

**FIRST AMENDMENT TO
AMENDED & RESTATED LEASE AGREEMENT
(MESA GOLF, INC.)**

This First Amendment to Amended & Restated Lease Agreement (this “First Amendment”) is made this ___ day of May, 2019 by and between the CITY OF MESA, an Arizona municipal corporation, hereinafter referred to as “LESSOR” and MESA GOLF, INC., an Arizona Corporation, hereinafter referred to as “LESSEE”. Lessor and Lessee may be referred to jointly as “Parties,” and each separately as a “Party.”

RECITALS

A. Lessor and Lessee entered into that certain Lease Agreement dated January 20, 1977 (the “Original Lease”) for the rental of 29.15 acres of real property located at 1415 S. Westwood, Mesa, AZ 85210, which is north of the U.S. 60 (“Superstition Freeway”) along South Extension Road (the “Premises”) on which Lessor was required to construct and maintain a detention basin for storm waters.

B. The Original Lease provided, among other things, that Lessee would maintain the detention basin and was granted permission to construct a golf course on the Premises.

C. The Original Lease was amended by that certain First Amendment, dated September 28, 1977 (the “Original First Amendment”), which extended the Term of the Original Lease until December 31, 2026 (the “Term”).

D. The Original Lease and Original First Amendment were combined together and restated by the Parties in that certain document entitled Lease Agreement, dated January 20, 1977, but executed by the Parties on March 29, 1978 (the “A&R Lease”). The A&R Lease is attached hereto as Exhibit “A”, which the Parties agree is the operative document controlling the agreements of the Parties, as amended by this First Amendment, which label is being used to avoid any confusion with the Original First Amendment. As the context requires, the phrase “Lease” or “A&R Lease” may refer to the same document as the context requires.

E. The A&R Lease is also subject to that certain License Agreement for Use of City of Mesa Parking Spaces, dated July 15, 2015.

F. The Parties desire to extend the term of A&R Lease for an additional 25 years, provide for additional obligations on the part of the Lessee, and allow additional uses to occur on the Premises, as set forth in more detail below.

AGREEMENTS

1. Recitals. The Recitals set forth above are incorporated herein and made a part hereof by this reference.

2. Successors, Assigns, and Sub-Lessees. This First Amendment is to be binding upon and inure to the benefit of the Parties to this First Amendment and to their respective heirs, successors, assigns and sub-lessees.

3. Renewal of Term. Section 3 of the A&R Lease is amended to provide for an additional renewal term of 25 years (i.e., until December 31, 2051) as follows:

Renewal of Term: Lessee shall have the right at its option to renew the Term of the Lease for an additional twenty-five (25) years beginning on January 1, 2027 until December 31, 2051; provided however, that at the time of the extension exercise and at the time of commencement of the additional period, Lessee is not in default under any term or provision hereof. Lessee shall exercise this extension by giving written notice to Lessor not less than one hundred twenty (120) days prior to the end of the then existing Lease term, which expires on December 31, 2026, and tendering the rental amount specified in Section 5 of the Lease. During any such renewal period, all the terms and provisions of the Lease, as amended, shall be applicable and shall remain in full force and effect.

4. Uses of Property. Section 4 of the A&R Lease is amended to allow additional sports (e.g., but not limited to, soccer) with other and ancillary sporting uses, to occur on the Premises as follows:

Notwithstanding anything to the contrary contained in the Lease, as amended, Lessee may also use the Premises for soccer and other athletic type uses that are not inconsistent with the primary use of the Premises as a detention basin. All such uses shall be sport related. Lessee may not use the Premises in any manner that materially and detrimentally affects the overall drainage capacity of the Premises as required by any law or regulation. Any changes to the Premises shall be constructed, operated, and maintained at Lessee's sole cost and expense.

5. Rental Rate of Premises. Section 5 of the A&R Lease is amended as follows:

5.1 Regular Rental Rate. Beginning on January 1, 2019 and continuing through the end of the Term of the Lease, Lessee shall pay Lessor the sum of \$1.00 per year (the "Rental Rate"), payable in one lump sum at the time of extension or on or before the 1st day of January of each year hereafter. The Rental Rate is contingent upon and subject to Lessee performing all of its maintenance and repair obligations on the Premises as described in Section 11 of the Lease and Section 6 of this First Amendment.

