

CITY COUNCIL REPORT



Meeting Date: June 8, 2021
 General Plan Element: *Community and Economic Development*
 General Plan Goal: *Sustain Scottsdale as a tourist destination*

ACTION

TPC/PGA Tour Lease and Management Agreement Amendment Approval Adopt Resolution 12197 authorizing the Mayor to execute Contract No. 1985-060-COS-A7, the seventh amendment to the lease and management agreement between the City, Tournament Players Club of Scottsdale, Inc., and PGA Tour, Inc. to direct the operation of sportsbook wagering at the TPC golf facility.

BACKGROUND

On December 10, 1985, the City of Scottsdale (city) entered into a lease and management agreement 1985-060-COS with the Tournament Players Club of Scottsdale, Inc. (TPC) and the PGA Tour, Inc (Tour), for management of the operation of the city's TPC golf facilities, located on Bureau of Reclamation (BOR) land and city parcels north of the Central Arizona Project Canal and east of Scottsdale Road. These facilities provide a high-quality golf experience of Scottsdale residents and visitors. The TPC/Tour also annually host the Waste Management Phoenix Open, the Tour's largest annual golf event in terms of attendance, that draws visitors to Scottsdale from across the globe.

The term of the agreement is through 2035 with a 25-year option and is subject to the requirement of the Recreation Land Use Agreement 5-07-30-L0213 as amended, between the United States of American acting through the Bureau of Reclamation and the city. The term is not modified by this seventh amendment.

As a result of recent Arizona State legislation (House Bill 2772), the TPC/Tour is requesting to add a sports book facility at the current TPC location. A new facility at the city's stadium course clubhouse parcel will be constructed. This addition will provide individuals the ability to place wagers on sports events and will include new dining facilities. Revenues from this contract will be received into the existing Tournament Players Club account.

The seventh amendment includes the following key provisions:

- TPC/Tour will construct a retail sportsbook addition and associated parking improvements at the city's stadium course clubhouse parcel. TPC/Tour commits to completion by December 31, 2023, but has a goal to complete before the Phoenix Open in 2023. The construction

commitment and goal are subject to commercially reasonable efforts. The construction deadline may be extended by one (1) year.

- TPC/Tour will make two (2) initial \$50,000 licensing fee payments to City -- one (1) on September 30, 2021 and one (1) at the time a certificate of occupancy is achieved for the retail sportsbook addition;
- TPC/Tour will make gaming income percentage payments to the city on a quarterly basis, starting at 2 percent and increasing over time to 3.5 percent and 5 percent;
- TPC/Tour will pay city an annual \$25,000 fee beginning on January 30, 2024 and by January 30th of each subsequent year;
- Sports event wagering will take place at the new retail sportsbook addition upon completion; and
- Temporary sports event wagering can also take place at the additional golf facility property located east of Hayden Road and south of Bell Road during the Phoenix Open event days.

STAFF RECOMMENDATION

Adopt Resolution No. 12197 authorizing the Mayor to execute Contract No. 1985-060-COS-A7, the seventh amendment to the lease and management agreement with the Tournament Players Club of Scottsdale, Inc., and PGA Tour, Inc. for the operation of a sportsbook at the TPC golf facility.

RESPONSIBLE DEPARTMENT(S)

Community Services division, Parks and Recreation department
Public Works division, Capital Project Management

STAFF CONTACT(S)

William B. Murphy, Assistant City Manager

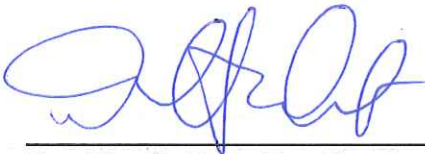
APPROVED BY



William B. Murphy, Assistant City Manager
480-312-7954, bmurphy@scottsdaleaz.gov

5/26/2021

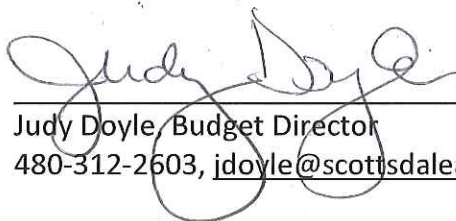
Date



Dan Worth, Executive Director Public Works
480-312-5555, daworth@scottsdaleaz.gov

5-26-21

Date



Judy Doyle, Budget Director
480-312-2603, jdoyle@scottsdaleaz.gov

5.25.21

Date

ATTACHMENTS

1. Resolution 12197
2. Contract 1985-060-COS-A7

RESOLUTION NO. 12197

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 1985-060-COS-A7, THE SEVENTH AMENDMENT TO LEASE AND MANAGEMENT AGREEMENT AMONG THE CITY, THE TOURNAMENT PLAYERS CLUB OF SCOTTSDALE, INC. AND PGA TOUR, INC. TO DIRECT THE OPERATION OF SPORTSBOOK WAGERING AT THE TPC GOLF FACILITY.

