SW/vv
06/18/15
Item #54

AN ORDINANCE 2015-06-18-0580

AUTHORIZING A THREE YEAR LICENSE AGREEMENT WITH TWO ADMINISTRATIVE ONE-YEAR RENEWAL OPTIONS WITH NORTHEAST GOLF CENTER, LLC FOR USE OF SALADO CREEK GREENWAY PROPERTY AT 450 IRA LEE ROAD LOCATED IN COUNCIL DISTRICT 10 FOR THE OPERATION OF A GOLF DRIVING RANGE AND RELATED ACTIVITIES CONSISTENT WITH PARKLAND USE.

* * * * *

WHEREAS, in 2006, the City accepted a donation of property from Oakwell Holdings, LLC as part of the Salado Creek Greenway development; and

WHEREAS, the donation of the land included the assignment of a lease for the Northeast Golf Center, which sits entirely upon a former landfill of approximately twenty-one (21) acres; and

WHEREAS, at the time of assignment to the City, rent was established at $31,000.00 annually and allowed for an adjustment based on market rate; and

WHEREAS, this agreement ended January 31, 2015; and

WHEREAS, though the previous ground lease was market driven, local conditions such as prolonged road construction in the immediate area; San Antonio Water System sewer development along Ira Lee Road; and a heavy equipment staging area adjacent to the property, the operator has determined business is no longer viable under the same operating terms; and

WHEREAS, due to property use constraints, existing compatible public recreational opportunities, and benefit of sustaining an ongoing presence on this isolated segment of the greenway, a revised rental rate methodology is recommended; and

WHEREAS, the term of the proposed new License Agreement is for three (3) years with two (2) administrative one-year renewal options effective February 1, 2015, through January 31, 2018; and

WHEREAS, this includes annual rent in the amount of $7,800.00, full maintenance responsibility for the Northeast Golf Center, and a minimum of $2,000.00 annually in capital improvements or repairs to the facility; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department Parks and Recreation or his designee, is authorized to execute a three year license agreement with two administrative one-year renewal options with Northeast Golf Center, LLC for use of Salado Creek Greenway property at 450 Ira Lee Road located in Council District 10 for the operation of a golf driving range and related activities consistent with parkland use. A copy of the license agreement,

in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 226000000000 and General Ledger 4407720.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**54 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a three year License Agreement with two administrative one-year renewal options with Northeast Golf Center, LLC for use of Salado Creek Greenway property at 450 Ira Lee Road located in Council District 10 for the operation of a golf driving range and related activities consistent with parkland use. [Xavier D. Urrutia, Interim Assistant City Manager; Janet Martin, Acting Director, Parks and Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

LICENSE AGREEMENT

NORTHEAST GOLF CENTER, LLC

This License Agreement is made and entered into by and between the **CITY OF SAN ANTONIO,** a Texas Municipal Corporation (herein referred to as **"CITY"),** acting through the Director of the Parks and Recreation Department and **NORTHEAST GOLF CENTER, LLC** (herein referred to as **"LICENSEE").**

1. WITNESSETH

1.1 WHEREAS, **CITY** desires to maintain its parks in the best condition possible while at the same time conserving its resources; and

1.2 WHEREAS, **LICENSEE** has operated and maintained a golf driving range which is open to the public for recreational purposes and located on Salado Creek Greenway property; and

1.3 WHEREAS, in consideration of **LICENSEE's** rent to CITY for business operations, **CITY desires** to grant permission to **LICENSEE to** enter and use said Salado Creek Greenway property as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the mutual benefits to **CITY** and **LICENSEE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. DEMISE OF PREMISES

2.1 **CITY,** for and in consideration of the covenants and promises herein contained to be kept, performed and observed by **LICENSEE,** does hereby License and demise to **LICENSEE,** and **LICENSEE** does hereby License and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows:

2.1.1 An area consisting of **21.112 acres,** located at 450 Ira Lee, New City Block 12163, San Antonio, Bexar County, Texas.