5.2 Additional Rental Rate. If Lessor were to assume the maintenance and repairs on the Premises as described in Section 11 of the Lease and in Section 6 of this First Amendment, it is anticipated that the Lessor currently would incur annual costs in the amount of \$275,000.00 for maintenance and repair of the Premises. Lessee acknowledges that the maintenance and repair costs for the Premises may increase at an undetermined amount during the Term of the Lease. If, at any time during the Term of the Lease, Lessee fails to perform all required maintenance or repair obligations, after receiving notice and an opportunity to cure, and Lessee is still in actual possession of the Premises, Lessee shall immediately pay, and continue to pay, an additional rental rate equal to ten percent (10%)

of the Lessor's then current annual cost to maintain and repair the Premises, for each and every month, or portion of a month, during which Lessee's maintenance and repair obligations on the Premises remain outstanding, which funds shall be solely used by Lessor for the maintenance and repair obligations of the Premises. For the avoidance of doubt, the foregoing obligation to pay Additional Rent for maintenance costs is meant to apply if Lessee (or its successor) is not properly maintaining the Premises while still occupying or controlling any portion of the Premises. Thus, if Lessee (or its successor) is not in actual physical possession or control of any portion of the Premises, or if Lessor has terminated this Lease (or has been deemed to have terminated this Lease), the foregoing obligation to pay Additional Rent shall not apply.

6. Improvements. Section 6 of the Lease is amended to reflect that any improvements to the Premises including installation of soccer fields, with associated lighting and other ancillary improvements, shall be allowed subject to the approval of the City, which approval will not be unreasonably withheld, conditioned or delayed. All improvements to the Premises made under this Section 6 shall be made at the sole cost of the Lessee.

7. Insurance. Section 8 of the A&R Lease is amended as follows:

8. Insurance.

8.1 Coverage Required. Upon the effective date of this First Amendment, Lessee shall procure and, at all times, maintain the following types and amounts of insurance for its operations at, and use of, the Premises:

8.1.1 General Liability Insurance. General Liability insurance with minimum coverage of \$3,000,000. The Lessor, its agents, officials, volunteers, officers, elected and appointed officials and employees shall be named as additional insureds.

8.1.2 Automobile Liability Insurance. Automobile Liability insurance for all owned, non-owned and hired vehicles in the amount of at least \$1,000,000 per occurrence.

8.1.3 Property Insurance. Lessee shall be responsible for carrying fire and extended risk insurance coverage for any and all structures and all permanent fixtures placed or erected on the Premises for the full replacement value thereof. Lessor shall be named as an additional insured on all property insurance policies. All personal property and fixtures belonging to Lessee and all persons claiming by or through Lessee which may be on the Premises shall be at Lessee's sole risk.

8.1.4 Workers' Compensation Insurance. Lessee shall maintain workers' compensation insurance to cover obligations imposed by federal and state statute.

8.2 Evidence and Requirements of For All Insurance Coverages. Upon the effective date of this First Amendment, Lessee shall provide the Lessor with a Certificate(s) of Insurance (using the appropriate ACORD certificate) signed by the Issuer with applicable

endorsements. Lessor reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating to the policies.

8.2.1 Lessee's insurance shall be primary of all other sources available. No policy shall expire, be cancelled or materially changed to affect the coverage available without advance written notice to the Lessor.

8.2.2 All insurance policies (whether or not required by this Lease) shall contain a waiver of subrogation in favor of the Lessor, and its agents, officials, volunteers, officers, elected and appointed officials and employees. Lessor and Lessee each hereby waive any and all rights of recovery against the other, or against the partners, officers, employees, agents, and representative or the other, for loss of or damage to such waiving party or its property or the property of the other under its control to the extent that such loss or damage is insured under any insurance policy in force at the time of such loss or damage, but only to the extent of such insurance coverage afforded; provided, however, any of Lessor's property insurance deductibles, or Lessor's self-insured retentions for workers compensation or public entity liability insurance program are not subject to this waiver.

8.2.3 All policies shall be from a company or companies rated A- or better and authorized to do business in the State of Arizona.

8.3 No Limits on Indemnification. The procuring of such policies of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this First Amendment to the Lease.

8.4 Insurance by Lessee. In the event Lessee shall fail to procure any insurance required hereunder, or Lessee allows it to lapse, Lessor may, upon written notice to Lessee, procure and maintain any or all of the insurance required of Lessee under this Section. In such event, all costs of such insurance procured and maintained by Lessor on behalf of Lessee shall be the responsibility of Lessee and shall be fully reimbursed to Lessor within ten (10) business days after Lessor advises Lessee of the cost thereof.

