

**AGREEMENT BETWEEN THE CITY OF GILLETTE AND THE GILLETTE GOLF
AND COUNTRY CLUB, INC., REGARDING THE OPERATION AND DEVELOPMENT
OF A GOLF COURSE AT THE ENERGY CAPITAL SPORTS COMPLEX**

This Agreement is entered into this ____ day of _____, 2017, between, the City of Gillette, Wyoming, a municipal corporation and City of the First Class (hereinafter referred to as “CITY”) of Box 3003, Gillette, Wyoming 82717, and Gillette Golf and Country Club, Inc., a Wyoming Nonprofit Corporation of Box 363, Gillette, Wyoming, 82717-0363 hereinafter the “CLUB”. The CITY and CLUB may be referred to hereinafter collectively as the Parties.

I. PURPOSE

This Agreement shall outline the terms of understanding among the Parties with respect to the continued development of a new 9 hole golf course (the Golf Course) on property owned by the CLUB and upon property leased to the CLUB from the CITY. The PARTIES previously entered into a Lease dated August 6, 2012 regarding the development of the 9-hole golf course. Additionally, the CITY has provided matching funds to the CLUB for purposes of development of the Golf Course. The PARTIES find it prudent to memorialize these prior transactions between them, and provide an understanding as to dealings between the PARTIES in the future.

As part of the overall development of Golf Course and in furtherance of the development of the Energy Capital Sports Complex, the CITY found it necessary to re-subdivide those lands previously known as Tract A, Tract B, Tract C, and Tract D of the Field of Dreams Subdivision. Consequently, the PARTIES further agreed to enter into a new lease reflecting the revised legal description for the lands being leased to the CLUB. The new legal description of the lands leased between the CITY and the CLUB are: Tract F, Tract G and Tract H of the Energy Capital Sports Complex Subdivision. The Lease, upon execution of the PARTIES, will be filed with the Campbell County Clerk and Ex Officio of Deeds.

Finally, the Parties agree that they will work cooperatively with each other, as outlined in this Agreement, to design, construct and operate the Golf Course in harmony with the development and operation of the Energy Capital Sports Complex.

II. PROJECT

The premises are to be used and developed for a public recreation area and golf course by the CLUB. The PARTIES acknowledge that the LAND is adjacent to a City of Gillette park and recreation area known as the Energy Capital Sports Complex and agree that the development of the golf course should complement the adjoining CITY property. The PARTIES further acknowledge that certain conditions are established for the use of the Tracts set forth herein as follows:

1. TRACT F: CLUB acknowledges that the CITY maintains a waste water trunk line in Tract F. CLUB further acknowledges that a loop-road, pathway, and drainage channel are currently located in Tract F. Should CLUB seek to develop Tract F, CLUB shall at its own expense ensure that any disturbance to the loop-roadbed, pathway, and/or drainage channel are regraded and re-established the property back to its prior condition. The design of any alterations to these improvements shall be approved by the CITY prior to any work commencing, and shall require a City permit.

2. TRACT F WALKING PATH: The CLUB's development plan for Tract F includes the establishment of a practice area and driving range ("Range") open to the public. The PARTIES shall facilitate the establishment of a walking path across Tract F so as to allow public access from the Energy Capital Sports Complex to the Range by means of Tract F. CLUB shall not discourage, deny or interfere with access across Tract F for purposes of the use of the Range by the Public. LESSEE will fully comply with its club liquor license and post appropriate signage stating open containers are prohibited on the Energy Capital Sports Complex.

3. TRACT F TRUNK LINE AND INVERTED SIPHON ACCESS. The CITY currently maintains a waste water trunk line and inverted siphon on a portion of Tract F. Upon completion of the CLUB's anticipated project, and by the terms of this Agreement, the CITY shall be granted access to both the trunk line and the inverted siphon by means of the 9 hole maintenance path as otherwise set forth in the attached Exhibit.

4. TRACT G: Tract G is leased as a buffer space between Tract H and Garner Lake Road. No structures, temporary or permanent in nature, shall be constructed in Tract G. CLUB may plant trees and engage in other similar landscape improvements to the premises in keeping with the terms of this Lease. Any trees planted in Tract G shall be planted and established along the Southern boundary of the Tract. The CITY retains the right, as a condition of this Lease, to

terminate the Lease with regard to Tract G should the CITY determine, in its sole opinion, that Tract G is required or needed for purposes of construction or improvement to Garner Lake Road, or for purposes of the construction of a parking lot on said Tract.

5. TRACT H: The CITY reserves, as a condition of this Lease, a fifty (50) foot wide right-of-way and general utility easement along the Eastern boundary of the Tract for a distance of one thousand and one (1,001) feet. (See attached Exhibit A.) This easement is reserved for purposes of a future roadway and development in the area.