WHEREAS, the City of Scottsdale ("City") has rights in certain real property (the "Property") comprising the TPC Golf Course located at the northeast corner of the CAP Canal and Scottsdale Road in the City of Scottsdale, Maricopa County, Arizona;

WHEREAS, the City, Tournament Players Club of Scottsdale, Inc. ("Tenant"), and PGA Tour, Inc. ("Tour") are the original parties to that certain Lease and Management Agreement (Contract No. 850060) regarding the Property dated December 10, 1984, notice of which was recorded December 2, 1986 at document No. 86-664162 in the official records of Maricopa County Recorder's Office (the "Original Agreement");

WHEREAS, the Original Agreement has been amended on November 17, 1986, August 1987, June 6, 1988, December 4, 1995, July 6, 1999, and December 3, 2012 (collectively, the "Agreement");

WHEREAS, pursuant to House Bill 2772 passed in the first regular session of 2021, the Arizona State Legislature has authorized a limited number of event wagering licenses to permit event wagering to be operated by certain entities and in certain sports facilities, including a facility that hosts an annual golf tournament on the PGA Tour;

WHEREAS, the City, Tenant, and Tour desire to enter into the Seventh Amendment to Lease and Management Agreement, Contract No. 1985-060-COS-A7 ("Amendment"), to allow the Tenant and PGA to construct and operate a retail sportsbook for event wagering upon obtaining all applicable licenses and subject to the terms and conditions of the Amendment; to require the Tenant to pay the City to operate the retail sportsbook, including an escalating percentage of Gaming Income (as defined in the Amendment) starting at 2% and escalating to 5% starting on January 1, 2027, an initial licensing fee of \$100,000, and an annual fee of \$25,000 starting in January 2024; and to update other provisions in the Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The recitals above are hereby incorporated as if fully set forth herein.

Section 2. The City Council hereby authorizes, approves, and directs the Mayor to execute, on behalf of the City, Contract No. 1985-060-COS-A7, the Seventh Amendment to Lease and Management Agreement among the City, Tenant, and Tour.

Section 3. The City Council has considered the City expenditure authorized by this resolution, if any, and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure and that City will receive direct consideration substantially equal to its expenditure.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this ____ day of _____, 2021.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney

By: Kimberly Campbell, Senior Assistant City Attorney

SEVENTH AMENDMENT TO LEASE AND MANAGEMENT AGREEMENT

This SEVENTH AMENDMENT TO LEASE AND MANAGEMENT AGREEMENT (this "Amendment") is made June 8, 2021, by the City of Scottsdale, an Arizona municipal corporation ("City"), Tournament Players Club of Scottsdale, Inc., an Arizona corporation ("Tenant"), and PGA TOUR, Inc., a Maryland corporation ("TOUR").

RECITALS

A. City has rights in certain real property (the "Property") comprising the TPC Golf Course located at the northeast corner of the CAP Canal and Scottsdale Road in the City of Scottsdale, Maricopa County, Arizona.

B. City, Tenant and TOUR are the original parties to that certain Lease and Management Agreement (Contract No. 850060) regarding the Property dated December 10, 1984, notice of which was recorded December 2, 1986 at document No. 86-664162 in the official records of Maricopa County Recorder's Office, as amended November 17, 1986, August 1987, June 6, 1988, December 4, 1995, July 6, 1999 and December 3, 2012 (collectively, the "Agreement").

C. City, Tenant and TOUR desire to further amend the Agreement as set forth in this Amendment.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions**. Capitalized terms used in this Amendment but not defined in this Amendment have the meanings ascribed to them in the Agreement.

2. **Definitions in the Agreement**.

2.1 Section 1.1.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.1.2 "Annual Financial Statements" means the annual financial statements prepared by Tenant in accordance with generally accepted accounting principles consistently applied and certified by an independent certified accountant, and annual financial statements prepared on a cash receipts and disbursements basis showing the Golf Course Income, Sales Income, Gaming Income and Fee for Retail Sportsbook, for the preceding Fiscal Year.