8. Maintenance and Repairs. Section 11 of the A&R Lease is amended as follows:

11. Maintenance and Repairs.

11.1 Lessee's Maintenance, Repairs, and Replacements. In addition to the obligations described in Section 11 of the Lease, Lessee shall, at its sole cost and expense, throughout the Term of this Lease, keep the Premises and all improvements therein in a neat and clean condition and in good order, condition and repair, and shall make and perform all maintenance and all necessary repairs and replacements thereto, structural and non-structural, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. Without limiting the foregoing, Lessee shall, at its sole cost and expense, throughout the Term of this Lease, take good care of, repair and maintain (and replace when necessary) all improvements, landscaping, HVAC improvements, plumbing and electrical improvements, fixtures, walls, ceilings, floor coverings, parking areas, landscape areas, asphalt, concrete, driveways, and pathways in or on the Premises.

All repairs made by Lessee shall be at least equal in quality and cost to the original work, shall be performed by licensed and bondable Arizona contractors, and shall be made in accordance with all laws, ordinances and regulations whether heretofore or hereafter enacted. Lessee's obligation to make repairs, and the use of the word "repairs" in this paragraph, includes all necessary replacements, renewals, alterations, additions and betterments, whether capital or non-capital in nature. The necessity for or adequacy of maintenance and repairs shall be measured by the standards which are appropriate for improvements of similar construction, age and class, provided that Lessee shall in any event make all repairs necessary to avoid any structural damage or other damage or injury to the Premises and all improvements therein. Lessee is required to maintain preventative maintenance records for all work performed on the Premises. These records will be provided to Lessor upon request.

11.2 Damage to Lessor's Property. Any improvements, or real or personal property of Lessor's damaged or destroyed by Lessee as a result of Lessee's use or occupancy of the Premises, ordinary wear and tear excepted, shall be promptly repaired or replaced by Lessee to the reasonable satisfaction of Lessor. In lieu of such repair or replacement, where required by the Lessor, Lessee shall pay to Lessor an amount sufficient to compensate for the loss.

11.3 Trash Removal. Lessee shall, at all times, keep the Premises in a neat, clean, safe, sanitary and orderly condition, and shall keep such area free of all trash and debris. Lessee shall, at Lessee's expense, be responsible for ensuring all trash is removed from the Premises on a regular basis and ensuring the Premises are free of any foul odors caused by Lessee's use of the Premises.

11.4 Pest Control. Lessee shall, at Lessee's expenses, at all times, be responsible for having the Premises sprayed on a regular basis to prevent the accumulation of mosquitos, roaches, ants, etc., on the Premises.

11.5 Inspection/Access to Premises. Lessor may enter the Premises at reasonable times during normal business hours and upon reasonable notice for any reasonable purpose including, but not limited to: inspecting the condition of the Premises, verify compliance with the terms and conditions of this Lease, perform maintenance or repairs not performed by Lessee under the terms and conditions of the Lease and this First Amendment, or the exercise of Lessor's governmental functions for such activities as fire protection or security; provided, however, that no notice will be required in any emergency situation as reasonably determined by Lessor.

11.6 Emergency Repairs. Within fifteen (15) days of the Effective Date, each Party shall provide to the other Party a list of names and telephone numbers for 24-hour emergency contact for the Premises.

9. Section 12 of the A&R Lease is amended to read as follows:

12. Assignments and Subleases. Neither Lessee nor its successors or assigns may assign this Lease or sublet the real property without first securing the consent of Lessor,

which consent shall not be unreasonably conditioned, delayed or withheld. It is not intended by this provision to limit the right of Lessee, its successors and assigns, to rent or Lease space on the Premises as may be necessary for carrying on the business of Lessee. Accordingly, and notwithstanding the foregoing, Lessee may sublease any portion of the Premises to an individual or group who uses the sporting facilities located on the Premises in a manner consistent with Lease. Lessee agrees, as a condition of any full and complete assignment or full and complete sublease of the Premises, that any assignee or sublessee must agree to execute any and all documents required by Lessor to comply with all terms of the A&R lease and all amendments (including this First Amendment) thereto.

