

**CITY OF EL PASO, TEXAS  
AGENDA SUMMARY FORM**



**DEPARTMENT / COUNCIL OFFICE:**

**AGENDA DATE:**

**PUBLIC HEARING DATE:**

**CONTACT PERSON NAME:**

**PHONE NUMBER:**

**2nd CONTACT PERSON NAME:**

**PHONE NUMBER:**

**DISTRICT(S) AFFECTED:**

**AGENDA ITEM:**

**ISSUE STATEMENT:**

**BACKGROUND:**

**COUNCIL OPTIONS:**

**COMMITTEE REVIEW AND/OR RECOMMENDATION:**

**COMMUNITY AND STAKEHOLDER OUTREACH (if applicable, as an attachment) – please include:**

**RELATED CITY POLICIES:**

**PRIOR COUNCIL ACTION:**

**LEGAL REVIEW:**

*Legal counsel reviewed as a part of Council packet*

*Legal counsel reviewed in advance of packet as an individual item*

**AMOUNT AND SOURCE OF FUNDING:**

**REPORTING OF CONTRIBUTION OR DONATION TO CITY COUNCIL:**

NAME	AMOUNT (\$)

**ATTACHMENTS:**

**FOR MORE INFORMATION:**

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**SIGNATURE:**



(If Agenda Summary Form is initiated by Purchasing, client department should sign also)

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Golf Course Operation and Concession Agreement between the City of El Paso and EP GOLFCO, LLC., to allow a private concessionaire to run the golf course for public use, to provide the successful operation, improved efficiency, and greatest benefit to the citizens of the City of El Paso, located at the premises numerically known as 1510 Hawkins Boulevard, El Paso, Texas 79925 and more particularly described as:

A portion of Morehouse Survey No. 12 and a portion of Section 40, Block 80 TSP 2 T&P Survey, City of El Paso, El Paso County, Texas, and municipally known as Lone Star Golf Club (f/k/a/ Cielo Vista Golf Course).

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2026.

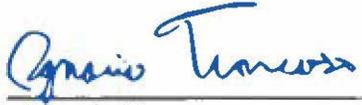
**CITY OF EL PASO:**

\_\_\_\_\_  
Renard U. Johnson  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ignacio Troncoso  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Juan Antonio Nevarez, CM, AC, IACE  
Director of Aviation

GOLF COURSE OPERATION AND CONCESSION AGREEMENT  
LONE STAR GOLF CLUB

by and between

THE CITY OF EL PASO

and

EP GOLFCO LLC

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## **List of Exhibits**

- Exhibit A: Leased Premises
- Exhibit B-1: Leased FF&E
- Exhibit B-2: Concessionaire FF&E
- Exhibit C: Concessionaire Improvements
- Exhibit D: Lessor Improvements
- Exhibit E: Concessionaire Scope of Services
- Exhibit F: Concessionaire Maintenance and Repair Obligations
- Exhibit G: Approval and Installation of Improvements
- Exhibit H: Required Federal Provisions

## GOLF COURSE OPERATION AND CONCESSION AGREEMENT

LONE STAR GOLF COURSE

EL PASO INTERNATIONAL AIRPORT

**THIS GOLF COURSE OPERATION AND CONCESSION AGREEMENT** (this “**Agreement**”) is made and entered into this 1<sup>st</sup> day of April, 2026 (the “**Effective Date**”), by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (“**Lessor**” or “**City**”) and EP GolfCo LLC, a Texas limited liability company (“**Concessionaire**”). Lessor and Concessionaire are sometimes referred to herein individually as “**Party**” and collectively as “**Parties**.”

### RECITALS

**WHEREAS**, Lessor, as part of the El Paso International Airport (the “**Airport**”), owns a golf course known as the Lone Star Golf Course, formerly known as the Cielo Vista Municipal Golf Course, located at 1510 Hawkins Boulevard in the City of El Paso, Texas (the “**Golf Course**”); and

**WHEREAS**, Lessor, by and through its City Council, has determined that the operation of the Golf Course should be operated by a private concessionaire for public use, in order to provide for the successful operation, improved efficiency, and greatest benefit to the citizens of the City of El Paso; and

**WHEREAS**, Concessionaire has the capability and desires to operate the Golf Course upon the terms, conditions, and covenants herein provided; and

**WHEREAS**, Concessionaire, as assignee and successor-in-interest, and Lessor are parties to that certain Golf Course Operation and Concession Agreement dated April 1, 1985 (the “**Original Agreement**”), as amended by that certain First Amendment to the Original Agreement dated March 28, 1991 (the “**First Amendment**”), as amended by that certain Second Amendment to the Original Agreement effective June 1, 2000 (the “**Second Amendment**”), as amended by that certain Third Amendment to the Original Agreement dated April 30, 2002 (the “**Third Amendment**”), as amended by that certain Fourth Amendment to the Original Agreement dated August 3, 2004 (the “**Fourth Amendment**”), as amended by that certain Fifth Amendment to the Original Agreement dated September 2, 2008 (the “**Fifth Amendment**”), as amended by that certain Lessor’s Approval of Assignment effective January 1, 2009 (“**Assignment**”), as further amended by that certain First Amendment to Lessor’s Approval of Assignment effective December 11, 2011 (the “**Amended Assignment**”), as amended by that certain Sixth Amendment to the Original Agreement dated March 12, 2013 (the “**Sixth Amendment**”), and as further amended by that certain Seventh Amendment to the Original Agreement and Lessor’s Approval of Assignment dated August 30, 2022 (the “**Seventh Amendment**”) (the Original Agreement together with each subsequent amendment and assignment are collectively referred to herein as the “**Original Lease**”); and

**WHEREAS**, the Original Lease is set to expire on March 31, 2026 with an additional 9 year option period to March 31, 2035.; and

**WHEREAS**, the Parties wish to execute a new agreement regarding Concessionaire's operation of the Golf Course to reflect the new terms negotiated herein; and

**WHEREAS**, the Parties acknowledge and agree that commencement of the Term of this Agreement (as defined herein) shall void, nullify, and terminate the Original Lease in accordance with the terms of this Agreement; and

**NOW THEREFORE**, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE 1 – RECITALS AND DEFINITIONS**

1.1 **RECITALS.** The foregoing recitals are true and correct and incorporated herein by this reference.

1.2 **DEFINITIONS.** In and throughout this Agreement, the following defined terms shall have the following meanings:

(a) "Airport" shall mean the El Paso International Airport owned and operated by the City of El Paso.

(b) "Airport Rules and Regulations" shall mean all rules, regulations, and policies as are now or may hereafter be prescribed by the City and/or the Director of Aviation.

(c) "Airport Sponsored Events" shall have the meaning set forth in Article 16 herein.

(d) "Annual Statement" shall mean the statement provided by Concessionaire to Lessor on an annual basis providing a true and accurate statement of Gross Receipts, Rent payments, and other amounts necessary to calculate rent owed for the preceding Year, in a form and with detail satisfactory to Lessor, which statement shall be prepared by an independent certified public accountant.

(e) "Applicable Law" shall mean all current and future laws, statutes, ordinances, rules, regulations, and orders (including without limitation Environmental Laws, the Airport Rules and Regulations, and any executive orders) issued or promulgated by any Governmental Authority governing or otherwise applicable to Concessionaire, the Airport, this Agreement, the Leased Premises, or Concessionaire's use of the Leased Premises, as amended from time to time.

(f) "Buildings" shall mean the built structures located on the Land, which include those structures existing thereon as of the Effective Date and those to be constructed thereon by either Party during the Term.

(g) "City" shall mean the City of El Paso, a municipal corporation existing under the laws of the State of Texas.

(h) “Club House Expansion” shall have the meaning set forth in Section 3.4(a)(iii) herein.

(i) “Club House Expansion Investment” shall mean the amount Concessionaire is forecasting to expend in constructing and completing the Club House Expansion, which is estimated to be Four Hundred and Seventy-Eight Thousand dollars (\$478,000.00).

(j) “Concessionaire” shall mean EP Golf Co LLC, a Texas limited liability company and its successors and assigns.

(k) “Concessionaire FF&E” shall have the meaning set forth in Section 2.2(b).

(l) “Concessionaire Parties” shall mean Concessionaire’s officers, volunteers, representatives, agents, employees, personnel, contractors, subcontractors, licensees, subtenants, sublessees, invitees, and suppliers.

(m) “Construction Documents” shall mean all documents, completed in accordance with the approved Proposal for Improvements, plans and specifications, and Design Development Drawings prepared by a registered engineer and architect, required by the Development Services Department of the City of El Paso for Concessionaire to obtain an approved building permit, and submitted in accordance with the requirements of **Exhibit G** attached hereto. Construction Documents include, but are not limited to: blueprints of floor plan; electrical, plumbing, and HVAC plans and schematics; detailed architectural renderings; interior and exterior elevations; final budget estimates, and estimated date of completion.

(n) “Design Development Drawings” shall mean detailed drawings, completed in accordance with the approved Proposal for Improvements, including but not limited to detailed sketches and architectural concepts, interior and exterior elevation sketches, and detailed budget and time schedule estimates.

(o) “Director of Aviation” and “Director” shall mean Lessor’s Director of Aviation of the Airport.

(p) “Environmental Claims” shall have the meaning set forth in Section 13.4 herein.

(q) “Environmental Laws” shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251 et seq.), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401 et seq.), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802 et seq.), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing and (x) any other federal, state, or local law (including any

common law), statute, regulation, or ordinance, permit, permit condition, order, license or directive having the force of law, regulating, prohibiting, or otherwise restricting pollution or regulating the environment or the use, storage, handling, discharge or disposal of Hazardous Materials, including, without limitation, the Airport Rules and Regulations.

(r) “Events of Default” shall mean those circumstances that constitute a breach of this Agreement by Concessionaire, which are further enumerated in Section 9.2(a) herein.

(s) “FF&E” shall mean movable furniture, fixtures, and other equipment that are not permanently affixed to the Leased Premises.

(t) “First Option Term Improvements” shall mean those improvements Concessionaire is required to construct during the first Option Term as further set forth in Section 3.4(b)(i) herein.

(u) “Force Majeure Event” shall have the meaning set forth in Section 8.5 herein.

(v) “Golf Course” shall mean the municipal golf course owned by the City and known as the Lone Star Golf Course, formerly known as the Cielo Vista Municipal Golf Course, located on the Leased Premises at 1510 Hawkins Boulevard in the City of El Paso, Texas.

(w) “Governmental Authority” or “Governmental Authorities” shall mean any federal, state, county, municipal, or other governmental entity or entities, or any subdivision thereof, with authority over the Leased Premises, the Airport, or Concessionaire, including but not limited to the City.

(x) “Grant Assurances” shall have the meaning set forth in Section 14.3 herein.

(y) “Gross Receipts” shall mean the total amount in dollars of the actual gross revenue from all business conducted, services rendered, and sales made by Concessionaire upon and from the Leased Premises pursuant to this Agreement, including but not limited to the goods and services listed in Section 4.1(a) herein and **Exhibit E** attached hereto. However, Gross Receipts shall not include the following items and such items shall be shown as deductions on the Monthly Statements and Annual Statements:

(i) all sales taxes; taxes imposed by the Texas Alcoholic Beverage Commission; transaction taxes; admission, entertainment, or similar or equivalent taxes regardless of name, the amount of which is determined by the amount of sales made and which is required to be separately identified to and collected from each customer and account for to any governmental entity, provided, however, that this exclusion shall not include any license or permit fees or taxes payable by Concessionaire;

(ii) all credits or refunds received by Concessionaire from vendors or paid by Concessionaire to customers for unacceptable or unsatisfactory merchandise or items which have been returned; and

(iii) any credit loss sustained or discount or deduction that may be applicable by reason of acceptance or use of credit cards, other credit arrangements, or the like.

Except as herein specified, if any charge for any of the services or goods mentioned in this Section 1.2(r) be not assessed, charged, or collected, irrespective of the reason therefor, the proper amount of such charge shall, nevertheless, be included in the term “Gross Receipts.”

(z) “Hazardous Materials” means any elements, compounds, chemicals, substances, flammable materials, explosives, radioactive materials, oil, petroleum, petroleum products, asbestos, lead paint, perfluorooctane sulfonic acids or perfluorooctanoic acids, polychlorinated biphenyls, military or civilian munitions, explosives, materials or wastes that, because of their quantity, concentration or physical or chemical characteristics pose a present or potential hazard to human health or safety or to the environment including, by way of illustration and not limitation, those which are or become regulated, identified, defined, listed, or otherwise classified as a contaminant, pollutant, toxic pollutant, or toxic or hazardous substance, or a regulated substance under Environmental Laws.

(aa) “Initial Term Improvements” shall have the meaning set forth in Section 3.4(a) herein and as more particularly described on Exhibit C attached hereto.

(bb) “Land” shall mean the real property containing approximately 135 acres comprising the Golf Course, as more specifically described and/or depicted on Exhibit A attached hereto.

(cc) “Leased FF&E” shall have the meaning set forth in Section 2.2 herein.

(dd) “Leased Premises” shall have the meaning set forth in Section 2.1 herein.

(ee) “Lessor” shall mean the City of El Paso, a municipal corporation existing under the laws of the State of Texas.

(ff) “Lessor Improvements” shall have the meaning set forth in Section 3.4(e) herein and as more particularly described on Exhibit D attached hereto.

(gg) “Letter of Credit” shall mean the letter of credit required under Section 7.4(c) herein.

(hh) “MAG Payment” shall mean each monthly payment by Concessionaire to Lessor of an amount equal to one-twelfth (1/12) of the relevant annual MAG, as it may be prorated pursuant to Section 4.1(b) herein.

(ii) “Minimum Annual Guarantee” or “MAG” shall mean the minimum rental amount due annually under this Agreement, as set forth in Section 4.1(b) herein.

(jj) “Monthly Statement” shall mean the statement provided by Concessionaire to Lessor on a monthly basis setting forth Concessionaire’s Gross Receipts and other information required for calculation of rent under the terms of this agreement for the preceding month in a form

and with detail satisfactory to Lessor, which shall be inclusive of all relevant statistics and signed by a responsible accounting officer of Concessionaire.

(kk) “Option Term” shall mean each of the two ten (10)-year extensions of the Term of this Agreement, as further defined in Section 3.2 herein.

(ll) “Option Term Improvements” shall mean the improvements Concessionaire is required to make to the Premises during each Option Term, specifically the First Option Term Improvements, and the Second Option Term Improvements as further described in Section 3.4(b) herein.

(mm) “Original Agreement” shall mean that certain Golf Course Operation and Concession Agreement dated April 1, 1985.

(nn) “Original Lease” shall mean the Original Agreement together with each subsequent amendment and assignment as defined and set forth in the Recitals hereto.

(oo) “Percentage Rent” shall mean the amount equaling the total percentages of actual Gross Receipts for the preceding month, which percentages are set forth in Section 4.1(a) herein.

(pp) “Percentage Rent Payment” shall have the meaning set forth in Section 4.1(c) herein.

(qq) “Permitted Use” shall mean the use of the Leased Premises by Concessionaire (i) to operate a Golf Course and to offer goods and services customarily related thereto, including but not limited to the driving range, club house, restaurant and bar for the dispensing of food and alcoholic and non-alcoholic beverages, golf lessons, a golf pro shop, a parking facility for patrons of the Golf Course, and private event offerings, and (ii) to construct, furnish, and operate the Initial Term Improvements and other alterations, modifications, and/or improvements otherwise approved by Lessor pursuant to the terms of this Agreement.

(rr) “Proposal for Improvements” shall mean Concessionaire’s proposal submitted to Lessor for approval of Concessionaire’s planned changes, alterations, modifications, improvements, or additions to the Leased Premises in accordance with **Exhibit G** attached hereto.

(ss) “Records” shall have the meaning set forth in Section 4.2 herein.

(tt) “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of Hazardous Materials.

(uu) “Rent” shall mean the monthly rentals due and payable under this Agreement as set forth in Article 4 herein. (vv) “Rent Commencement Date” shall be the Effective Date of this Agreement. “Replacement Reserve Account” shall have the meaning set forth in Section 6.5.

(vv) “Required Improvements” shall mean each of the improvements Concessionaire is required to construct and complete during the Term pursuant to Section 3.4 of this Agreement, specifically the Initial Term Improvements, First Option Term Improvements, and Second Option Term Improvements.

(ww) “Second Option Term Improvements” shall mean those improvements Concessionaire is required to construct during the second Option Term as further set forth in Section 3.4(b)(ii) herein.

(xx) “Term” means, collectively, the Initial Term and any subsequent Option Term exercised pursuant to Section 3.2 herein.

(yy) “Year” shall mean each twelve (12) month period beginning on January 1 of each calendar year.

## ARTICLE 2 – LEASED PREMISES

2.1 **LEASED PREMISES.** Lessor hereby leases to Concessionaire, and Concessionaire hereby rents from Lessor, the Land, Buildings, and improvements comprising the Golf Course, as more specifically depicted and/or described in Exhibit A attached hereto and incorporated herein (the “**Leased Premises**”), subject to the terms, provisions, and conditions set forth in this Agreement.

### 2.2 FURNITURE, FIXTURES, AND EQUIPMENT.

(a) Leased FF&E. Lessor hereby leases to Concessionaire, and Concessionaire hereby rents from Lessor, existing FF&E located on the Leased Premises as of the Effective Date which are owned by Lessor and are to be used in connection with the operation of the Golf Course, as more specifically described in Exhibit B-1 attached hereto and incorporated herein (the “**Leased FF&E**”), subject to the terms, provisions, and conditions set forth in this Agreement.

(b) Concessionaire FF&E. The Leased FF&E does not include the FF&E owned by Concessionaire that are existing on the Leased Premises as of the Effective Date, as more specifically described in Exhibit B-2, and the FF&E that may be acquired by Concessionaire after the Effective Date (the “**Concessionaire FF&E**”). Upon the request of Lessor, and as otherwise required in Section 3.4(c) herein, Concessionaire shall provide Lessor an updated inventory of Concessionaire FF&E acquired by Concessionaire during the Term, which shall be in a form reasonably satisfactory to Lessor and shall include the cost, description, and location of the Concessionaire FF&E.

## ARTICLE 3 – TERM, HOLDOVER, AND REQUIRED IMPROVEMENTS

3.1 **INITIAL TERM.** The initial term of this Agreement shall be for a period of thirty (30) years (the “**Initial Term**”) commencing on \_\_\_\_\_, 2026 (the “**Commencement Date**”).