2.2 Section 1.1 of the Agreement is hereby modified to add the following after Section 1.1.14:

1.1.14(a) "Gaming Income" means, with respect to each Fiscal Year, all revenues received by Tenant and/or TOUR from the Retail Sportsbook Operator from its acceptance of sports wagers placed through a wagering window, terminal, kiosk or other fixed or temporary apparatus at the Retail Sportsbook, including any variable, fixed or guaranteed amounts, but excluding any amount of sales tax or other taxes in connection therewith and excluding, for clarity, any revenues derived from wagers placed on mobile or other personal devices of persons at the Golf Facility.

2.3 Section 1.1.19 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.1.19 "Golf Facility" means the golf facility to be constructed on the Golf Course Land and Clubhouse Parcel as generally described in the Description of the Project. The term Golf Facility, as used herein, shall include, without limitation, the Golf Course Land, Golf Courses, Clubhouse Parcel, Clubhouse, Retail Sportsbook Addition, Parking Improvements, storage area, maintenance building, Clubhouse parking areas, drainage facilities, driving range and shed, electronic scoreboard foundations and wiring, communications wiring, practice green, pitching green, comfort station, rain shelters, landscaping, irrigation, access road, utilities (electricity, telephone, water and sewer), and Golf Facility FFE.

2.4 Section 1.1.23 of the Agreement, definition of "Net Operating Revenue," is hereby deleted in its entirety.

2.5 Section 1.1 of the Agreement is hereby modified to add the following after Section 1.1.31:

1.1.31(a) "Retail Sportsbook" means the portion of the Golf Facility designated by Tenant and/or TOUR for the placement of sports wagers through wagering windows, terminals, kiosks or other fixed or temporary apparatuses (and associated food and beverage operations and audio-visual experiences).

1.1.31(b) "Retail Sportsbook Operator" means the third-party operator of the Retail Sportsbook selected by Tenant and TOUR.

2.6 Section 1.1.43 of the Agreement is hereby deleted in its entirety and replaced with the following, and Exhibit "A-1" is hereby deleted along with corresponding references to Exhibit "A-1":

1.1.43 "Use Agreement" means the Recreational Land Use Agreement between the Bureau of Reclamation and City of Scottsdale, BOR Contract No. 5-07-30-L0213, City of Scottsdale Contract No. 1986-299-COS, as amended as follows, copies of which are on file with the Scottsdale City Clerk:

<u>DOCUMENT</u>	<u>DATE (approximate)</u>
Original Agreement	June 10, 1985
Amendment No. 1	January 9, 1987
Amendment No. 1(a)	January 9, 1987
Amendment No. 2	January 9, 1987
Amendment No. 3	September 9, 1987
Amendment No. 4	February 4, 1988
Amendment No. 5	April 17, 1995
Amendment No. 6	November 3, 1998
Amendment No. 7	May 19, 2003
Amendment No. 8	May 8, 2007
Amendment No. 9	November 6, 2007

3. **Rent from Retail Sportsbook.** The Agreement is hereby modified to add the following after Section 2.3.2.2 (for clarity, as Rent under the Agreement):

2.3.3 The following percentages of the Gaming Income derived during each Fiscal Year during such periods:

2.3.3.1 For the period of June 8, 2021 through December 31, 2024, two percent (2%).

2.3.3.2 For the period of January 1, 2025 through December 31, 2026, three and 5/10 percent (3.5%).

2.3.3.3 From and after January 1, 2027, five percent (5%).

4. **Operating Expenses.** Section 2.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.5 Tenant shall pay Operating Expenses in connection with the operation of the Golf Facility. It is the intention of Tenant and City that Tenant shall bear the Operating Expenses and that in calculating Rent, Operating Expenses shall not be deducted from Golf

Course Income, Sales Income, Gaming Income, or Fee for Retail Sportsbook.

5. **Changes Related to Availability of Net Operating Revenue.** The Agreement is hereby modified to make the following changes to various sections related to the availability of Net Operating Revenue.