The CITY of Gillette reserves the right to locate pathways and underground utility lines within the LAND and will endeavor to locate, construct and maintain those improvements so as to complement the development of the property as a public golf course. The CITY of Gillette will restore the surface of any portion of the LAND disturbed by its actions under this paragraph to a condition comparable to the condition before the disturbance.

III. TERM OF AGREEMENT AND REQUIRED APPROVALS

This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is from April 1, 2017 through March 31, 2057. This Agreement may be renewed once by agreement of both parties, in writing, for an additional forty (40) years, subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the CITY.

IV. FINANCING

It is agreed by the Parties that they will each be responsible for the construction of improvements as follows: The CLUB will be responsible for the funding for the construction and operation of the Golf Course and the CITY will be responsible for the funding for the construction and operation of its improvements to develop the Energy Capital Sports Complex. However, nothing contained within this Section of the Agreement shall prevent or prohibit either the CLUB or the CITY from volunteering to provide financing to one another for the development of the Golf Course or for the Energy Capital Sports Complex, nor does this Section negate prior funding provided by the CITY to the CLUB.

V. OWNERSHIP OF FACILITY

It is the intent of the Parties that the Golf Course, as may be established in CITY owned property, will be owned by the CITY and leased to the CLUB.

VI. USE OF FACILITY

The CLUB shall operate the Golf Course and those lands leased by the CITY to the CLUB. The CLUB shall pay all costs associated with its regular operations including utilities and general maintenance.

VII. LIABILITY AND WORKERS' COMPENSATION INSURANCE

The CLUB shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the construction, development, maintenance and operations of the Golf Course. The CITY specifically does not waive and specifically reserves any and all immunities granted by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq.

The following shall be the minimum scope and limits of Insurance, and the Golf Course shall obtain additional coverage above that set forth herein upon their own discretion. Coverage shall be at least as broad as:

Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than one million dollars (\$1,000,000.00) per occurrence; and two million dollars (\$2,000,000.00) in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Workers' Compensation: as required by the State of Wyoming with Statutory Limits.

Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status. The CITY, their officers, officials, employees, and volunteers, are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CLUB including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to this contract, CLUB's insurance coverage shall be primary insurance as respects the CITY, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of CLUB's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the CITY.

Waiver of Subrogation. CLUB hereby grants to the CITY a waiver of any right to subrogation which any insurer of CLUB may acquire against the CITY by virtue of the payment of any loss under such insurance. CLUB agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not CLUB has received a waiver of subrogation endorsement from the insurer.

Employers Liability/Stop Gap Coverage. The CGL policy shall be endorsed to contain Employers Liability/Stop Gap Coverage

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require CLUB to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

Verification of Coverage. CLUB shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before the project commences. However, failure to obtain the required documents prior to the beginning of the project shall not waive the CLUB's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

VIII. INDEMNITY AGREEMENT

The CLUB shall indemnify, defend, and hold harmless the CITY, and its officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of CLUB's failure to perform any of CLUB's duties and obligations hereunder or in connection with the negligent performance of CLUB's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of CLUB's action.

IX. COMPLIANCE WITH LAW

The CLUB shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

X. AMENDMENTS

Either party may request changes in this Agreement. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

XI. APPLICABLE LAW

The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming.

XII. ENTIRETY OF AGREEMENT

This Agreement, consisting of ten (10) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

XIII. PRIOR APPROVAL

This Agreement shall not be binding upon either party unless this Agreement has been reduced to writing before performance begins as described under the terms of this Agreement, and unless this Agreement is approved as to form by the City Attorney or his representative.

XIV. SEVERABILITY

Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

XV. GOVERNMENTAL IMMUNITY

The CITY does not waive governmental immunity by entering into this Agreement and specifically retain all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

XVI. THIRD PARTY BENEFICIARY RIGHTS

The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

XVII. ASSIGNMENT/AGREEMENT NOT USED AS COLLATERAL

Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The CLUB

shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of the CITY.

XVIII. SIGNATURES

In witness whereof, the Parties, through their authorized representatives, have executed this Agreement on the dates set out below and certify that they have read, understood and agree to the terms and conditions of this Agreement as set forth herein.

DATED ____ day of _____, 2017.

City of Gillette, Wyoming.

Louise Carter-King, Mayor

(S E A L)
ATTEST:

Karlene Abelseth, City Clerk

CITY ATTORNEY'S OFFICE APPROVAL AS TO FORM

Patrick G. Davidson

Date

Gillette Golf and Country Club, Inc, a Wyoming
nonprofit Corporation

Keith Chrans, President

STATE OF WYOMING)
) ss.
County of Campbell)

The above and foregoing instrument was acknowledged before me by Keith Chrans,
President of the Gillette Golf and Country Club, Inc. a Wyoming nonprofit Corporation on this
____ day of _____, 2017.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: