct of any of the Licensee Indemnitees, and (x) any obligations under the Nicklaus Subcontract to the extent that City is required to perform such obligations under this Agreement and/or the Development Agreement or if such obligations are required to be performed by or on behalf of Sanford Golf Design under the Nicklaus Subcontract. Notwithstanding anything to the contrary contained herein, the provisions of the City’s indemnification shall not be construed to indemnify or provide for the defense of any of the Licensee Indemnitees to the extent any Claims are attributable to the acts or omissions of any of the Licensee Indemnitees (provided, however, notwithstanding the foregoing, the City’s indemnification obligations shall apply to Claims related to or in connection with any Environmental Conditions and/or the effects of Environmental Conditions, except to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees). The foregoing indemnification shall survive any termination or expiration of this License Agreement.

Notwithstanding anything to the contrary set forth in this License Agreement, Licensee shall indemnify, protect, defend and hold harmless City, Parks, their agents and employees (collectively, “Indemnitees”) from and against any and all Claims relating to or in connection with: (i) a default or breach by Licensee under this License Agreement, including a breach of the representations set forth
in this Agreement; (ii) the exposure or disturbance of municipal solid waste at the Licensed Premises to the extent such municipal solid waste is exposed or disturbed by the negligence or willful misconduct of any of the Licensee Indemnitees and the failure of Licensee to properly dispose of and/or remediate such municipal solid waste in accordance with applicable Legal Requirements if required of Licensee by this Agreement in connection with such exposure or disturbance; (iii) the negligence or willful misconduct of any of the Licensee Indemnitees, including but not limited to, in the course of performing Licensee’s responsibilities pursuant to Section 7.4 or Section 12.16(b) of this Agreement or Section 11.4 or Section 12.1 of the Development Agreement, (iv) the failure of Licensee to properly dispose of municipal solid waste, if required by this Agreement or the Development Agreement, in accordance with Legal Requirements, in the course of performing Licensee’s responsibilities pursuant to Section 7.4 or Section 12.16(b) of this Agreement or Section 11.4 or Section 12.10 of the Development Agreement; (v) Environmental Conditions and/or effects of Environmental Conditions, whether such Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the date hereof, to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees; and/or (vi) the performance by Licensee of the City’s Work in accordance with Section 10.8 of the Development Agreement (provided that the foregoing in this clause (vi) shall not apply to the extent any Claim is related to or in connection with Environmental Conditions and/or effects of Environmental Conditions except to the extent such Environmental Conditions and/or the effect of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees); (vii) wildlife hazards to nearby airports or air navigation resulting from geese and/or other wildlife at the Licensed Premises and/or the Licensee’s control and/or mitigation of geese and/or other wildlife populations at the Licensed Premises to the extent any such Claims set forth in this clause arise from the negligence or willful misconduct of any of the Licensee Indemnitees in performing any of the Licensee Goose Related Activities. Notwithstanding anything to the contrary contained herein, the provisions of Licensee’s indemnification shall not be construed to indemnify or provide for the defense of any Indemnitees to the extent any Claims are attributable to the acts or omissions of the Indemnitees. The foregoing indemnification shall survive any termination or expiration of this License Agreement.

(d) Licensee shall at its sole cost and expense provide all new cover over the Landfill required by Licensee to replace cover that is removed or disturbed due to Licensee’s construction and maintenance activities, Golf Course operations and maintenance. Licensee represents, warrants and covenants that any soil or other fill material brought to the Licensed Premises for the purpose of providing cover for the Landfill (x) shall not contain any Hazardous Substances in amounts that would result in a violation of Environmental Laws, the DEC Part 360 Permit or the DEC Deed or pose a threat to the safety or health of persons or the Environment, and (y) shall not compromise the integrity of the Golf Course or any building foundations.

(e) (i) If (x) Licensee discovers (without any obligation to investigate) or becomes aware of any maintenance, repair, replacement, removal, remediation or other work ("Repair or Remediation") required to be performed by the City pursuant to Section 12.19(a), then within sixty (60) days of Licensee discovering (without any obligation to investigate) or becoming aware of any Repair or Remediation, Licensee shall send a written notice to the City (the "Repair or Remediation Notice") requesting that the City comply with such Repair or Remediation obligations, or (y) the City or Parks, as the case may be, discovers any Repair or Remediation that the City is required to perform pursuant to Section 12.19(a), then the City or Parks, as the case may be, shall send a written notification to Licensee.
(ii) If the subject Repair or Remediation does not require Repair or Remediation of an Environmental Condition, the City shall, within one hundred twenty (120) days (or one hundred eighty (180) days where the City needs to obtain a new or replacement Contractor to perform such Repair or Remediation) after receipt of such Repair or Remediation Notice or after the City or Parks, as the case may be, has sent a written notice to Licensee pursuant to Section 12.19(e)(i) above, commence such Repair or Remediation and shall diligently complete such Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a first class, tournament quality daily fee golf course and a Jack Nicklaus Signature golf course. If the City fails to commence the Repair or Remediation within the applicable period or fails to diligently complete such Repair or Remediation in accordance with the standards set forth herein within one hundred eighty (180) days of commencing such Repair or Remediation, Licensee may either (i) terminate this License Agreement or (ii) perform such Repair or Remediation.

(iii) If the subject Repair or Remediation requires Repair or Remediation of an Environmental Condition, within one hundred twenty (120) days (or one hundred eighty (180) days where the City needs to obtain a new or replacement Contractor to perform such Repair or Remediation) after its receipt of such Repair or Remediation Notice or after the City or Parks, as the case may be, has sent a written notice to Licensee pursuant to Section 12.19(e)(i) above, the City shall give written notice to Licensee whether or not the City will perform the Repair or Remediation, and, if the City elects to perform the Repair or Remediation, the amount of time, including any time required to obtain DEC approval of the proposed Repair or Remediation action, if required, that the City estimates will be required to complete the Repair or Remediation. In the event the City elects to undertake such Repair or Remediation the City shall, promptly thereafter, use commercially reasonable efforts to obtain DEC approval in accordance with Section 12.19(a)(ii) of this Agreement, and after receipt of DEC approval of any proposed Repair or Remediation action, if required, commence such Repair or Remediation and shall diligently complete such Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a first class, tournament quality daily fee golf course and a Jack Nicklaus Signature golf course. If the City elects not to undertake such Repair or Remediation or, having elected to perform such Repair or Remediation, fails to promptly commence the Repair or Remediation or to diligently complete such Repair or Remediation in accordance with the standards set forth herein within one hundred eighty (180) days of commencing such Repair or Remediation, Licensee may either (i) terminate this License Agreement or (ii) perform such Repair or Remediation, subject to DEC approval of any proposed Repair or Remediation action, if required.

(iv) In the event that the Repair or Remediation described above in this Section 12.19(e) is required due to an emergency condition or a condition that materially and adversely affects Licensee’s Grow-In, construction of the Required Capital Improvements or operation of the Licensed Premises, or any part thereof (whether or not such emergency qualifies as an emergency pursuant to the New York City Charter or New York General Municipal Law, Article 5-A, §103, subsection 4), Licensee may request a meeting with Parks to discuss a plan for expediting the remediation, repair or replacement, as applicable, and Licensee and Parks shall attempt in good faith to promptly negotiate a mutually acceptable solution to expedite the remediation, repair, or replacement.

(v) In the event that the time to complete such Repair or Remediation under this Section 12.19(e), including any time required to obtain any required DEC approval, as reasonably estimated by the City, exceeds twelve (12) months, and if, during such twelve (12) month period,
Licensee would not be able to conduct business at the Licensed Premises, Licensee shall have the right to terminate this Agreement.

(vi) (A) If (x) the City or Parks discovers (without any obligation to investigate) any maintenance, repair, replacement, removal, remediation or other work required to be performed by Licensee pursuant to Section 12.19(a) (“Licensee Repair or Remediation”), then the City or Parks, as the case may be, shall send a written notice to Licensee (the “Licensee Repair or Remediation Notice”) requesting that Licensee comply with such Licensee Repair or Remediation obligations, or (y) Licensee discovers any Licensee Repair or Remediation that Licensee is required to perform pursuant to Section 12.19(a), then Licensee shall send a written notice to the City. The Parties agree that Licensee’s failure to perform a Licensee Repair or Remediation in accordance with the provisions of this Agreement shall be deemed a material breach or failure to substantially comply with this Agreement.

(B) If the subject Licensee Repair or Remediation does not require Licensee Repair or Remediation of an Environmental Condition, then Licensee shall, within one hundred twenty (120) days after receipt of such Licensee Repair or Remediation Notice or after Licensee has sent a written notice to the City pursuant to Section 12.19(e)(vi)(A) above, commence such Licensee Repair or Remediation and shall diligently complete such Licensee Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a first class, tournament quality daily fee golf course and a Jack Nicklaus Signature golf course within one hundred eighty (180) days of commencing such Licensee Repair or Remediation.

(C) If the subject Licensee Repair or Remediation requires Licensee Repair or Remediation of an Environmental Condition, within one hundred twenty (120) days after its receipt of such Licensee Repair or Remediation Notice or after Licensee has sent a written notice to the City pursuant to Section 12.19(e)(vi)(A) above, Licensee shall give written notice to the City of the amount of time, including any time required to obtain DEC approval of the proposed Licensee Repair or Remediation action, if required, that Licensee estimates will be required to complete the Licensee Repair or Remediation. Licensee shall, (x) promptly thereafter, submit its proposed submission for DEC to Parks for Parks’ approval, which approval shall be given or withheld (and if withheld shall state the reason for such withholding and the changes required by Parks) as expeditiously as reasonably possible to avoid any delay in the proposed submission to the DEC and in no event later than the earlier of (i) two (2) days prior to the time the submission is due to the DEC or (ii) fifteen (15) business days from the date of receipt of such request for approval by Parks and (y) after receipt of DEC approval of any proposed Licensee Repair or Remediation action, if required, commence such Licensee Repair or Remediation and shall diligently complete such Licensee Repair or Remediation, to the satisfaction of all federal, state and City agencies having jurisdiction over such work and the standards of a first class, tournament quality daily fee golf course and a Jack Nicklaus Signature golf course within one hundred eighty (180) days of commencing such Licensee Repair or Remediation.