5.1 **Golf Facility FFE; Rolling Stock; Consumables.** Sections 4.1, 4.2, and 4.4 of the Agreement are hereby deleted in their entirety and replaced with the following, with Section 4.3 remaining unchanged:

4.1 As part of its construction of the Golf Facility, City shall provide all Golf Facility FFE required in connection with the operation of the Golf Facility as set forth in the Description of the Project and the Final Plans. Upon final completion of the total Golf Facility (including, without limitation, the Stadium Course, the Desert Course, the Clubhouses for each Course, maintenance facilities, on-course restrooms, pumping systems, drainage, parking lots, landscaping, desert revegetation, entry roads, cart paths, cart storage areas, practice facilities, on-course restrooms and utilities), Tenant shall, at its sole cost, repair and replace the Golf Facility FFE as and when Tenant deems necessary or desirable and maintain the Golf Facility in a first-class condition at least equal to that of the Tournament Players Club at Sawgrass.

4.2 City shall provide Tenant not less than six months prior to the Substantial Completion Date with a one-time subsidy of \$300,000.00 ("Rolling Stock Subsidy"), which shall be applied by the Tenant towards the Lease or purchase of the Rolling Stock, and Tenant shall provide the balance of the funds necessary to purchase or lease any and all Rolling Stock which the Tenant reasonably deems necessary to operate the Golf Course Facility as provided herein. As and when Tenant determines that such Rolling Stock should be replaced, Tenant shall pay the cost of replacing such Rolling Stock at its sole expense.

....

4.4 Tenant also shall provide, at its sole cost, all Consumables which Tenant deems necessary or desirable in order to commence operation of the Golf Facility, and Tenant shall, at its sole cost, replace such Consumables as and when Tenant deems necessary or advisable.

5.2 **Golf Facility Purchases.** Section 6.1.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

6.1.5 Purchases. To purchase, at its sole cost, all additional Golf Facility FFE and all Rolling Stock, Consumables and other materials necessary or desirable in Tenant's reasonable judgment for the operation or maintenance of the Golf Facility;

5.3 Capital Improvements. Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

7.1 Except as provided with respect to certain capital repairs and/or capital replacements (collectively the "City Capital Projects"), Tenant shall make all capital repairs and/or capital replacements to the Golf Facility at its sole expense.

6. Approval of Retail Sportsbook and Operator. Provided that Tenant and TOUR comply with state and local laws and all applicable licenses are obtained, City hereby (i) approves of the development, existence and operation of the Retail Sportsbook at the Golf Facility during the Term under the Agreement, subject to the requirements in the Agreement, and (ii) consents to Tenant and TOUR contracting with the Retail Sportsbook Operator for the operation of the Retail Sportsbook during the Term (which, for clarity, constitutes consent thereto for purposes of Section 19.2 of the Agreement).

7. Operation of the Retail Sportsbook.

7.1 The Agreement is hereby modified to delete the last sentence of Section 6.7.2.A and replace with the following:

The only public use City is required to permit on the Additional Property during the public use period as required by this Subsection are activities directly supporting the Phoenix Open, including such uses as parking, construction and operation of an exposition center or party tent, construction and operation of media facilities, construction and operation of concession operations, and operation of a temporary Retail Sportsbook location only during the times authorized in Section 6.8.2.

7.2 The Agreement is hereby modified to add a new Section 6.8, Operation of the Retail Sportsbook, as follows:

6.8 Operation of the Retail Sportsbook. City, Tenant and TOUR agree that Tenant may operate a Retail Sportsbook at the Golf Facility, provided that Tenant and TOUR comply with all applicable state and local laws and all applicable licenses are obtained and that it complies with the following conditions:

6.8.1 Fee for Retail Sportsbook. Tenant agrees to pay an initial licensing fee equal to \$100,000.00 to City, payable in two (2) equal payments of \$50,000.00, with the first payment due by September 30, 2021 and the second payment due upon receipt of the certificate of occupancy for the

Retail Sportsbook Addition. Additionally, Tenant agrees to pay City an annual fee of \$25,000.00 beginning on January 30, 2024 and by January 30 for each subsequent year of the Term to offset the City's administrative and operational expenses for the operation of the Retail Sportsbook. The initial licensing fee and the annual fees are collectively referred to in this Agreement as the "Fee for Retail Sportsbook." All Fees for Retail Sportsbook are deemed to be paid in advance for the calendar year during which payment is made. If the Retail Sportsbook permanently closes to the public, Tenant shall provide at least thirty (30) days' advance written notice to the City to the extent reasonably practicable and shall have no obligation to pay any further Fee for Retail Sportsbook.