10. Section 13 is amended to read as follows:

13. Lessee Default, Lessor Remedies.

13.1 Events of Default. Each of the following shall constitute a material default of this Lease by Lessee (an “Event of Default”):

13.1.1 The failure of Lessee to pay any Rent when due and any other amount due from Lessee under this Lease, provided that Lessee does not cure such failure within ten (10) business days after delivery by Lessor of a written notice of such failure; or

13.1.2 The failure of Lessee to perform any of its other obligations under this Lease, provided that Lessee does not cure such failure within thirty (30) calendar days after delivery by Lessor of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Lessor agrees, then the time to cure shall be extended so long as the cure is being diligently pursued; or

13.1.3 The filing of any mechanic’s, materialmen’s or other lien or of any kind against the Premises because of any act or omission of Lessee which lien is not discharged, by bonding or otherwise, within thirty (30) calendar days of receipt of actual notice thereof by Lessee; or

13.1.4 The taking of possession for a period of thirty (30) days or more of all or substantially all of the personal property used on or at the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or

13.1.5 The voluntary abandonment by Lessee of the Premises; provided however that the cessation of business operations upon the Premises shall not be considered an Event of Default under this Section 13.1; or

13.1.6 The failure of Lessee to maintain all insurance coverage required by Section 8 of the Lease (as amended by Section 7 of this First Amendment) and the failure to cure the same within thirty (30) days of notice from Lessor (and any cure must cover any lapsed or uncovered period of time); or

13.1.7 There shall occur the dissolution of Lessee or Lessee shall file a petition, or institute any proceeding under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), either as such Bankruptcy Code now exists or under any amendment thereof which may hereafter be enacted, or under any act or acts, state or federal, dealing with, or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt, or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby Lessee asks or seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of Lessee's debts, or for any other similar relief, or any involuntary petition in bankruptcy is filed against Lessee and the same is not stayed or discharged within ninety (90) days from such filing or any other petition or any other proceedings of the foregoing or similar kind or character is filed or instituted or taken against Lessee, or a receiver of the business or of the property or assets of Lessee shall be appointed by any court except one appointed at the instance or request of Lessor, or Lessee shall make a general assignment for the benefit of Lessee's creditors.

13.2 Lessor's Remedies. Upon the occurrence of an Event of Default under this Lease, Lessor may, without prejudice to any other rights and remedies available to a Lessor at law, or in equity, exercise one or more of the following remedies, all of which shall be construed and held to be cumulative and non-exclusive:

13.2.1 Terminate this Lease and re-enter without notice, terminate Lessee's right to possession of the Premises, and take possession of the Premises and take possession of or remove any personal property or fixtures therein; or

13.2.2 With or without such re-entry, terminate Lessee's right to possession and recover possession of the Premises and demand Premises Rent in the manner prescribed by any statute.

13.3 Lessor's Costs to Re-Lease. Lessor is authorized to make reasonable repairs to the Premises and other improvements located thereon, recognizing normal wear and tear, as may be necessary for the purpose of attempting to re-let the Premises for the use(s) set forth in this First Amendment, subject to Lessee's rights under Section 6 of this Lease to remove nonpermanent buildings and structures. The costs and expenses incurred by Lessor for such reasonable repairs, shall be limited to a maximum of \$22,500.00, which shall be paid by Lessee to Lessor within ten (10) business days after receipt of Lessor's statement therefor.

13.4 Lessor's Damages Relating to Premises Rent. Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of the Event of Default, which are allowable under applicable law.

13.5 Lessor May Perform Lessee's Obligations, Interest on Amounts Owing. In the Event of a Default, Lessor may (but shall not be obligated to) cure such default (e.g., make payments or perform or comply with such obligations) and all amounts paid or expended by Lessor to cure such default shall become an additional obligation of Lessee to Lessor,

which amounts Lessee agrees to pay within ten (10) business days of invoice to Lessee. If Lessee fails to pay any amount owing under this Lease on or before the due date, Lessee shall be responsible for interest on the unpaid amount at the rate of twelve (12%) per annum from the due date until payment in full is made.

13.6 Content of Default Notice. Any default notice tendered to Lessee hereunder shall be deemed to be sufficient if it is reasonably calculated to put Lessee on inquiry as to the nature and extent of such default.