(f) (i) If Licensee conducts a Repair or Remediation action at the Licensed Premises, as set forth in Section 12.19(e) (other then a Licensee Repair or Remediation action that Licensee is required to perform pursuant to Section 12.19(a)), then the City shall pay or reimburse Licensee in an amount equal to the reasonable cost of the Repair or Remediation (including all consultants, experts’ and attorneys’ fees) actually paid or incurred by Licensee, provided that documentation of
such costs, satisfactory to the City, is submitted to the City. In the event that the City fails to pay or reimburse Licensee for such amount within sixty (60) days after receipt of satisfactory documentation of such costs and written demand, Licensee shall be entitled to a License Fee Credit in such amount, with interest thereon at the Interest Rate as set forth in Section 4.10 hereof, which License Fee Credit and interest, subject to the last sentence of Section 4.10, shall be Licensee’s sole remedy hereunder for such costs of the Repair or Remediation. For the sake of clarity, the City shall not pay or reimburse Licensee and Licensee shall not be entitled to any License Fee Credit or any other remedy for conducting a Licensee Repair or Remediation action at the Licensed Premises that Licensee is required to perform pursuant to Section 12.19(a).

(ii) Without limiting Licensee’s rights under this Agreement, if Licensee performs any maintenance, repairs, replacement, restoration, or rebuilding that is required by reason of material defects of design, manufacture, construction or installation of the City’s Work or any other Capital Improvements performed by or on behalf of the City which may appear or to which damage may occur because of such defect during the period beginning after the one (1) year anniversary of Substantial Completion with respect to any applicable item of the City’s Work or other Capital Improvement, then the costs and expenses of such work shall be a Capital Improvement Cost and shall be credited against the Minimum Capital Improvement Cost to be expended by Licensee under this Agreement.

(g) If Licensee’s operation of (A) at least two (2) Holes in accordance with the terms of this Agreement is adversely interrupted, impacted or restricted for (x) at least two (2) consecutive months during the golf season (which shall mean the period commencing on May 1st of a calendar year and ending on September 30th of the same calendar year) or (y) at least three (3) consecutive months at any time, or (B) the Practice Facility is adversely interrupted, impacted or restricted for at least the period between May 1st of a calendar year and September 30th of the same calendar year, through no fault of Licensee, due to (i) repairs, alterations, improvements, additions or maintenance work being performed by or on behalf of the City and/or Parks pursuant to Section 19.3; (ii) where such matter shall be within the City’s and/or Parks’ control, the City's and/or Parks’ failure to provide (or cause to be provided) Utilities or other services that they are required to provide hereunder; (iii) Repair or Remediation being performed by or on behalf of the City and/or Parks pursuant to Section 12.19(a), including any Repair or Remediation being performed by Licensee on behalf of the City pursuant to Section 12.19(e); (iv) failure of the City and/or Parks to perform their Repair or Remediation obligations under Section 12.19(a); (v) the existence or remediation of Environmental Conditions and/or effects of Environmental Conditions by or on behalf of either the City or Parks or Licensee (except to the extent that the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees), or (v) Force Majeure, then, in such an event Licensee shall provide Parks with written documentation of same, and thereafter Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution to minimize such adverse effect, it being acknowledged and agreed by the Parties that Licensee is not assuming the risk with respect to the foregoing items listed above in this Section 12.19(g). While the Parties shall use good faith efforts to agree to an equitable solution as quickly as possible, Parks shall provide its proposed solution no later than fifteen (15) business days from the Parties’ meeting in accordance with the preceding sentence. Without limiting the scope of potential equitable solutions, the Parties recognize that an equitable solution may, depending on the circumstances and subject to compliance with applicable Legal Requirements, include, among other things, providing License Fee Credits; directly reimbursing Licensee for reasonable costs and expenses actually paid or incurred by Licensee, reducing the Minimum Annual Fee; extension of the
Concession Period; and allowing Licensee to operate and/or maintain the Licensed Premises to a standard lower than that required under the License Agreement; provided that an equitable solution shall not include lowering the standard of operation or maintenance below that of a “first class” golf course facility unless Parks and Licensee mutually agree to such reduction in each such Party’s sole discretion. If Licensee acts in good faith to reach an equitable solution and the Parties are unable to reach an equitable solution, Licensee shall have the right to seek all appropriate legal and equitable remedies.

(h) In the event that the Golf Course Facilities and the Clubhouse cannot be reasonably operated for a period of twelve (12) consecutive months to the standard of a first class, tournament quality daily fee golf course, by reason of any of the conditions set forth in Section 12.19(g), then Licensee may elect to terminate this License Agreement. If by reason of the conditions set forth in Section 9.40(z) Licensee is unable to complete the Grow-In so that the Licensed Premises can be operated to the standard of a first class, tournament quality daily fee golf course within the period of two (2) years following the City’s receipt of a notice pursuant to Legal Requirements (including any notice from the DEC) requiring the City to perform any City’s Reconstruction Activity (a “Reconstruction Notice”), then Licensee may elect to terminate this License Agreement, provided, however, if the City challenges (through administrative or judicial process, as applicable) a Reconstruction Notice in good faith, then the two (2) year period following City’s receipt of such Reconstruction Notice shall be tolled beginning on the date that the City initiates its challenge (through administrative or judicial process, as applicable) until the earlier of: (i) such time that the City’s challenge is denied beyond any right of appeal, and the two (2) year period shall begin or continue running, as the case may be, from the date of such denial or (ii) if the City is required pursuant to Legal Requirements to perform City’s Reconstruction Activities regardless of its good faith challenge of the Reconstruction Notice, such time that the City commences performance of City’s Reconstruction Activities after initiating the City’s challenge (through administrative or judicial process, as applicable) of the Reconstruction Notice. The City shall provide to Licensee notice of its receipt of any Reconstruction Notice within ten (10) business days after the City’s receipt thereof.

(i) If Licensee terminates this License Agreement pursuant to Sections 12.19(e)(ii), (iii), (v) or (h), the City shall pay the Termination Payment, with accrued interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof, to Licensee in accordance with the provisions of Section 3.2. The exercise of all options granted to Licensee under this Section 12.19 shall be solely at the discretion of the Licensee and shall be effective upon thirty (30) days written notice to the Commissioner.

13. EQUIPMENT

13.1 Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, acquire, provide, install or affix and replace, if necessary, all equipment materials and supplies necessary for the operation of the Licensed Premises, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

13.2 Commissioner represents that City has title to all Fixed Equipment. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.
13.3 Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the Substantial Completion of the affixing of said equipment or the Substantial Completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option, it shall provide written notice thereof to Licensee, and it shall be the responsibility of Licensee, at its sole cost and expense, to remove such equipment during the Removal Period. For avoidance of doubt the Parties agree that Licensee shall not under any circumstances be required to remove completed buildings, heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures. Notwithstanding the foregoing, Licensee shall have the right, at its sole cost and expense, to dispose of and replace any equipment subject to applicable law, including, without limitation, all Fixed and Additional Fixed Equipment and Expendable Equipment that is obsolete or that exceeds its useful life, provided that such Fixed and Additional Fixed Equipment is replaced with equipment of similar quality.

14. EXPENDABLE EQUIPMENT

14.1 Except for and without limiting the City’s and Parks’ obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement) Licensee shall supply, at its own cost and expense, all Expendable Equipment, consumables and operating supplies and equipment reasonably required for the operation of this License Agreement, including, but not limited to, tables and chairs, and office furniture, and replace same at its own cost and expense when requested by Commissioner.

14.2 Licensee shall, to the reasonable satisfaction of Parks, supply a fleet of a sufficient number of golf carts for the successful operation of the Golf Course, maintain them in good condition, and replace them as reasonably necessary over the length of the Concession Period.

14.3 Except as provided in Section 10.1, title to all Expendable Equipment obtained by Licensee shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License Agreement. In the event Expendable Equipment remains in the Licensed Premises following such termination or expiration and after the Removal Period without Parks’ express permission, Commissioner may treat such Expendable Equipment as abandoned and charge all reasonable costs and expenses incurred in the removal thereof to Licensee.

14.4 The Expendable Equipment to be removed by Licensee pursuant to Section 14.3 above shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it caused to the Licensed Premises.

15. CONDITION UPON SURRENDER

15.1 At the expiration or sooner termination of this License Agreement, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment to which City holds title, in at least as good a condition as said Licensed Premises and the Fixed and Additional Fixed Equipment were found by Licensee, reasonable wear and tear excepted.

15.2 Except as provided in this License Agreement and/or the Development Agreement, Licensee acknowledges that it is acquiring a license to use theLicensed Premises solely in reliance on its own
investigation and that no representations, warranties or statements have been made by the City concerning the fitness thereof.

16. RESERVATION FOR PARKS SPECIAL EVENTS

16.1 (a) For the purposes of this Section 16.1 and Section 16.2 only, the term “Parks Sponsored Special Event(s)” shall mean any event conducted, sponsored or contracted by Parks or its designee for which Parks has issued a Special Event Permit and which is consistent with the intended uses of the Licensed Premises. Licensee agrees to reserve all or a portion of the Licensed Premises as requested by Parks for Parks Sponsored Special Events; provided that (i) Licensee shall only be required to make the Licensed Premises available to Parks for up to six (6) Parks Sponsored Special Events per Operating Year (each of which such Parks Sponsored Special Events shall be no longer than twelve (12) hours); (ii) Parks will use its best efforts not to interfere with or impede Licensee’s income generating activities under the terms and conditions of this License Agreement or any of the Licensee’s other rights, powers and privileges necessary for the proper conduct and operation of the License; (iii) the scheduling of any Parks Sponsored Special Event is subject to the prior approval of Licensee, which may be withheld if Licensee has any event scheduled pursuant to Section 9.3(a) (and for the sake of clarity, Parks shall not require Licensee to cancel or postpone any such scheduled event); and (iv) Parks agrees to schedule such Parks Sponsored Special Events no less than thirty (30) days prior to the Parks Sponsored Special Event.