3.2 **OPTION TERM.** Provided that Concessionaire is not in default under this Agreement, that the Parties have agreed on Rent for the Option Term (defined herein), and

Concessionaire has completed the Initial Term Improvements as provided in Exhibit C, Concessionaire may request to extend this Agreement for two (2) additional terms of ten (10) years (each, an “**Option Term**” and together with the Initial Term, the “**Term**”) on the same terms and conditions of this Agreement. The granting of such Option Term shall not be unreasonably withheld if Concessionaire is substantially in compliance with all terms of the agreement. Concessionaire shall provide a written request to Lessor not less than one hundred twenty (120) days prior to the scheduled expiration of the Term, and no more than 180 calendar days prior to the scheduled expiration of the Term. Notwithstanding the foregoing, as an additional condition precedent to Concessionaire requesting the second Option Term, Concessionaire shall complete additional improvements during the First Option Term as set forth in Section 3.4(b).

**3.3 HOLDING OVER.** Any holding over by Concessionaire of the Leased Premises at the expiration or termination of this Agreement shall be construed as a month-to-month tenancy at a rent rate of one and one-half (1.5) times the current monthly Rent. Concessionaire shall be liable to Lessor for all loss or damage on account of any holding over against Lessor’s will after the expiration or termination of this Agreement. Lessor’s acceptance of Rent after such expiration or termination shall not result in a renewal of this Agreement, nor affect Lessor’s right of re-entry or any rights of Lessor hereunder or as otherwise provided by Applicable Law. If Concessionaire fails to vacate the Leased Premises despite City’s termination and demand(s) to vacate, Concessionaire shall indemnify and hold City harmless from all loss or liability including, without limitation, any claim made by any succeeding concessionaire or lessee resulting from such failure to surrender, together with interest, reasonable attorney’s fees, costs, and expenses

### **3.4 REQUIRED IMPROVEMENTS.**

(a) Concessionaire Improvements. In accordance with Applicable Law and the applicable procedures and requirements set forth in Article 6 herein, Concessionaire shall, at its own cost and expense, make certain improvements, alterations, and/or additions (“**Concessionaire Improvements**”) to the Leased Premises during the Initial Term as provided in Exhibit C:

(i) Within twenty-four (24) months following the Effective Date, Concessionaire shall complete construction of the putting golf course and associated dining/activity areas in accordance with Exhibit C, and shall open such improvements for business in accordance with the standard of service provided in Article 5;

(ii) Within Twenty-four (24) months following the Effective Date, Concessionaire shall complete construction of the expansion to the club house located on the Leased Premises (“**Club House Expansion**”) and shall complete all finishes to and provide all FF&E for the interior and exterior of the Club House Expansion in accordance with Exhibit C (as approved by Lessor), and shall open such improvements for business in accordance with the standard of service provided in Article 5 herein. Concessionaire will provide Lessor a construction schedule within 6 months of the Effective Date of this Agreement.

(b) Concessionaire Option Term Improvements. In accordance with Applicable Law and the applicable procedures and requirements set forth in Article 6 herein, Concessionaire

shall, at its own cost and expense, make certain improvements, alterations, and/or additions to the Leased Premises during each Option Term as provided in Exhibit C:

(i) *First Option Term Improvements.* If the Parties exercise the first ten (10)-year Option Term pursuant to Section 3.2, then Concessionaire shall, within twenty-four (24) months of the commencement of the first Option Term, complete construction of a technology forward driving range, using Top Tracer or similar equipment with along with lighting for night time usage as provided in Exhibit “C” and provide all related FF&E, and shall open such completed improvements for business in accordance with the standard of service provided in Article 5 herein. Should Concessionaire complete this project during the Initial Term, it will be treated as having qualified for the First Option Term.

(ii) *Second Option Term Improvements.* If the Parties exercise the second ten (10)-year Option Term pursuant to Section 3.2, then Concessionaire shall, within twenty-four (24) months of the commencement of the second Option Term, complete construction of a new range fence with improved ball containment capabilities as provided in Exhibit “C” and provide all related FF&E, and shall open such completed improvements for business in accordance with the standard of service provided in Article 5 herein. Should Concessionaire complete this project during an earlier term, it will be treated as having qualified for the Second Option Term.

(c) Concessionaire FF&E Inventory. Within thirty (30) days following the completion of each of the Required Improvements, Concessionaire shall provide Lessor an inventory of all Concessionaire FF&E acquired by Concessionaire to furnish and complete such Required Improvements, as applicable, which inventory shall be consistent with the requirements of Section 2.2(b) above.

(d) Lessor Improvements. Within eighteen (18) months following the Effective Date, Lessor, at its sole cost and expense, shall complete construction for the installation of a new irrigation system for the Leased Premises in accordance with Exhibit “D” (“**Lessor Improvements**”).

**3.5 TITLE TO IMPROVEMENTS.** All existing improvements on the Leased Premises as of the Effective Date are and shall remain property of Lessor. All improvements constructed by Lessor on the Leased Premises during the Term shall at all times be and remain property of Lessor. Upon completion of each the Initial Term Improvements any other improvements to the Leased Premises made by Concessionaire, title to the same shall automatically transfer to Lessor and shall become and remain property of Lessor, in addition to any permanent fixtures affixed thereto. Title to all Concessionaire FF&E shall remain property of Concessionaire during the Term, unless otherwise agreed to in writing by the Parties, subject to Lessor’s right of first refusal set forth in Section 3.6(b) below.

### **3.6 PROPERTY RIGHTS UPON TERMINATION.**

(a) Upon expiration or termination of this Agreement, Concessionaire’s leasehold interest in the Leased Premises and Leased FF&E shall cease and Concessionaire shall have no further interest in the Leased Premises or Leased FF&E.

(b) Upon expiration or termination of this Agreement, Concessionaire shall provide Lessor with an updated inventory of the Concessionaire FF&E and Lessor shall have the right of first refusal to purchase all or some of the Concessionaire FF&E from Concessionaire at no more than the fair market value of such Concessionaire FF&E as of the expiration or termination date. In no event shall Lessor be obligated to purchase any or all Concessionaire FF&E. The fair market value of any such Concessionaire FF&E shall be determined by an appraisal performed on Concessionaire's behalf and at its expense. Should Lessor not agree or accept the value established by Concessionaire's appraisal, Lessor at its expense shall have a second appraisal performed. If Concessionaire does not agree or accept the value established by Lessor's appraisal, then Concessionaire's appraiser and Lessor's appraiser shall choose a third appraiser, the fees and expenses for whom shall be borne equally by both Parties. The three (3) appraisers shall determine the then fair market value of such Concessionaire FF&E and shall give written notice thereof to Lessor and Concessionaire.

**3.7 OBLIGATIONS UPON TERMINATION.** Upon expiration or termination of this Agreement, Concessionaire, at its sole cost and expense, shall peacefully and quietly:

(a) remove all of the Concessionaire FF&E and its other personal property that have not been affixed to the Leased Premises and that have not been purchased by Lessor pursuant to Section 3.6(b);

(b) restore the Leased Premises, Leased FF&E, and all improvements thereon to the condition in which they were received, constructed, or installed, reasonable wear and tear excepted; and

(c) return the Leased Premises and Leased FF&E to Lessor in a condition reasonably acceptable to Lessor. Concessionaire shall complete such obligations before or upon the expiration or termination date of this Agreement. Concessionaire, at its sole cost and expense, shall repair, or reimburse Lessor for the cost of repairing, any damage caused by Concessionaire's removal or restoration activities contemplated herein. Upon Concessionaire's failure to remove the relevant Concessionaire FF&E or personal property as required by subsection (a) above before or upon the expiration or termination date of the Agreement, Lessor may elect to take one or more of the following actions: (i) remove such Concessionaire FF&E and personal property, notwithstanding any security interest therein, and to store them at a location of Lessor's choice, and Concessionaire shall pay to Lessor the cost of such removal and storage; or (ii) at the option of Lessor, any such property remaining after thirty (30) days following expiration or termination of this Agreement shall immediately be and become the property of Lessor, and Concessionaire shall relinquish any rights or title therein.

**3.8 ORIGINAL LEASE TERMINATED.** Without necessitating notice to either Party or requiring the execution of any separate agreement or documentation, the Original Lease shall terminate upon the Commencement Date of this Agreement, except those provisions, rights, and/or obligations thereof which by their nature or context are intended to survive the expiration or termination of the Original Lease, including without limitation the following provisions, rights, and/or obligations of the Original Lease:

(a) Concessionaire's indemnification requirements under section 7 of the Original Lease;

- (b) Concessionaire’s waiver of claims under section 21 of the Original Lease;
- (c) Concessionaire’s record-keeping obligations and Lessor’s audit rights under sections 4.04 and 4.05, respectively, of the Original Lease;
- (d) Concessionaire’s obligations regarding any outstanding rentals, payments, or other amounts due under the Original Lease;
- (e) Any Lessor claim or cause of action arising under the Original Lease; and
- (f) Any express or implied representations or warranties of Concessionaire under the Original Lease.

**ARTICLE 4 – RENTALS AND ACCOUNTING RECORDS**

4.1 **RENT.** Subject to Sections 4.4 and 4.5, Beginning on the Rent Commencement Date and throughout the remainder of the Term, Concessionaire shall pay Lessor monthly rent equal to either the Percentage Rent or one-twelfth (1/12) of the relevant Minimum Annual Guarantee, whichever is greater, calculated and paid in the manner set forth herein (“**Rent**”).

(a) Percentage Rent. Percentage Rent shall be calculated by multiplying the following percentages by the Gross Receipts for each of the following categories of goods and services for the preceding month evinced by the Monthly Statement provided under Section 4.1(d):

- (i) Food and non-alcoholic beverages.....10% of Gross Receipts
- (ii) Beer, wine, and alcoholic beverages (including mixed drinks).....15% of Gross Receipts
- (iii) Putting Golf Course and Green fees, including all memberships, driving range fees, golf cart rentals, and golf equipment rentals.....12% of Gross Receipts
- (iv) Pro shop sales.....10% of Gross Receipts

(b) Minimum Annual Guarantee. The Minimum Annual Guarantee shall be calculated as follows:

- (i) From the Rent Commencement Date through December 31, 2026, the MAG shall equal ONE HUNDRED AND SIXTY-SIX THOUSAND NINE HUNDRED SIXTY-NINE DOLLARS AND EIGHT CENTS 08/100 (\$166,969.08), payable in prorated monthly installments of THIRTEEN THOUSAND NINE HUNDRED FOURTEEN DOLLARS AND NINE CENTS 09/100 (\$13,914.09).
- (ii) Beginning on January 1, 2027, the MAG shall equal ONE HUNDRED AND NINETY-ONE THOUSAND NINE HUNDRED SIXTY-NINE DOLLARS AND ZERO CENTS 00/100 (\$191,000.00), payable in twelve (12) equal monthly installments of FIFTEEN THOUSAND NINE HUNDRED SIXTEEN DOLLARS AND SIXTY-SEVEN CENTS 67/100 (\$15,916.67).

(iii) For each subsequent Year during the Term, the MAG shall be an amount equal to the greater of either (a) eighty percent (80%) of the immediately preceding Lease Year's annual Percentage Rent evinced by the Annual Statement provided pursuant to Section 4.1(d) below, or (b) the MAG set forth in Section 4.1(b)(ii) above, payable in twelve (12) equal monthly installments. This amount is subject to adjustment in the event of a catastrophic event, such as a national health emergency or a physical event that would cause a significant drop in revenues not under control of the Concessionaire.

(iv) For any partial Year or calendar month during the Term, the relevant MAG shall be calculated on a pro rata basis.

(c) Manner of Payment. No later than the first (1<sup>st</sup>) day of each calendar month of the Term, Concessionaire shall pay Lessor in advance an amount equal to one-twelfth (1/12) of the relevant annual MAG ("**MAG Payment**"). Following the end of each calendar year, Concessionaire shall calculate the total Rental actually due for the past year pursuant to subsection 4.01(a). In the event that it is determined that the Percentage Rental for the year exceed the MAG actually paid by the Concessionaire, then Concessionaire shall tender the different to the Lessor within 30 calendar days of the end of the calendar year. Concessionaire shall pay Lessor Rent and all other amounts due and payable under this Agreement to Lessor by check, made to the following address, or in the manner otherwise prescribed Lessor upon written notice to Concessionaire:

Accounting Department  
El Paso International Airport  
6701 Convair Road  
El Paso, Texas 79925

(d) Monthly and Annual Statements. Within twenty (20) days of the close of each calendar month of the Term, Concessionaire shall provide to Lessor the Monthly Statement for the previous month. Additionally, no later than sixty (60) days after the end of each Year or the expiration of the Term, whichever applicable, Concessionaire, at its own expense, shall provide to Lessor the Annual Statement for the previous Year certified by a certified public accountant. Each Annual Statement shall also include an accurate record of the Rent payments made to Lessor during the previous Year.

(e) Rent Reconciliation. Concessionaire shall reconcile the Gross Receipts in the Annual Statement with the Rent paid to Lessor over the preceding Year in the following manner:

(i) If the total annual Rent paid is less than the greater of the relevant MAG or the annual Percentage Rent due, Concessionaire shall immediately pay Lessor the difference to equal the greater amount due;

(ii) If the total annual Rent paid exceeds the MAG and is greater than the correct amount of Percentage Rent due, Lessor shall hold the overpayment as a credit, and shall apply the credit to the immediately upcoming monthly Rent payments until such amount is exhausted.

(f) Late Payment. Without waiving any other right of action available to Lessor in the event of default in payment of Rent or any other amount due and payable under this Agreement, if Concessionaire is delinquent for a period of ten (10) days or more in paying any Rent or other amount due and payable to Lessor, Concessionaire shall pay Lessor interest thereon at the rate of fifteen percent (15%) per annum from the date such amount was due and payable until paid.

(g) Option to Reassess MAG. Any time after December 31, 2028, but no more than twice during the Term, Concessionaire, at its sole cost and expense, may obtain an appraisal to reevaluate the then applicable fair market rentals for the Leased Premises, with an appraiser mutually acceptable to both Parties, which acceptance may not be unreasonably withheld, conditioned, or delayed. Updated fair market rentals as determined by such appraisal may be used to adjust the Rent under Section 4.1, subject to the approval of the Director of Aviation. Such adjusted Rent shall be memorialized in writing by the Parties and shall take effect the next calendar month of the Term.

(h) Landlord Lien. In addition to any landlord's lien provided by Applicable Law, Lessor shall retain the right to obtain a specific lien on any property of Concessionaire on the Leased Premises (including Concessionaire FF&E) as security for payment of Rent.

**4.2 BOOKS AND RECORDS.** With respect to its business and operations upon the Leased Premises, Concessionaire shall keep true and accurate records, books, and dates in accordance with generally accepted accounting principles, which shall identify all the Gross Receipts of Concessionaire's business upon and within the Leased Premises and all expenditures related to the Permitted Use (as defined herein), including those related to all improvements Concessionaire has made to the Leased Premises, such as invoices, time sheets, and other back-up documentation (collectively, the "**Records**"). Concessionaire further agrees to keep books and records as Lessor may request. The Records shall be open for inspection by authorized representatives of Lessor at all times during business hours. Concessionaire shall provide Records to Lessor within thirty (30) days of Lessor's written request for such Records. Concessionaire shall use commercially reasonable efforts to provide Lessor information that may become necessary for Lessor to successfully implement new accounting or audit standards during the Term. Concessionaire shall keep and preserve the Records for at least three (3) years after the date of expiration or termination of this Agreement, or such longer period as may be prescribed by Applicable Law, and, during such time, Lessor may inspect or audit such records upon request.

**4.3 AUDIT.** Lessor reserves the right, at its own cost and expense, to audit Concessionaire's Records at any time for the purpose of reviewing Concessionaire's compliance with this Agreement, including verifying the Gross Receipts, Rent, and/or the Initial Required Investment hereunder. Concessionaire shall comply with any such audit and shall make its Records available to Lessor upon Lessor's request. If, as a result of such audit, it is established that Concessionaire has (i) overstated the amount it expended on the Club House Expansion, (i) underpaid Rent by three (3%) or more, or (ii) understated the Gross Receipts received by it from all operations conducted pursuant to this Agreement, by three percent (3%) or more (after the deductions and exclusions provided for herein), then the entire expense of said audit shall be borne by Concessionaire. Any additional amounts due shall as a result of such audit shall be immediately paid by Concessionaire to Lessor with interest thereon at fifteen percent (15%) per annum from

the date such amount became due, and any overpayment by Concessionaire shall be refunded to Concessionaire or credited by Lessor to the Rent next thereafter due.

**4.4 Deductions from Rent Payments.** Notwithstanding anything to the contrary, starting on the Rent Commencement Date, the Concessionaire may deduct from the rent payments the following amounts until these amounts have been recovered by the Concessionaire:

(a) \$478,000 for the expansion of the club house provided that Concessionaire is complying with Section 3.4 of this Agreement and Exhibit G Section 5, and

(b) \$73,000 incurred by the Concessionaire for irrigation construction contractor oversight.

**4.5 Replacement Reserve Deductions.** As provided in Section 6.5, the Concessionaire may also deduct from Rent Payments the amounts listed under Section 6.5 of this Agreement.

## **ARTICLE 5 – PERMITTED USE AND OBLIGATIONS OF CONCESSIONAIRE**

**5.1 PERMITTED USE.** Concessionaire shall use and occupy the Leased Premises solely for the Permitted Use, which shall be subject to the terms and conditions of this Agreement. Concessionaire shall not use the Leased Premises, or allow the Leased Premises to be used, for any other purpose beyond Concessionaire’s Permitted Use without the prior written consent of Lessor, which may be withheld in its sole and absolute discretion. Furthermore, Concessionaire shall not take any action on or about the Leased Premises, other than as is provided for in this Agreement, which would or could increase the rate of or suspend the insurance upon the Leased Premises.

**5.2 CONCESSIONAIRE OBLIGATIONS; STANDARD OF SERVICE.** At all times during the Term, Concessionaire shall, at its own cost and expense, maintain, use, and operate the Leased Premises, the Golf Course, and all improvements, FF&E, and facilities thereon (except to the extent Lessor is expressly responsible for maintenance under Section 6.1 herein) in accordance with the requirements of this Agreement. Concessionaire shall perform all duties and obligations normally required to operate a public golf course and related facilities in the utmost professional, safe, and sanitary manner and shall at all times furnish and maintain a high standard of service and quality which shall be at least equal to that of the better class of similar municipal golf courses, club houses, pro shops, restaurants, and lounges providing similar accommodations, services, and facilities. Such duties and obligations of Concessionaire shall include, without limitation, the those outlined in Exhibit E.

