

RESOLUTION 65-2010

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A CHARITABLE DONATION AGREEMENT (CASH) AND A CHARITABLE DONATION AGREEMENT (GOLF COURSE) WITH ARIZONA GOLF SYSTEMS, L.L.C.

WHEREAS, Arizona Golf Systems, L.L.C. (AGS) is willing to donate to the City certain parcels on land known as the San Pedro Golf Course, together with up to \$950,000 to fund golf course operations over the next 32 months, pursuant to the terms of the Charitable Donation Agreement (Cash) and Charitable Donation Agreement (Golf Course), attached hereto as Exhibits A and B; and

WHEREAS, one of the terms of the Charitable Donation Agreement (Golf Course) contemplates an early transfer of possession before close of escrow by the City's delivering to AGS a Notice described in Exhibit E of said Agreement; and

WHEREAS, it is in the City's best interest to be able to transfer possession of the golf course prior to closing so as to commence City operation of the golf course at an early date.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, that:

1. The Charitable Donation Agreement (Cash) and Charitable Donation Agreement (Golf Course) attached hereto as Exhibits A and B respectively, are hereby approved and adopted.
2. The City Manager is hereby authorized to execute said agreements on behalf of the City.
3. The City Manager is further authorized to execute a Notice pursuant to Paragraph 2.7 of the Charitable Donation Agreement (Golf Course) transferring possession of the golf course to the City prior to close of escrow at such time that in his discretion he believes it is appropriate to do so.
4. City staff is directed to take all actions necessary to give effect to the terms of these Agreements.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA this 25th day of October, 2010.



MARK M. FENN, Mayor

ATTEST:


VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:


MICHAEL J. MASSEE, City Attorney

**CHARITABLE DONATION AGREEMENT
(CASH)**

THIS CHARITABLE DONATION AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2010 (the "Effective Date"), by and between the CITY OF BENSON, a political subdivision of the State of Arizona ("Donee"), and ARIZONA GOLF SYSTEMS, LLC, a Colorado limited liability company ("Donor").

RECITALS:

WHEREAS, Donor previously owned a golf course located in the City of Benson, Arizona, and known as the San Pedro Golf Course, which Donor has donated to Donee under separate agreement;

WHEREAS, Donor is willing to donate cash and cash equivalents described herein to Donee, and Donee is willing to accept the donation on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donor and Donee, intending to be legally bound, agree as follows.

AGREEMENT:

1. Donation.

1.1 Donor agrees to donate cash and cash equivalents totaling Nine Hundred Fifty Thousand Dollars (\$950,000.00) as follows:

- i. the amount of One Hundred Thirty-five Thousand Dollars (\$135,000.00) in cash shall be paid to Donee upon Acceptance of the Golf Course donation by Donee, as specified in paragraph 2.7 of the Golf Course Agreement ("Initial Donation");
- ii. the amount of Fifteen Thousand Dollars (\$15,000.00) in cash equivalents comprised of the inventory of the San Pedro Golf Course Pro Shop, as described on Exhibit A upon acceptance of the Golf Course donation by Donee; and
- iii. the amount of Twenty-Five Thousand Dollars (\$25,000.00) per month for thirty-two (32) months following acceptance of the Golf Course donation by Donee ("Monthly Donation"). The first payment shall be due thirty (30) days after acceptance.

1.2 With respect to the Initial Donation and Monthly Donations, Donee agrees that as a condition of those donations, Donee must furnish to Donor reasonable evidence that Donee has expended amounts in excess of all Golf Course revenues equal to or greater than the amount of the donations. The entitlement to the donation shall be determined by aggregating the Donee's costs in excess of revenues for the period from the date Donee takes possession of the Golf Course through June 30, 2011, and for each fiscal year thereafter. The amount that Donee's

costs exceed revenues for the periods described above shall be determined ("Excess Costs"). If the amount of Excess Costs for any period equal or exceed the total of donations made during the period, Donee shall be entitled to retain the donations. To the extent the donations for any period exceed the Excess Costs for the period, Donee shall return the difference to Donor or the Monthly Donations for the following period may be decreased by an amount equal to the difference. Donee shall provide records for each month within thirty (30) days after the close of each calendar quarter and shall provide the annual accounting within thirty (30) days after the end of each period.