(b) Notwithstanding anything to the contrary in this Agreement, Parks will use its reasonable efforts to ensure that any third party sponsoring or promoting any Parks Sponsored Special Event pursuant to Section 16.1(a) will be responsible for maintenance, repair and clean-up associated with any such Parks Sponsored Special Event and Parks shall require any such third party to (i) purchase insurance for said special event, naming Licensee as an additional insured party; (ii) post a clean-up and restoration bond to ensure clean-up and restoration of the Licensed Premises; and (iii) indemnify Licensee Indemnitees for such losses, claims, suits, damages and costs associated with any such Parks Sponsored Special Event including reasonable attorney’s fees, to the extent that such losses, claims, suits, damages and costs are not attributable to the actions or omissions of any of the Licensee Indemnitees. Commissioner represents to Licensee that Commissioner has not granted to any other person or entity any license, permit, or right of possession or use which would prevent Licensee in any way from performing its obligations and realizing its rights under this License Agreement.

16.2 Parks agrees to notify any third party operator or sponsor of Parks Sponsored Special Events of Licensee’s rights to the Licensed Premises and to provide same with the name and telephone number of Licensee’s Manager.

17. PROHIBITION AGAINST TRANSFER

17.1 Except as provided in this License Agreement (including, without limitation, use of the Concession by the public as a golf course and Sections 18.1 thru 18.4 hereof), Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License Agreement hereby granted, a majority of the shares of Licensee, or any equipment furnished as provided herein (provided that Licensee shall have the right to enter into equipment leases for or grant security interests in Expendable Equipment), or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, building, space or facilities covered by this License Agreement, nor shall this License Agreement be transferred by operation of law, unless approved in
advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License Agreement solely to Licensee herein named.

18. ASSIGNMENTS AND SUBLICENSES

18.1 Licensee may assign or sublicense its interest in whole or in part in this License Agreement provided that Licensee obtains the Commissioner's prior written approval, as follows:

(a) No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership and/or control, whether direct or indirect, of more than forty-nine percent (49%) of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth reasonably acceptable to the Commissioner together with a certification that it shall provide management control reasonably acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations that are experienced and reputable operators and are not intended to diminish Licensee’s interest in the Licensed Premises or to create any rights to payment as a condition of the granting of any required consent or approval.

(b) As used in this Section 18 the term “assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than forty-nine percent (49%) in stock and/or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Section 18.

18.2 Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided above. The Commissioner may request any additional information Commissioner reasonably deems necessary and Licensee shall promptly comply with such requests.

18.3 No consent to or approval of any assignment or sublicense granted pursuant to this Section 18 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License Agreement.

18.4 Except as set forth in Section 18.6 below, notwithstanding anything to the contrary contained in this Agreement, Licensee shall have the right to assign this License Agreement and the direct and indirect members of Licensee shall have the right to transfer of any direct or indirect ownership interests in Licensee, without the consent of the City, Parks or the Commissioner to (i) Donald J. Trump, (ii) the spouse and descendants of Donald J. Trump (including any related trusts controlled by, and established and maintained for the benefit of Donald J. Trump or such spouse or descendants), (iii) the estate of any of the foregoing or (iv) any entity in which Donald J. Trump and/or any of the parties referred to in clauses (i), (ii) or (iii) above has an ownership interest, provided that the proposed assignee/transferee is found by Parks, acting reasonably, to be responsible consistent with Section 1-07 of the FCRC Concession Rules, and further provided that the proposed
assignee agrees in writing to assume all of Licensee’s responsibilities and obligations under the Agreement, and further provided that the Development Agreement, if then in effect, is simultaneously assigned to such entity. Licensee and proposed assignee/transferee shall comply with Vendex procedures in connection with any such assignment/transfer.

18.5 This License Agreement may be assigned by the City to any governmental corporation, governmental agency or governmental instrumentality having authority to accept such assignment provided such assignee assumes all of the City’s obligations hereunder, and further provided that the Development Agreement is simultaneously assigned to such entity. The City shall provide the Licensee with prior written notice of any such assignment.

18.6 Notwithstanding anything to the contrary set forth in this Article 18, any assignment or sublicense by Licensee of any of its obligations under this Agreement that impacts upon the use of the Endorsement or the Nicklaus Subcontract shall be subject to the approval of Nicklaus Design (not to be unreasonably withheld or denied) and the provisions of Section 1.8 above; provided that, notwithstanding anything in the foregoing to the contrary, the direct or indirect transfer of ownership interests in Licensee shall not require the approval of Nicklaus Design as long as the proposed transferee/assignee is found by Parks, acting reasonably, to be responsible consistent with Section 1-07 of the FCRC Concession Rules.

19. ALTERATIONS

19.1 (a) “Alteration” shall mean (excepting ordinary repair and maintenance):

   (i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

   (ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Licensed Premises.

   (b) Licensee may make Alterations and Capital Improvements to the Licensed Premises only in accordance with the requirements of subsection (c) of this Section 19.1. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises which may be undertaken by Licensee without approval by Nicklaus Design or Parks and/or the City. Licensee may use Capital Reserve Funds to pay for Alterations to the extent such Alterations are Capital Improvements. Alterations shall become property of the City, at the option of the City, upon their attachment, installation or affixing to the Licensed Premises.

   (c) In order to make Alterations and Capital Improvements to the Licensed Premises pursuant to subsection (b) of this Section 19.1, Licensee shall:

   (i) submit to Parks whatever designs, plans, specifications, cost estimates, agreements and contractual understandings that may pertain to the contemplated Alterations or Capital Improvement;
obtain the approval of the Commissioner, and, if required hereunder, of Nicklaus Design, to such Alterations or Capital Improvements in accordance with subsection (d) of this Section 19.1;

insure that work performed and Alterations made on Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to subsection (i) of this Section 19.1(c), in a good and workmanlike manner, and within a reasonable time; and

notify Commissioner of completion of, and the making final payment for, any Alteration within ten (10) days after the occurrence of said completion or final payment.

(d) (i) With regard to the Golf Course (but subject to Section 19.1(d)(ii) below), pursuant to the Nicklaus Subcontract, no substantial changes can be made to the Golf Course without the prior written approval of Nicklaus Design. Licensee acknowledges and agrees that Licensee shall obtain (x) a written determination from Nicklaus Design as to whether any proposed Alterations or Capital Improvements to the Golf Course are substantial in nature, and, if so, the express prior written approval of Nicklaus Design to such Alterations or Capital Improvements; and (y) the express prior written approval of Parks prior to making any Alterations or Capital Improvements to the Golf Course. Licensee shall request approval to commence Alterations or Capital Improvements from Parks and shall simultaneously provide Parks with copies of the documents set forth in subsection (i) of Section 19.1(c) together with the determination and approval, if required, from Nicklaus Design as described herein. In the event that the proposed Alterations or Capital Improvements have a cost of less than one hundred thousand dollars ($100,000), Parks shall respond to any such approval request from Licensee within ten (10) business days of receipt of such request or such request shall be deemed approved. In the event that the proposed Alterations or Capital Improvements have a cost of one hundred thousand dollars ($100,000) or greater, Parks shall use best efforts to respond to any such approval request from Licensee within thirty (30) business days of receipt of such request.

(ii) Licensee shall have the right from time to time to make Capital Improvements or Alterations with regard to the Clubhouse, Snack Bars, shelter houses, sanitary facilities, drinking fountains, maintenance facilities, irrigation system, storm drainage system, dams, bridges, walls, cart paths, utility lines or other similar improvements, facilities or structures incidental to the Golf Course, subject to the prior written approval of the Commissioner. For the sake of clarity and notwithstanding anything to the contrary contained in Section 19.1(d)(i), Licensee is not required to obtain the approval of Nicklaus Design in connection with the Capital Improvements or Alterations described in this Section 19.1(d)(ii). Parks shall have the right, but not the obligation, to submit any such request for approval to make such Alterations or Capital Improvements to Nicklaus Design for its written approval or its confirmation that its approval is not required. For all such proposed Alterations or Capital Improvements, Parks shall use best efforts to respond to any such approval request from Licensee within thirty (30) business days of receipt of such request, provided, however, that in the event such Alteration or Capital Improvement is needed to address an emergency condition, Licensee may address such emergency immediately upon notice to Parks, and Parks shall use best efforts to respond to Licensee’s approval request for the final Alteration or Capital Improvement within ten (10) days.

(iii) Notwithstanding anything to the contrary contained herein, (A) the Commissioner’s approval shall not be required for Alterations or Capital Improvements to the interior of the Clubhouse or any other building or structure located on the Licensed Premises having
a cost of less than one hundred thousand dollars ($100,000) from Operating Year 1 until the end of Operating Year 5, one hundred and fifty thousand dollars ($150,000) from Operating Year 6 until the end of Operating Year 10, two hundred thousand dollars ($200,000) from Operating Year 11 until the end of Operating Year 15, and two hundred and fifty thousand dollars ($250,000) from Operating Year 16 until the end of Operating Year 20, and (B) the approval of Nicklaus Design shall not be required for Alterations or Capital Improvements to the interior of the Clubhouse or any other building or structure located on the Licensed Premises.

19.2 In the event of an emergency or for health and safety reasons or following a default by Licensee in its obligations to repair and maintain the Licensed Premises for twenty five (25) days after notice, plus, if the default cannot be cured within such twenty five (25) day period, such additional time as may be reasonably necessary to cure such default, provided that Licensee promptly commences and diligently prosecutes such cure, the Commissioner may, in his reasonable discretion, make repairs, alterations, additions or improvements to Licensed Premises, but nothing in this Section 19.2 shall be deemed to obligate or require Commissioner to make any repairs, alterations, additions or improvements, nor shall this provision in any way affect or impair Licensee’s obligation herein in any respect. Commissioner may also make repairs, alterations, additions, or improvements at the City’s expense in other cases, provided however that in such cases the prior written approval of the Licensee must be obtained, such approval not to be unreasonably withheld, and this provision shall not in any way affect or impair Licensee’s obligation herein in any respect.