## **ARTICLE 6 – MAINTENANCE, REPAIR, AND ALTERATIONS**

**6.1 LESSOR MAINTENANCE OBLIGATIONS.** Lessor, at its sole cost and expense, shall be responsible for maintenance and repairs to the structural elements of the permanent Buildings and the HVAC system of the Leased Premises, except to the extent damage to such structural elements or the HVAC system is caused by the acts or omissions of Concessionaire or its employees, agents, or contractors. Lessor shall have no responsibility to

repair or maintain any other portion of the Leased Premises, including FF&E or non-permanent structures such as portable equipment or portable buildings. Furthermore, Lessor shall not be called upon to make such repairs occasioned by the act or omission of Concessionaire, its agents, employees, customers, occupants, invitees, vendors, licensees, or contractors.

6.2 **CONCESSIONAIRE MAINTENANCE OBLIGATIONS.** Except as provided above in Section 6.1, Concessionaire, at its sole cost and expense, shall be responsible for all other maintenance and repairs to the Leased Premises, the Golf Course, and the facilities thereon, shall keep the same in good condition commensurate with similarly situated first-class public golf courses, and shall perform all maintenance and repair obligations as more specifically described in Exhibit F attached hereto.

6.3 **CHANGES, ALTERATIONS, AND ADDITIONS.**

(a) Approval of Plans and Specifications. Concessionaire shall not make any substantial changes, alterations, modifications, improvements, or additions to the Leased Premises without first submitting to Lessor proposals, design documents, and plans and specifications for such changes and obtaining the prior written consent of Lessor’s Director of Aviation, in their sole and absolute discretion, pursuant to the submittal, review, and approval process set forth in Exhibit G attached hereto. All such changes, alterations, modifications, improvements, and additions to the Leased Premises shall remain for the benefit of and become the property of Lessor upon completion thereof, unless otherwise specified in Lessor’s written consent.

(b) Coordination. Concessionaire shall coordinate all construction of improvements and all other changes, alterations, modifications, or additions to the Leased Premises, including but not limited to the construction and completion of the Initial Term Improvements, with the Director of Aviation and such other appropriate City departments as the Director of Aviation may direct or Applicable Law may require.

6.4 **QUALITY OF WORK.** All maintenance, repairs, replacements, improvements, changes, alterations, modifications, and/or additions permitted or required under this Agreement shall be completed in a good and workmanlike manner employing materials and workmanship that are of high quality not inferior to the original materials and workmanship, and in a manner so as not to interfere with the operations of Lessor or other users of the Airport. If Concessionaire fails to meet its obligations under this Article 6, Lessor may exercise its step-in rights under Section 12.3(a) herein to perform such obligations at the sole cost and expense of Concessionaire.

6.5 **REPLACEMENT RESERVE.** No later than December 2, 2027, Concessionaire shall establish, and maintain throughout the Term, a reserve account (“**Replacement Reserve Account**”) with a reputable financial institution acceptable to Lessor for the sole purpose of reserving funds for the replacement of equipment and facilities on the Leased Premises specified in this Section 6.5. Starting on December 2, 2027 and ending on December 2, 2037 Lessor shall deduct the amount of \$12,638 per month from the rent owed to the Lessor as calculated according to this agreement and place the amount into the Replacement Reserve Account. Concessionaire will stop deducting \$12,638 per month from the rent as calculated according to this agreement on December 2, 2037. Beginning on January 2, 2037, Concessionaire shall, for the remaining term of this agreement, place an amount of \$11,180 per month into the Replacement Reserve Account. Concessionaire shall only use the Replacement Reserve Account funds for the replacement of

water well equipment (including pumps), the lake, and all or part of the irrigation system located on the Leased Premises. If the Replacement Reserve Account generates any interest, the interest shall remain in the Replacement Reserve Account and the Concessionaire may deduct from the Replacement Reserve Account funds to cover any tax liabilities generated by the account. In calculating the tax liability, the then current highest marginal rate shall be applied to any taxable gains for the period. Upon the expiration or early termination of this Agreement, Concessionaire shall pay to Lessor the entire then-available balance of the Replacement Reserve Account. Upon an approved transfer of this agreement to another Concessionaire, the balance will be transferred to the new Concessionaire under the same terms as provided in this Agreement. If the Replacement Reserve Account holds more funds than necessary for the replacement of the water well equipment (including pumps), the lake, and all or part of the irrigation system located on the Leased Premises, then the Concessionaire may ask the Lessor, in writing, to use excess funds for other improvements to the Golf Course. The Concessionaire will not use any excess funds other than what is permitted under this section without the express written approval of the Director. Concessionaire will provide monthly reports to the Lessor regarding the status of the account including any deposits and withdrawals.

## **ARTICLE 7 – INSURANCE, PAYMENT AND PERFORMANCE BONDS, AND INDEMNIFICATION**

**7.1 INSURANCE MINIMUM COVERAGES.** Prior to the Effective Date, Concessionaire shall obtain and maintain throughout the Term, the types and minimum amounts of insurance coverage listed below, which may be reasonably adjusted from time to time by the Director of Aviation:

(a) Comprehensive General Liability Insurance. Concessionaire shall maintain Comprehensive General Liability Insurance in amounts not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, two million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence; and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

(b) Fire and Extended Coverage. Concessionaire shall maintain fire, extended coverage, and vandalism/malicious damage insurance on the Leased Premises, Buildings thereon, any additions, alterations, or modifications thereto, and all FF&E and personal property thereon, equal to 100% of the replacement value. Any payments received by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said leasehold improvements.

### **7.2 EVIDENCE OF INSURANCE.**

(a) Prior to the Effective Date, Concessionaire shall deliver to Lessor a certificate of insurance in a form acceptable to Lessor showing policies meeting the requirements of this Article 7. Concessionaire shall submit evidence of continuing coverage to Lessor on an annual basis no later than thirty (30) days after the beginning of each Year. Upon the written request of Lessor, Concessionaire shall provide Lessor with copies of insurance policies required

under this Article 7. At least thirty (30) days prior to the expiration of any policy required herein, Concessionaire shall file with Lessor a certificate showing that such insurance coverage has been renewed or extended. If such coverage is canceled, reduced, or materially changed, Concessionaire shall, within fifteen (15) days after receipt of written notice of such cancellation, reduction, or material change of coverage, file with Lessor a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

(b) In the event Concessionaire fails to provide Lessor with the certificate or certificates required under this Article 7, or otherwise fails to maintain the minimum insurance coverages as required herein, Lessor may, upon ten (10) days written notice to Concessionaire, secure the required insurance, at the cost and expense of Concessionaire, and Concessionaire shall promptly reimburse Lessor for the cost thereof, plus ten percent (10%) thereof for administrative overhead.

(c) Concessionaire shall cause all policies required hereunder to (i) provide that the insurance cannot be cancelled or modified without thirty (30) days prior written notice to Lessor, (ii) require that Lessor shall be provided with ten (10) days prior written notice of Concessionaire's nonpayment of insurance policy premiums; include a statement of the coverage provided by the policy, (iv) include a statement of the period during which the policy is in effect, and (v) include a statement that the annual premium or the advance deposit premium for such policy has been paid in advance.

**7.3 ADDITIONAL INSURED.** Lessor, including its elected officials, officers, agents, and employees, shall be named as an additional insured or loss payee, as appropriate, on all insurance policies required herein, either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

#### **7.4 PAYMENT AND PERFORMANCE BONDS.**

(a) Required Bonds. Prior to the commencement of any construction work on the Leased Premises, the total cost of which exceeds fifty thousand dollars (\$50,000.00), Concessionaire, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows (the "**Bonds**"):

(i) A payment bond with Concessionaire's contractor or contractors as principal in a sum equal to the full amount of the construction contract(s) awarded for the project, which bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction project; and

(ii) A surety performance bond in a sum equal to the full amount of the construction contract(s) awarded for the project, which bond shall guarantee the faithful performance of all necessary construction and completion of improvements in accordance with this Agreement, approved final plans and detailed specifications, and shall further guarantee Lessor against any losses and liability, damages, expenses, claims, and judgements caused by or resulting from any failure of Concessionaire or its contractors to completely and faithfully perform the work described as herein provided.

(b) Additional Requirements. In accordance with Section 3503.004 of the Texas Insurance Code, if a performance or payment bond is in an amount equal to ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas.

(c) Letter of Credit. In lieu of the Bonds required herein, Concessionaire may, upon the prior written consent of Lessor, provide Lessor with an irrevocable letter of credit ("**Letter of Credit**") in a form acceptable to the Director of Aviation and approved by the City Attorney, in an amount equal to the full amount of the construction contract(s) awarded for the construction work on the Leased Premises. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract(s) awarded, or (ii) complete construction of the improvements contemplated by the construction contract(s).

**7.5 AUTHORIZED INSURANCE AND SURETY COMPANIES.** The insurance policies and Bonds required herein shall be written by insurance and surety companies, respectively, authorized to do business in the State of Texas and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld.

**7.6 INDEMNIFICATION; WAIVER OF CLAIMS.** To the fullest extent permitted by law, Concessionaire shall indemnify, defend (with counsel satisfactory to Lessor), and hold harmless Lessor, its officers, directors, agents, and employees, and their successors and assigns, individually or collectively, from and against any and all claims, debts, demands, liabilities, losses, damages (of any kind or nature-including, but not limited to, direct damages, consequential damages, liquidated damages, and/or special damages), costs, charges, expenses (including investigation expenses and reasonable attorneys' fees), judgments, penalties, fines, liens, or causes of action of every kind or character, whether in law or in equity, arising directly or indirectly from any acts, omissions, or intentional misconduct by Concessionaire, Concessionaire Parties, or any other parties related to Concessionaire's use and occupancy of the Leased Premises, its business thereon, or any breach of this Agreement by Concessionaire, except to the extent such claims arise from the gross negligence or willful misconduct of Lessor. Concessionaire waives any and all complaints, claims, demands, and causes of action which may arise or be related to the proximity of the Leased Premises to the Airport and all operations and activities related thereto, including without limitation ground and flight operations of aircraft and ground vehicles, noises and odors related thereto, the flight of aircraft over the Leased Premises at all times during all hours of the day and night, and the like, and agrees to indemnify and hold Lessor harmless against the same at its sole cost and expense by counsel acceptable to Lessor. The requirements of this Section 7.6 shall survive the expiration or termination of this Agreement and shall bind Concessionaire's successors and assigns and inure to the benefit of Lessor's successors and assigns.

## **ARTICLE 8 – DAMAGE TO LEASED PREMISES; FORCE MAJEURE**

**8.1 PARTIAL DAMAGE.** If all or a portion of the Leased Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but if none of the Leased Premises is rendered untenable, the same will be repaired with due diligence by Lessor,

subject to the limitations of Section 8.4; provided, however, that if the damage is caused by the negligent act or omission of Concessionaire or Concessionaire Parties, Concessionaire shall be responsible for reimbursing Lessor for the full cost and expenses incurred in such repair.

**8.2 EXTENSIVE DAMAGE.** If the damage by causes referred to in Section 8.1 shall be so extensive as to render all or a portion of the Leased Premises untenable, the same shall be repaired with due diligence by Lessor, subject to the limitations of Section 8.3 and Section 8.4. To the extent such damage or casualty has a material adverse impact on Concessionaire's business on the Leased Premises, the MAG due hereunder will be abated from the time such damage occurs until such material adverse impact is resolved or the damage is repaired (whichever is sooner), during which time the MAG will be proportionally reduced by the amount by which such damage or casualty reduces Concessionaire's business, as determined by comparing against Concessionaire's Gross Receipts during the prior Year for the same period of time. However, if said damage is caused by the negligent act or omission of Concessionaire or Concessionaire Parties, the Rent will not abate and Concessionaire shall be responsible for reimbursing Lessor for the full cost and expenses incurred in such repair.

### **8.3 TOTAL DAMAGE.**

(a) In the event that the main club house or any other building on the Leased Premises is completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable within the last two (2) years of the Term, Lessor shall be under no obligation to repair, replace, and reconstruct said premises, and the MAG due hereunder will be abated from the time such damage occurs until such material adverse impact is resolved or the damage is repaired (whichever is sooner), during which time the MAG will be proportionally reduced by the amount by which such damage or casualty reduces Concessionaire's business, as determined by comparing against Concessionaire's Gross Receipts during the prior Year for the same period of time. If within three (3) months after the time of such damage or destruction such portions of the Leased Premises shall not have been repaired or reconstructed, Concessionaire, upon thirty (30) days written notice to Lessor, may terminate this Agreement in its entirety or only as to that portion of the Leased Premises completely destroyed as of the date of such damage or destruction.

(b) Notwithstanding the foregoing, if the Leased Premises, or a portion thereof, are completely destroyed as a result of the negligent act or omission of Concessionaire or Concessionaire Parties, the MAG shall not abate and Lessor may, in its discretion, either (i) require Concessionaire to repair and reconstruct the said premises within twelve (12) months of such destruction and pay the full cost and expense therefor, (ii) Lessor may repair and reconstruct the said premises within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing Lessor for the full costs and expenses incurred in such repair.

**8.4 LIMITATION OF LESSOR'S OBLIGATIONS.** It is understood that, in the application of this Article 8, Lessor's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality existing as of the Commencement Date. Concessionaire shall be solely responsible for the replacement of FF&E, decorations, and other furniture, equipment, and supplies, and the cost thereof, and such replacements shall be of a quality at least equivalent to that originally installed or leased hereunder.

8.5 **FORCE MAJEURE.** Neither Party shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to circumstances for which such Party is not responsible and which are not in its power to control, including, but not limited to, strikes, boycotts, labor disputes, shortages of materials that cannot be reasonably mitigated, fires, explosions, floods, earthquakes, acts of God, acts of public enemy, acts of a Governmental Entity (not including that of the City), severe weather conditions, riots, rebellion, sabotage, or pandemic (“**Force Majeure Event**”). Notwithstanding the foregoing, Concessionaire shall not be relieved of its obligation to pay the MAG due to a Force Majeure Event except as expressly provided in this Article 8.

## ARTICLE 9 – TERMINATION

9.1 **TERMINATION BY CONCESSIONAIRE.** Provided Concessionaire is not in default in the payment of Rent, fees, or other charges payable to Lessor hereunder and is not otherwise in default of this Agreement, Concessionaire may terminate this Agreement not less than ninety (90) days after providing written notice to Lessor upon or after the occurrence of any one or more of the following events:

(a) The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Leased Premises, or any substantial part or parts thereof, in such a manner as to substantially restrict Concessionaire for a period in excess of ninety (90) consecutive days from operating thereon;

(b) Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Leased Premises as a golf course, and the remaining in force of such injunction for a period of at least ninety (90) consecutive days;

(c) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Concessionaire of written notice to remedy the same;

(d) Failure of Lessor, in accordance with the terms of Section 8.3, to repair and reconstruct (or require Concessionaire to repair and reconstruct) the Leased Premises or portion thereof, that are completely destroyed; or

Passage of any ordinance by the City which substantially and materially affects Concessionaire’s existing rights of operation under this Agreement as to render Concessionaire’s business permitted hereunder inoperable.

### 9.2 **TERMINATION BY LESSOR.**

(a) Concessionaire Default. The occurrence of any one or more of the following listed events of default (“**Events of Default**”) shall constitute a breach of this Agreement by Concessionaire:

(i) The failure of Concessionaire to pay any Rent or any other amount payable under this Agreement within ten (10) days after written notice by Lessor that the same is due and payable;

(ii) The failure of Concessionaire to comply with its obligations under Section 4.1(d), Section 4.2, or Section 4.3 herein, related to providing Monthly Statements and Annual Statements, keeping and providing Records, and complying with audits of Concessionaire's Records;

(iii) The abandonment of the Leased Premises or any substantial part thereof, provided, failure of Concessionaire to operate the Golf Course and to provide the services contemplated by this Agreement for a period of thirty (30) days shall constitute abandonment by Concessionaire, except to the extent Concessionaire has obtained the prior written consent of Lessor;

(iv) In the event any interest of Concessionaire under this Agreement is levied upon under execution which levy is not lifted within sixty (60) days;

(v) The filing by, on behalf of, or against Concessionaire of any petition or pleading to declare Concessionaire bankrupt, whether voluntary or involuntary, under any bankruptcy act or law, which petition is not dismissed within ninety (90) days;

(vi) The commencement in any court or tribunal of any proceeding, voluntary or involuntary, to declare Concessionaire insolvent or unable to pay its debts, which proceeding is not dismissed within ninety (90) days;

(vii) The assignment by Concessionaire of all or any part of its property or assets for the benefit of creditors;

(viii) The assignment, sublease, or transfer of this Agreement by Concessionaire without Lessor's prior written consent;

(ix) The failure of Concessionaire to obtain or maintain insurance as required under Article 7 herein, which Concessionaire shall have three (10) days from Lessor's notice of the same to cure such Event of Default; and

(x) The failure of Concessionaire to perform, fully and promptly, any obligation required under this Agreement, or otherwise to comply with any term or provision hereof.

(b) Termination for Concessionaire Default. Upon the occurrence of any Event of Default, if Concessionaire fails to cure such default within fifteen (15) days from the time Lessor provides written notice thereof to Concessionaire, or, if applicable, within the shorter cure period provided in Section 9.2(a)(ix) above then Lessor may terminate this Agreement by written notice to Concessionaire, which termination shall be effective as of the date of said notice, and may re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within sixty (60) days, Concessionaire shall be deemed to have cured such default if within such sixty (60) day period it shall commence performance and thereafter diligently prosecute the same to completion.

(c) No Waiver. No waiver by Lessor of default by Concessionaire of any of the terms, covenants, or conditions hereof to be performed, kept, and preserved by Concessionaire

shall be construed to be a waiver of any subsequent default. The acceptance of Rent (or any other amounts due under this Agreement) or the performance of all or part of this Agreement by Lessor for or during any period or periods after default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Concessionaire, shall not be deemed a waiver of any right on the part of Lessor to declare a default, terminate this Agreement for a subsequent breach thereof, or seek any other remedy at law or in equity.

(d) Reservation of Rights. Notwithstanding the foregoing, Lessor reserves all rights and remedies at law or in equity to recover for any uncured Event of Default or other violation of this Agreement resulting in damages, loss, or harm to Lessor. This Section 9.2(d) shall survive expiration or termination of this Agreement.

**9.3 LESSOR RIGHT OF ENTRY UPON TERMINATION.** In the event Lessor terminates this Agreement pursuant to Section 9.2, Lessor shall have the right to enter upon and take possession of the Leased Premises. In such case, Lessor shall use its reasonable best efforts to relet the Leased Premises upon commercially reasonable terms, and if a sufficient sum shall not be realized thereby, after paying expenses of such reletting, to satisfy the Rent and other sums herein agreed to be paid by Concessionaire, Concessionaire shall pay any such deficiency. Concessionaire shall hold Lessor harmless from any loss, damage, or claim arising out of the action of Lessor in pursuance of this Section 9.3, except for any loss, damage, or claim caused by the negligence of Lessor or its employees.