3. TERM

3.1 The term of this License Agreement is for THREE (3) years beginning February 1, 2015 and ending January 31, 2018, unless terminated sooner according to conditions herein. **CITY** at its discretion may extend this License Agreement administratively for up to and including two (2) additional terms of one (1) year each, without further consideration by City Council, under the same terms and conditions of this License Agreement.

4. USE

4.1 The Licensed Premises are herein licensed to the **LICENSEE** for the operation and maintenance of the Northeast Golf Center and other activities incidental or compatible to a golf driving range including the sale of concessions, and for no other purpose without approval by **CITY**.

4.2 The **LICENSEE** agrees not to use the Licensed Premises or any building situated upon said Licensed Premises, or any part thereof, for any purpose which violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, or the City of San Antonio.

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 **LICENSEE** had full opportunity to examine the Licensed Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE's** taking possession of the Licensed Premises shall be conclusive evidence of **LICENSEE's** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Licensed Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which Licensed. **LICENSEE** accepts the Licensed Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE's intended** commercial purposes.

5.2 **LICENSEE** agrees that no representations, respecting the condition of the Licensed Premises, and no promises to decorate, alter, repair, or improve the Licensed Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made a part hereof by specific reference herein.

5.3 **LICENSEE** acknowledges that **CITY** has informed **LICENSEE** of the existence of a closed municipal landfill on the Licensed Premises and the existence of methane gas and other hazardous substances on, under or about the Licensed Premises. **CITY** shall be responsible for any environmental liabilities related to the landfill. In no event shall **CITY** be obligated to reimburse **LICENSEE** for any costs or damages incurred by **LICENSEE** during any period of time the Licensed Premises are not available for use as a result of state or federally required environmental maintenance and/or remediation. Any activities that **LICENSEE undertakes** under this License Agreement shall be in full compliance with all state and federal environmental regulations related to landfills.

6. PLANS APPROVAL AND CONSTRUCTION

6.1 Subject to the following conditions, the **LICENSEE** shall have the right at any time and from any time during the term of this License Agreement to erect, construct, build, maintain, alter, remodel, reconstruct, remove, and rebuild buildings and other improvements within the Licensed Premises.

6.1.1 The **LICENSEE** shall pay for the cost of any such construction, change alteration, or improvement(s).

6.1.2 Plans, specifications, and proposed location of any new facilities or structural improvements within the Licensed Premises shall first be approved by the Director of the Parks and Recreation Department, or his designee, and by such Boards, Commissions, and review agencies deemed necessary and proper by the **CITY.**

6.1.3 The Director of the Parks and Recreation Department, or his designee shall review the plans and specifications, and in writing, either approve same or note any required changes or corrections which must be made to the plans and specifications within sixty (60) calendar days after receipt of said plans and specifications. If changes or corrections are required by CITY, **LICENSEE** shall address such changes and/or corrections and resubmit changed and/or corrected plans and specifications to **CITY** for review and approval. **LICENSEE shall** not commence construction until final written approval has been given by the Director of the Parks and Recreation Department, or his designee.

6.1.4 The approval by the **CITY** of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plan for the Licensed Premises and such approval shall not be withheld unreasonably or delayed. Such plans and specifications are not approved for architectural or engineering design and the **CITY,** by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications, including tracks which may be constructed.

6.2 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by the **LICENSEE** and at any time placed or maintained by the **LICENSEE** on any part of the Licensed Premises shall be and remain the property of the **LICENSEE;** provided, however, that all improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Licensed Premises shall become the property of the **CITY** from and after the time that such improvements are made and shall remain the property of the **CITY** after the termination of this License Agreement.