19.3 Parks reserves the right to perform construction or maintenance work at the Licensed Premises pursuant to Section 19.2 or as required to be performed by Parks pursuant to this License Agreement at any time during the Term of this License Agreement (including pursuant to Sections 9.40 and 12.19(a)(vi)), provided that, except in the case of an emergency or for health and safety reasons, if requested by Licensee, after the Concession Commencement Date, Parks shall use best efforts to perform such works at the Licensed Premises during the off season or in a manner that minimizes disruption of the Golf Course operations between April 1st and October 31st of any year. Licensee agrees to cooperate with Parks, to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its best efforts to give Licensee at least fourteen (14) days' written notice of any such work and to not unreasonably interfere with Licensee’s Grow-In, operations or use of the Licensed Premises. In performing their obligations under this License Agreement, Parks and the City shall use commercially reasonable efforts to minimize the extent to which the Grow-In and use of the Golf Course and the Licensed Premises are disrupted. Parks shall coordinate its work pursuant to this Section 19.3 with Licensee. Parks or the City, as the case may be, shall be responsible for restoration of the Licensed Premises (subject to Section 12.19(a)(vi)) after the completion of any such work at the City’s sole cost and expense, provided however that if Parks performs work following a default by Licensee as set forth in Section 19.2, then subject to Section 4.4(c), Parks or the City may apply the Security Deposit, or as much thereof as may be necessary to compensate Parks or the City for the expense of performance of such work and/or restoration. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner, provided that if such closure adversely interrupts, impacts or restricts Licensee’s operation of the Licensed Premises, then Licensee shall be entitled to exercise its rights and remedies pursuant to Section 12.19(g) of this Agreement. For the sake of clarity, all City’s Reconstruction Activities shall be performed pursuant to and in accordance with this Section 19.3.
20. **COMPLIANCE WITH LAWS**

20.1 Except as otherwise specifically provided herein and without limiting Park’s or the City’s obligations under this License Agreement, in the performance of Licensee’s duties hereunder, Licensee shall comply and cause its employees and agents to comply with all laws (including but not limited to Environmental Laws), rules, regulations, orders and Governmental Approvals now or hereafter reasonably prescribed by Commissioner applicable to Licensee’s particular use of the Licensed Premises, and to comply with all Legal Requirements (including but not limited to Environmental Laws) applicable to Licensee’s particular use and occupation of the Licensed Premises.

20.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License Agreement.

21. **NON-DISCRIMINATION**

21.1 With respect to all employment decisions, Licensee shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

21.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

22. **NO WAIVER OF RIGHTS**

22.1 No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of Commissioner to terminate this License Agreement. No waiver by Commissioner or Licensee of any default on the part of the other party hereto in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

23. **INDEMNIFICATION**

23.1 To the fullest extent permitted by law, Licensee shall defend, indemnify and hold the Indemnitees harmless against any and all Claims, for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, out of the work, activities or operations of any of the Licensee Indemnitees at the Licensed Premises pursuant to this License Agreement, except for Claims arising from Environmental Conditions and/or effects of Environmental Conditions, whether such Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the date hereof except to the extent that such Environmental Condition and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees. Notwithstanding anything to the contrary contained herein, the provisions of this indemnification shall not be construed to indemnify or provide for the defense of any Indemnitees to the extent any Claims are attributable to the acts or omissions of the Indemnitees provided, however, for the sake of clarity, notwithstanding the foregoing, the indemnity or provision for the defense of Indemnitees shall apply to the extent any Claims are attributable to any Environmental Conditions and/or effects of Environmental Conditions.
to the extent that such Environmental Conditions and/or effects of Environmental Conditions are 
caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees. 
Licensee’s duty to defend, indemnify and hold the Indemnitees harmless, as provided in this Section 23.1, shall survive the expiration or sooner termination of this License Agreement.

23.2 Intentionally Omitted

23.3 Licensee’s duty to defend, indemnify and hold the Indemnitees harmless, as provided in Section 23.1, shall not be abrogated, diminished or otherwise affected by Licensee’s further duty on their behalf to procure and maintain insurance pursuant to the provisions of Section 25 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License Agreement.

23.4 Except as expressly provided in this License Agreement and/or in the Development Agreement, Licensee assumes all risk in the operation of this License Agreement. For the sake of clarity, and without limiting the City’s or Parks’ obligations under this Agreement, Licensee shall not be deemed to assume the risks associated with (a) Parks Sponsored Special Events, (b) any portion of the Licensed Premises prior to delivery of possession of such portion of the Licensed Premises to Licensee in accordance with the provisions of this License Agreement and the Development Agreement (except if Licensee performs any Capital Improvement or other activities on any portion of the Licensed Premises prior to delivery thereof to Licensee, then subject to the terms of this Agreement and the Development Agreement and without limiting Parks’ or the City’s obligations under this Agreement and the Development Agreement, Licensee shall assume the risk for such Capital Improvement or activity), (c) the City’s or Parks’ construction of the Golf Course, the Snack Bars and other facilities to be constructed by the City or Parks pursuant to this License Agreement and the Development Agreement (including City’s Reconstruction Activities), (d) any Environmental Conditions and/or effects of Environmental Conditions whether such Environmental Conditions and/or effects of Environmental Conditions are presently existing or arise after the execution of this Agreement (except to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees), (e) any settlement due to the Landfill, and (f) any of the City’s or Parks’ responsibilities under the DEC Part 360 Permit, the DEC Deed or other applicable Legal Requirements with respect to Environmental Conditions and/or effects of Environmental Conditions, except as otherwise provided in this License Agreement or the Development Agreement.

23.5 Without limiting the City’s and Parks obligations under the Development Agreement and this Agreement (including, without limitation, Section 12.19(c) of this Agreement), the City shall defend, indemnify and hold the Licensee Indemnitees harmless against any and all Claims for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, out of the work, activities or operations of the City or Parks, or the City’s or Park’s employees, contractors or other agents, at the Licensed Premises, including, without limitation, the City’s or Park’s construction of the Golf Course, the Snack Bars and other facilities to be constructed by the City or Parks pursuant to the Development Agreement (including City’s Reconstruction Activities), and any Environmental Conditions and/or effects of Environmental Conditions presently existing or arising after the execution of this Agreement (except to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees) and any conditions existing on any portion of the Licensed Premises delivered to Licensee existing as of the date of delivery of such portion of the Licensed Premises to Licensee pursuant to this Agreement and
the Development Agreement, except to the extent caused by the negligence or willful misconduct of any of the Licensee Indemnitees prior to delivery of such portion of the Licensed Premises to Licensee. Notwithstanding anything to the contrary contained herein, the provisions of this indemnification shall not be construed to indemnify or provide for the defense of Licensee Indemnitees to the extent any Claims are attributable to the acts or omissions of any of the Licensee Indemnitees, provided, however, for the sake of clarity, notwithstanding the foregoing, the indemnity or provision for the defense of Licensee Indemnitees shall apply to the extent any Claims are attributable to any Environmental Conditions and/or effects of Environmental Conditions (except to the extent that such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees). The City’s duty to defend, indemnify and hold the Licensee Indemnitees harmless, as provided in this Section 23.5, shall survive the expiration or sooner termination of this License Agreement.

23.6 (a) In the City’s defense of the Licensee Indemnitees (or any one of them), as applicable, in accordance with the terms of this Agreement (including, without limitation Section 12.19(c) and Article 23), the City shall not, without the prior written consent of Licensee, (i) make any non-monetary settlement of any Claims against any of the Licensee Indemnitees or (ii) make any monetary settlement of any Claims against any of the Licensee Indemnitees unless such monetary settlement is free of any admission of guilt or wrongdoing by any of the Licensee Indemnitees. Additionally, the City agrees (i) to make good faith efforts to consult with Licensee regarding legal strategy in the defense of any Claims against any of the Licensee Indemnitees (including positions asserted, claims and counterclaims) and (ii) not to portray any of the Licensee Indemnitees in a negative light.

(b) In Licensee’s defense of the Indemnitees (or any one of them), as applicable, in accordance with the terms of this Agreement (including, without limitation Section 12.19(c) and Article 23), Licensee shall not, without the prior written consent of the City, (i) make any non-monetary settlement of any Claims against any of the Indemnitees or (ii) make any monetary settlement of any Claims against any of the Indemnitees unless such monetary settlement is free of any admission of guilt or wrongdoing by any of the Indemnitees. Additionally, Licensee agrees (i) to make good faith efforts to consult with the City regarding legal strategy in the defense of any Claims against any of the Indemnitees (including positions asserted, claims and counterclaims) and (ii) not to portray the City in a negative light.

24. WAIVER OF COMPENSATION

24.1 Except as otherwise provided in this Agreement or in the Development Agreement, including, without limitation, any provisions which provide for a License Fee Credit (with interest thereon at the Interest Rate as set forth in Section 4.10 hereof) or Termination Payment (with interest thereon, as applicable, at the Interest Rate as set forth in Section 3.2(b) hereof) to Licensee, Licensee hereby expressly (i) waives any and all claims for compensation for any and all loss or damage sustained by reason of or arising from, and (ii) releases and discharges Parks, the Commissioner, his agents, and City from, any and all demands, claims, actions, and causes of action arising from, (1) any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or (2) any loss of any gas supply, water supply, heat or current which may occur from time to time, or (3) fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, except, in each case, to the extent arising from (A) the negligence or willful misconduct of Parks or the City or due to Environmental
Conditions and/or the effects of Environmental Conditions (except to the extent such Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of any of the Licensee Indemnitees), (B) the Landfill at the Licensed Premises, or (C) any material defects in design, manufacture, construction or installation by the City or Parks or their contractors or other agents.