11. A new Section 20 is created to read as follows:

20. Indemnity.

20.1 Indemnity.

20.1.1 Lessor will pay, defend, protect, indemnify and hold harmless individually and collectively Lessor and its officials, elected and appointed officials, employees, volunteers, and agents (collectively, the “Indemnified Persons”), for, from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees and costs), causes of action (whether in contract, tort, or otherwise), suits, claims, demands, and judgments of every kind, character and nature whatsoever (collectively, the “Liabilities”) directly or indirectly arising from or relating to Lessee’s performance under this Lease, or due to Lessee’s, or its officers’, directors’, employees’, agents’, contractors’ or invitees’ or its sub-lessees’ occupancy of, use of, or activities or operations on, the Premises, including, but not limited to, the following: (i) any liability directly or indirectly arising out of or connected with the use, non-use, condition or occupancy of the Premises or any part thereof or any improvement thereon, or any accident, injury to or death of any person or damage to property in or upon the Premises, during the Term of this Lease; or (ii) any violation due to Lessee, or its officers, directors, employees, agents, contractors or invitees or its sublessees of any law, ordinance, or regulation affecting the Premises or any part thereof or the ownership, occupancy or use thereof during the Term of this Lease; provided, however, that nothing in this Section 20.1.1 shall be deemed to provide indemnification to an Indemnified Person, with respect to Liabilities arising from the fraud, gross negligence or willful misconduct of such Indemnified Person.

20.1.2 After service of a legal action to an Indemnified Person for which Lessee’s indemnification obligations would apply, such served Indemnified Person shall notify Lessee in writing of the commencement thereof; provided that the failure to give such notice shall not result in the loss of rights to indemnity hereunder, except that the liability of Lessee shall be reduced by the amount of any loss, damage or expense incurred by Lessee as the result of such failure to give notice. Lessee may, or if so requested by the Indemnified Person shall, participate therein and assume the defenses thereof, with counsel reasonably satisfactory to such Indemnified Person and Lessee. If Lessee shall, after notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Person, the

Indemnified Person shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matters on behalf of, for the account of, and at the risk of, Lessee, and Lessee shall be responsible for the reasonable fees, costs, and expenses, (including reasonable attorneys' fees and costs) of the Indemnified Person in conducting its defense.

20.1.3 The indemnification provisions in this Section shall not be exclusive or in limitation of, but shall be in addition to, the rights to indemnification of the Indemnified Persons under any applicable law.

20.1.4 The obligations of Lessee under this Section entitled "Indemnity" shall survive any assignment or termination of this Lease.

12. A&R Lease Ratified. As amended hereby, the A&R Lease, attached hereto as Exhibit "A", is in full force and effect and hereby ratified.

13. Conflicting Terms. In the event of any conflict between the terms of this First Amendment and the A&R Lease, as it existed prior to this First Amendment, the terms of this First Amendment shall control.

14. Capitalized Terms. Any capitalized term used herein but not defined herein shall have the meaning therefor specified in the A&R Lease.

15. Counterparts and PDF Signatures. This First Amendment may be executed in counterparts and it is the intention of the Parties hereto that any executed counterpart shall constitute the agreement of the Parties and that all of the counterparts shall together constitute one and the same agreement of the Parties. Any facsimile or electronic PDF transmittal of original signature versions of this First Amendment shall be considered to have the same legal effect as execution and delivery of the original document and shall be treated in all manner and respects as the original document.

[Signatures of the Parties Appear on the Following Page]

IN WITNESS WHEREOF, Lessor and Lessee have executed this First Amendment as of the date first above written.

LESSOR:

CITY OF MESA,
an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

LESSEE:

MESA GOLF, INC.,
an Arizona Corporation

By: _____

Name: _____

Its: _____

Approved as to form

Alfred J. Smith
Deputy City Attorney

EXHIBIT "A"
(Copy of A&R Lease)

[Attached]

LEASE AGREEMENT
(MESA GOLF, INC.)