7. CAPITAL IMPROVEMENTS

7.1 **LICENSEE** must, at a minimum, make annual capital improvements to the premises in the amount of $2,000. Improvements shall consist of any item of expense for repair or replacement to the Northeast Golf Center at an amount of $2,000 or more. Improvements must be submitted in writing and must be pre-approved by the Director of the Parks and Recreation Department. Operating maintenance costs are not permitted to apply toward the required threshold for capital improvements. Supporting documentation for all such improvements shall be retained for City review upon request. Subject to the following conditions, the **LICENSEE** shall have the right at any time and from any time during the term of

this License Agreement to erect, construct, build, maintain, alter, remodel, reconstruct, remove, and rebuild buildings and other improvements within the Licensed Premises.

8. MAINTENANCE, UTILITIES, AND REPAIR

8.1 **LICENSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, which may be necessary for its operations as authorized herein on the Licensed Premises. **LICENSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LICENSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY.** All utilities shall be underground unless otherwise specifically authorized in writing by the Director of the Parks and Recreation Department, or his designee.

8.2 **LICENSEE** shall have the non-exclusive right to access and use CITY's water well and water lines located adjacent to the Licensed remises. **CITY's** water well contains an electric pump which is shared by **LICENSEE** and an adjacent land owner and provides non-potable water to both parties. Such electric pump is controlled by separate electricity meters. **LICENSEE** shall assume sole responsibility for monthly electric bills associated with **LICENSEE's** use of the pump. **CITY** and **LICENSEE** shall work cooperatively to transfer the electric utility account to **LICENSEE. LICENSEE understands** that **LICENSEE** and adjacent property owner will be unable to simultaneously pump water from **CITY's** water well at any given time. **LICENSEE** may withdraw up to 25 acre feet of water from **CITY's** water well each year for the purpose of irrigating the golf driving range and other turf areas. **CITY's** water well is a non-potable source of water and **LICENSEE** understands that well water shall be used solely for outdoor irrigation and for no other purpose. **LICENSEE** acknowledges that **CITY** has performed repairs to the water well at **CITY's expense** in order to comply with current Edwards Aquifer Authority regulations. **LICENSEE** shall reimburse **CITY** for **LICENSEE's** pro rata share (83.33%) of all future maintenance costs associated with repairing or replacing the existing well improvements including but not limited to pumps, tanks, motors and housing, meters, water lines and related equipment. **LICENSEE** may install additional improvements to the well at **LICENSEE's** expense with prior written approval from **CITY.**

8.3 The **LICENSEE,** at its sole cost and expense and at all times during the term of this License Agreement and any extensions thereof, agrees to keep and maintain, or cause to be kept and maintained, the interior and exterior of all buildings, roof, foundation, structure, windows, walls and floors, mechanical systems; utilities, and improvements located on the Licensed Premises in a good state of appearance and repair, reasonable wear and tear excepted.

8.3.1 **LICENSEE** shall not be required to maintain a flood damaged storage barn located along the east side of the Premises and **LICENSEE** shall have permission to remove the storage barn at **LICENSEE's** expense upon obtaining written approval from **CITY** and securing all applicable permits.

8.4 **LICENSEE** shall, at all times, keep or cause to be kept the Licensed Premises free of litter, trash, paper, and other waste and shall conform to all applicable garbage, sanitary, and health regulations of the **CITY.**

8.5 The **LICENSEE** shall be strictly responsible for the condition of the Licensed Premises and shall maintain the Licensed Premises in a safe, clean, neat, sanitary condition and attractive in appearance. The **CITY** shall have the right at reasonable times to make inspections of the Licensed Premises and to insure that fire, safety, and sanitation regulations and other provisions contained in this License Agreement are adhered to by the **LICENSEE.**

8.6 Subject to prior written approval of the Director of the Parks and Recreation Department, or his designee, **LICENSEE** may erect a chain-link fence no more than 6-foot high along the boundaries of the Licensed Premises and/or around other parts of the Licensed Premises for the purposes of security and/or safety.