6.8.2 Location of the Retail Sportsbook. The Retail Sportsbook shall be located as an addition to or within or adjacent to the Stadium Course Clubhouse and shall be located within the Clubhouse Parcel at such specific location selected by Tenant and TOUR, except as set forth below. Tenant and TOUR may locate a temporary location of the Retail Sportsbook at the portion of the Additional Property (as defined in Section 6.7) that is south of Bell Road during the Phoenix Open event only (i.e., not the days preceding or following the Phoenix Open) pursuant to Section 6.7.2.A. Further, Tenant and TOUR may request permission from the City and the Bureau of Reclamation ("BOR") (when BOR land is being requested for use) to locate a temporary location of the Retail Sportsbook during the Phoenix Open event at a location of the Golf Facility other than the Clubhouse Parcel. The City representative designated to administer this Agreement is authorized to grant permission for this temporary use on behalf of the City, but such determination shall be at the City's and BOR's, as applicable, sole and absolute discretion. With the exception of individuals wagering on their mobile and other personal devices as authorized pursuant to the laws of the State of Arizona, Tenant and/or TOUR shall not license or authorize gambling at any location of the Golf Facility other than the Clubhouse Parcel, the Additional Property on the temporary basis as provided in this section, and any temporary location expressly authorized by the City and BOR, as applicable, as provided in this section.

6.8.3 Operation of Retail Sportsbook. Tenant agrees that the Golf Facility including the Stadium Course Clubhouse will continue to be operated primarily for athletic, recreational or entertainment activities, that the food and beverage area of the Retail Sportsbook must be open to the general public (subject to limitations imposed by applicable law, including age requirements) and that the Retail Sportsbook must close no later than 12:00 a.m. daily.

6.8.4 Security. Tenant shall provide, at its sole cost and expense, adequate security and surveillance for the Retail Sportsbook to ensure compliance with applicable laws, including without limitation age

requirements applicable to gambling, and to ensure the reasonable safety and well-being of patrons.

8. **Retail Sportsbook Addition Capital Improvement and Parking Improvements.**
The Agreement is hereby modified to add a new Section 7.3, Retail Sportsbook Addition Capital Improvement and Parking Improvements, as follows:

7.3 **Retail Sportsbook Addition Capital Improvement and Parking Improvements.** Tenant shall comply with the following requirements for the design and construction of the Retail Sportsbook addition to the Stadium Course Clubhouse ("Retail Sportsbook Addition") and for the design and construction of any parking improvements to serve the Golf Facility ("Parking Improvements"):

7.3.1 **Agreement Plans Approval Process.** Before proceeding with any construction of the Retail Sportsbook Addition or the Parking Improvements, Tenant shall first obtain written approval from the City representative designated to administer this Agreement of the written plans or any adjustments to those plans for the Retail Sportsbook Addition or the Parking Improvements, which approval may be withheld in the City's sole and absolute discretion. This approval is for the purposes of this Agreement only.

7.3.2 **Zoning and Other Regulatory Approval Processes.** The generally applicable zoning processes, building permit processes and similar regulatory requirements for the Retail Sportsbook Addition and the Parking Improvements are separate from the Agreement plans approval process under this Agreement. Tenant's satisfaction of any requirement of this Agreement does not count toward any compliance with any regulatory requirement. Tenant's satisfaction of any regulatory requirement does not count toward compliance with any requirement of this Agreement. Tenant must make all submittals and communications regarding the requirements of this Agreement through the City representative designated to administer this Agreement. Tenant must make all submittals and communications regarding building safety and other regulatory requirements through building safety or other applicable staff and not through the City representative designated to administer this Agreement. Prior to opening the Retail Sportsbook Addition Tenant shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Retail Sportsbook Addition or the Parking Improvements.

7.3.3 **Design and Construction Requirements.** The Retail Sportsbook Addition and the Parking Improvements shall comply with the following:

- (i) Tenant shall promptly submit to the City representative designated to administer this Agreement the plans and

permits regarding the Retail Sportsbook Addition and the Parking Improvements and any amendments to such plans or permits.