24.2 Except as set forth in Section 3.2(b) and any other provision of this Agreement or the Development Agreement which specifically provides for the payment of a Termination Payment, Licensee expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License Agreement is terminated in accordance with the terms of this License Agreement; provided that for the sake of clarity, Licensee shall be entitled to interest, as applicable, on any Termination Payment at the Interest Rate as set forth in Section 3.2(b) of this Agreement.

25. INSURANCE

25.1 Licensee shall, at its own cost and expense, procure and maintain on or before the Concession Commencement Date and thereafter during the Term of this License Agreement, such insurance as will:

(a) protect Licensee from Worker’s Compensation, including Employer’s Liability and Disability claims;

(b) insure Licensee, its agents and sublicensees, and Licensee Indemnitees, the City, Parks, and their respective officials, agents and employees against any and all Claims, for which they, or any of them, are or may be liable as a result of any bodily injury, including death, or property damage arising, in whole or in part, from Licensee’s operations pursuant to this License Agreement, including but not limited to any accident occurring on the Licensed Premises, the operation of the Licensed Premises, and the design, construction, installation, operation, repair, maintenance, replacement or removal of any Capital Improvements by Licensee or any of the Licensee Indemnitees. For the sake of clarity, such insurance shall not apply to the extent Claims are related to (x) an Environmental Condition and/or the effects of Environmental Conditions (except to the extent the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of Licensee or any of the Licensee Indemnitees), or (y) any other matter for which the City or Parks is responsible or liable under this Agreement or the Development Agreement;

(c) provide coverage against business interruption losses; and

(d) insure the Licensed Premises, including without limitation all structures and the Fixed and Additional Fixed Equipment, against any damage from any cause whatsoever.

25.2 (a) The policies shall provide the amounts of insurance hereafter mentioned, and before the Concession Commencement Date, Certificates of Insurance and Broker’s Certification in forms satisfactory to the Commissioner shall be submitted to Commissioner for his approval and retention. Each policy shall be endorsed to reflect that “No cancellation of or change in this policy shall become effective until after thirty (30) days notice by Certified Mail to Asst. Commissioner for Revenue and Marketing, Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, New York 10065.” Licensee shall be solely responsible for the payment of all premiums,
deductibles and other costs relating to the policies of insurance required under this License Agreement. Licensee shall obtain from the insurance broker accounting statements providing evidence that the premiums for the insurance policies have been paid and shall submit such accounting statements to Commissioner. There shall be no self-insurance program relating to any such insurance, unless approved in writing by the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall be required to demonstrate to the Commissioner’s reasonable satisfaction that such self-insurance program provides coverage at least as broad as required herein and provides the City and Parks with all rights required herein.

(b) Each policy shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City regarding the operation of this License Agreement, provided that the foregoing in this Section 25.2 shall not apply where such claims are related exclusively to (x) an Environmental Condition and/or the effects of Environmental Conditions (except to the extent the Environmental Conditions and/or the effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of Licensee or any of the Licensee Indemnitees) or (y) any other matter for which the City or Parks is solely responsible or liable under this Agreement or the Development Agreement. For the sake of clarity, this Section 25.2(b) relates only to issues of legal defense and does not relate to indemnification or liability under any policy. If, at any time, any of said policies shall reasonably become unsatisfactory to Commissioner as to form or substance, or if a company issuing any such policies shall reasonably become unsatisfactory to Commissioner, Licensee shall promptly (within not more than fifteen (15) business days) obtain a new policy, and submit the same to Commissioner for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided.

(c) If, at any time, any of said policies shall terminate, Licensee shall, prior to the termination of such existing policy, promptly obtain a new policy, and submit the required Certificate of Insurance and Broker’s Certification (or binder) to Commissioner for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinbefore provided. In the event any insurance is suspended, discontinued, or terminated, Licensee shall have the right, prior to such suspension, discontinuation, or termination, to secure replacement insurance satisfying the requirements of this Section 25 and provide Parks with a Certificate of Insurance and Broker’s Certification (or binder) evidencing such insurance. Upon failure of Licensee to maintain, furnish and deliver insurance (including renewal or replacement insurance) or to provide Certificate(s) of Insurance and Broker’s Certification (or binder(s)) as above provided in this Section 25, this License Agreement may, at the election of Commissioner, be immediately suspended and/or may be terminated in accordance with the provisions of Section 3.3 and any and all payments made by Licensee on account of this License Agreement shall thereupon be retained by Commissioner as additional liquidated damages along with the Security Deposit. Failure of Licensee to take out and/or maintain or the taking out or maintenance of any required insurance shall not relieve Licensee from any liability under this License Agreement, nor shall the insurance requirements be construed to conflict with or limit the obligations of Licensee concerning indemnification or otherwise.

25.3 If the Licensed Premises, including without limitation all structures and the Fixed and Additional Fixed Equipment shall be damaged or destroyed by fire or other cause, such damage shall be promptly repaired or replaced so that the Licensed Premises are in the same condition as prior to such damage; provided for the sake of clarity, if such repair or replacement shall be the responsibility of the City (rather than Licensee) under Section 12.19 of this Agreement, then the City shall be liable for the repair and replacement at its sole cost and expense and an insurance claim shall not be filed under Licensee’s insurance policies unless Licensee agrees, in its sole discretion. Except for and
without limiting the City’s and Parks’ obligations for any repair or restoration under the Development Agreement and this Agreement (including, without limitation, Section 12.19(a) of this Agreement), Licensee shall promptly commence and diligently prosecute to completion any restoration or repair within six months (or such longer period as is reasonably necessary to complete such restoration and repairs) after Licensee is notified by Commissioner, that insurance proceeds have been received and are available for such work. If insurance proceeds are received by the City, at Licensee’s request, the City shall advance such insurance proceeds in accordance with Section 25.4 of this Agreement, except that such payments shall in no event exceed the amount actually collected and received by Commissioner under the insurance policies. Any extension of time for the completion of Restoration shall be granted at the reasonable discretion of Commissioner. For the sake of clarity, Licensee’s insurance policies and the proceeds of such insurance policies are intended to apply to any repair or restoration that are the responsibility of Licensee under this License Agreement. In no event shall Licensee’s insurance policies and the proceeds of such insurance policies be utilized for any repair or restoration that are the responsibility of the City under this License Agreement.

25.4 (a) Subject to Section 25.3 of this Agreement, to the extent the insurance proceeds are paid to the City under the All-Risk insurance policies procured under this License Agreement on account of such damage or destruction, such insurance proceeds less the reasonable costs of the City with the recovery or adjustment of the losses, shall be applied by the City to the payment of the cost of the restoration, repairs, replacements, rebuilding or alterations, including the costs of temporary repairs, provided such temporary repairs have been approved by Commissioner in writing, for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (collectively referred to as the “Restoration”), and shall be paid out from time to time, on a monthly basis, if requested by Licensee, as such restoration progresses upon the written request of the Licensee which shall be accompanied by:

(i) a certificate signed by an executive officer of Licensee and signed by the Architect/Engineer in charge of Restoration (who shall be satisfactory to the Commissioner) dated not more than thirty (30) days prior to such request, setting forth the following:

(A) that the sum then requested either has been paid by Licensee, or if in the event the Licensee is unable to pay for the Restoration, and funds are to be advanced by the City pursuant to Section 25.3, that said sum is justly due or shall become due to contractors, subcontractors, suppliers, engineers, architects or other persons who shall or have rendered services or furnished materials for said Restoration, and giving a brief description of such services and materials and the several amounts so paid and/or due or to become due to each of said persons in respect thereof and the sum then requested does not exceed the cost of the services and materials described in the certificate;

(B) that except for the amount, if any, stated in said certificate pursuant to this Section 25.4, i.e., to be due for services or materials, there is no outstanding indebtedness known to Licensee, after due inquiry, which is then due for labor, wages, materials, supplies or services in connection with Restoration; and

(C) that the cost, as estimated by such Architect/Engineer, of the Restoration required to be done subsequent to the date of such certificate in order to complete the same does not exceed the insurance money remaining in the hands of the City after payment of the sum requested in such certificate; and
(ii) A Title Company search or other evidence satisfactory to the Commissioner showing that there has not been filed with respect to the Licensed Premises any mechanic's or other lien which has not been discharged of record or appropriately bonded.

(b) Within ten (10) days after compliance by Licensee with this Section 25.4, the City, shall, on behalf of the Licensee out of such insurance money, pay or cause to be paid to the persons named in the certificate, pursuant to Section 25.4(a)(i), the respective amounts stated in said certificate to be due to them and/or shall pay or cause to be paid to Licensee the amount stated in said Certificate to have been paid by Licensee. Licensee shall have the right to make requests for disbursement of insurance proceeds on a monthly basis. Notwithstanding the foregoing, where a Restoration is Licensee’s responsibility under this Agreement, in the event that Licensee fails to undertake the Restoration of Licensed Premises as a result of damage or destruction by fire or other casualty in accordance with Section 25.3, the Commissioner may but shall not be obligated to proceed with such Restoration using insurance proceeds received for such purpose and may terminate this License Agreement upon written notice to Licensee. However, if this License Agreement is terminated as provided in this Section 25.4, Licensee shall be responsible for the payment for any fees or other sums then due and owing to the City and the City reserves any and all rights it may have against the Licensee in law or in equity as a result of the termination of this License Agreement.

25.5 Should Licensee fail, after notice from the City of the need thereof, to perform its obligations required under Sections 25.3 or 25.4, the City in addition to all other available remedies may, but shall not be so obligated to enter upon the Licensed Premises and perform Licensee’s said failed obligations using any equipment or materials on the Premises suitable for such purposes. Licensee shall forthwith on demand reimburse City for all costs and expenses so incurred.