2. Default Remedies.

2.1 Default Failure by either party to perform any term or provision of this Agreement for a period of fifteen (15) days (the "Cure Period") after written notice thereof from the other party shall constitute a default under this Agreement. Any notice of default shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured, if possible.

2.2 Remedies. If any party to this Agreement is in default under any provision of this Agreement after any applicable notice and cure periods, the non-defaulting party shall be entitled, without prejudice, to exercise any and all rights or remedies available to it under law or in equity, including, without limitation, the right to seek specific performance by the defaulting party. In addition, each party hereby waives the defense that the other party has an adequate remedy at law.

3. Notices.

3.1 All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express or Airborne; or (v) sent by facsimile transmission, addressed as follows:

If to Donor: Arizona Golf Systems, LLC
Attn: Tom Hartley
13990 W. 44th Avenue, Unit A
Golden, CO 80403
FAX: (303) 271-9038

With a copy to: Spencer A. Smith
DeConcini McDonald Yetwin & Lacy, P.C.
2525 E. Broadway, Suite 200
Tucson, AZ 85716-5300
FAX: (520) 322-5585

If to Donee: City of Benson
Attn: _____

Benson, Arizona _____
FAX: (520) _____

With a copy to:

Michael Massee
City Attorney
120 W. 6th Street
Benson, AZ 85602
FAX: (520) _____

If to Escrow Agent:

FAX: _____

3.2 All notices shall be deemed delivered and received upon the earliest of (a) actual receipt, (b) the third day after the day of mailing, (c) the next business day after the date of deposit with a nationally recognized overnight courier service, or (d) upon confirmation of error-free facsimile transmission. Any notice received on a Saturday, Sunday or on an Arizona state or federal holiday, or after 5:00 p.m. Arizona Time, on a business day shall be deemed received on the next succeeding business day. Any party may change its address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this Section. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

4. General.

4.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Donee or Donor of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

4.2 Attorneys' Fees. In the event either party finds it necessary to bring any action at law, arbitration or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or by reason of any breach or default hereunder, the party prevailing in any such action, arbitration or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees and litigation or arbitration related expenses by the other party, and in the event any judgment is secured by the prevailing party, all such costs, attorneys' fees and litigation or arbitration related expenses shall be included therein, with the fees to be set by the arbitrator or court and not by jury.

4.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages may all be attached to a single instrument.

4.4 Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next date which is not a Saturday, Sunday or holiday.

4.5 Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the intent of the parties contemplated by this Agreement.

4.6 Time of the Essence. Time is of the essence of this Agreement and each and every provision hereof

4.7 No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Donor and the Donee. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

4.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

4.9 Amendment. No changes or additions may be made to this Agreement except by a written amendment executed by the parties hereto.

4.10 Good Standing; Authority. The parties hereto represent and warrant to one another as follows: (i) each party is a legal entity, duly formed, validly existing and in good standing under the laws of the State of Arizona; (ii) each party has the necessary power and organizational authority to execute, deliver and accept this Agreement and any other documents and instruments required to be executed, delivered or accepted pursuant to this Agreement, and to perform its respective obligations under this Agreement; (iii) this Agreement has been duly authorized, executed and delivered by all necessary organizational or governing board action by each party and constitutes the legal, valid and binding obligations of each party, enforceable against such party in accordance with its terms; and (iv) the persons executing this Agreement on behalf of such party is duly authorized and empowered to bind the party on whose behalf each such person is signing.