## **ARTICLE 10 – ASSIGNMENT AND SUBLETTING**

Concessionaire shall not lease, sell, assign, or transfer this Agreement or any interest in this Agreement, including its leasehold interest in the Leased Premises, without the prior written consent of Lessor, which may be withheld in Lessor's sole and absolute discretion. Concessionaire shall not sublease the Leased Premises or any portion thereof, nor shall Concessionaire assign any privileges granted herein without the prior written consent of Lessor. Any such assignment or sublease without Lessor's prior written consent shall be void *ab initio* and of no force or effect. Any assignment or subcontract permitted by Lessor will not constitute any release of Concessionaire's obligation to perform its obligations hereunder and to make all of the payments required under this Agreement.

## **ARTICLE 11 – TAXES AND LICENSES**

**11.1 TAXES.** Concessionaire shall pay, or in good faith contest, all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Concessionaire or Lessor with respect to the Leased Premises, the FF&E on the Leased Premises, the leasehold privileges and operations hereunder, or Concessionaire's rights to use the Leased Premises during the Term. Should Concessionaire in good faith contest any such tax or governmental charge, Concessionaire may not permit said tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to Lessor such action will not adversely affect any right or interest of Lessor.

**11.2 LICENSES AND PERMITS.** Concessionaire, at its sole cost and expense, shall obtain and maintain all licenses and/or permits necessary or required by Applicable Law for Concessionaire's Permitted Use under this Agreement, including, but not limited to, the construction of additions or improvements, the installation of FF&E, the operation of a restaurant,

the provision of alcoholic beverages, and any other licenses or permits necessary to operate the Golf Course and the facilities thereon. Lessor shall assist Concessionaire where necessary and appropriate in obtaining said licenses and permits.

## **ARTICLE 12 – LESSOR RIGHT OF ENTRY**

**12.1 INSPECTION OF PREMISES.** Lessor or its duly authorized representatives, agents and other persons acting for it, shall have the full and unrestricted right to enter upon the Leased Premises at any and all reasonable times for the purpose of inspection for fire protection, safety, and maintenance, to exercise any of its rights or obligations under or incidental to this Agreement, and to investigate compliance with the terms of this Agreement. Notwithstanding the foregoing, Lessor may enter upon the Leased Premises at any and all times in the case of emergency.

**12.2 SHOWINGS FOR FUTURE TENANTS.** Lessor shall have the right to show the Leased Premises to others at any time within six (6) months prior to the date of expiration or termination of this Agreement.

### **12.3 FACILITY MAINTENANCE.**

(a) Lessor, through its duly authorized agents, may at any reasonable time and without notice enter upon the Leased Premises to determine if Concessionaire is performing its obligations under Article 6, including whether satisfactory maintenance and repairs are being performed. If it is determined that such obligations are not being performed in accordance with the requirements of this Agreement, Lessor shall so notify Concessionaire in writing specifying the issues concerning Concessionaire's performance or nonperformance of its obligations. If any such obligations are not satisfactorily performed or ongoing with due diligence by Concessionaire within fifteen (15) days after receipt of Lessor's written notice, Lessor shall have the right to enter upon the Leased Premises and perform said obligations and Concessionaire shall promptly reimburse Lessor for the cost thereof, plus ten percent (10%) thereof for administrative overhead.

(b) Lessor, through its duly authorized agents, shall have the right to enter the Leased Premises to (i) perform essential maintenance, repair, relocation, or removal of existing facilities owned by Lessor, including but not limited to wires, pipes, drains, cables, and conduits located on or across the Leased Premises, (ii) to construct, maintain, repair, relocate, and remove such facilities in the future if necessary to carry out the master plan of development of the Airport, and/or (iii) to make improvements or repairs as contemplated in Section 6.1, provided that such work shall not unreasonably disrupt or unduly interfere with Concessionaire's Permitted Use.

(c) Nothing herein shall be construed to impose upon Lessor any obligations to construct or maintain or to make repairs, replacements, alterations, or additions, or shall create any liability for any failure to do so. Furthermore, nothing herein shall be construed to lessen Concessionaire's responsibilities under Article 6.

## **ARTICLE 13 – ENVIRONMENTAL COMPLIANCE**

**13.1 GENERAL CONDITIONS.** Concessionaire agrees that in conducting any activities or business on the Leased Premises or on Airport property pursuant to this Agreement,

Concessionaire shall comply, and require its Concessionaire Parties comply, with any and all Environmental Laws. Concessionaire further agrees, without limitation:

(a) Hazardous Materials. Concessionaire and its Concessionaire Parties shall not use, store, generate, manufacture, produce, handle, treat, dispose, transport, or conduct operations involving Hazardous Materials whether intentionally or unintentionally, at or from the Leased Premises in violation of any Environmental Laws. Without limiting the foregoing, Concessionaire and its Concessionaire Parties shall not discharge Hazardous Materials into the sewer and/or storm water drainage systems, or cause any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or about the Leased Premises in violation of Environmental Laws. Concessionaire shall, at no cost or expense to Lessor, promptly remove and remedy, in accordance with the requirements of Environmental Laws, all Hazardous Materials present in, on, under, or migrating from the Leased Premises in violation of Environmental Laws, as a result of the acts or omissions of Concessionaire or any Concessionaire Party or its or their use or occupancy of the Leased Premises; provided, however, that Concessionaire has no obligation to remove any Hazardous Materials in, on, under, or migrating from the Leased Premises as a result of (i) the acts or omissions of third parties other than Concessionaire Parties or Concessionaire's predecessors in interest ; or (ii) the acts or omissions of Lessor, unless Concessionaire's acts or omissions exacerbated such Hazardous Materials. However, Concessionaire shall bear the burden of providing evidence to Lessor that any Hazardous Materials in, on, under, or migrating from the Leased Premises were not exacerbated by the acts or omissions of Concessionaire and are a result of (i) the acts or omissions of third parties other than Concessionaire Parties or Concessionaire's predecessors in interest; or (ii) the acts or omissions of Lessor.

(b) Recordkeeping. Concessionaire shall maintain, in an orderly and easily accessible manner, all correspondence and communications with any Governmental Authority, records, or other information evidencing its compliance with all Environmental Laws for all Hazardous Materials brought upon, kept, used, stored, generated or disposed of in, on or about the Leased Premises, or transported to or from the Leased Premises by Concessionaire or Concessionaire Parties. Concessionaire must maintain these records for the period of time as is required by Environmental Laws or ten (10) years following termination of this Agreement, whichever time is longer.

(c) Environmental Permits. Concessionaire, at its expense, shall obtain, maintain and comply with any and all permits required by any Environmental Laws to conduct the activities or business in which Concessionaire or its Concessionaire Parties will engage on the Leased Premises.

(d) Review of Environmental Documents. At Lessor's written request, Concessionaire shall make available for inspection and copying, upon reasonable notice and at reasonable times, any and all non-privileged correspondence and communications with Governmental Authority, records, or other information evidencing its compliance with all Environmental Laws for all Hazardous Materials brought upon, kept, used, stored, generated, managed, or disposed of in, on, or about the Leased Premises, or transported to or from the Leased Premises by Concessionaire or Concessionaire Parties.

(e) Cooperation with Investigations. Concessionaire agrees to cooperate with any investigation, audit, or inquiry by Lessor or any Governmental Authority regarding possible violation of any Environmental Laws upon the Leased Premises.

(f) Access for Environmental Inspection. Lessor shall have access to the Leased Premises upon reasonable prior notice to inspect the same in order to confirm that Concessionaire is in compliance with the requirements of this Article 13; provided, however, that Lessor may enter the Leased Premises for such purposes without prior written notice in the event of an emergency pertaining to Environmental Laws, as determined by Lessor. Concessionaire agrees to fully cooperate with any such inspections; provided that such inspections shall not unreasonably interfere with Concessionaire's operations. If Lessor reasonably believes or has received information leading it to reasonably believe that Concessionaire's operations are not in compliance with the requirements of this Article 13, then, upon request by Lessor, Concessionaire shall conduct such inspection, testing, and analysis as Lessor reasonably deems necessary to ascertain whether Concessionaire is in compliance with this Article 13. Concessionaire shall pay all actual costs associated with any such environmental inspection, testing, and analysis. Any such tests shall be conducted by qualified independent environmental consultants chosen by Concessionaire, but such environmental consultants, and the scope and the methods of such investigation, shall be subject to Lessor's approval, which shall not be unreasonably withheld. Concessionaire shall provide copies of any and all relevant reports prepared by such experts to Lessor within a reasonable time after Concessionaire receives such reports.

(g) Duty to Notify Authority. In the event of any Release or threatened Release of Hazardous Materials caused by or discovered by Concessionaire or any Concessionaire Party at, on, under, or about the Leased Premises or the Airport, or in the event any claim, demand, complaint, or action arising under Environmental Laws is made or taken against Concessionaire with respect to activities on the Leased Premises or the Airport, or if Concessionaire receives any notice pertaining to Concessionaire's failure or alleged failure to comply with any Environmental Laws at the Leased Premises, Concessionaire shall notify Lessor of all known facts pertinent to such Release, threatened Release, claim, demand, complaint, action, or notice, and shall provide Lessor with copies of any and all claims, demands, complaints, notices, or actions so made no later than twenty-four (24) hours following receipt of the same. If Concessionaire is required by any Environmental Laws or applicable Governmental Authority to file any notice or report of a Release or threatened Release at, on, under or about the Leased Premises or the Airport, Concessionaire shall simultaneously provide a copy of such notice or report to Lessor.

## 13.2 ENVIRONMENTAL REMEDIATION.

(a) General Obligations. Concessionaire shall undertake all necessary steps to remedy and remediate a Release of Hazardous Materials or other condition to the extent required by Environmental Laws or the requirements of this Agreement to the extent caused by, or resulting from the activities, conduct or omissions of Concessionaire or its Concessionaire Parties, on the Leased Premises or at the Airport, as necessary to reasonably protect the public health and safety to the extent required by Applicable Law and/or to bring the Leased Premises or the Airport into compliance with all Environmental Laws applicable to the Leased Premises or Concessionaire's operations. Specific cleanup levels for any environmental remediation work Concessionaire performs shall be designed to meet and satisfy the requirements of all Environmental Laws

applicable to the Leased Premises or Concessionaire's operations as are consistent with the continued use of the affected areas for its use as a golf course, including any risk-based clean-up standards approved by any Governmental Authority having jurisdiction and approved by Lessor, whose approval shall not be unreasonably withheld. Such work shall be performed at Concessionaire's expense. Except in the event of an emergency, such work shall be performed only after Concessionaire submits to Lessor a written plan for completing such work and receives the prior approval of Lessor, which shall not be unreasonably withheld. Lessor shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The actual cost of such review and inspection shall be paid by Concessionaire. Concessionaire expressly warrants that all work performed pursuant to this Agreement shall be performed in accordance with all Environmental Laws. Concessionaire shall not enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Release of Hazardous Materials or other condition in violation of Environmental Laws on, at, or from the Leased Premises or the Airport without first notifying Lessor of Concessionaire's intention to do so and affording Lessor a reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect Lessor's interest with respect thereto, which appearance or intervention by Authority will be at Lessor's sole cost and expense.

(b) Obligations Upon Termination. At the expiration or termination this Agreement, Concessionaire shall dispose of all Hazardous Materials and containers in compliance with all applicable Environmental Laws and shall complete all actions necessary to bring the Leased Premises into full compliance with this Article 13 and all Environmental Laws. Concessionaire shall provide Lessor with copies of all waste manifests for Hazardous Materials removed from the Leased Premises at least thirty (30) days prior to the termination or expiration date of the Agreement.

(c) Step-In Rights. Notwithstanding Concessionaire's obligations under this Section 13.2, Lessor and any Governmental Authorities shall at all times have the right, should Concessionaire fail to comply with its obligations in subsection (a) or (b) of this Section 13.2, after reasonable advance written notice, which shall include a reasonable opportunity to cure (except where a Governmental Authority other than Lessor is empowered by Applicable Law to act without notice), or immediately, if necessary to prevent additional harm to the environment, to take any and all actions as they individually or collectively may reasonably deem necessary to cease, contain, investigate, remediate, or otherwise respond to a condition which results from, causes, or threatens to cause a Release of Hazardous Materials or other condition in violation of Environmental Laws at, under, or about the Leased Premises or at the Airport. Concessionaire agrees to cooperate with any and all such actions.

**13.3 NO LIABILITY FOR BUSINESS INTERRUPTION.** Lessor shall not be responsible to Concessionaire or any Concessionaire Party for any Hazardous Materials in existence in, on, under, or migrating from the Leased Premises or at the Airport, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, its Concessionaire Parties, customers, or clients, except to the extent such conditions are caused by the actions or omissions of Lessor.

**13.4 ENVIRONMENTAL INDEMNIFICATION.** In addition to any and other requirements of Concessionaire to indemnify and hold Lessor harmless under this Agreement, Concessionaire shall also indemnify, defend (with counsel satisfactory to City), and hold harmless Lessor, its officers, directors, agents, and employees, and their successors and assigns, from and against any and all loss, cost, damage, expense (including reasonable attorney’s fees), claim, demand, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from Concessionaire’s violation of this Article 13, Environmental Laws, and/or any Release or threat of Release of Hazardous Materials caused by Concessionaire’s or Concessionaire’s Parties’ use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Leased Premises or the Airport in violation of Concessionaire’s obligations under this Agreement (“**Environmental Claims**”). This indemnification shall include without limitation (a) personal injury or property damage claims, (b) the payment of liens, (c) diminution in the value of the Leased Premises or the Airport, (d) damages for the loss or restriction on use of the Leased Premises or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys’ fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remediation, removal, or restoration work, detoxification, and/or reporting obligations if required by any Governmental Authorities or Environmental Laws, or deemed necessary in Lessor’s reasonable judgment. Lessor shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with the Environmental Claims. Lessor may also negotiate, defend, approve, and appeal any action taken or issued by any Governmental Authorities with regard to Environmental Claims. Any costs or expenses incurred by Lessor for which Concessionaire is responsible under this Section 13.4 or for which Concessionaire has indemnified Lessor: (i) shall be paid to Lessor on demand, during the Term as additional Rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Concessionaire on demand. The requirements of this Section 13.4 shall survive the expiration or termination of this Agreement and shall bind Concessionaire’s successors and assigns and inure to the benefit of Lessor’s successors and assigns.

**13.5 REMEDIES CUMULATIVE.** Concessionaire agrees that all remedies of Lessor as provided in this Article 13 with regard to Hazardous Materials, or violations of any Environmental Laws shall be deemed cumulative in nature and Lessor’s right to indemnification as provided under this Article 13 shall survive the termination of this Agreement.

**13.6 SURVIVAL.** The rights and obligations of this Article 13 shall survive the expiration or termination of this Agreement and shall bind Concessionaire’s successors and assigns and inure to the benefit of Lessor’s successors and assigns, except those rights and/or obligations which by their nature or context are not intended survive the expiration or termination of this Agreement.

## **ARTICLE 14 –FEDERAL REQUIREMENTS**

**14.1 PUBLIC USE AND FEDERAL GRANTS.** The parties acknowledge that the Airport will be operated as a public airport, subject to the provisions of the Federal Aviation Act of 1958, as amended, and grant agreements between Lessor and the federal government containing assurances guaranteeing the public use of the Airport, so that nothing contained in this Agreement

shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended.

**14.2 RIGHT TO DEVELOP AIRPORT.** Lessor, in its sole and absolute discretion, reserves the right to further develop or improve the Airport and all landing areas, terminals, and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance therefrom.

**14.3 SUBORDINATION TO GRANT AGREEMENTS.** This Agreement shall be subject and subordinate to the provisions of any existing or future agreements between Lessor and the United States of America or the State of Texas, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Lessor of federal or state funds for the development of the Airport (“**Grant Assurances**”). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, Lessor has the right to unilaterally amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation. Furthermore, in the event that the Federal Aviation Administration or the Texas Department of Transportation or either of their successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to obtain such funds.

**14.4 FEDERAL RIGHT TO RECLAIM.** In the event a United States Governmental Authority demands and takes over the entire facilities of the Airport or the portion thereof wherein the Leased Premises are located, for public purposes, for a period in excess of ninety (90) days, then this Agreement will terminate and Lessor will be released and fully discharged from any and all liability hereunder. In the event of such termination, Concessionaire’s obligation to pay Rent, fees and charges will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

**14.5 NON-DISCRIMINATION.** Concessionaire shall comply with the non-discrimination requirements set forth in **Exhibit H**, attached hereto and incorporated herein. In addition to such requirements, Concessionaire for itself, its successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

(a) No person shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the Leased Premises because of his or her race, color, sex, national origin, physical disability, or veteran status.

(b) In the construction of any improvements on, over, or under the Leased Premises, and in providing the furnishings or services thereon, no person shall be excluded from participation in, or denied the benefits of, such construction or service, or otherwise be subjected to discrimination, because of his or her race, color, sex, national origin, physical disability, or veteran status.

(c) Concessionaire shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, as said regulations now or hereafter provide.

## ARTICLE 15 – EMINENT DOMAIN

15.1 **TOTAL TAKING.** If the entire Leased Premises, or a substantial portion thereof (the taking of which would render Concessionaire’s business untenable on the Leased Premises), shall be lawfully taken, condemned, or conveyed under threat of such taking or condemnation for any public or quasi-public use or purpose, the Term of this Agreement shall end upon, and not before, the date of the taking of possession by the condemning authority. Rent shall be apportioned as of the date of such termination.

15.2 **PARTIAL TAKING.** If any part of the Leased Premises not constituting a substantial part thereof shall be lawfully taken, condemned, or conveyed under threat of such taking or condemnation, or if the grade of any street adjacent to the Leased Premises is changed by any competent authority and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Leased Premises, Lessor shall have the right to terminate this Agreement, such termination to take place not later than the date of this taking of possession by the condemning authority. Rent shall be apportioned as of the date of such termination. No money or other consideration shall be payable by Lessor to Concessionaire for the right of termination herein.

15.3 **NOTICE.** The Party receiving notice of an intended taking, condemnation, or exercise of eminent domain shall give the other Party notice of such action within a reasonable time of its receipt of the same.

15.4 **AWARDS NOT LIMITED.** If any Notwithstanding any provision in this Agreement to the contrary, Lessor and Concessionaire shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceeding. Termination of this Agreement shall not affect the rights of the respective Parties to such awards.