8.7 **LICENSEE** shall at its sole expense; keep the Premises in good order, repair, and leasable condition at all times during the Term hereof and shall promptly repair all damages to the Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the Director of the Parks and Recreation Department, or his designee, and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO. If **LICENSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith. In the event of an emergency situation requiring **LICENSEE** to perform a repair or replacement outside of **CITY's** normal business hours, **LICENSEE** shall be required to notify **CITY** of such repair or replacement on the next regular business day. **LICENSEE** shall not be required to repair existing flood lights which are not currently operational.

8.8 **LICENSEE** will, at the termination of this License Agreement, return the Licensed Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.

8.9 **LICENSEE** agrees to hold **CITY** harmless for any theft, damages, or destruction of signs, goods, and/or other property of **LICENSEE** both during the term of this License Agreement and as so left on the Licensed Premises after **LICENSEE** vacates the Licensed Premises. If said signs, goods, and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by it within thirty (30) days after the Licensed Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

9. REVENUES

9.1 **LICENSEE** may establish an admission fee and concession fee structure as it deems necessary for the effective management, maintenance and operation of Northeast Golf Center. **LICENSEE's** admission fee and concession fee structure

shall be comparable with other golf driving ranges. Admission fee and concession fee structure may be adjusted from time to time in order to reflect current market conditions with prior review and written approval by the Director of the **CITY's** Parks and Recreation Department. **LICENSEE** may offer souvenirs, printed materials, and other concession items appropriate to a golf driving range, and must provide the parks and Recreation Department with a Price List of fees and items for sale by January 31, annually.

9.2 **LICENSEE** may accept donations from private sources and from admittees to Northeast Golf Center and may offer for sale souvenirs, printed materials, and other concession items appropriate to operation of a golf driving range. **LICENSEE** shall collect all such revenues and retain same for operation, maintenance, and improvements to Northeast Golf Center. **LICENSEE,** at all times, shall be required to obtain and maintain all necessary permits required by federal, state and local jurisdictions in order to sell concessions.

10. TAXES AND LICENSES

10.1 **LESSE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Licensed Premises, or upon **LICENSEE,** or upon the business conducted on the Licensed Premises, or upon any of **LICENSEE's** property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by **LICENSEE.** Failure to comply with the foregoing provisions shall constitute grounds for termination of this License Agreement by the **CITY.**

11. RENTAL

11.1 In consideration of **LICENSEE's** use of the Licensed Premises and collection of revenue from operation of the golf driving range, **LICENSEE** shall pay rent to the **CITY** in the amount of $650 per month for a total of $7,800 per annum during the term of this LICENSE Agreement. Rent shall be due on the 25th of each month of during the term of this LICENSE Agreement. At no time will any month's rent be reduced, cancelled or forgiven; and monthly rent will accrue as outlined in this License Agreement until such time as rent is paid in full.

11.2 **LICENSEE** shall pay current arrears of $10,333.33 in full by no later than April 30, 2016. Should **LICENSEE** fail to pay arrears in full by such date, CITY shall have the right to terminate this Agreement.

12. ASSIGNMENT & SUBLICENSING

12.1 **LICENSEE** shall not voluntarily or involuntarily sell, assign or otherwise transfer (collectively "Transfer") all or any portion of its interest under this License Agreement and in the Licensed Premises and the Licensehold estate ("**LICENSEE**'s Interest") or sublicense the License Premises without prior written consent from CITY through the Director of the Parks and Recreation Department. The term "sublicense" shall include any Licenses, leases, occupancy agreements, franchises, or other similar rights, agreements, or arrangements of whatever

nature relating to the use or occupancy of any part of the Licensed Premises. Any sale, assignment or sublicensing by **LICENSEE** without prior written permission from **CITY** shall constitute grounds for termination of this License Agreement by the **CITY**.

12.2 During the term of this License Agreement, **LICENSEE** shall not transfer all or any controlling portion (that is a portion sufficient to provide such transferee control of **LICENSEE**) of **LICENSEE's** Interest to any unrelated third party without prior written consent from the Director of the **CITY's** Parks and Recreation Department.