4.11 Governing Law. This Agreement is entered into in Arizona and shall be governed by, and construed and interpreted in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DONOR:

ARIZONA GOLF SYSTEMS, LLC, a
Colorado limited liability company

By: _____

Name: Tom Hartley

Title: Manager

DONEE:

CITY OF BENSON, a political subdivision of the
State of Arizona

By: _____

Name: _____

Title: _____

DRAFT ONLY

EXHIBIT A
Inventory of Retail Products

DRAFT ONLY

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San Pedro Golf Course

Pro Shop Inventory for Sale

Sub Depart	Manufact	Description	Quantity	Retail Price	CostExtnd	RetailExtnd
01-Accessories	Foot Joy	Umbrella	1	\$59.95	\$32.50	\$59.95
01-Accessories	Oakley	Oakley - Hijinx	1	\$104.95	\$52.50	\$104.95
01-Accessories	Oakley	Oakley - Commit	2	\$139.95	\$140.00	\$279.90
01-Accessories	Skin Care	FroggTogg Towel	97	\$24.95	\$1,212.50	\$2,420.15
12-Iron Sets	Wilson Golf	Wilson - Wedge	2	\$109.95	\$127.00	\$219.90
13-Woods	Ping	Ping - G10 Driver	4	\$349.95	\$836.00	\$1,399.80
13-Woods	Ping	Wood	2	\$229.95	\$306.00	\$459.90
13-Woods	Wilson Golf	Wood	8	\$189.95	\$784.38	\$1,519.60
14-Putters	Ping	Ping - Craz E Putter	2	\$129.95	\$160.00	\$259.90
14-Putters	Wilson Golf	Wilson - Putter	2	\$109.95	\$120.00	\$219.90
21-Balls	Titleist	Titleist Pro V1	216	\$15.00	\$1,807.34	\$3,240.00
21-Balls	Titleist	Titleist NXT	84	\$9.50	\$428.50	\$798.00
21-Balls	Titleist	Titleist DT Solo	44	\$7.00	\$181.31	\$308.00
21-Balls	Titleist	Pinnacle - Logo Ball	68	\$3.00	\$123.76	\$204.00
21-Balls	Titleist	Pinnacle Gold 15pak	86	\$17.95	\$848.23	\$1,543.70
21-Balls	Titleist	4-pak	160	\$6.95	\$586.13	\$1,112.00
21-Balls	Titleist	Ladies 4Pak	27	\$4.95	\$70.77	\$133.65
21-Balls	Titleist	3-pak	43	\$5.95	\$139.75	\$255.85
21-Balls	Titleist	Soft Glove	9	\$4.50	\$18.00	\$40.50
21-Balls	Titleist	Ball	46	\$1.50	\$34.50	\$69.00
21-Balls	Wilson Golf	Wilson - Fifty Ball	8	\$5.95	\$23.04	\$47.60
22-M Gloves	Foot Joy	Soft Glove	133	\$11.95	\$802.06	\$1,589.35
22-M Gloves	Foot Joy	Glove	66	\$12.95	\$511.32	\$854.70
23-L Gloves	Foot Joy	Soft Glove	77	\$11.95	\$462.91	\$920.15
24-Bags	Ping	Ping - Explore Bag	2	\$149.95	\$160.00	\$299.90
24-Bags	Titleist	Titleist - Custom Bag	2	\$199.95	\$228.00	\$399.90
24-Bags	Wilson Golf	Bag	1	\$69.95	\$33.33	\$69.95
31-M Shoes	Foot Joy	FJ Mens Greenjoy	5	\$59.95	\$167.75	\$299.75
31-M Shoes	Foot Joy	FJ - Mens Contour	17	\$99.95	\$1,103.63	\$1,699.15
31-M Shoes	Foot Joy	FJ - Mens Ecomfort	8	\$84.95	\$418.23	\$679.60
31-M Shoes	Foot Joy	Athletics	12	\$89.95	\$642.00	\$1,079.40
31-M Shoes	Foot Joy	Contour	1	\$99.95	\$95.00	\$189.95
31-M Shoes	Oakley	Oakley - Pro Tye	1	\$99.95	\$52.80	\$99.95
32-L Shoes	Foot Joy	FJ - Ladies Ecomfort	4	\$89.95	\$214.00	\$359.80
32-L Shoes	Foot Joy	FG - Ladies Contour	1	\$109.95	\$65.12	\$109.95
32-L Shoes	Foot Joy	FJ - Ladies LoPro	11	\$99.95	\$655.99	\$1,099.45
41-M Headwear	Monterey Club	Monterey - Beenie	16	\$14.95	\$100.80	\$239.20
41-M Headwear	Page & Tuttle	Cap	39	\$15.95	\$227.76	\$622.05
41-M Headwear	Page & Tuttle	Cap	37	\$19.95	\$115.13	\$738.15
41-M Headwear	Ping	Ping Stretch Fit Cap	3	\$24.95	\$36.00	\$74.85
41-M Headwear	Ping	Ping Mr. Ping Cap	1	\$19.95	\$10.00	\$19.95
41-M Headwear	Ping	Ping Boonie Cap	2	\$35.95	\$36.00	\$71.90
41-M Headwear	Ping	Ping - Basic Cap	5	\$19.95	\$40.00	\$99.75
41-M Headwear	Titleist	Titleist - College Hat	23	\$29.95	\$342.53	\$688.85
41-M Headwear	Titleist	Titleist - D-back Hat	1	\$24.95	\$11.45	\$24.95
42-L Headwear	Page & Tuttle	Visor	2	\$10.95	\$5.98	\$21.90
56-L Socks	Foot Joy	FJ- 1 Pair L Socks	48	\$4.95	\$80.38	\$237.60
Accessories	Oakley	Oakley - Fuel Cell	2	\$99.95	\$104.00	\$199.90
Polo	Foot Joy	Foot Joy - Logo Polo	5	\$59.95	\$147.50	\$299.75
Polo	Foot Joy	Polo	8	\$34.95	\$289.44	\$279.60
Polo	Oakley	Oakley - Tact Polo	2	\$44.95	\$48.00	\$89.90
64-M Outerwear	Foot Joy	FJ DryJoy Jacket	4	\$99.95	\$200.00	\$399.80
66-M Socks	Foot Joy	FJ 3 Pair Socks	11	\$11.95	\$66.00	\$131.45
66-M Socks	Foot Joy	FJ- 1 Pair M Socks	6	\$4.95	\$17.40	\$29.70
Accessories	Ping	Ping - Cart Gloves	6	\$24.95	\$78.00	\$149.70
					\$15,650.00	\$28,866.15