## ARTICLE 16 – AIRPORT SPONSORED EVENTS

Subject to availability based on Concessionaire’s priority use of the Leased Premises, Lessor shall be entitled to use of the public areas (non-golf course areas) of the Leased Premises, rent-free as to the use of the space, for civic-oriented, community not-for-profit, or educational events, such as City ceremonies, conferences, conventions, meetings and training sessions, for the benefit of the Airport (“**Airport Sponsored Events**”). Lessor shall not attempt to schedule and shall not be authorized to use the Leased Premises for any Airport Sponsored Events without the prior written consent of Concessionaire, which may not be unreasonably withheld, conditioned, or delayed. Lessor and Concessionaire each agree that the scheduling of Airport Sponsored Events will be a cooperative endeavor, and Lessor and Concessionaire each agree to recognize, and in good faith, attempt to accommodate Lessor with respect to the scheduling of up to four (4) Airport Sponsored Events per year. Lessor shall be responsible for any golf related fees and food and beverage service costs as then customarily being charged to the public.

In order to schedule an Airport Sponsored Event, Lessor shall notify Concessionaire in writing of Lessor's intent to hold an Airport Sponsored Event at the Leased Premises, which notice shall be given not less than thirty (30) days prior to the proposed Airport Sponsored Event and shall include a full and complete written description of that event.

## ARTICLE 17 – GENERAL PROVISIONS

17.1 **NO LIENS.** Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Leased Premises by Concessionaire, and shall keep said Leased Premises and Concessionaire's interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission, or that of its Concessionaire Parties. Nothing herein shall prevent Concessionaire from, in good faith, contesting any such lien.

17.2 **ENCUMBRANCE OF FEE OR LEASEHOLD INTEREST PROHIBITED.** Concessionaire shall not encumber Lessor's fee interest in the Leased Premises or Concessionaire's interest in or its rights under this Agreement, including but not limited to its leasehold interest in the Leased Premises or the Leased FF&E, by any mortgage, deed of trust, or other instrument in the nature of a security agreement, lien, mortgage, or deed of trust.

17.3 **QUIET ENJOYMENT.** Lessor agrees that Concessionaire, upon payment of the Rent and all other payments, fees, and charges required under the terms of this Agreement and upon observing and keeping the agreements and each of the covenants of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises and FF&E thereon during the Term.

17.4 **COMPLIANCE WITH LAWS.** Concessionaire shall conduct, and shall cause its Concessionaire Parties to conduct, all activities permitted or required under this Agreement in accordance with all Applicable Law, including, without limitation, the Airport Rules and Regulations and all permits and licenses which may be necessary or required for the proper operation of Concessionaire's business; provided, however, Concessionaire shall use its best efforts to lawfully prevent any unreasonable inhibition or restriction of Concessionaire's or Lessor's rights under this Agreement.

17.5 **WAIVERS.** No waiver by Lessor or Concessionaire at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of Concessionaire to enter or of Lessor to re-enter the Leased Premises or of either party to exercise any right, power, privilege or option arising from any default, nor subsequent payment of or acceptance of rent then or thereafter accrued, shall impair any such right, power, privilege or option or be construed to be a waiver of any such default, relinquishment thereof, or acquiescence therein, while such default is continuing. No notice by Concessionaire or by Lessor shall be required to restore or revive time as of the essence hereof after waiver by Concessionaire or by Lessor of default in one or more instances. No option, right, power, remedy or privilege of Concessionaire or Lessor shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers,

options, or remedies given to Concessionaire and to Lessor by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by Concessionaire or by Lessor shall not impair its right to any other right, power, option, or remedy.

**17.6 WAIVER OF CLAIMS.** Concessionaire hereby waives any claim against the City of El Paso and its elected officials, officers, agents, or employees only as regards loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

**17.7 SECURITY ARRANGEMENTS.** Lessor shall provide, or cause to be provided, during the Term, periodic patrol by Airport security officers of the Leased Premises, as well as all proper and appropriate public fire and police protection similar to that afforded to other tenants at the Airport. Concessionaire shall, at its own cost and expense, keep active during the Term the alarm system presently in place upon the Leased Premises.

**17.8 UTILITIES.** Concessionaire shall provide, maintain, and pay all utility charges for all utilities used on the Leased Premises, including deposits, installation costs, meters, and service charges. Payment of utilities shall not be considered a payment of Rent or credit against any other provision of this Agreement. Concessionaire shall pay before delinquency all charges for water, sewer, gas, heat, air cooling, electricity, power, telephone, garbage, and other utility services used on or serving the Leased Premises during the Term of this Agreement.

**17.9 SIGNS.** Exterior signs on the Leased Premises shall be limited to those identifying the Golf Course and related uses conducted on the Leased Premises. All signs, including the size, design, and location thereof, shall require the prior written approval of Lessor's Director of Aviation which will not be unreasonably withheld. Temporary signs may not be displayed for more than 30 days. No sign shall be permitted on the roof of any building. This requirement does not apply to typical golf course signage located at tee boxes or course directional signage.

**17.10 INDEPENDENT CONTRACTOR.** The Parties agree that Concessionaire is an independent contractor and not subject to the direction or control of the City, except as specified in this Agreement or provided by Applicable Law.

**17.11 PUBLIC RECORDS ACT.** This Agreement, and the records submitted to Lessor hereunder, are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code.

**17.12 SEVERABILITY.** The invalidity of any part, portion, article, paragraph, section, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, section, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by Applicable Law.

**17.13 TERMS BINDING UPON SUCCESSORS.** All the terms, conditions, and covenants of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. The provisions of this Section 17.13 shall not be deemed as a waiver

of any of the limitations and conditions of assignment or subletting set forth in Article 10 of this Agreement.

17.14 **TIME OF ESSENCE.** Time is expressly agreed to be of the essence in this Agreement.

17.15 **NOTICE.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid or by nationally recognized overnight courier, addressed to the proper party at the following addresses:

If to Lessor: Director of Aviation  
El Paso International Airport  
6701 Convair Rd.  
El Paso, Texas 79925-1091

with a copy to: City Clerk  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

If to Concessionaire: Lone Star Golf Club  
Attn: General Manager  
1510 Hawkins Blvd  
El Paso, TX 79925

with a copy to: Bill Collins  
505 Mallory Lane  
El Paso, TX 79912

and email to: Bill.Collins.Bus@gmail.com  
maponce617@gmail.com

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either Party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other Parties in the manner set forth in this Section 17.15.

17.16 **DEALINGS WITH LESSOR.** Whenever in this Agreement Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with Lessor, Concessionaire shall deal with Lessor's authorized representative who shall be the Director of Aviation or his/her designee.

17.17 **GOVERNING LAW AND VENUE.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Texas. Venue for

any action brought pursuant to this Agreement will be in El Paso County, Texas, or in the United States District Court for the Western District of Texas.

17.18 **AMENDMENT.** All duties, obligations, and liabilities of Lessor and Concessionaire with respect to the Leased Premises are expressly set forth herein and this Agreement can only be amended by a written instrument agreed to and executed by both Parties.

17.19 **HEADINGS.** The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

17.20 **ENTIRE AGREEMENT.** The provisions of this Agreement contain the entire understanding between Parties hereto and said Agreement.

*(Signatures on the following page)*

IN WITNESS WHEREOF, Lessor and Concessionaire have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**LESSOR:**

CITY OF EL PASO:  
a Texas municipal corporation

By: \_\_\_\_\_  
Name: Dionne Mack  
Title: City Manager

**ATTEST:**

By: \_\_\_\_\_  
Name: Laura D. Prine  
Title: City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ignacio R. Troncoso  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Juan Antonio Nevarez, CM, AC, IACE  
Director of Aviation

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS    ))  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2026,  
by Dionne Mack, as City Manager for the City of El Paso, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

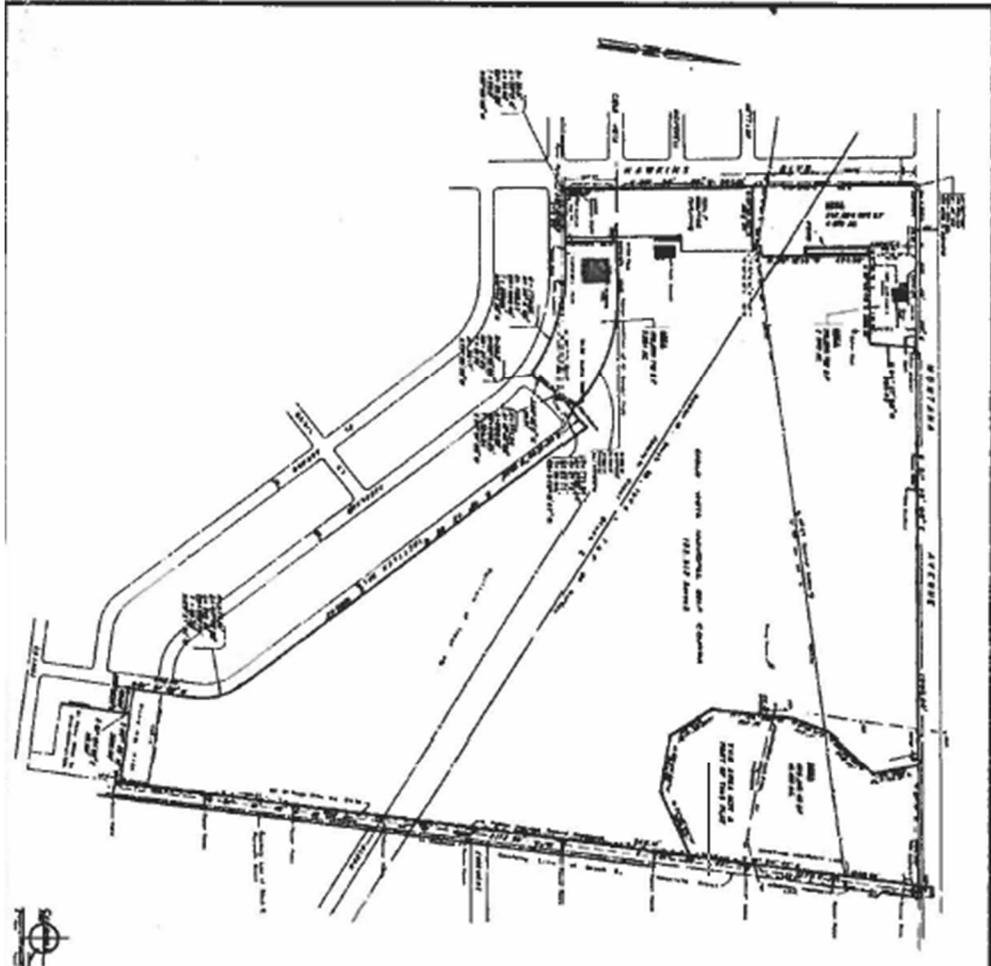
*(Concessionaire signature page on following page)*



**EXHIBIT A**

**Leased Premises**

A portion of Morehouse Survey No. 12 and a portion of Section 40, Block 80 TSP 2 T&P Survey, City of El Paso, El Paso County, Texas, being more particularly described in EXHIBIT A, attached hereto and made a part hereof, and municipally known as Lone Star Golf Club (f/k/a/ Cielo Vista Golf Course) located at 1510 Hawkins Blvd., El Paso, Texas.



**PLAT**  
**CIELO VISTA MUNICIPAL GOLF COURSE**  
**EL PASO INTERNATIONAL AIRPORT**

SCALE: AS SHOWN

EXHIBIT  
**A**

- AREAS - FOOT MEASUREMENTS**
- 1. 100' x 100' (10,000)
  - 2. 100' x 100' (10,000)
  - 3. 100' x 100' (10,000)
  - 4. 100' x 100' (10,000)
  - 5. 100' x 100' (10,000)
  - 6. 100' x 100' (10,000)
  - 7. 100' x 100' (10,000)
  - 8. 100' x 100' (10,000)
  - 9. 100' x 100' (10,000)

10/1/74  
 10/2/74

**EXHIBIT B-1**

**Leased FF&E**

Name	QTY
RESTAURANT TABLES	16
RESTAURANT BARREL CHAIR W/ VINYL	72
DRINKING WATER FOUNTAIN (Not functional)	1
CONCRETE TRASH RECEPTACLE	6
METAL BAG RACKS	2
MAINTENANCE METAL LOCKERS	8
CART BARN AIR COMPRESSOR	1

**EXHIBIT B-2**  
**Concessionaire FF&E**

Year	Name	Serial #	Replacement Cost	QTY	Total	CURRENT FMV
2024	Yanmar Tractor w/ Attachments	YMJ50036PMLK00182	\$ 60,000.00	1	\$ 60,000.00	\$ 60,000.00
2000	CLUB CAR 272	QG0051-965019	\$ 11,700.00	1	\$ 11,700.00	\$ 3,510.00
2006	CLUB CAR CARRYALL	HG0609-605342	\$ 11,700.00	1	\$ 11,700.00	\$ 3,510.00
2003	TORO WALKMOWER	0421-240001550	\$ 12,000.00	1	\$ 12,000.00	\$ 3,600.00
2003	TORO WALKMOWER	04021-210000253	\$ 12,000.00	1	\$ 12,000.00	\$ 3,600.00
1996	TORO WALKMOWER	04050-10696	\$ 12,000.00	1	\$ 12,000.00	\$ 3,600.00
2003	TORO WALKMOWER	04021-23000288	\$ 12,000.00	1	\$ 12,000.00	\$ 3,600.00
2003	TORO WALKMOWER	04021-230000294	\$ 12,000.00	1	\$ 12,000.00	\$ 3,600.00
2008	JOHN DEERE TOPDRESSER	TC100GX040007	\$ 16,000.00	1	\$ 16,000.00	\$ 4,800.00
1986	CASE 485 TRACTOR		\$ 56,000.00	1	\$ 56,000.00	\$ 16,800.00
2006	JOHN DEERE AERATOR	TC800AC045234	\$ 15,000.00	1	\$ 15,000.00	\$ 4,500.00
2000	TORO TRIPLEX	04354-2000000124	\$ 38,000.00	1	\$ 38,000.00	\$ 11,400.00
2003	JOHN DEERE FAIRWAR MOWER	TC3235T030076	\$ 70,000.00	1	\$ 70,000.00	\$ 21,000.00
1994	JOHN DEERE FAIRWAR MOWER	M03235A010125	\$ 70,000.00	1	\$ 70,000.00	\$ 21,000.00
2003	JOHN DEERE SPRAYER	TC200GX030095	\$ 11,000.00	2	\$ 22,000.00	\$ 6,600.00
1991	MASSEY FERGUSON	530917M3F/9A275391	\$ 46,000.00	1	\$ 46,000.00	\$ 13,800.00
1996	AGRIMETAL BLOWER	Bw360	\$ 449.00	1	\$ 449.00	\$ 134.70
1997	BEAR CAT CHIPPER	72928	\$ 2,600.00	1	\$ 2,600.00	\$ 780.00
1994	SLIT SEEDER	93519205	\$ 2,500.00	1	\$ 2,500.00	\$ 750.00
2000	BILLY GOAT BLOWER	QB883	\$ 1,600.00	1	\$ 1,600.00	\$ 480.00
1992	GAS PUMP	4725-0197		1	\$ -	\$ -
2000	FOLEY REEL GRINDER		\$ 750.00	1	\$ 750.00	\$ 225.00
1997	INDUSTRIAL PRESS	RP55	\$ 800.00	1	\$ 800.00	\$ 240.00
2004	CRAFTSMAN ROTOR TILLER	917294482	\$ 700.00	1	\$ 700.00	\$ 210.00
2008	STIHL CHAIN SAW	M5361	\$ 229.00	2	\$ 458.00	\$ 137.40
2000	STIHL TREE PRUNNER		\$ 749.00	2	\$ 1,498.00	\$ 449.40
	SHOVELS		\$ 35.00	11	\$ 385.00	\$ 115.50
	MECHANICS TOOL SET		\$ 7,500.00	1	\$ 7,500.00	\$ 2,250.00
1985	PICKUP TRUCK		\$ 22,000.00	1	\$ 22,000.00	\$ 6,600.00
	JOHN DEERE SAND PRO	TC1200A-13579	\$ 14,000.00	1	\$ 14,000.00	\$ 4,200.00
	RAKES		\$ 80.00	2	\$ 160.00	\$ 48.00
	STEEL RAKES		\$ 50.00	5	\$ 250.00	\$ 75.00
	CUP CUTTER		\$ 500.00	2	\$ 1,000.00	\$ 300.00
	HEDGE TRIMMER		\$ 359.00	3	\$ 1,077.00	\$ 323.10
	ARC WELDER		\$ 1,000.00	1	\$ 1,000.00	\$ 300.00
	METAL SAN DRAG		\$ 400.00	2	\$ 800.00	\$ 240.00
	ROUGH MOWER ATTCH	33145-50114	\$ 3,500.00	1	\$ 3,500.00	\$ 1,050.00
	TORO VERTICUT REELS		\$ 3,000.00	3	\$ 9,000.00	\$ 2,700.00
	TORO MOWING REELS		\$ 575.00	9	\$ 5,175.00	\$ 1,552.50
	RAIN BIRD IRRIGATION COMPUTER		\$ 3,000.00	1	\$ 3,000.00	\$ 900.00
	KITCHEN STOVES/GRILLS/REFRIGERATORS		\$ 25,000.00	1	\$ 25,000.00	\$ 7,500.00
	TOOLS AND EQUIPMENT CART BARN		\$ 6,000.00	1	\$ 6,000.00	\$ 1,800.00
	MISCELLANEOUS EQUIPMENT		\$ 45,000.00	1	\$ 45,000.00	\$ 13,500.00
					<b>TOTAL REPLACEMENT VALUE</b>	<b>\$ 572,602.00</b>
						<b>\$ 231,780.60</b>