This Lease Agreement, originally made and entered into the 20th day of January, 1977, by and between the CITY OF MESA, a municipal corporation, hereinafter referred to as "LESSOR" and MESA GOLF, INC., an Arizona Corporation, hereinafter referred to as "LESSEE":

W I T N E S S E T H ::

Whereas, Lessor owns certain real property north of the Superstition Freeway along South Extension Road on which Lessor is required to construct and maintain a detention basin for storm waters; and

Whereas, the maintenance of the real property as a detention basin requires landscaping, other improvements and continuing maintenance which would cause Lessor to incur a substantial initial cost and continuing substantial initial cost and continuing substantial annual costs for which Lessor has no readily available funds; and

Whereas, Lessee has proposed to Lessor that in consideration of the terms and conditions hereinafter set forth, it is willing, at Lessee's cost and expense, to discharge Lessor's obligation by improving and maintaining the real property as a commercial recreation facility with a golf course, driving range, putting course and related improvements and facilities; and

Whereas, the proposal of Lessee is compatible with the primary use of the property as a detention basin for storm waters, and Lessee is willing to assume the risk of loss or damage to the improvements and facilities installed by Lessee, together with the obligation to restore and repair said improvements and facilities, if and when such loss or damage occurs, without any liability or obligation of Lessor to restore or replace such improvements and facilities; and

Whereas, it is not practicable for Lessee to insure the risk of loss or damage which would depend on the number of storms and the amount of water resulting therefrom; and

Whereas, Lessee's proposal, in addition to relieving the Lessor of the responsibility of making and maintaining certain improvements to the real property and of the risk of loss or damage thereto, Lessee's proposal would benefit the public by providing certain recreational facilities which would otherwise be unavailable; and

Whereas, the uses to which the real property may be put are limited by its primary use for a detention basin for storm waters; and

Whereas, Lessor has no available funds, under present circumstances, to construct, maintain, and operate any recreational facility under its Parks Department and the City Manager, City Finance Director, and City Parks Director have recommended to the City Council that Lessee's proposal be accepted; and

Whereas, the City Council has considered Lessee's proposal and the recommendations above described, and has found that the obligations of Lessee herein provided and the benefits to Lessor herein described, constitute a fair rental for the real property and is fair, equitable, and reasonable to both Lessor and Lessee; and

Now therefore, in consideration of the mutual promises and conditions of the parties herein contained, it is agreed as follows:

1. PROPERTY: That Lessor does hereby lease and demise unto Lessee, and Lessee does hereby lease and take from Lessor, the following described real property, to-wit:

Beginning at the center of Section 33, Township One North, Range Five East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; thence North $00^{\circ}20'33''$ East 600 feet along the East line of the Northwest Quarter of

said Section 35 to the True Point of Beginning; thence continuing North $00^{\circ}20'33''$ East along said East line 590 feet; thence South $89^{\circ}07'40''$ West 1286.63 feet; thence Southerly along a circular curve to the Right which has a central angle of $36^{\circ}51'05''$, a radius of 480.00 feet and radius point that bears North $89^{\circ}19'32''$ West from the beginning of curve, a distance of 308.73 feet; thence South $0^{\circ}20'32''$ West a distance of 626.80 feet to a point in the North line of Freeway right-of-way; thence along North line of Freeway right-of-way South $84^{\circ}35'56''$ East a distance of 209.97 feet; thence North $89^{\circ}07'40''$ East 1095 feet; thence North $06^{\circ}55'30''$ East 348.94 feet; thence North $89^{\circ}39'27''$ East 40 feet to the True Point of Beginning.

2. TERM: That the term of the Lease Agreement shall be for a period of twenty-five (25) years, commencing on the 1st day of January, 1977, and ending on the 31st day of December, 2001.

3. RENEWAL OF TERM: Lessee shall have the right at its option to renew this lease for an additional twenty-five (25) years, provided that at the time of the exercise and at the time of commencement of the additional period, Lessee is not in default under any term or provision hereof, by giving written notice to Lessor not less than one hundred twenty (120) days prior to the end of the then existing lease term. During any such renewal period all the terms and provisions hereof shall be applicable and shall remain in full force and effect.

4. USES OF PROPERTY: Lessor agrees to construct the necessary structures and facilities required to utilize the property as a retention basin for storm waters, which shall be the primary use, and Lessee agrees to construct, operate, and maintain at Lessee's expense, a golf course as a secondary use of the premises. Lessee shall operate such course during such days and within such hours as shall be customary for comparable facilities.

5. RENTAL: As rental for the leased premises for the initial term of twenty-five (25) years and for the

optional term of twenty-five (25) years Lessee agrees to pay Lessor the sum of one dollar (\$1.00) per year, which rental shall be payable annually or all in advance. If payment is annual said payment will be made on or before the 1st day of January of each year hereafter, beginning January 1, 1977.