**CHARITABLE DONATION AGREEMENT
(GOLF COURSE)**

THIS CHARITABLE DONATION AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2010 (the "Effective Date"), by and between the CITY OF BENSON, a political subdivision of the State of Arizona ("Donee"), and ARIZONA GOLF SYSTEMS, LLC, a Colorado limited liability company ("Donor").

RECITALS:

WHEREAS, Donor owns a golf course on approximately 120 acres of land located in the City of Benson, Arizona, and known as the San Pedro Golf Course, which is depicted on the site plan attached hereto as Exhibit A-1 and incorporated herein by this reference, and more particularly described on Exhibit A-2 attached hereto and incorporated herein by this reference (the "Golf Course");

WHEREAS, Donor is willing to donate the Golf Course to Donee, and Donee is willing to accept the donation on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donor and Donee, intending to be legally bound, agree as follows.

AGREEMENT:

1. Donation.

1.1 Upon the terms and conditions contained herein and at the time provided herein, Donor agrees to donate the Golf Course to the Donee. The Golf Course includes the real property described on Exhibit A-2, all buildings and improvements located on or under the real property, all water rights, liquor license (to the extent transferable), and all furniture, fixtures and equipment located on the real property on September 13, 2010, as enumerated on Exhibit B hereto.

1.2 The parties acknowledge that there may, as of the Effective Date hereof, exist underground sewer and/or water facilities that may cross lands owned by Donor adjacent to the Golf Course. Donor agrees to provide to Donee, at no cost, written easements of sufficient width to allow Donee to maintain, repair and replace such utility facilities. Donee must provide notice, specific location and legal descriptions of the existing facilities within one year of written notice from Donor, or prior to commencement of construction of any infrastructure improvements, whichever first occurs. Otherwise, this provision shall have no force or effect.