25.6 All required insurance must be issued by companies which have an A.M. Best rating of at least A-7 and are duly licensed to do business in the State of New York and must be in effect and continue so from and after the Concession Commencement Date during the Term in not less than the following amounts (or such higher amounts as the Commissioner may hereafter reasonably require):

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Compensation and Disability Insurance</td>
<td>Per Statute</td>
</tr>
<tr>
<td>Employer’s Liability Insurance</td>
<td>As required by the laws of the State of New York</td>
</tr>
<tr>
<td>Comprehensive General Liability Insurance dedicated to Licensee’s operations at the Licensed Premises (with Broad Form Property Damage, Personal Injury Liability, Products/Completed Operations Liability, Contractual Liability, Independent Contractors, Fire/Legal Liability, Host Liquor Liability, Property Insurance Endorsements), for any one occurrence</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Any Auto, Hired Auto, and Non-Owned Auto Insurance, for any one occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Umbrella/Excess Liability dedicated to Licensee’s operations at the Licensed Premises</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>
All Risk Insurance, for any one occurrence

The full replacement value of the buildings on the Licensed Premises, including without limitation all structures and the Fixed and Additional Fixed Equipment, which shall be reassessed every year or at Parks’ reasonable discretion.

In the event that Licensee maintains Pollution Legal Liability Insurance with regard to any operations under this Agreement or requires any of Licensee’s Contractors to procure Contractors Pollution Liability Insurance, then Licensee shall or Licensee shall cause Licensee’s Contractors to name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Form CG 2026. For the sake of clarity, Licensee has the right, but not the obligation, to maintain or cause Licensee’s Contractors to procure and maintain such insurance.

Further, for the sake of clarity, such insurance shall not protect the City, Parks and their respective agents and employees, with regards to Environmental Conditions and/or the effects of Environmental Conditions, except to the extent the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of Licensee or any of the Licensee Indemnitees.

25.7 In the event that claims in excess of these amounts (including Licensee’s umbrella insurance policy) are filed against the City, the amount of excess of such claims, or any portion thereof, may be withheld from any payment due or to become due to Licensee until such time as Licensee shall furnish such additional security covering such claims as may be reasonably determined by Commissioner; provided that the foregoing in this Section 25.7 shall not apply to the extent such claims are related to (x) an Environmental Condition and/or the effects of Environmental Conditions (except to the extent the Environmental Conditions and/or effects of Environmental Conditions are caused or exacerbated by the negligence or willful misconduct of Licensee or any of the Licensee Indemnitees) or (y) any other matter for which the City or Parks is responsible or liable under this Agreement or the License Agreement.

25.8 All policies other than Worker's Compensation, Disability Benefits, Employer’s Liability and All Risk shall name the City, including its officials and employees, as Additional Insured with coverage at least as broad as Insurance Services Office (ISO) Form CG 20 26. The All Risk policy shall name the Licensee as named insured and the City as an additional loss payee, as their interests may appear.

25.9 Endorsement to Policies - The following additional endorsements shall be made part of all policies other than Worker's Compensation, Disability Benefits, and Employer’s Liability:

(a) This policy shall not be canceled, terminated, modified, or the coverage thereof reduced, until thirty (30) days after receipt of written notice thereof by certified mail addressed to the Commissioner.

(b) If and insofar as knowledge of an “occurrence”, “claim”, or “suit” is relevant to the City of New York as additional insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the
City of New York of the “occurrence”, “claim”, or “suit” unless notice thereof is received by the:
Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department.

(c) Any notice demand or other writing by or on behalf of the named insured to the
insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City
as additional insured. Any response by the Insurance Company to such notice, demand or other
writing shall be addressed to the named insured and to the City at the following address: Insurance
Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church
Street, New York, New York 10007.

(d) The presence of representatives of the City on the Licensed Premises shall not
invalidate this policy.

(e) Violation of any of the terms of any other policy issued by the Insurance Company to
the Licensee shall not invalidate this policy.

26. INVESTIGATIONS

26.1  (a) The Parties to this License Agreement shall cooperate fully and faithfully with any
investigation, audit or inquiry conducted by a State of New York (hereinafter “State”’) or City
governmental agency or authority that is empowered directly or by designation to compel the
attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General
of a governmental agency that is a party in interest to the transaction, submitted bid, submitted
proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

(b) (i) If any person who has been advised that his or her statement, and any
information from such statement, will not be used against him or her in any subsequent criminal
proceeding refuses to testify before a grand jury or other governmental agency or authority
empowered directly or by designation to compel the attendance of witnesses and to examine
witnesses under oath concerning the award of or performance under any transaction, agreement,
lease, permit, contract, or license entered into with the City, the State, or any political subdivision or
public authority thereof, or the Port Authority of New York and New Jersey, or any local
development corporation within the City, or any public benefit corporation organized under the laws
of the State of New York; or

(ii) If any person refuses to testify for a reason other than the assertion of his or
her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or
State governmental agency or authority empowered directly or by designation to compel the
attendance of witnesses and to take testimony concerning the award of, or performance under, any
transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any
political subdivision thereof or any local development corporation within the City, then:

(c) (i) The Commissioner or agency head whose agency is a party in interest to the
transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a
hearing, upon not less than five (5) days written notice to the parties involved to determine if any
penalties should attach for the failure of any person to testify.

(ii) If any non-governmental party to the hearing requests an adjournment, the
Commissioner or agency head who convened the hearing may, upon granting the adjournment,
suspend any contract, lease, permit, or license pending the final determination pursuant to Section 26.1(e) below without the City incurring any penalty or damages for delay or otherwise.

(d) The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(e) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 26.1(e)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 26.1(e)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 26.1(d) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 26.1(c)(i) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

(f) (i) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
(ii) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(g) In addition to and notwithstanding any other provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by the Licensee, or affecting the performance or this License Agreement.

27. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

27.1 This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

27.2 Any and all claims asserted by or against the City (which for purposes of this Article 27 includes the Commissioner) or Licensee arising under this License Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York. To effect this License Agreement and its intent, Licensee and the City agree:

   (a) If any such action or proceeding is brought in Federal Court or in New York State Court, service of process may be made on the City or Licensee, as the case may be, by personal service in accordance with the provisions of the New York Civil Practice Law and Rules (“CPLR”), wherever such party may be found (and if the City is the party being served, process shall be served on the Corporation Counsel, 100 Church Street, New York, New York 10007); provided, however, that in so far as service is to be made upon the Licensee, as an alternative to personal service in accordance with the provisions of the CPLR, service of process upon Licensee may be made in such other manner and at such other address for Licensee in each case only as Licensee may provide in writing to the City; and

   (b) With respect to any action between the City and the Licensee in New York State Court, the Licensee and the City each hereby expressly waives and relinquishes any right it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
With respect to any action between the City and the Licensee in Federal Court located in New York City, each of them expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

27.3 If the Licensee or the City commences any action arising under or in connection with this License Agreement against any of them in a court located other than in the City and State of New York, upon request of any of the other of such Parties, the commencing party shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the commencing party shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

28. **EMPLOYEES OF LICENSEE/CITY**

28.1 (a) All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License Agreement or the Development Agreement on behalf of Licensee are not employees of the City with respect to such work and shall not be deemed to be under contract to the City for such work, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement or the Development Agreement for such work. Except as may be expressly set forth in this Agreement or the Development Agreement, nothing in this License Agreement or the Development Agreement shall impose any liability or duty on the City for (A) acts, omissions, liabilities or obligations of (i) Licensee or (ii) any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent for or arising from work to be done on behalf of Licensee (any such person or entity so engaged, a “Licensee Party”) or (B) taxes of any nature including but not limited to unemployment insurance, workers’ compensation, disability benefits and social security with respect to Licensee or any Licensee Party.

(b) All experts, consultants and employees of the City who are employed by the City to perform work under this License Agreement or the Development Agreement on behalf of the City are not employees of Licensee with respect to such work and shall not be deemed to be under contract to Licensee for such work, and the City alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement or the Development Agreement for such work. Except as may be expressly set forth in this Agreement or the Development Agreement, nothing in this License Agreement or the Development Agreement shall impose any liability or duty on the Licensee for (A) acts, omissions, liabilities or obligations of (i) the City or (ii) any person, firm, company, agency, association, corporation or organization engaged by the City as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent for or arising from work to be done on behalf of the City (any such person or entity so engaged, a “City Party”) or (B) taxes of any nature including but not limited to unemployment insurance, workers’ compensation, disability benefits and social security with respect to the City or any City Party.

29. **INDEPENDENT STATUS OF LICENSEE**

29.1 Licensee is not an employee of Parks or the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be
officers or employees of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for, any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

30. CONFLICT OF INTEREST

30.1 Licensee represents and warrants that neither it nor any of its members, partners, officers, directors, or Affiliates, has any interest nor shall it acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that, to its knowledge, none of its employees has any interest, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Parks and the City acknowledge and agree that the present or future ownership and operation of other golf courses by Trump or any of his Affiliates, or any of their members, partners, officers, directors or employees does not constitute such a conflict and shall not violate this provision. Licensee further represents and warrants that in the performance of this License Agreement no person having such interest or who acquires such interest or possible interest shall be knowingly employed by it, provided, however, if Licensee unknowingly has employed or employs a person having such interest or who acquires such interest and such conflicting interest is subsequently discovered by Licensee, then Licensee shall take prompt steps to remedy the conflict. No elected official or other officer or employee of the City or Parks, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this License Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License Agreement or in the proceeds thereof.

31. PROCUREMENT OF AGREEMENT

31.1 Licensee and the City and Parks represent and warrant to each other that no person or selling agency has been employed or retained to solicit or secure this License Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee and the City agree to indemnify and hold the other party harmless from any loss, cost, damage or expense incurred by the other party as a result of a breach of the foregoing representation.

31.2 Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the Parties. Licensee makes such representations and warranties to induce the City to enter into this License Agreement and the City relies upon such representations and warranties in the execution hereof. For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License Agreement without liability, entitling the City to recover all monies paid hereunder, if any and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License Agreement.
32. **ALL LEGAL PROVISIONS DEEMED INCLUDED**

32.1 Each and every provision of law required to be inserted in this License Agreement shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License Agreement shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

33. **SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

33.1 If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the purposes intended by the Parties including the economic purposes shall remain substantially in effect.