6. IMPROVEMENTS: Lessor agrees to excavate and top dress the excavated basin with nine (9) inches of top soil. Grades after excavation shall be approximately one foot more or less (1'+) within those grades which have been agreed upon by Lessor and Lessee. Lessee agrees to install necessary irrigation facilities and landscape the basin with turf, shrubbery, and trees as Lessee considers appropriate for a golf course, driving range, and putting course. Lessee shall also have the right to construct such structures and parking facilities required for administering and maintaining the golf course, driving range, and putting course and serving its customers, providing such installations and construction does not interfere with Lessor's primary use of the property as a detention basin for storm waters. Lessor acknowledges that the estimated cost for the improvements installed by Lessee exceeds one hundred thousand dollars (\$100,000.00).

Any building, structure, or other improvements constructed on the property shall, when completed, be free from all mechanic's and materialmen's liens or claims of lien, subject to Lessee's right to enter into a bona fide contest of any claimed lien, provided Lessor shall be indemnified and saved and held harmless therefrom by Lessee.

Lessor shall have the right to install such facilities as are necessary to properly utilize the area as a retention basin for storm waters, and the type and amount of facilities so constructed shall be at the sole discretion of Lessor. It is intended that the retention

basin for storm waters, when completed, will conform to the requirements of the Arizona Department of Transportation.

Lessee agrees to complete all improvements required to make the premises suitable for golf course purposes within eighteen (18) months after Lessor has completed the construction work necessary for the operation of the premises as a retention basin for storm waters.

All buildings and structures not permanently affixed on the real property shall remain the property of Lessee, and Lessee shall have the right to remove the same upon the expiration of the term of this lease, provided that all such buildings and structures shall be removed by Lessee within thirty (30) days from the termination of this lease, or any extensions thereof, and in the event they are not so removed, Lessor shall have the right at its option to retain same, in which event such buildings and improvements shall become the property of Lessor or upon giving notice within forty (40) days after the termination of the lease, Lessor shall have the right to cause same to be removed and Lessee agrees to pay the expense of such removal.

Lessee agrees that all construction on the premises shall comply with the Building, Plumbing, Electrical, and Mechanical Codes of the City of Mesa and further agrees to secure all necessary permits in connection therewith and to pay the required fees therefor. In addition thereto, Lessee agrees to install and pay for, at its sole expense, all necessary paving improvements on the real property necessary to provide for a dust free wearing surface in all traffic areas and after installation of all such improvements to maintain same in good condition at Lessee's sole expense.

Lessee agrees to submit its plans and designs for approval of the Lessor prior to construction. Such

approval, other than for conformity with Codes as previously described, is intended to be limited, however, to reasonable compatibility of general or overall design and compatibility with the primary use of a detention basin for storm waters.

7. STORAGE OF EQUIPMENT AND MATERIAL: Lessee agrees that the real property will not be used for outside storage of equipment or material. This provision does not apply to or preclude Lessee from parking golf carts on the real property.

8. INSURANCE: Lessee agrees that it will at all times during the term of this lease maintain in full force and effect an insurance policy or policies which will name Lessor and Lessee as insured against all liability resulting from injury occurring to persons or property in or about the real property from any operation of Lessee. The limit of liability under such insurance policy or policies shall not be less than \$250,000.00 for any one person injured, \$500,000.00 for any accident, and \$100,000.00 for property damage. The original of said policy or policies shall remain in the possession of Lessee, provided however, that Lessor shall receive from Lessee a duplicate policy or policies of any such insurance. Lessee also agrees to maintain and keep in force all employees' compensation insurance on its employees required under the applicable workman's compensation act. Notwithstanding anything else contained in this lease, Lessee agrees to hold Lessor harmless of or from any liability of any nature by reason of any operation of Lessee, unless such damage is caused by or results from the negligence of Lessor, or any of its agents or employees.

9. LIABILITY: Because the primary use of the premises is for a retention basin for storm waters, Lessee agrees that Lessor shall not be liable for any

damage to the improvements installed by Lessee or for any damages to Lessee's business by reason of flood waters and drainage occasionally inundating portions of the lease property. Lessee will repair and restore any loss or damage to Lessee's improvements resulting therefrom at Lessee's cost and expense.

10. UTILITIES: Lessee agrees that it will at all times during the term of this lease pay for all utilities of every nature used by it on the premises before the charges therefore become delinquent.