2. Due Diligence Investigations; Closing.

2.1 From the Effective Date to the Closing, Donor shall be responsible for maintaining the property. Donee agrees that prior to the Effective Date, it has performed such

studies, tests, soil samplings and assessments (the "Studies") as Donee deems necessary, including, without limitation, land title surveys, soils investigations, environmental assessments and archaeological assessments. Within five (5) days after the Effective Date, Donor shall provide Donee with copies of all reports, test results, reviews and other information and documentation in Donor's possession or within its reasonable control concerning the condition of the Golf Course, but Donor shall not make and does not make any representations or warranties regarding such reports, documentation or information. Until Closing, Donor shall maintain a policy of commercial general public liability insurance in an amount of not less than Two Million Dollars (\$2,000,000.00), combined single limit.

2.2 Possession; Risk of Loss. Transfer of possession of the Golf Course to Donee will occur at 2:00 p.m. on the Closing Date, or as provided by paragraph 2.7 hereof. Title conveyed shall be subject to all patent reservations, obligations, liabilities or other matters of record to which reference is made in the public record as of the Effective Date hereof; and any and all conditions, easements, encroachments, rights-of-way, or restrictions that a physical inspection, or accurate ALTA survey, of the Golf Course would reveal. Risk of loss or damage to the Golf Course and all liability to third persons belongs to Donor until the transfer of possession, except for the Donee indemnity obligations and restoration obligations in Section 5 below.

2.3 As Is, Where Is. The Golf Course will be conveyed by Donor to Donee on an "as is, where is, with all faults" basis, and Donor specifically disclaims any representations of any kind, express or implied, with respect to the Golf Course, except that Donor represents and warrants that during Donor's possession of the Golf Course property commencing on June 15, 2001, through the Closing Date, Donor did not cause or permit the deposition or disposal of any hazardous waste, substance or materials, as defined by CERCLA, on the property.

2.4 Escrow. The donation of the Golf Course will be consummated through an escrow established with _____, AZ _____ ("Escrow Agent").

2.5 Conveyance. Donor shall convey the Golf Course to the Donee within five (5) days after a legal description of the Golf Course is delivered to Donee (the "Closing," "Closing Date" or "Close of Escrow"). Donor shall convey the Golf Course pursuant to a special warranty deed in the form attached hereto as Exhibit C and incorporated herein by this reference, subject to all matters of record except that the Golf Course shall be free and clear of all monetary liens and assessments.

2.6 Closing Costs. Donor shall pay all closing costs and expenses associated with the conveyance of the Golf Course by Donor to Donee, including, without limitation, escrow fees and recording costs. If the Golf Course will be subject to *ad valorem* real estate taxes for the year in which the conveyance occurs, the *ad valorem* real estate taxes will be prorated so that Donor is responsible for the *ad valorem* real estate taxes to the Closing Date, and the Donee is responsible for the *ad valorem* real estate taxes from and after the Closing Date.

2.7 Early Transfer of Possession. The parties agree that transfer of the possession and operation of the Golf Course as soon as possible would be in the best interest of both parties. The parties also recognize that obtaining an accurate legal description may delay formal closing

and recording of the Special Warranty Deed. Therefore, Donee shall have the option of electing to take early possession of the Golf Course by delivery to Donor of a notice of early possession and acceptance of donation in the form attached hereto as Exhibit E ("Acceptance"). Upon delivery of the Acceptance, possession shall pass to Donee at 12:01 p.m. on the following calendar day.

2.8 Pending the transfer of possession, (i) the operation of the Golf Course will be conducted in the ordinary course as it is presently being conducted; and (ii) Donor shall not enter into, assume or cause any lien, encumbrance, mortgage, deed of trust, conditional sales or other title retention agreement or charge of any kind upon the Golf Course, or sell, convey, abandon, assign, transfer or otherwise dispose of any interest in the Golf Course.

3. Obligations of Donee.

3.1 Donee agrees that it shall retain title to the Golf Course for a minimum of three (3) years after Closing. Donee understands and agrees that failure to honor this condition of the Agreement could expose Donor and Donor's members to significant liability resulting from the failure of the donation to comply with applicable tax laws and Donee shall be liable for any damages incurred by Donor as a result of Donee's breach of this condition.