12.3 **CITY** will not unreasonably withhold or delay its consent to any Transfer so long as any such proposed transferee (i) has or has contracted for competent, experienced management to operate the Northeast Golf Center as a first class golf center, (ii) has a net worth and liquidity sufficient to operate and maintain the Northeast Golf Center as a first class golf center, (iii) has a good reputation within the business and golfing community (taking into consideration any experienced Management which has been placed under contract to operate the Northeast Golf Center), and (iv) consideration of any third party with whom such transferee has contracted shall have a good reputation and such reputation will be considered in **CITY's** final decision. **CITY** shall provide **LICENSEE** with written notice of acceptance or rejection of **LICENSEE's** Transfer request within sixty (60) days after **LICENSEE** delivers to **CITY** a request for such approval, which request shall provide to **CITY** information on the proposed transferee which is reasonably sufficient for **CITY** to make its determination.

12.4 Without prior written consent of **LICENSEE, CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License Agreement and in the property referred to in this License Agreement; and, to the extent that such assignee assumes **CITY's** obligations in this License Agreement, **CITY** shall, by virtue of such assignment, be re-licensed from such obligation.

12.5 The receipt by the **CITY** of rent from an assignee, or occupant of the Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment, and/or acceptance of the assignee, or occupant as a **LICENSEE**, or a re-license of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in this License Agreement. No provision of this License Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

13. LIENS PROHIBITED

13.1 The **LICENSEE** shall not suffer or permit any mechanics liens or other liens to be filed against the fee title of the Licensed Premises or any buildings or improvements on the Licensed Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to the **LICENSEE** or to anyone holding the Licensed Premises or any part thereof through or under the **LICENSEE.**

13.2 If any mechanics' liens or materialmen's liens shall be recorded against the Licensed Premises, or any improvements thereon, the **LICENSEE** shall cause the same to be removed within thirty (30) days after such liens are recorded, or, in the alternative, if the **LICENSEE** in good faith desires to contest the same, the **LICENSEE** shall be privileged to do so, but in such case, the **LICENSEE** hereby agrees to indemnify and save the **CITY** harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment, such damages to include all costs of court and attorneys' fees.

14. RECORDS AND REPORTS

14.1 **CITY** shall have the right to review **LICENSEE's** financial records to determine and/or verify gross income and revenue associated with the operation and management of Northeast Golf Center. **LICENSEE** shall keep true and accurate accounts, records, books and data which shall show all gross revenue. Within (90) days from the date of tax filing, **LICENSEE** shall furnish to **CITY** a statement of total gross revenue for such fiscal year in conformity with generally accepted accounting principles applied on a consistent basis. All of **LICENSEE's** books, records and accounting reports or statements ("Records") related to the computation of total gross revenue shall be maintained at Northeast Golf Center (or at such other place as **LICENSEE** may select) for a period of at least four (4) years after the end of the applicable fiscal year. **CITY** shall have the right to examine, inspect, audit and make copies of **LICENSEE's** Records upon request and such access shall not be unreasonably delayed.

14.2 **CITY** may conduct periodic inspections of the Licensed Premises in order to ensure **LICENSEE's** compliance with the terms of this License Agreement. **CITY** shall conduct such inspections at a date and time that is mutually agreed upon by **CITY** and **LICENSEE**.

14.3 **LICENSEE** shall report annually on all program activities for the previous year, due by January 31, such as but not limited to the number of visitors/participants, buckets of balls sold, and inclement weather days.

14.4 **LICENSEE** shall furnish to **CITY** a fiscal report reflecting all aggregate gross sales generated from Use fees and Concession Revenue, and Operating expenses and capital Improvements due 30 days from the date of tax filing.