## EXHIBIT C

### Concessionaire Improvements

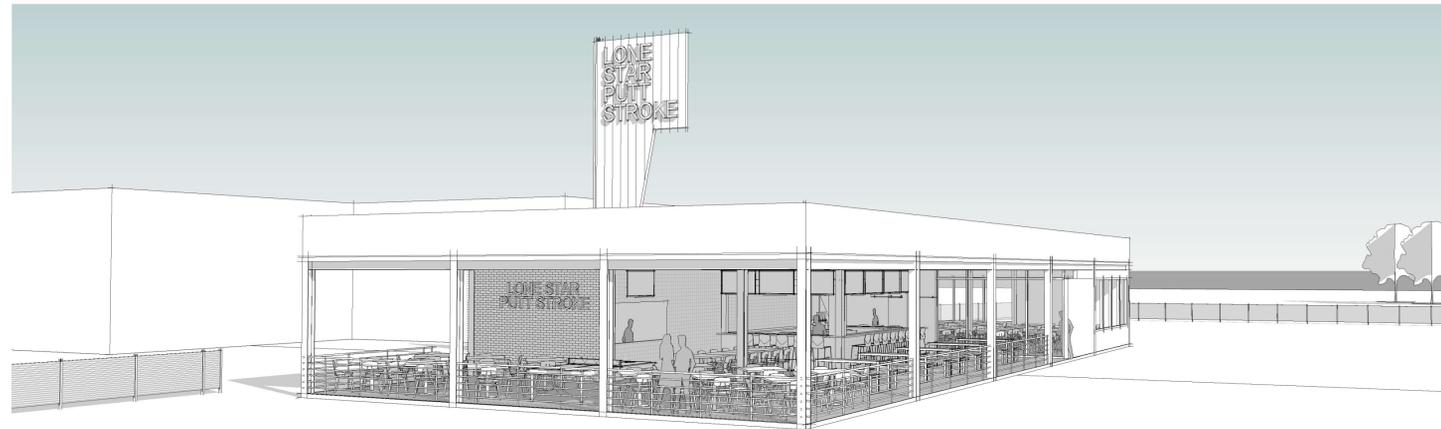
<b>Investment</b>	<b>Timeframe</b>	<b>Estimated Cost</b>
Putting Golf Course: +- 31,000 putting golf course with an open pavilion style restaurant and bar with the putting golf course wrapping around the restaurant. Including FF&E. Generally depicted below.	Within 24 months of Effective Date.	\$1,300,000
Foodservice expansion FF&E, and related restaurant renovation.	Within 24 months of Effective Date.	\$400,000
Irrigation System Design	Complete	\$92,000
Driving Range Upgrades which includes a technology forward driving range, using Top Tracer or similar equipment with along with lighting for night time usage	Within 24 months of First Option	\$250,000
Replacement of mowing equipment as necessary.	Within Initial Term	\$300,000
Drill and Fill deep core irrigation.	Periodically within term of agreement	\$144,000
Yanmar Tractor	Complete	\$47,000
New Water Stations as necessary.	Recently completed. Periodically upgraded/replaced as necessary within term of agreement	\$5,000
Range Net Replacements	Within 24 months of Second Option	\$140,000

Addition of Food Service Station on Course	Periodically during term of agreement	\$40,000
Course/Green upgrades	Some already completed. To continue throughout term of agreement	\$500,000
Maintain a fleet of golf carts sufficient to meet needs of course.	Throughout term of agreement	\$5,599,800
Replacement Reserve Contributions	Periodically as provided in Section 6.5 of Agreement	\$5,232,474

LONE STAR - MINI GOLF

PROJECT DATA

PROJECT DATA



2 3D View 1

ARCHITECTURAL:  
A0.0 COVERSHEET / SITE PLAN  
A1.0 FLOOR PLAN LVL 1  
A1.1 FLOOR PLAN LVL 2  
A1.2 MINI GOLF COURSE PLAN  
A2.0 EXTERIOR ELEVATIONS  
A3.0 3D VIEWS  
A4.0 MOOD BOARDS

STRUCTURAL:

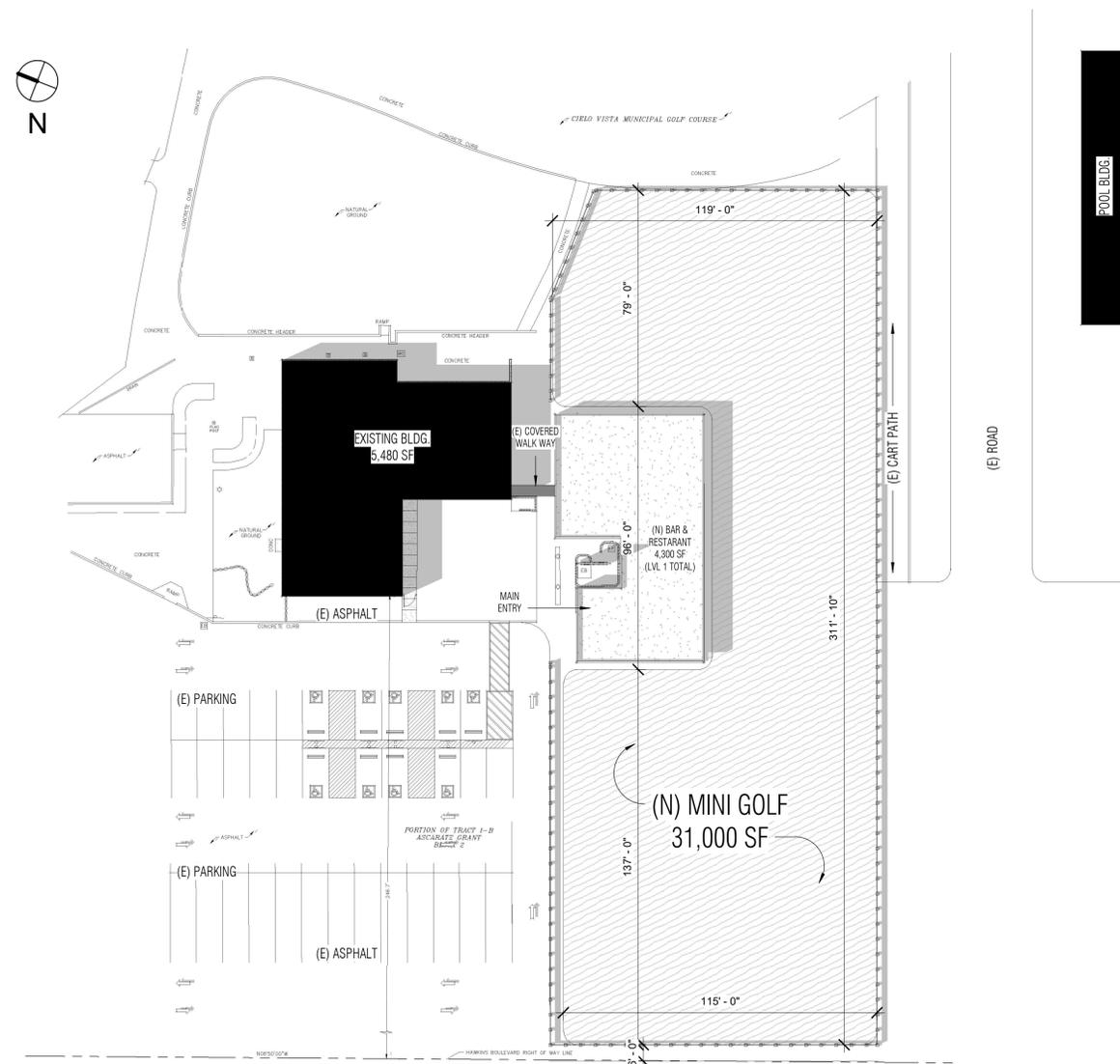
MECHANICAL:

ELECTRICAL:

PLUMBING:

CONTACT  
OWNER: LONE STAR GOLF COURSE  
CONTRACTOR: TBD  
DESIGNER: CHARLES AUSTIN - 310.254.5077  
NEW  
ZONING: ?  
APN#: ?  
LOT SIZE: 31,600 SF +/-  
LVL 1 PATIO & BAR: 4,300 SF  
HEIGHT: 35'-0" (2 STORY)  
OCCUPANCY: A-2  
CONST. TYPE: II-B  
FIRE SPRINKLER: N/A  
SCOPE OF WORK: NEW SINGLE COVERED OUTDOOR PATIO WITH BAR AND RESTAURANT KITCHEN.

Site Map



1 Site Plan  
1" = 30'-0"

PROXIMITY MAP



LONE STAR S- MINI GOLF

1510 Hawkins Blvd, El Paso, TX

PROJECT # DATE

10.4.25

REVISIONS

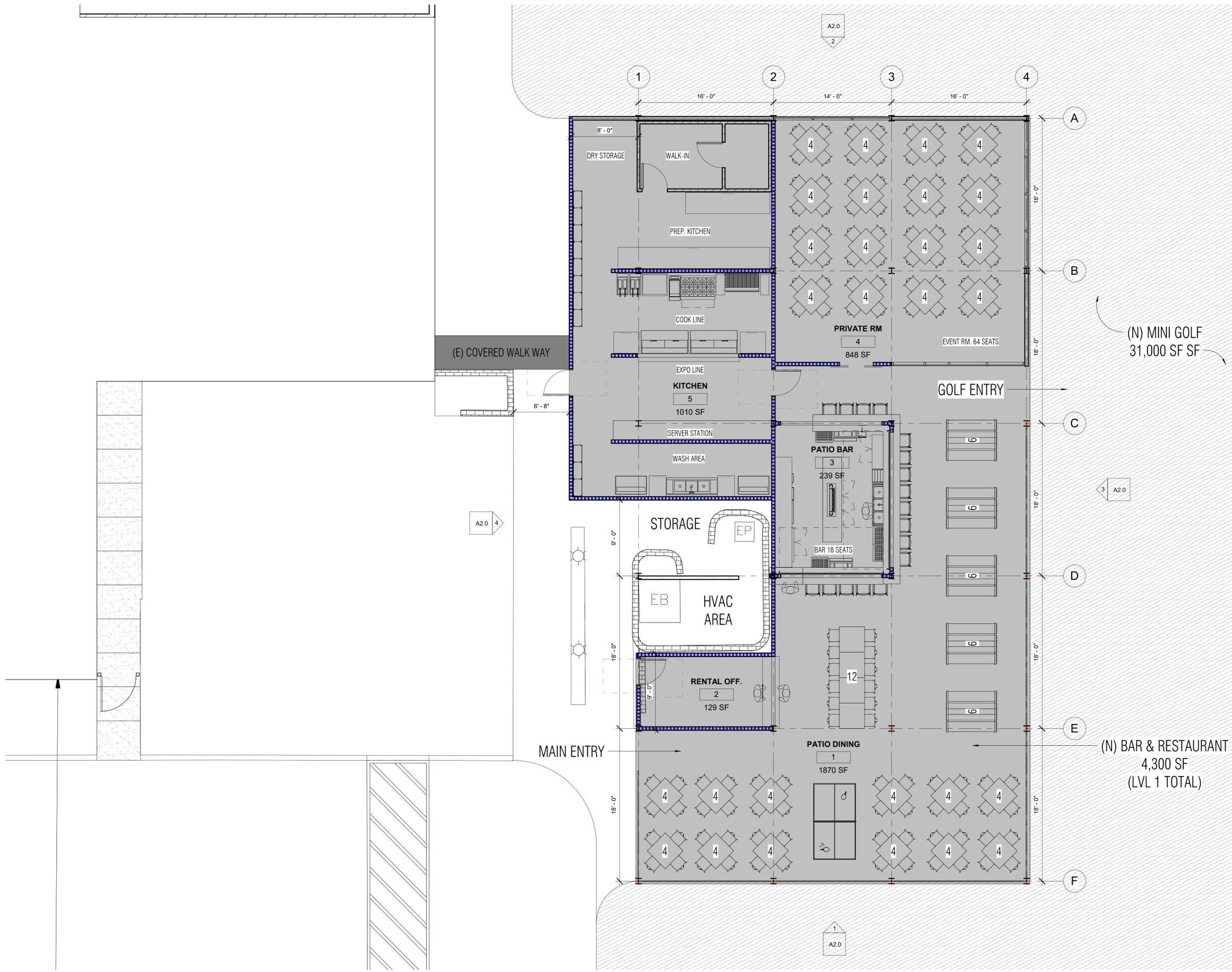
SHEET TITLE

COVERSHEET

SHEET NUMBER

A0.0

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(N) MINI GOLF  
31,000 SF

(N) BAR & RESTAURANT  
4,300 SF  
(LVL 1 TOTAL)

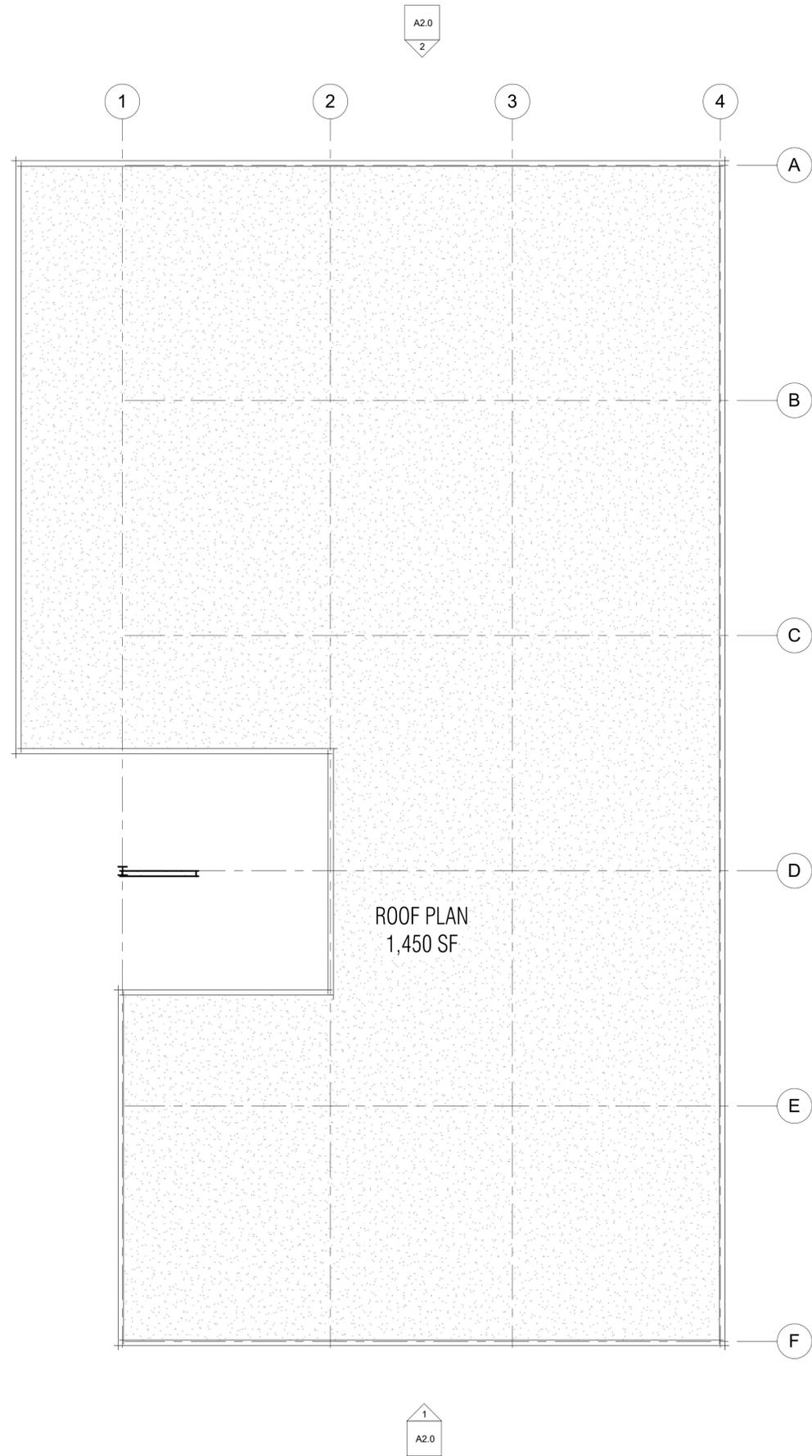
① Level 1  
3/16" = 1'-0"

<b>LONE STAR S - MINI GOLF</b>	
1510 Hawkins Blvd, El Paso, TX	
PROJECT #	DATE
	10.4.25
REVISIONS	
SHEET TITLE	
<b>FLOOR PLAN LVL 1</b>	
SHEET NUMBER	
<b>A1.0</b>	

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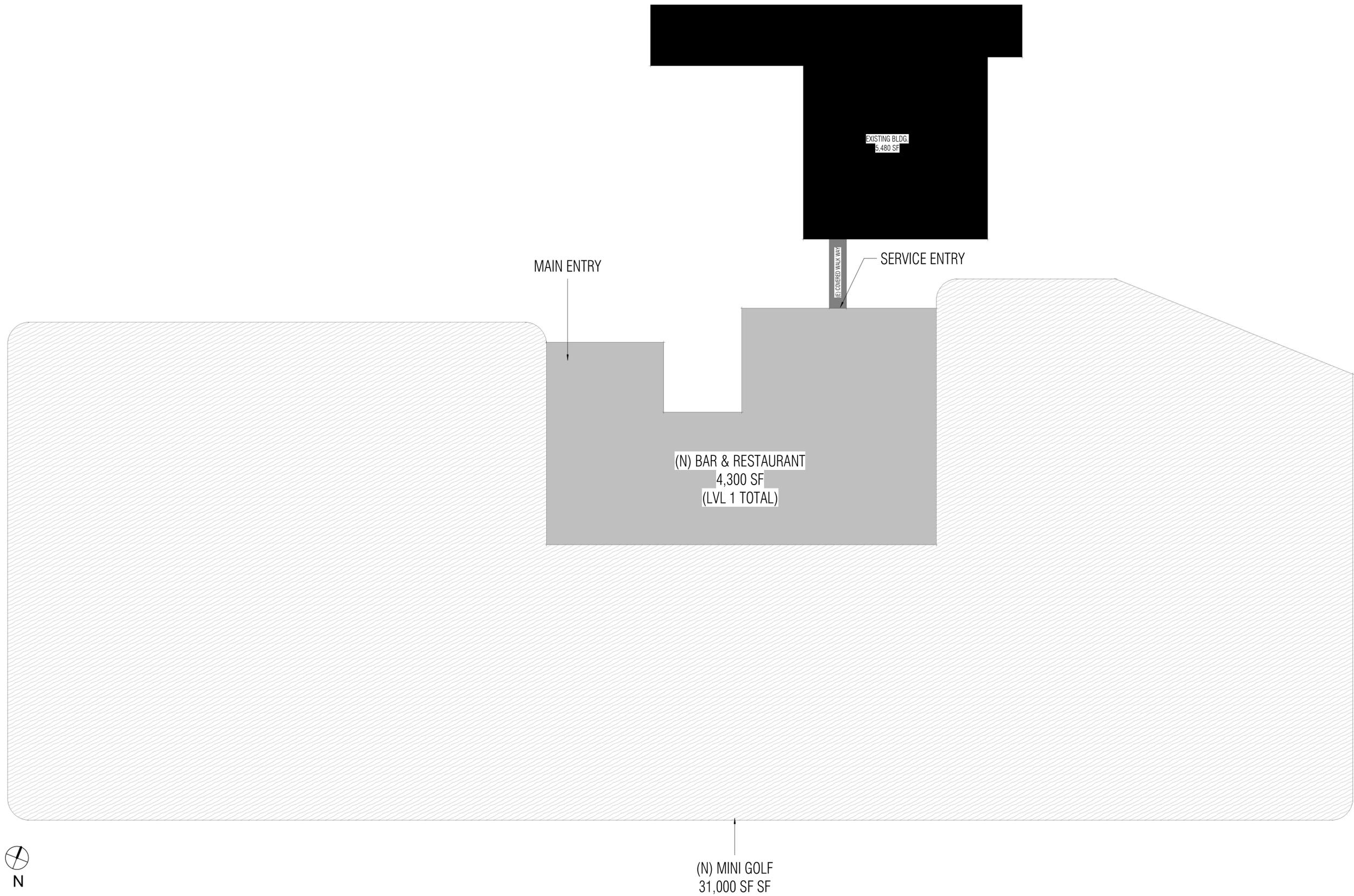
1 LVL 2  
3/16" = 1'-0"