33.2 In the event that any condition or provision of this License Agreement is declared void or of no effect, then in such an event the Parties shall use best efforts to modify this License Agreement to the extent possible, consistent with the Parties’ intent not to convey any interest in real property, to provide the Parties an opportunity to continue the License on economic terms and for the public purposes intended; provided, however, that any such modification shall be subject to all necessary City approvals and authorizations and compliance with all City procedures and processes. In the event continuation of the License cannot be lawfully achieved, the Parties shall negotiate an orderly and equitable termination of the License Agreement on such terms as may be just and equitable and that avoid an unjust enrichment. For the avoidance of doubt, Grow-In Costs and Capital Improvement Costs shall be considered in the determination of an equitable result.

34. **JUDICIAL INTERPRETATION**

34.1 Should any provision of this License 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 of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all Parties hereto have participated in the preparation of this License Agreement and that legal counsel was consulted by each responsible party before the execution of this License Agreement.

35. **MODIFICATION OF AGREEMENT**

35.1 This License Agreement constitutes the whole of the agreement between the Parties hereto, and no other representation made heretofore shall be binding upon the Parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the Party or Parties affected by said modification.
36. **NOTICES**

36.1 Except as set forth in **Section 3.3(e)** of this Agreement, where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery, by mailing a copy of such notice or other communication by certified mail, return receipt requested, or by overnight courier service addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner. In addition, in the case of any notice or other communication required or permitted to be given to Licensee under this License Agreement, an additional copy thereof shall be delivered in accordance with the foregoing to each of the following persons at the following address: Trump Ferry Point, LLC, c/o The Trump Organization LLC, 725 Fifth Avenue, New York, New York 10022, Attention: Jason Blacksberg, Esq., Allen Weisselberg and Ron Lieberman.

37. **NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

37.1 No claim whatsoever shall be made by the Licensee against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this License Agreement.

38. **CREDITOR-DEBTOR PROCEEDINGS**

38.1 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the Guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of License Fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

39. **CLAIMS AND ACTIONS THEREON**

39.1 (a) No action at law or proceeding in equity against the City or Parks shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(b) In the event any claim is made or any action brought in any way relating to the License Agreement herein other than an action or proceeding in which Licensee and Parks are adverse parties, Licensee shall render to Parks and/or the City of New York, without additional compensation, any and all assistance which Parks and/or the City of New York may reasonably require of Licensee.

40. **SURVIVAL**

40.1 In addition to the provisions of this Agreement that specifically survive termination of this Agreement, any provisions of this Agreement which by their nature would survive termination shall be deemed to do so.
IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION

By: Elizabeth W. Smith,
Assistant Commissioner for Revenue

Dated: 2/21/12

TRUMP FERRY POINT LLC

By: Donald J. Trump, President

Dated: ______________________

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

On this 21 day of February, 2012 before me personally came Elizabeth W. Smith, to me known, and known to be the Assistant Commissioner for Revenue of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

STATE OF NEW YORK
ss:
COUNTY OF

On this ______ day of ____________, 2012, before me personally came Donald J. Trump, who, being duly sworn by me did depose and say that he is the President of Trump Ferry Point LLC and that he executed the foregoing instrument for the purposes mentioned therein in such capacity.

Notary Public
IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION

By: ______________________________
Elizabeth W. Smith,
Assistant Commissioner for Revenue

Dated: ______________________________

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

TRUMP FERRY POINT LLC

By: ______________________________
Donald J. Trump, President

Dated: February 21, 2012

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

On this __________ day of __________, 2012 before me personally came Elizabeth W. Smith, to me known, and known to be the Assistant Commissioner for Revenue of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

On this 21st day of February, 2012, before me personally came Donald J. Trump, who, being duly sworn by me did depose and say that he is the President of Trump Ferry Point LLC and that he executed the foregoing instrument for the purposes mentioned therein in such capacity.

Notary Public

SHARON HWANG
Notary Public, State of New York
No. 02HW6106147
Qualified in New York County
Commission Expires March 1, 2012
IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION

By: ______________________
Elizabeth W. Smith,
Assistant Commissioner for Revenue

Dated: ____________________

TRUMP FERRY POINT LLC

By: ______________________
Donald J. Trump, President

Dated: ____________________

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK
COUNTY OF NEW YORK

On this ______ day of __________, 2012 before me personally came Elizabeth W. Smith, to me known, and known to be the Assistant Commissioner for Revenue of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK
COUNTY OF

On this ______ day of __________, 2012, before me personally came Donald J. Trump, who, being duly sworn by me did depose and say that he is the President of Trump Ferry Point LLC and that he executed the foregoing instrument for the purposes mentioned therein in such capacity.

Notary Public
EXHIBIT M

Maintenance Guidelines

Maintenance Guidelines for Trump Golf Links at Ferry Point Park

The following specifications are for the care of Trump Golf Links at Ferry Point Park, with the intention being to provide a first class, tournament quality daily fee golf course. Careful planning and work will be taken to ensure that the design of the golf course remains intact as the designers intended. Any and all of these specifications may be altered as weather or conditions dictate at the superintendent’s reasonable discretion.

GREENS

Greens will be cut daily prior to play with walking greens mowers at a height ranging from .105” to .140” as conditions permit. Greens may be cut with triplex type mowers for verticutting/dethatching operations. Green collars and cleanups shall be cut three times a week or as conditions permit. Greens will also be rolled 2-3 times per week with turf type rollers to promote a smooth putting surface with speeds staying consistent from 10 – 10.5 on the stimpmeter. The greens will remain smooth, firm and true at all times except for the period of time following core aerification. Mowing directions will be varied each mowing according to the clock direction method. Original green outlines to be maintained to original design unless approved by Parks and Nicklaus Design using best mowing practices

Greens will be core aerified a minimum of two times a year, once in the spring and once in late August or as required to relieve compaction, vent the subsurface, and/or to control thatch. This will be done with tines ranging from ¼” to 5/8” diameter at the superintendents discretion. The cores are to be removed. Following aerification the greens will be top dressed with sand that is compatible with the existing root zone. Thatch must not be allowed to accumulate to a depth of more than ¾ inch from the surface base.

A regular, light topdressing program will be followed on the greens throughout the growing season with sand that is determined by laboratory testing to be compatible to the existing root zone. The sand will either be brushed or watered in to minimize disturbance to golfers.

Greens are to remain relatively grain free through a regular grooming, verticutting and/or brushing program as conditions permit. Grooming, verticutting and brushing shall be scheduled to minimize disturbance to golfers.

A fertility program will be followed that avoids allowing the plant to become too lean or promote excessive growth and puffiness. Care will be taken to ensure accurate applications that avoid unnecessary run off and/or leaching. All amendment and fertilizer shall be blended to the standards of a first class, tournament quality daily fee golf course. All programs to be based on soil and tissue test results. Soil and tissue tests to be administered three times starting in spring.

Greens shall be hand watered as a supplement to automatic irrigation to prevent the turfgrass from becoming excessively dry and to promote firm and fast playing conditions. Overhead irrigation will be used as needed to flush salt from greens, water in fertilizer and pesticide applications and topdressing. Irrigation methods shall be at the superintendent’s discretion with the goal being to provide a firm fast surface on a daily basis as conditions dictate.
Greens are to remain relatively weed, disease and pest free through use of Best Management Practices and a sound Integrated Pest Management program. Special attention will be given to minimizing Poa annua invasion by utilizing industry and university recommended programs to discourage Poa annua and encourage healthy bentgrass growth.

Any blemishes or damage to the greens shall be removed as soon as possible using plugs of similar turfgrass. Greens will be vented through the use of needle tine aerification and/or spiking as conditions dictate throughout the season. This will be scheduled to minimize disturbance to golfers.

Greens shall be maintained to the designed perimeter dimensions and care shall be taken to prevent the encroachment of unwanted grasses.

Greens shall be protected against winter desiccation and winter diseases as required using industry standard Best Management Practices.

TEES

Tees will be cut three times a week with a walking and/or triplex mower in a manner that produces aesthetically appealing striping. Care shall be taken to prevent excessive grain from forming in the turf. The height of cut shall range from .300” to .400” as conditions permit. Original tee outlines to be maintained to original design unless approved by Parks and Nicklaus Design using best mowing practices.

Tees will be core aerifed a minimum of two times a year, once in the spring and once in late August, with tines ranging from 3/8” to ¾”. Following aerification the tees will be topdressed with sand that is deemed compatible with the existing root zone by laboratory testing.

Tees are to be topdressed and verticut a minimum of two times per year or as often as necessary to provide a healthy upright plant. Topdress as required to level any depressions in the tee and provide a best Thatch Management program.

Divots on tees will be filled with the originally specified seed and an appropriate sand mixture on a daily basis to promote maximum recovery from divots, with additional emphasis on par 3 tees as these receive additional wear. Any damage from maintenance equipment or golfer wear shall be repaired in a timely fashion.

A fertility program will be followed so as to allow for rapid recovery from divots and wear without producing excessive growth. All programs based on soil and tissue test results. Soil and tissue will be tested three times starting in the spring. All amendments and fertilizers shall be blended to the standards of a first class, tournament quality daily fee golf course.

Tees are to remain relatively weed, disease and pest free through use of Best Management Practices and a sound Integrated Pest Management program.

Tees shall be watered to prevent excessive turf stress and desiccation while still providing a firm playing surface.

Tees shall be maintained to the designed perimeter dimensions and care shall be taken to prevent the encroachment of unwanted grasses.
Tees shall be protected against winter desiccation and winter diseases as required using industry standard Best Management Practices.

FAIRWAYS

Fairways will be mowed at least three times per week during the growing season or as required to produce a clean, uniform playing surface. Mowers will vary direction based on standard golf course practices at a height ranging from .375” to .500” as conditions permit. Care shall be taken to ensure that the original contours and shape of the fairways are maintained.

Irrigation heads and drain covers are to be regularly edged so as not to interfere with water flowing into or out of said objects.

Fairways will be aerified a minimum of two times a year or as necessary to prevent excessive compaction or thatch development. Cores may be removed or verticut and/or dragged back into the surface at the discretion of the superintendent. Superintendent shall create a best practice plan for thatch control including sound management and a topdressing program.