(ii) Once construction is commenced, Tenant shall use commercially reasonable efforts to pursue construction of the Retail Sportsbook Addition and the Parking Improvements to completion. Tenant shall complete the Retail Sportsbook Addition and Parking Improvements by December 31, 2023 ("Improvements Deadline"); provided that Tenant may extend the Improvements Deadline for one (1) year upon written notice to the City so long as Tenant continues to use commercially reasonable efforts to complete the Retail Sportsbook Addition and Parking Improvements. Notwithstanding the foregoing, Tenant's goal is to complete the construction of the Retail Sportsbook Addition and the Parking Improvements before the Phoenix Open in 2023. If Tenant does not complete the Retail Sportsbook Addition and Parking Improvements by the Improvements Deadline (as extended hereby), Tenant shall pay the City, within thirty (30) days of City providing an invoice, the City's estimated costs to restore the Clubhouse Parcel to its condition prior to the construction of the Retail Sportsbook Addition and Parking Improvement, provided that such amount shall not exceed \$500,000 in the aggregate. Upon completion of the restoration, the City shall compare the invoiced amount to actual costs incurred to restore the Clubhouse Parcel and refund to Tenant any amount Tenant paid above the actual costs or invoice Tenant for the costs the City incurred that exceeded the estimate, subject to the \$500,000 maximum, which Tenant shall pay within thirty (30) days of the date of invoice.

(iii) Tenant shall cause the Retail Sportsbook Addition and the Parking Improvements to be constructed or installed in a good, workmanlike and professional manner to the satisfaction of the City, in full compliance with all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of federal, state, county, city, local and regulatory authorities.

(iv) Tenant shall satisfy all City Code requirements for parking.

7.3.4 Cost of Retail Sportsbook Addition and Parking Improvements. The Retail Sportsbook Addition and the Parking Improvements shall be designed and constructed by Tenant at Tenant's or TOUR's sole cost and expense.

9. **Insurance.** The Agreement is hereby modified to delete Section 8, Insurance, and replace it with a new Section 8 as set forth in **Schedule 1**.

10. **Changes Related to Miscellaneous Provisions of Agreement**. The Agreement is hereby modified to make the following changes to the miscellaneous provisions of the Agreement.

10.1 Section 34 of the Agreement, Contract with Sudan and Iran, is hereby deleted and replaced with the following:

34. **Boycott of Israel**. Tenant and TOUR certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, boycott activities as proscribed by A.R.S. §§ 35-393 *et seq.*

10.2 A new Section 35, Conflict of Interest, is hereby added to the Agreement:

35. **Conflict of Interest**. Pursuant to A.R.S. § 38-511, the City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of any party is, at any time while this Agreement is in effect, an employee of one of the other parties in any capacity, or a consultant to one of the other parties with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice is received by the Tenant and TOUR, unless the notice specifies a later time.

10.3 A new Section 36, Government Property Lease Excise Tax, is hereby added to the Agreement:

36. **Government Property Lease Excise Tax**. The Golf Facility, including all improvements authorized by this Agreement, is intended to be used primarily for athletic, recreational and entertainment activities, so the parties do not believe or intend that ad valorem property tax, the governmental property lease excise tax or any other similar tax apply to this Agreement or to Tenant's rights hereunder. Nevertheless, Tenant shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time, if any, that are lawfully assessed against the Golf Facility or against the City or Tenant with respect to the Golf Facility. Pursuant to A.R.S. § 42-6206, failure by Tenant to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Tenant of any interest in or right of occupancy of the Golf Facility.

11. **Notice Addresses**. City and Tenant confirm the addresses for giving notices as stated in the Sixth Amendment to the Agreement (Contract No. 1985-060-COS-A6), except that the City's address is updated as follows, with the "copy to" address remaining the same:

Real Estate Management Specialist
City of Scottsdale
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

12. **Miscellaneous.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Electronic signatures have the same force and effect as original signatures. Except as expressly modified by this Amendment, the Agreement remains unmodified and in full force and effect and the same is hereby affirmed and ratified. This Amendment is governed by the laws of the State of Arizona, without regard to conflict of laws principles. The Agreement and this Amendment may be canceled by the City pursuant to A.R.S. § 38-511. There are no third-party beneficiaries to this Amendment. This Amendment shall not be recorded.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date written above.