(E) RESTAURANT



<b>LONE STAR S- MINI GOLF</b>	
1510 Hawkins Blvd, El Paso, TX	
PROJECT #	DATE
	10.4.25
REVISIONS	
SHEET TITLE	
<b>ROOF PLAN</b>	
SHEET NUMBER	
<b>A1.1</b>	

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① Level 1 Copy 1  
3/32" = 1'-0"

**LONE STAR S- MINI GOLF**

1510 Hawkins Blvd, El Paso, TX

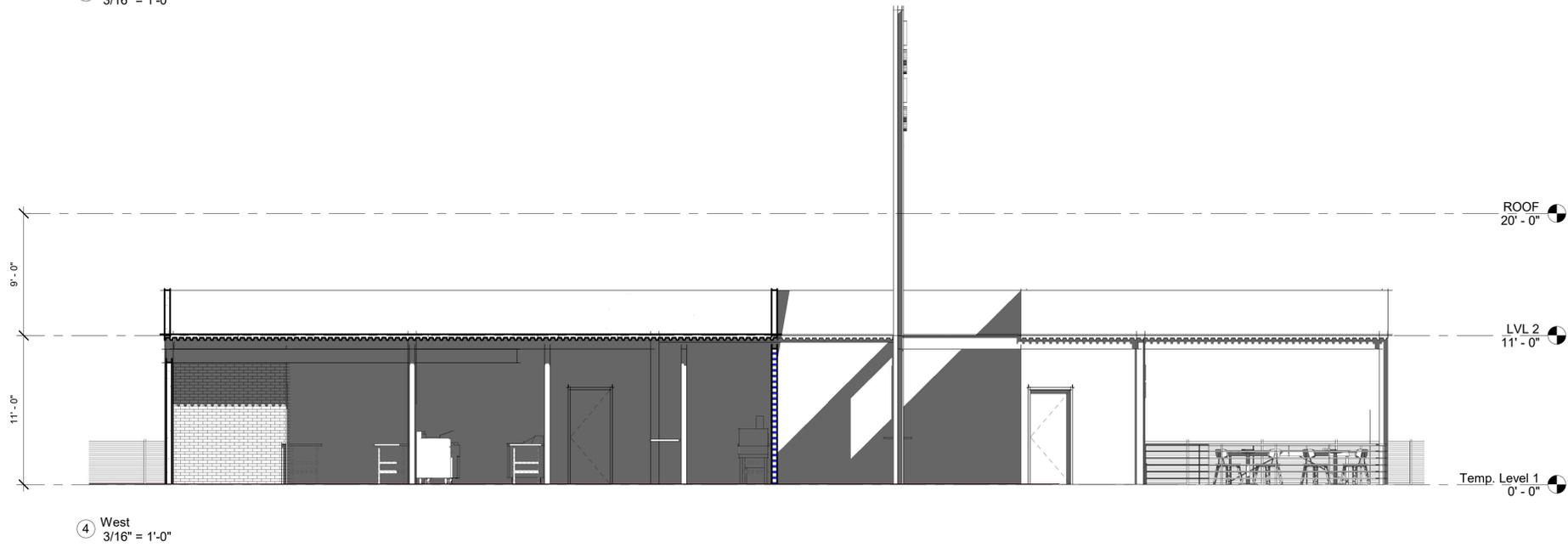
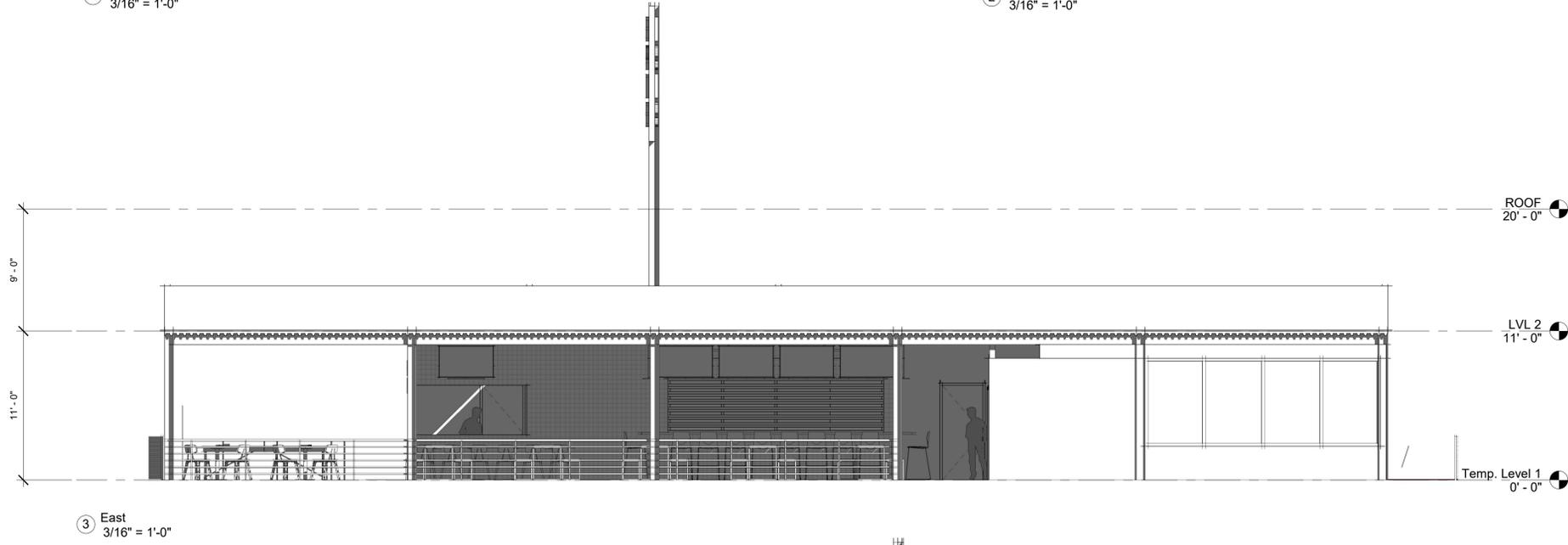
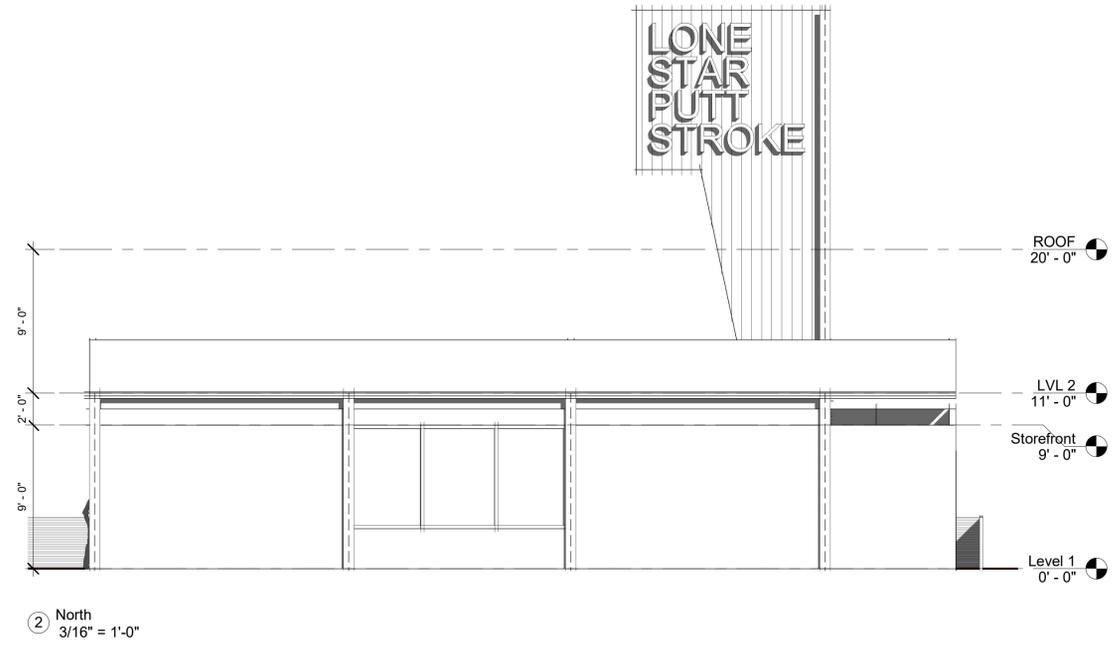
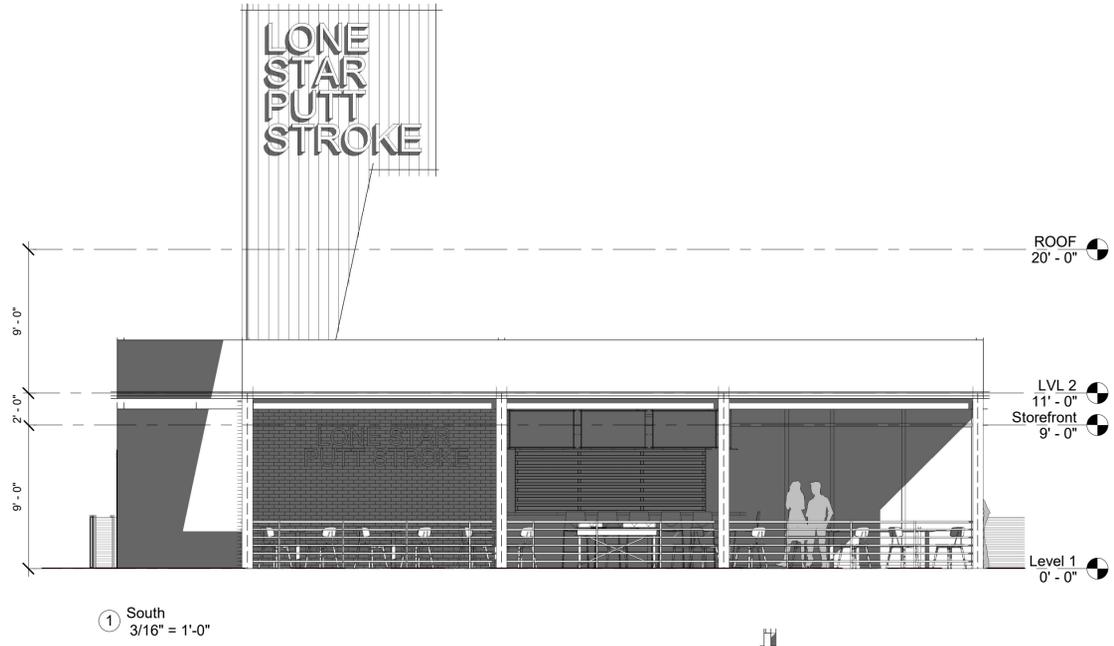
PROJECT #	DATE
	10.4.25
REVISIONS	

SHEET TITLE  
**MINI GOLF COURSE PLAN**

SHEET NUMBER

**A1.2**

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<b>LONE STAR S- MINI GOLF</b>	
1510 Hawkins Blvd, El Paso, TX	
PROJECT #	DATE
	10.4.25
REVISIONS	
SHEET TITLE	
<b>EXTERIOR ELEVATIONS</b>	
SHEET NUMBER	
<b>A2.0</b>	

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① 3D View 2



② 3D View 3

**LONE STAR S- MINI  
GOLF**

1510 Hawkins Blvd, El Paso, TX

PROJECT #	DATE
	10.4.25

REVISIONS

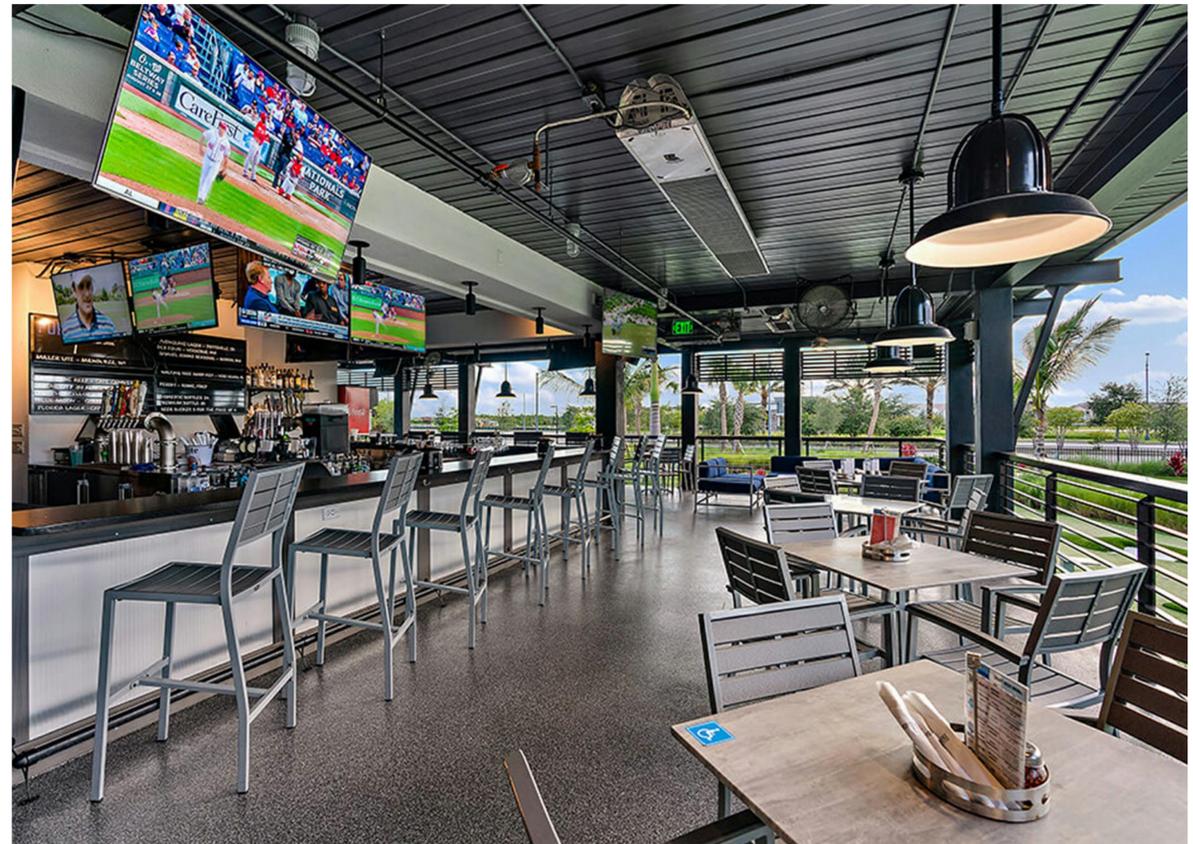
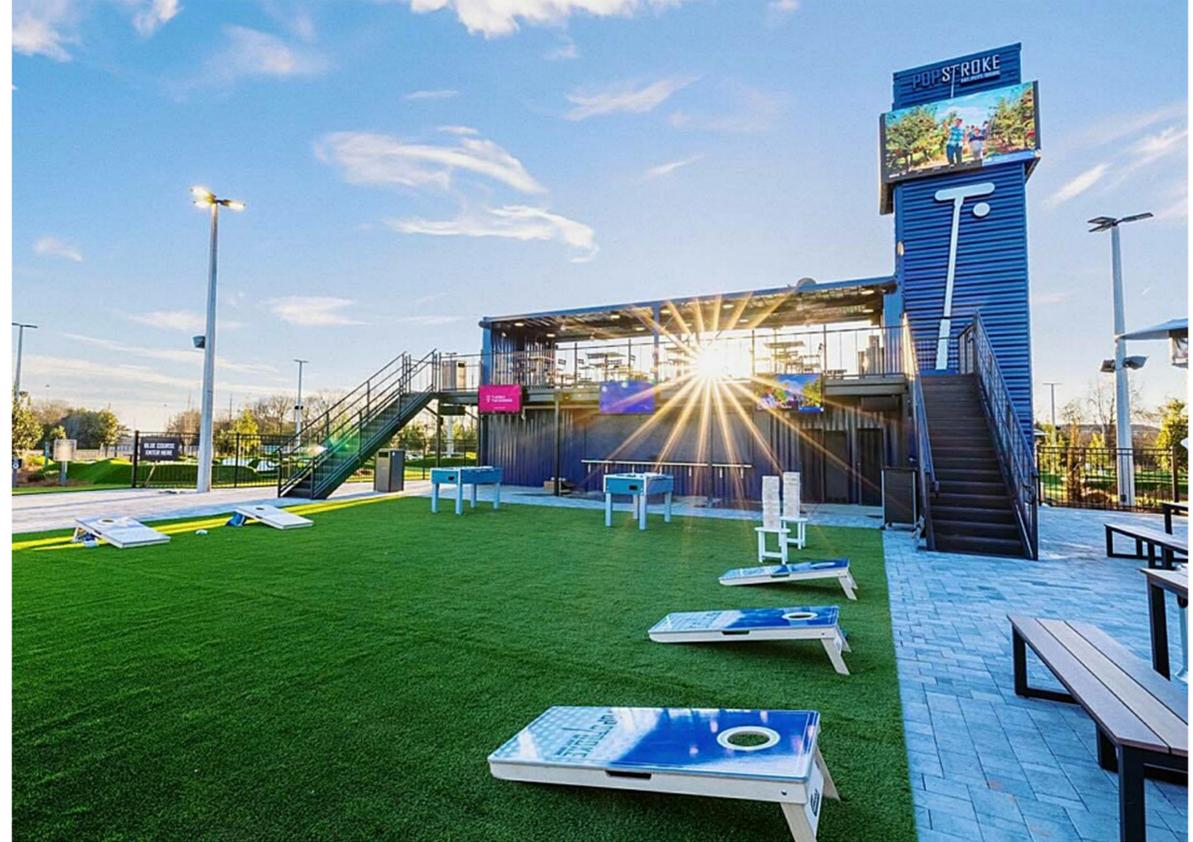
SHEET TITLE  
**3D VIEWS**

SHEET NUMBER

**A3.0**

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# COVERED BAR, GAMING AREA & PUTT GOLF



## LONE STAR S- MINI GOLF

1510 Hawkins Blvd, El Paso, TX

PROJECT #      DATE

10.4.25

REVISIONS

SHEET TITLE

**MOOD BOARDS**

SHEET NUMBER

**A4.0**

## **EXHIBIT D**

### **Lessor Improvements**

Replacement of the golf course irrigation system. The improvements consist of but not limited to:

- The full replacement of the existing irrigation system
- New Pumping System with filtration
- New wet well
- New Intake Structure

Estimated value of the improvements \$3,468,742.39

## EXHIBIT E

### Concessionaire Scope of Services

The Parties agree that Concessionaire shall be responsible for the operation of the Leased Premises and facilities thereon during the Term, which responsibilities shall include, but not be limited to, the scope of services set forth in this Exhibit E, unless otherwise agreed to in writing by Lessor. Notwithstanding the foregoing or any requirement in this Exhibit E, in the event this Exhibit E conflicts with any provision of the body of the Agreement itself, the provision of the body of the Agreement shall control unless otherwise mutually agreed to in writing by the Parties.