Divots shall be filled weekly with the originally specified seed and sand mix that promotes rapid recovery.

Fairways shall be verticut and groomed a minimum of two times a year to promote healthy upright growth during the growing season.

Fairways are to remain relatively weed, disease and pest free through use of Best Management Practices and a sound Integrated Pest Management program.

Fairways shall be watered to prevent excessive turf stress and desiccation while still providing a firm playing surface. Hand or portable watering may be necessary to supplement automatic irrigation.

A fertility program will be followed so as to allow for rapid recovery from divots and wear without producing excessive growth. All programs based on soil and tissue test results. Soil and tissue to be tested two times starting in spring.

Original Fairway outlines are to be maintained to original design unless approved by Parks and Nicklaus Design using best mowing practices.

ROUGHGS

Formal roughs shall be mowed at least one complete cycle a week, or as necessary to maintain heights between 2” to 3”. Direction should be reversed for each mowing to avoid grass from lying over. Intermediate roughs shall be mowed three times a week at a height of 1 to 1¼ inch, reversing direction each mowing.

Roughs shall be aerified twice a year or as necessary to alleviate compaction in wear areas.

Overseeding with the same originally specified seed mixture shall occur as necessary in wear areas to promote turfgrass recovery in the spring and fall seasons.

Roughs are to remain relatively weed and pest free through use of Best Management Practices and a sound Integrated Pest Management program.
A fertility program will be established to promote healthy turfgrass without causing excessive growth. All programs will be based on soil and tissue test results. Soil and tissue to be tested at least once a season. All amendments and fertilizers shall be blended to the highest golf course standards.

Native areas will be mowed as necessary to keep these areas natural as they were intended to look. Native areas will be completely mowed in the late fall to promote healthy spring growth. Native area maintenance to include watering as needed for healthy turf, disease, pest and weed control with fertilization only as needed to maintain health and stamina.

**BUNKERS**

Fairway bunkers are to be completely raked three times a week or as required so that the surface is maintained smooth and free of weeds and debris. Greenside bunkers are to be raked every day. Hand rake small bunkers every raking cycle. The remaining days of the week the fairway bunkers are to be touched up by hand raking only. Mechanical raking may be done where bunkers are large enough or designed in such a way that the machine can access and egress the bunker without destroying the turf around the perimeter. Bunker slopes and edges must be touched up by hand raking following mechanical raking.

After it rains, bunkers are to be promptly returned to playing condition with all wash outs repaired, silt removed and then completely raked.

Bunkers shall be checked regularly for proper sand depth. Sand will be redistributed properly or added as necessary to provide the proper depths. All rock and debris must be removed along with any sand contaminated by foreign soil, gravel, or grass clippings. Contaminated sand is to be removed and replaced as needed.

Banks of the bunkers shall be mowed regularly to provide the intended look of the design. Weeds will be pulled and edges will be trimmed once per month or as needed to maintain bunker definition. Bunker edges are to remain non-formal as designed for links conditions.

Bunker rakes shall be spaced evenly outside the bunker cavity for the convenience of the golfers.

Original bunker outlines to be maintained to original design unless approved by Parks and Nicklaus Design using best maintenance practices.

**COURSE SET UP**

Hole locations shall be changed on a daily basis during the busy season or as needed during slower times of the year. The superintendent, or a qualified individual selected by the superintendent, shall select fair hole locations and ensure that the hole has at least one full pace distance from a contour change and at least three paces from the inside edge of the collar. Charted and repetitive hole locations on given days are to be discouraged as excessive wear results in those areas leaving much of the green surface unused.

Tee markers shall be moved on a daily basis to avoid excessive wear in one location and to coordinate with pin locations and weather conditions.

Flags, cups, tee makers, yardage markers and flagsticks will be maintained so as to provide a “like new” appearance and replaced as necessary.

All course furniture shall be kept clean and organized in a neat manner.
Cart traffic is to be managed using ropes and stakes to minimize turf damage in wear areas.

PRACTICE RANGE

The driving range shall be mowed two times a week or as necessary to provide an aesthetically appealing facility. The practice range floor shall be mowed at a height and frequency consistent with healthy turf growth and resistance against wear.

Target bunkers shall be raked weekly or as necessary to provide an aesthetically appealing facility.

Yardage flags shall be spaced to provide a variety of shots and angles as dictated by the design intent.

The practice tee shall be cut a minimum of three times a week, reversing direction each time and fertilized so as to promote rapid recovery from divots and other wear. Divots shall be filled on a timely basis. The Practice Tee shall be mowed at fairway height. All programs based on soil and tissue test results. Soil and tissue to be tested three times starting in spring.

The practice range and tee will be irrigated as needed to prevent stress as well as promote seed germination and recovery on the tee surface. Occasional hand watering may be necessary to supplement automatic irrigation.

The practice range tee and floor areas, including target greens and chipping areas, will be aerified twice a year to prevent excessive compaction and thatch development.

All chipping and putting greens will be managed as regulation greens.

The synthetic grass practice tee shall be maintained to Manufacturers specifications and to keep surface playable.

IRRIGATION AND WATERING

The irrigation system is to be maintained in accordance to the manufacturers recommendations so that it is in working order at all times during the growing season. Visual checks shall be conducted on a regular basis as well as an analysis of the computer data from the prior night’s irrigation cycle to ensure everything is working properly. All repairs and adjustments shall be made by qualified personnel under the direction of the superintendent. The pump stations shall be serviced in a regular manner according to manufacturer recommendations.

The theory behind all watering practices is that firm and fast conditions should be provided while encouraging good root development and preventing excessive leaching. Overwatering and soft conditions are not acceptable. Turf needs shall be monitored on a daily basis visually, by use of the weather station data and in-ground moisture sensors. Tees, greens and fairways are to be hand water as needed. All “isolated dry spots” on the fairways and around the bunkers are to be hand water as needed.

The irrigation system should be emptied of all water in the fall strictly following manufacturer guidelines and specifications to prevent damage to the irrigation system during the winter season. Care will be taken in the spring to prevent damage when re-charging the system with water.
The water provided for irrigation is NYC potable water. Yearly water test will be needed to review the need for amendments such as wetting agents, pH adjustment, and the Sodium Absorption Ratio adjustment.

Salt Management irrigation practices (leaching or deep watering) may be necessary to maintain turfgrass health, especially during prolonged periods of drought.

CARTPATHS

Cart paths shall remain relatively clean and edged so as to provide a clean and tidy appearance. Cartpath repairs shall be done in a timely manner as needed to meet original design specification.

CLUBHOUSE GROUNDS

The clubhouse grounds shall be maintained in accordance with the standards of a first class, tournament quality daily fee golf course. All lawns shall be regularly mowed, debris cleaned up, shrubs and trees neatly trimmed and mulch beds regularly weeded and edged.

POND MANAGEMENT

Irrigation pond and detention ponds shall be properly maintained in order to control storm water and remain in compliance with all applicable laws, rules, regulations and guidelines related to lake/water management, including but not limited to, the Clean Water Act.

The grass and rip rap edges surrounding the irrigation pond and the grass surrounding the detention ponds shall be regularly maintained to ensure they are in keeping with the design intentions.

A weed and algae control program for the irrigation pond shall be implemented as part of the maintenance program. A weed control and reseed program for the detention ponds and designated wetlands shall be implemented as part of the maintenance program to maintain original design intentions and in strict compliance with any City, State, and Federal laws, rules, regulations and guidelines.

TREE MAINTENANCE

Trees and shrubs will be pruned of dead wood and undesirable branches to maintain their natural shape. All transplanted and new trees will be fertilized, watered and monitored for pests. An integrated best management program is to be instituted for all Landscaping. Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License Agreement, without the express written permission of Parks. Licensee shall not attach anything to any tree, such as lights.

(i) Prior to the commencement of construction work at the Licensed Premises, Licensee shall contact the Bronx Director of Forestry. (ii) Licensee shall comply with all quarantine zones for the Asian Long Horned Beetle and any other invasive tree species or disease that may develop during the Term of this License Agreement. Licensee shall comply will all city, state or federal rules and regulations regarding new tree planting, infestation control, treatment, tree trimming and removal, including but not limited to rules and regulations established by the United States Department of Agriculture, the New York State Department of Agriculture & Markets, and Parks.

(iii) Licensee shall not stockpile any construction material within the drip-line of trees.
(iv) Licensee shall perform at its sole cost and expense compensatory pruning of trees adversely affected by the work. Pruning shall be done by a Parks approved licensed arborist when and where directed by Parks.

(v) Licensee shall install wooden tree guards as directed by Parks.

(vi) Licensee shall circumvent trees by trenching outside the drip-line of the trees.
(vii) Licensee shall remove all dead plant material resulting from Licensee's work, as determined by Parks, from the Licensed Premises.

(viii) Tree removal and acceptable replacements must be approved in writing by Parks.

EQUIPMENT MAINTENANCE

All equipment shall be operated and maintained in accordance to the manufacturer’s specifications, recommendations and guidelines as provided in the owner’s manual and any subsequent notices or bulletins issued by the manufacturer. Employees will be thoroughly trained and educated on the proper use of the equipment.

All lubricants and fluids shall be regularly checked and changed as outlined in the service manual. A sound preventative maintenance program shall be developed by the golf course mechanic under the direction of the superintendent.

Licensee assumes responsibility for repairing damage to the golf course if any maintenance equipment damages any part of the golf course (ex. broken hydraulic line on green).

MAINTENANCE BUILDING

The maintenance building shall be kept in a neat, organized and functional manner that conveys the image of a professional operation.

SUMMARY

Though the above list is not all inclusive, it should provide a general direction of the desired maintenance practices for Trump Golf Links at Ferry Point Park. All maintenance activities mentioned within will be scheduled so as to minimize disruption to golfers as much as reasonably possible. The course shall be maintained to the standards of a first class, tournament quality daily fee golf course and consistent with the reasonable standards of a Jack Nicklaus Signature golf course.