15. INDEMNIFICATION

15.1 **LICENSEE** covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related

to **LICENSEE**'s activities under this License Agreement, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this License Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

15.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE**'s activities under this MEMORANDUM and shall see to the investigation and defense of such claim or demand at **LICENSEE**'s cost. The **CITY** shall have the right, at its option and at its own expense, to participate in

such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

16. INSURANCE REQUIREMENTS

16.1 Prior to the commencement of any work under this Contract, **LICENSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY's** Parks and Recreation Department, which shall be clearly labeled *"Northeast Golf Center"* in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY will** not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY.** The **CITY** shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the **CITY's** Parks and Recreation Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

16.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and

to modify insurance coverages and their limits up to a maximum of $2,000,000 when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

16.3 **LICENSEE's** financial integrity is of interest to the **CITY;** therefore, subject to **LICENSEE's** right to maintain reasonable deductibles in such amounts as are approved by the **CITY, LICENSEE** shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at **LICENSEE's** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
2. Property Insurance: For physical damage to the property of **LICENSEE**, including improvements and betterment to the Licensed premises, if applicable	Coverage for a minimum of eighty percent (80%) of the replacement cost of **LICENSEE**'s property.

*If applicable.

16.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the **CITY,** and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **LICENSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **LICENSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio City of San Antonio

Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

16.5 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

A. Name the **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of san Antonio where the **CITY** is an additional insured shown on the policy;
C. Workers' Compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**; and
D. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

16.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**, **CITY** shall have the option to suspend **LICENSEE's** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

16.7 If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the License Agreement; however, procuring of said insurance by the **CITY** is an alternative to other remedies the **CITY** may have, and is not the exclusive remedy for failure of **LICENSEE** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon **LICENSEE's failure** to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

16.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or

property resulting from **LICENSEE's** or its subcontractors' performance of the work covered under this License Agreement.

16.9 It is agreed that **LICENSEE's** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

16.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

17. RULES, REGULATIONS, AND PROHIBITED USES

17.1 **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE's** business.

17.2 No activity or method of operation shall be allowed in, on, or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

17.2.1 Nudity means total absence of clothing or covering for the human body.

17.2.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

17.3 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.

17.4 The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.

17.6 **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

17.7 **LICENSEE** shall not encroach on any property outside of the Licensed Premises as per Exhibit A attached hereto without written approval from the Director, Parks and Recreation Department, or his designee.

17.8 City of San Antonio City Ordinance No. 95687, passed and approved on April 25, 2002, prohibits the use of glass beverage containers and sale, possession, or consumption of alcoholic beverages on the Licensed Premises. This ban shall be effective until such time as the City of San Antonio City Council amends the aforementioned ordinance in order to permit the sale, possession, or consumption of alcoholic beverages on the Licensed Premises.

18. RESERVATIONS: CITY

18.1 The **LICENSEE** shall permit **CITY's** agents, representatives, or employees to enter upon the Licensed Premises at all reasonable times, for the purpose of audit or inspection, **in** order to determine whether the **LICENSEE** is in compliance with the terms hereof.

18.2 **CITY** park police and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons on the Licensed Premises. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE's** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

19. DEFAULT AND REMEDIES

19.1 The following events shall be deemed to be events of default by the **LICENSEE** under this License Agreement:

19.1.1 The **LICENSEE** shall fail to pay the required rent on the 25th day of each month;

19.1.2 The **LICENSEE** shall fail to pay the Arrears set forth in Article 11.2;

19.1.3 The **LICENSEE** shall fail to use the Licensed Premises for purposes set forth in Article 4;

19.1.4 **LICENSEE** initiates any material or substantial construction or improvement(s) without prior written approval from **CITY** through the Director, Parks and Recreation Department, or his designee.

19.1.5 The **LICENSEE** fails to comply with any term, provision or covenant of this License agreement and, after having received written notice of such failure, does not cure the failure within sixty (60) days; and

19.2 Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, the **CITY** may, declare this License Agreement and all rights and interests created by it to be created by it to be terminated, may seek any and all damages occasioned by the **LICENSEE's** default hereunder, or may seek any other remedies available at law or in equity.