#### 1. **General Service Obligations.**

(a) Operate its business on the Leased Premises with due diligence and efficiency so as to produce a maximum return to Concessionaire and to Lessor under the terms of this Agreement;

(b) Offer and dispense foods and beverages of high quality which are safe, free of adulteration, sanitary, and properly labeled and advertised;

(c) Monitor of all activities on the Golf Course to ensure compliance with the rules and regulations adopted by Concessionaire governing golf play;

(d) Manage and facilitate the scheduling and reservation of tee times and golf lessons;

(e) Maintain a commercially reasonable inventory of golf clothing, equipment, supplies, and other merchandise to be sold from the pro shop on the Leased Premises;

(f) Manage and facilitate the rental to the public of both powered and manual (pull) golf carts at the Golf Course and be responsible for the maintenance, repair, and replacement of such golf carts;

(g) Manage and facilitate the rental to the public of golf equipment, specifically golf clubs and bags, at the Golf Course and be responsible for the maintenance, repair, and replacement of such golf equipment;

(h) Operate the driving range at the Golf Course and provide the services related thereto; and

2. **Hours of Operations.** During the Term, Concessionaire shall keep commercially reasonable business hours for the Golf Course, restaurant, club house, pro shop, and other facilities on the Leased Premises in accordance with the requirements herein:

(a) Food and Beverage. Concessionaire shall operate food and non-alcoholic beverage service during such times as are necessary to provide an adequate level of service for the public and Golf Course employees, seven (7) days per week, or as may be determined by Lessor and Concessionaire from time to time. This provision shall not be interpreted, however, to require that all facilities be operated for the same number of hours. Alcoholic beverages shall be sold

during the same hours during which other food and beverage services are available, unless otherwise prohibited by law.

(b) Golf Course Facilities. The Golf Course, including the driving range and pro shop, shall be open for business year-round during commercially reasonable hours.

3. **Offerings and Pricing**. Concessionaire shall establish commercially competitive pricing for all services and offerings contemplated under this Agreement, including reasonable discounts, annual memberships, promotional events and items as is common in the industry. Concessionaire is expressly prohibited from allowing any use of the golf course facilities without receiving the required posted fees (no “free-play”) with the following exceptions: (1) Employees of the Concessionaire, (2) promotional events for the El Paso International Airport, (3) promotional events directly related to air travel provided such are expressly allowed in writing by the Airport Director (4) promotional days approved in writing by the airport director aimed at increasing membership. **Personnel**. Throughout the Term, Concessionaire shall employ and maintain qualified personnel in the quantity and quality required to assure a high standard of service to the public and to operate the Golf Course, food and beverage facilities, pro shop, club house, and all other facilities on the Leased Premises in an efficient, prompt, and courteous manner, subject to the requirements herein.

(a) Concessionaire shall ensure all such personnel, while on or about the Leased Premises, shall be clean, neat in appearance, courteous, and appropriately attired at all times.

(b) Neither Concessionaire nor any personnel employed by Concessionaire while on or about the Leased Premises shall be permitted to use improper language, act in a loud, boisterous, or otherwise improper manner or be permitted to solicit business in an inappropriate manner.

(c) Concessionaire shall manage and monitor personnel to ensure the maintenance of the standard of service to the public as required under Section 5.2 herein. Concessionaire shall take all proper steps Concessionaire deems necessary to discipline, transfer, or terminate employees, as appropriate, who participate in acts of misconduct on the Leased Premises.

(d) Concessionaire shall employ and train all employees in their duties and obligations to patrons of the facilities so that they are aware of and practice the customary standards of courtesy, service, and cleanliness. All such employees shall be required to comply with all Applicable Law and Concessionaire’s rules and regulations established for the conduct of activities of the Golf Course. All employees engaged in the handling, processing, or preparation of food shall be required to wear clean, reasonably attractive clothing.

(e) *No City Employment*. In no event shall Concessionaire, Concessionaire Parties, or any personnel hired or retained thereby be construed as being employed by or an employee of Lessor.

4. **Cash and Record Handling Requirements.**

(a) Concessionaire’s cash and record handling systems shall be incorporated in its written policy, rules, and regulations covering accounting and handling of all transactions of

merchandise and services, which policy, rules, and regulations shall be available for review by Lessor.

(b) Lessor retains the right to monitor and test any and all of Concessionaire's services on the Leased Premises either through Lessor's own representatives or through a qualified shopping service at any time during the Term, without notice to Concessionaire.

(c) Where customer sales have not been recorded due to failure by Concessionaire to properly account for sales, Concessionaire shall pay Lessor the amount which would have been due Lessor from such sales including interest thereon. Lessor shall have the right to make, through a qualified shopping service, a reasonable estimate of such losses, when they can be reasonably estimated.

## **EXHIBIT F**

### **Concessionaire Maintenance and Repair Obligations**

Except as specially provided in Section 6.1 of the Agreement, the Parties agree that Concessionaire shall be responsible for all maintenance and repair obligations on the Leased Premises during the Term, which shall include, but not be limited to, the duties set forth in this **Exhibit F**, unless otherwise agreed to in writing by Lessor. Notwithstanding the foregoing or any requirement in this **Exhibit F**, in the event this **Exhibit F** conflicts with any provision of the body of the Agreement itself, the provision of the body of the Agreement shall control unless otherwise mutually agreed to in writing by the Parties.

1. **FF&E and Personal Property.** Concessionaire, at its sole cost and expense, shall maintain all FF&E and all other personal property on the Leased Premises in a good and workmanlike condition, and will replace the same as Concessionaire deems necessary or as reasonably requested by Lessor. The Parties have caused to be prepared a mutual inventory of said FF&E and agree that the condition of each item as of the Effective Date is stated in **Exhibit B- 1** and **Exhibit B-2** attached hereto.

2. **Buildings, Fixtures, and Improvements.** Concessionaire, at its sole cost and expense, shall be responsible for the general maintenance and repair of the Leased Premises and the buildings, fixtures, and improvements thereon, which obligations shall include, but are not limited to, the following:

(a) Maintain all buildings, fixtures, and improvements on the Leased Premises and every part thereof, including, but not limited to, the club house, lake, irrigation system, parking facilities, water well and related pumps, in good appearance and repair and in safe and working condition;

(b) Provide custodial services for the Leased Premises in a prompt and timely manner as required to keep the Leased Premises and the facilities thereon clean, neat, wholesome, and attractive;

(c) Be responsible for the prompt, timely, and orderly repair and/or replacement of damaged, unsightly, or nonfunctional fixtures and improvements on the Leased Premises, except to the extent such damage is caused by the gross negligence or willful misconduct of Lessor;

(d) Be responsible for making the necessary repairs to and/or replacements of the irrigation system water well and related pumps;

(e) Obtain the prior written approval of Lessor's Director of Aviation for external building paint colors; and

(f) Repair of all damages to buildings on the Leased Premises caused by Concessionaire or Concessionaire Parties or by its operation of the Golf Course, except as otherwise specifically provided in this Agreement.

3. **Trash and Garbage.** Concessionaire, at its sole cost and expense, shall provide and secure a complete and proper arrangement for the adequate sanitary handling of all trash, garbage, and other refuse resulting from Concessionaire's use of and operations on the Leased Premises and shall provide for its timely removal off the Leased Property in accordance with the requirements of this Agreement and Applicable Law. Concessionaire shall provide and use suitable covered receptacles for all garbage, trash, and other refuse on or in connection with the Leased Premises. Concessionaire shall not cause or permit the piling of garbage, trash, refuse, boxes, cartons, barrels, or other similar items in or in view of a public area of the Leased Premises. Concessionaire shall be responsible for the proper disposal of its refuse in a manner as to not contaminate or restrict sewer lines and shall be in accordance with Applicable Law, including those of governing local, state, and federal public health and environmental entities.

4. **Golf Course.** Concessionaire shall maintain the turf, greens, tees and aprons, sand traps, and fairways and roughs of the Golf Course as follows:

(a) Turf. During the Term, Concessionaire shall engage a turf expert familiar with the soil and climatic conditions of the region in which the Golf Course is located. On a reasonably ongoing basis, Concessionaire shall cause such expert to analyze the then-present conditions at the Golf Course and make recommendations to Concessionaire for improving and/or maintaining the Golf Course at a standard of that equal to or better than similarly located municipal golf courses. Concessionaire shall use commercially reasonable efforts to implement such recommendations at its sole cost and expense. Leased Premises shall be maintained in a condition equal to or better than similarly located municipal golf courses and in no event shall Concessionaire allow the Leased Premises to fall below its condition existing as of the Effective Date.

(b) Greens. Concessionaire shall maintain the greens of the Golf Course as follows:

(i) Institute programs to eliminate weeds which may be present in the greens, including but not limited to *Poa Annua*;

(ii) Reduce compaction in the greens and the aprons surrounding the greens through airifying and topdressing;

(iii) Institute and maintain an efficient and effective watering program;

(iv) Mow the greens on a regular basis and as required by seasonal growing, and develop schedule of brushing and crisscross mowing so as to eliminate the grain in the greens;

(v) Develop and implement a schedule of moving the cups on the greens so as to provide even wear and tear and optimum playing conditions;

(vi) Implement an annual chemical and fertilizing program as recommended by Concessionaire's turf expert, pursuant to an analysis of the Golf Course; and

(vii) Apply the procedures above to the practice greens.

(c) Tees and Aprons. Concessionaire shall maintain the tees and aprons of the Golf Course as follows:

- (i) Institute programs to eliminate weeds which may be present, including but not limited to Poa Annua;
- (ii) Institute and maintain an efficient and effective watering program;
- (iii) Mow the tees and aprons on a regular basis and as required by seasonal growing;
- (iv) Move the tee markers on a regular schedule so as to provide even wear and tear and optimum playing conditions;
- (v) Implement an annual chemical and fertilizing program as recommended by Concessionaire's turf expert, pursuant to an analysis of the Golf Course;
- (vi) Develop and institute an airifying and topdressing program to and simultaneously level the tees to prevent compaction, provide drainage, and keep tees level; and;
- (vii) Apply the procedures above to the tee area of the driving range;

(d) Sand Traps. Concessionaire shall maintain the aprons of the Golf Course as follows:

- (i) Add new sand on a regular basis as needed;
- (ii) Shovel and rake sand as required so that the depth remains even;
- (iii) Use sand pro tractor at least two (2) times per week as well as hand raking to smooth sand; and
- (iv) Edge sand traps on a regular basis and as needed to keep grass from growing over the sides.

(e) Fairways and Roughs. Concessionaire shall maintain the fairways and roughs of the Golf Course as follows:

- (i) Institute programs to eliminate weeds, including by applying chemicals on a regular basis and as needed;
- (ii) Fertilize according to a regular annual schedule.
- (iii) Airify compacted areas and overseed the base areas on a regular basis and as needed; and
- (iv) Mow fairways and roughs to maintain playability. Mowing shall be performed on regular basis as required by seasonal growing and play conditions.

## EXHIBIT G

### **Approval and Installation of Improvements**

1. **Proposal for Improvements.** Prior to making any substantial changes, alterations, modifications, improvements, or additions to the Leased Premises, Concessionaire shall first submit to the Director of Aviation a Proposal for Improvements detailing the nature of the proposed project, the estimated budget, and timeframe for completion, which the Director may approve or disapprove (in whole or in part) in its sole discretion within 60 days of receiving such proposal. If Director has not responded within the 60 days and the Proposal for Improvements are for improvements anticipated under this agreement, then Concessionaire may proceed with the improvements provided that concessionaire must still comply with all submittals as provided below. If the Director has not responded within 60 days of receiving the Proposal for Improvements and the proposal is not for improvements anticipated under this agreement, then the request will be treated as if disapproved by the Director in whole. ,.

2. **Design Development Drawings.** Within sixty (60) days following receipt by Concessionaire of the Director's written approval of the Proposal for Improvements, Concessionaire shall submit to Director for review its Design Development Drawings for such improvements. Within thirty (30) days of receipt of such Design Development Drawings, the Director may provide Concessionaire with any reasonable requests for technical or aesthetic changes.

3. **Submission of Plans and Specifications.** Upon the Director's written approval of the Design Development Drawings, Concessionaire shall prepare and submit Construction Documents to the Director for the completion of said improvements. Concessionaire shall prepare and submit such Construction Documents in accordance with the following requirements:

(a) All Construction Documents shall be prepared by registered engineers and architects, and shall require the prior written approval of the Director before any construction may begin.

(b) All improvements shall be planned and constructed in accordance with the laws and ordinances of the City of El Paso with all Applicable Laws, including applicable building codes.

(c) Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the budget and time required to complete same, shall be submitted to, and receive the written approval of, the Director before any work or construction may commence. First-Class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements.

(d) Three (3) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to the Director for review prior to commencement of construction; after final approval by the Director, the Director shall return to Concessionaire two (2) approved copies for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.

(e) All improvements shall meet the requirements of Lessor's architectural standards as such may be issued, modified, or amended by Lessor from time to time throughout

the Term. Concessionaire agrees to comply with such standards in effect as of the date of any construction it undertakes.

(f) Lessor's approval of the Construction Documents shall include a review of architectural and aesthetic matters. Lessor reserves the right to reject any layout or design proposal submitted and to require Concessionaire to resubmit any such layout or design proposal until it meets the Lessor's approval.

(g) Upon completion of any construction project, Concessionaire shall provide the Director with two (2) complete sets of as-built drawings in reproducible form as specified by the Director. Concessionaire agrees that, upon the request of the Director, Concessionaire will inspect the Leased Premises jointly with the Director to verify the as-built drawings.

(h) All improvements and FF&E, including the plans and specifications therefor, constructed or installed by Concessionaire or Concessionaire Parties shall conform in all respects to all Applicable Law, including, but not limited to, the Americans with Disabilities Act of 1990, as amended. Any approval given by the Director shall not constitute a representation or warranty as to such conformity, and responsibility and liability therefore shall at all times remain with Concessionaire. Concessionaire acknowledges that approval of any Construction Documents by the Director does not end Concessionaire's requirement to obtain approval from other City departments, or other Governmental Authorities.

4. **Completion of Improvements.** Upon receipt of the Director's written approval of the Construction Documents, Concessionaire shall commence the construction and completion of said improvements. Failure to complete such work in the time set forth in the approved Construction Drawings may be cause for the assessment of additional compensation as set forth herein or, in the case of persistent failure by Concessionaire to complete such work in the time specified shall constitute a material default of this Agreement and Lessor may terminate this Agreement in accordance with the provisions set forth in Article 9 herein unless:

(a) Lessor, by its action or inaction, is solely responsible for the delay of the completion of said improvements;

(b) Lessor grants a written extension of the completion date;

(c) Asbestos is discovered during Concessionaire's construction in that portion of the Leased Premises related to the approved Construction Documents, in which event Lessor shall, at its option, either reimburse Concessionaire for the costs of abatement or abate the asbestos with its own contractor. Any resultant delay shall extend the schedule set forth in said Construction Documents; or

(d) Completion is delayed by Force Majeure.

5. **Certified Construction Costs.** Within ninety (90) days after completion of the Club House Expansion, Concessionaire shall provide Lessor with a certified statement setting out the cost of the improvements. Said certified statement shall be itemized and include receipts of each item and shall be provided in a form acceptable to the Director. To the extent that the actual costs of construction for the Club House Expansion are less than \$478,000, the Concessionaire will pay the airport the difference between the actual costs of construction and \$478,000. Concessionaire will make the payment within 90 days after completion of the Club House.

## EXHIBIT H

### Required Federal Provisions

A Compliance with Nondiscrimination Provisions. During the performance of this Agreement, the CONCESSIONAIRE, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “CONCESSIONAIRE”) agrees as follows:

1. **Compliance with Regulations:** The CONCESSIONAIRE will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** The CONCESSIONAIRE, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONCESSIONAIRE will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the CONCESSIONAIRE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the CONCESSIONAIRE of the CONCESSIONAIRE’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** CONCESSIONAIRE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a CONCESSIONAIRE is in the exclusive possession of another who fails or refuses to furnish the information, the CONCESSIONAIRE will so certify to the CITY or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a CONCESSIONAIRE’s noncompliance with the nondiscrimination provisions of this contract, the

CITY will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to withholding payments to the CONCESSIONAIRE under the Agreement until the CONCESSIONAIRE complies, and/or cancelling, terminating, or suspending the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The CONCESSIONAIRE will include the provisions of paragraphs one through six of this Section (A) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The CONCESSIONAIRE will take action with respect to any contract or procurement as the CITY or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CONCESSIONAIRE becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the CONCESSIONAIRE may request the CITY to enter into any litigation to protect the interests of the CITY. In addition, CONCESSIONAIRE may request the United States to enter into the litigation to protect the interests of the United States.

B Real Property Acquired or Improved Under the Airport Improvement Program. The CONCESSIONAIRE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the CONCESSIONAIRE will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. The CONCESSIONAIRE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the CONCESSIONAIRE will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

D Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, the CONCESSIONAIRE, for itself, its assignees, and successors

in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27 (nondiscrimination on the Basis of Disability in Programs or Activities receiving Federal Financial Assistance);
- v. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 (2005)); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681, *et seq.*).

E General Civil Rights Provision. In all its activities within the scope of its airport program, the CONCESSIONAIRE agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

If the CONCESSIONAIRE transfers its obligation to another, the transferee is obligated in the same manner as the CONCESSIONAIRE. The above provision obligates the CONCESSIONAIRE for the period during which the property is owned, used or possessed by the CONCESSIONAIRE and the airport remains obligated to the Federal Aviation Administration.

F Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, CITY will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G Subcontracts. CONCESSIONAIRE agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which CONCESSIONAIRE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.