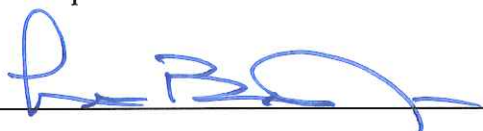
TENANT:

TOURNAMENT PLAYERS CLUB OF SCOTTSDALE, INC., an Arizona corporation

By: 
Name: James C. Triola
Title: President

TOUR:

PGA TOUR, INC.
a Maryland corporation

By: 
Name: Leonard Brown, Jr.
Title: CEO & EVP

[SIGNATURES CONTINUE ON NEXT PAGE]

CITY:

CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____

David D. Ortega, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney

By: Kimberly Campbell, Senior Assistant City Attorney

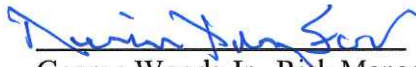
REVIEWED BY:



William B. Murphy, Assistant City Manager



Daniel J. Worth, Executive Director, Public Works



George Woods Jr., Risk Management Director

SCHEDULE 1

NEW SECTION 8, INSURANCE

8. Insurance.

8.1 Throughout the Term, Tenant shall, at its sole cost and expense obtain and maintain the following insurance:

8.1.1 Loss or Damage Insurance. Insurance against loss or damage by fire and other casualties, including vandalism and malicious mischief, within the meaning of "extended coverage" covering the Golf Facility in an amount sufficient to prevent Tenant from being a co-insurer under the terms of the applicable policy, but in any event not less than One Hundred percent (100%) of the full insurable value of the Golf Facility. The term "full insurable value" shall mean actual replacement value of the improvements comprising the Golf Facility excluding land, foundation and excavation costs.

8.1.2 Commercial General Liability (CGL) Insurance – Occurrence Form. Policy shall include bodily injury and property damage occurring upon, in or about the Golf Facility and broad form contractual liability coverage, with minimum limits as follows:

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$2,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

(i) The policy shall also include coverage for **Liquor Liability Insurance** as follows:

- General Aggregate \$2,000,000
- Each Occurrence \$1,000,000

(ii) The policy shall be endorsed, as required by this Agreement, to include the City of Scottsdale, and its departments, agencies, boards, commissions, officers, officials, agents and employees as additional insureds with respect to liability arising out of the activities or work performed by or on behalf of the Tenant.

(iii) The policy shall contain a waiver of subrogation endorsement, as required by this Agreement, in favor of the City of Scottsdale, and its departments, agencies, boards, commissions, officers, officials, agents and employees for losses arising from activities or work performed by or on behalf of the Tenant.

(iv) Policy must include coverage for **Assault and Battery** at limits consistent with each occurrence limit of the CGL policy.

8.1.3 Business Automobile Liability. Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement with the minimum limit as follows.

- Combined Single Limit (CSL) \$1,000,000

(i) Policy shall be endorsed to include Garagekeepers Coverage on a direct primary basis with the following limits and deductibles:

- Per Auto \$100,000
- Comprehensive - aggregate \$100,000
- Collision \$100,000

(ii) Policy shall be endorsed, as required by this Agreement, to include the City of Scottsdale, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities or work performed by, or on behalf of, the Tenant involving automobiles owned, hired and/or non-owned by the Tenant.

(iii) Policy shall contain a waiver of subrogation endorsement as required by this Agreement in favor of the City of Scottsdale, and its departments, agencies, boards, commissions, officers, officials, agents and employees for losses arising from activities or work performed by or on behalf of the Tenant.

8.1.4 Worker's Compensation and Employers' Liability Insurance. Worker's Compensation and Employers' Liability Insurance sufficient in all respects to insure all persons performing services in connection with the operation of the Golf Facility as follows:

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$1,000,000
 - Disease – Each Employee \$1,000,000
 - Disease – Policy Limit \$1,000,000

(i) Policy shall contain a waiver of subrogation endorsement, as required by this Agreement, in favor of the City of Scottsdale, and its departments, agencies, boards, commissions, officers, officials, agents and employees for losses arising from activities or work performed by or on behalf of the Tenant.

(ii) This requirement shall not apply to the Tenant or subcontractor that is exempt under A.R.S. § 23-901, and when such Tenant or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

8.1.5 Business Interruption Insurance. Business interruption insurance, insuring against losses incurred from the interruption of business at the Golf Facility for a period of not less than three (3) months.

8.1.6 Builders' Risk Insurance (Course of Construction). Tenant bears all responsibility for loss to all work being performed to design and construct any improvements it desires to make to the Golf Facility, for example, the Retail Sportsbook Addition and the Parking Improvements (collectively, "Work"), materials waiting to be installed, and to buildings under construction. Unless waived in writing by the City's Risk Management Director, Tenant shall purchase and maintain in force Builders' Risk insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form. The policy shall be endorsed to cover flood losses if the project is located in a High Hazard or Moderate Hazard Flood Zones. The policy limit shall be adequate to allow for replacement cost equal to the contract value and all subsequent modifications.