19.3 **Upon the CITY's election to terminate this License Agreement** due to **LICENSEE's** failure to cure an event of default as outlined in Section 19.1.5, the **CITY,** its agent or attorney, may take possession of the Licensed Premises and License the same for the remainder of the term at the best rent the **CITY,** its agent or attorney, may obtain for the account of the **LICENSEE,** who shall make good any deficiency. Any termination of this License Agreement as herein provided shall not relieve the **LICENSEE** from the payment of any sum or sums that shall then be due and payable to the **CITY** hereunder, or any claim for damages then or theretofore accruing against the **LICENSEE** hereunder, and any such termination shall not prevent the **CITY** from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from the **LICENSEE** for any default thereunder. All rights, options and remedies of the

CITY contained in this License Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and the **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or at equity, whether or not stated in this License Agreement. No waiver by the **CITY** of a breach of any of the covenants, conditions, or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

19.4 The **LICENSEE** shall have the right, within thirty (30) days after the termination of this License Agreement, whether such termination be by the expiration of the term or an earlier termination under any provision of this License Agreement, to remove from the Licensed Premises all of its furniture, fixtures, equipment and furnishings and other property which are not the property of the **CITY** and have not become the property of the **CITY** as herein provided or by attachment to the Licensed Premises, and with respect to any damage caused thereby, it shall have the obligation to restore the Licensed Premises to its condition prior to such removal, and provided that, if any of the **LICENSEE's** property remains in or on the Licensed Premises after ninety (90) days following termination of this License Agreement and no renewal agreement has been executed, such property as remains thereon shall be deemed to have become the property of the **CITY** and may be disposed of as the **CITY** sees fit at **LICENSEE's** cost, without liability to account to the **LICENSEE** for the proceeds of any sale thereof.

20. SIGNS

20.1 **LICENSEE** shall construct or erect no signs on or about the Licensed Premises visible from adjacent thoroughfares without the prior written consent to the Director, Parks and Recreation Department, or his designee. To this end, **LICENSEE** shall, before constructing or erecting any permanent outdoor sign(s) visible to motorists on Ira Lee, submit to the Director, Parks and Recreation Department a schematic drawing, indicating size, material, color, and content of such proposed sign(s). All exhibit-related signs shall be no larger than one hundred and twenty (120) inches square in size and shall be clean, brief and neatly lettered. **LICENSEE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other inappropriate matter. **LICENSEE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor.

21. RELATIONSHIP OF PARTIES

21.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and **LICENSEE.**

22. SEPARABILITY

22.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

23. NOTICES

23.1 Notices to **CITY** required or appropriate under this License Agreement shall be deemed sufficient if hand delivered or delivered in writing and mailed to:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

Northeast Golf Center
450 Ira Lee
San Antonio, Texas 78218

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY.**

24. ENTIRE AGREEMENT/AMENDMENT

24.1 This License Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE.**

24.2 No amendment, modification or alteration of the terms of this License Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

24.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

25. TEXAS LAW TO APPLY

25.1 **THIS LICENSE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

26. GENDER

26.1 Words of any gender used in this License Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

27. PARTIES BOUND

27.1 If there shall be more than one party designated as **LICENSEE** in this License Agreement, they shall each be bound jointly and severally hereunder.

27.2 The covenants and agreements herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY.**

28. CAPTIONS

28.1 The captions contained in this License Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this License Agreement.

29. CONFLICT OF INTEREST

29.1 **LICENSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

29.2 **LICENSEE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

30. NON-DISCRIMINATION

30.1 As a party to this contract, **LICENSEE** understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national

origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

31. AUTHORITY

31.1 The signer of this License Agreement for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of **LICENSEE.**

LESSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

_____

Xavier D. Urrutia, Director
Parks and Recreation Department

_____

Date

LICENSEE:

NORTHEAST GOLF CENTER, LLC

Mike Bowersock

Mike Bowersock,
Owner

5-14-15

Date

210-828-0332

Telephone Number

Attachments: Exhibit A, Property Description