11. MAINTENANCE AND REPAIRS: Lessor agrees to maintain the floodwater and drainage structures. Lessee agrees to maintain all improvements installed by it in a manner acceptable to Lessor and all other agencies having jurisdiction. Lessee's maintenance responsibilities shall include watering, mowing and trimming all turf and landscaping, plants, and trees, and maintenance of the irrigation lagoon.

12. ASSIGNMENTS AND SUBLEASES: Neither Lessee nor its successors or assigns may assign this lease or sublet the real property without first securing the consent of Lessor, which consent shall not be unreasonably withheld. It is not intended by this provision to limit the right of Lessee, its successors and assigns, to rent or lease space on the premises as may be necessary for carrying on the business of Lessee.

13. DEFAULT: The parties agree that in the event at any time a default shall be made by Lessee in the payment of any rent herein provided on the day the same becomes due and payable, or in the event Lessee shall fail to perform any of the covenants herein contained to be kept and performed by Lessee, and any such default continues for a period of thirty (30) days after written notice of such default shall have been received by Lessee,

then and in any or either of such events, it shall be lawful for Lessor, at its election, to declare the term of this lease ended and this lease cancelled, and Lessor shall have the right to re-enter and take possession of said premises, provided however, that any such default shall be deemed cured if same be corrected within thirty (30) days after receipt of said written notice by Lessee, in which event this lease and its terms and conditions shall continue in full force and effect, the same as though no default has been made. All notices pursuant to this lease shall be addressed to Lessee at 134 W. Broadway, Mesa, Arizona 85202, unless or until Lessee notifies Lessor in writing of some other address. Any notice given pursuant to this article shall be deemed received by Lessee within three (3) days after same is deposited in the United States Mail, postage prepaid, addressed to Lessee as above indicated.

14. WAIVER OF BREACH: The parties agree that no waiver of any breach of any of the covenants herein contained shall be construed to be a waiver of any succeeding breach.

15. LITIGATION: In the event Lessor or Lessee shall, without fault on its part, be made a party to any litigation commenced against the other, the other party shall pay the court costs and reasonable attorney's fees incurred by such Lessor or Lessee, as the case may be.

16. NONDISCRIMINATION:

(a) Lessee in the business to be conducted pursuant to the provisions of this lease and otherwise in the use of the property, will not discriminate or permit discrimination against any person or class of persons by reason of sex, race, color, creed, or national origin in any manner.

(b) Noncompliance with the above provision shall constitute a material breach of this lease and in the event of such noncompliance, Lessor shall have the right to terminate this lease and the estate hereby created without liability therefore or at the election of the Lessor or of the United States, either or both said governments shall have the right to judicially enforce the above provisions.

(c) Lessee agrees that it shall insert the above provision in any document by which said Lessee grants a right or privilege to any person, firm or corporation to rend accommodations and/or services to the public on the premises herein leased.

17. INSOLVENCY OF LESSEE: Either (a) the appointment of a receiver to take possession of all, or substantially all of the assets of Lessee for the purpose of liquidation, or (b) a general assignment of Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act shall, if any such appointment, assignment, or action continues for a period of thirty (30) days, constitute a breach of this lease by Lessee and cause it to become subject to termination as herein provided.

18. PARTIES LIABLE: The covenants and conditions herein contained shall apply to and bind the successors and assigns of the parties hereto.

19. MERGER. This Agreement supercedes and merges any and all prior agreements, amendments, addendums and understandings between the parties and constitutes the agreement between the parties.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first hereinabove written, and reexecuted this 29th day of March, 1978.

CITY OF MESA, a municipal corporation

By J. A. Lattie
"LESSOR"

ATTEST:
Lothe Lane

MESA GOLF, INC., an Arizona corporation

By C. A. Cardon
"LESSEE"

STATE OF ARIZONA)
)ss:
County of Maricopa)

This Agreement was acknowledged before me by J. A. Lattie City Clerk Meng. & Deathe Dean, City of Mesa, a municipal corporation, and therefore authorized to sign for said municipal corporation, this 29th day of March, 1978.

Dolores S. Spauld
Notary Public

My Commission Expires: June 7, 1979

STATE OF ARIZONA)
)ss:
County of Maricopa)

This Agreement was acknowledged before me by C. A. CARDON, who is Vice President of Mesa Golf, Inc., an Arizona corporation, and therefore authorized to sign for said corporation, this 23 day of MARCH, 1978.

My Commission Expires: 7/15/81
Edna M. Olson
Notary Public