(i) Builders' Risk must name the City of Scottsdale, Tenant and all tiers of subcontractors as Insureds as respects their insurable interest at the time of loss. Subcontractors and subconsultants may provide separate coverage if they are able to provide the same level of coverage and coverage provisions with the City named as loss payee.

(ii) The insurance must contain a provision that this insurance will not be canceled or materially altered without at least 30 days' advance notice to the City. Tenant is also required to give the City 30 days' advance written notice of the coverage termination for this project.

(iii) Builders' Risk insurance must cover the entire Work including reasonable compensation for architects' and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk insurance must provide coverage from the time any covered property comes under Tenant's control and/or responsibility, and continue without interruption during course of construction, renovation and/or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition and construction upgrades as may be legally required by operation of any law, ordinance, regulation or code.

(iv) Tenant will be responsible for any and all deductibles under these policies, and Tenant for themselves and their insurer waives all rights of recovery and subrogation against the City for any claims or losses under the Tenant provided Builders' Risk and Installation Floater insurance described above.

(v) The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders' Risk insurance must be maintained until

whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

(vi) Tenant's Builders' Risk insurance must be primary and not contributory to any insurance carried by the City.

8.2 Additional Insurance Requirements. All policies required to be maintained under this Article 8 shall be written by companies of recognized standing qualified to do business in the State of Arizona and may be provided by a blanket policy covering the Golf Facility and other properties. Such policies shall contain waiver of subrogation clauses, and shall provide that they may not be cancelled without thirty (30) days' prior written notice to each insured. On the Commencement Date, Tenant shall furnish City with copies of the original policies or certificates of insurance, together with evidence of payment of the premiums therefor, and thereafter Tenant shall furnish City with evidence of the renewal of such policies and the payment of the premiums therefor not more than fifteen (15) days prior to the expiration date of such policies. The failure of Tenant to provide such evidence, whether or not objected to by City, shall not be deemed a waiver of Tenant's obligation to maintain the insurance required hereunder. City shall have the right to require higher minimum limits of coverage than those contained herein to the extent necessary to take into account the effects of inflation during the Term.

8.2.1 Additional Provisions/Endorsements. The policies shall include, or be endorsed to include, as required by this Agreement, the following provisions:

The Tenant's policies, as applicable, shall stipulate that the insurance afforded the Tenant shall be primary and that any insurance carried by the City of Scottsdale, its agents, officials, employees shall be excess and not contributory insurance.

Insurance provided by the Tenant shall not limit the Tenant's liability assumed under the indemnification provisions of this Agreement.

8.2.2 Notice of Cancellation. Applicable to all insurance policies required within the Insurance section of this Agreement, Tenant's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days' prior written notice to the City. Within two (2) business days of receipt, Tenant must provide notice to the City if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the City and shall be mailed, emailed, hand delivered or sent by facsimile transmission to the City representative designated to receive notices under this Agreement.

8.2.3 Subcontractors. Tenant shall be responsible for ensuring and/or verifying that all subcontractors have valid general liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate as evidenced by the certificates of insurance and endorsements for each subcontractor. The City reserves

the right to require, at any time throughout the life of the Agreement, proof from the Tenant that its subcontractors have the required coverage.

8.2.4 Restoration Work. All proceeds from the insurance coverage described in subsection 8.1.1 hereof shall be deposited in the Capital Improvement Fund and shall be applied in whole or in part to the restoration or replacement of the damaged or destroyed portions of the Golf Facility resulting in the payment of such insurance proceeds (the "Restoration Work"). Any insurance proceeds remaining after the completion of the Restoration Work shall be retained in the Capital Improvement Fund and disbursed in accordance with Article 7 hereof. All Restoration Work shall be performed in accordance with the provision of subsection 7.1.3 hereof.

8.3 Indemnification. To the fullest extent permitted by law, Tenant shall defend, indemnify, and hold harmless the City of Scottsdale, and its departments, agencies, boards, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Tenant or any of its owners, officers, directors, agents, employees, or subtenants. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Tenant to conform to any federal, City, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Tenant from and against any and all claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration entering into this Agreement, amended, Tenant agrees to waive all rights of subrogation against the City of Scottsdale, its officers, officials, agents, and employees for losses arising from the work performed by, or on behalf of, the Tenant.