3.2 Donee understands that Donor intends to develop certain lands surrounding the Golf Course property subsequent to Closing. Donee agrees to cooperate with Donor with respect to the granting of utility easements and/or easements for ingress and egress that may be required across the Golf Course property in connection with Donor's development of its adjacent land. Such cooperation shall be at no cost to Donee and in the event that the grant of an easement by Donee to Donor results in damage to or destruction of any portion of the Golf Course, Donor shall be obligated to minimize any disruption by performing work after Golf Course hours and to fully restore the Golf Course to substantially the same condition as existed prior to the installation of utilities or ingress or egress roads or paths. Donor shall pay to Donee the appraised value of any easements granted under this paragraph.

3.3. Donee understands that development of Donor's Remainder Parcel is contingent on adjusting the location of certain ponds and associated equipment and processes within the current area of the City's wastewater treatment plant (hereinafter "Revisions"). The City is amenable to such adjustments and agrees to cooperate with Donor to undertake such Revisions on the following terms:

(a) the planning, designing, permitting, bidding, contracting, construction, inspection and final approval of such Revisions shall be at no cost to the City;

(b) Donor agrees to supply the City with financial assurances in a form and amount deemed necessary by the City;

(c) No construction activity associated with such Revisions shall negatively impact the operation of the wastewater treatment plant;

(d) the Revisions shall not diminish the current or future capacity of the wastewater treatment plant;

(e) submit all plans for Revisions to the Arizona Department of Environmental Quality for review and obtain all required approvals and permits or permit amendments;

(f) all plans for Revisions shall also be submitted for review to the City Engineer, who shall review the plans for conformity to relevant regulations and whose approval shall not be unreasonably withheld;

(g) Donor shall provide and/or fund all necessary and customary documents to close out the construction project, including all inspection reports, as-built drawings, approval of construction and other documents deemed by the City to be necessary for final acceptance;

(h) Donor shall warrant the proper operation of all ponds and equipment newly constructed or installed as part of the Revisions for 2 years after final acceptance by City;

(i) construction of the Revisions shall commence within three years and be completed within five years of this Agreement.

4.1 Charitable Tax Contribution.

4.1 Background. Donor and Donee have agreed to this transaction in which Donor will grant and convey the Golf Course and Donee will acquire the Golf Course on a donated basis by Donor. Donor asserts that the fair market value of the Golf Course is a gift from Donor to Donee. The terms set forth below will supersede any conflicting terms in this Agreement.

4.2 Fair Market Value. The fair market value of the Golf Course asserted by Donor ("Fair Market Value") is Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00).

4.3 Closing Documents. Upon the Closing, the Escrow Agent shall prepare a closing statement showing the Fair Market Value as the value of the Golf Course.

4.4 Tax Reporting. Donor will report this transaction to the Internal Revenue Service as a gift. Donor acknowledged that Donee has not given Donor legal advice with respect to the tax consequences of this transaction and that Donor has obtained advice from a lawyer or tax professional with regard to this matter or has decided to proceed without such advice. Donor releases Donee and any of Donee's agents, employees, consultants, advisors, accountants and attorneys from any claim related to the tax treatment of this transaction and the obligation to furnish advice or to assure that taxing authorities, federal, state or local, will allow any particular treatment for tax purposes to Donor for this transaction unless Donee breaches the provisions of paragraph 3.1 hereof.

4.5 Receipt. Donee will give a gift substantiation document to meet the requirements of Internal Revenue Code §170(f)(8) in connection with this transaction, which will read as follows:

To the Members of Arizona Golf Systems, LLC ("AGS"):

On behalf of the citizens of the City of Benson, a political subdivision of the State of Arizona, we would like to express our gratitude for the gift of the San Pedro Golf Course to the City of Benson. This land will be used as a municipal golf course. The City of Benson provided no other goods or services in consideration, in whole or in part, for the contribution.

4.6 Donee to Sign Internal Revenue Service Form 8283, which is also Signed by Appraiser. Donor shall provide an Internal Revenue Service Form 8283 to support the gift supported by an appraisal establishing the Fair Market Value and signed by Donor's appraiser. Donee's only obligation with regard to the Form 8283 is to sign the portion of the form acknowledging receipt of the Golf Course, which Donee will do at Closing after Donee has accepted the Golf Course and this transaction. Donor agrees to sign or provide any additional documentation, if any is required by the Internal Revenue Service, to document the charitable contribution of the Golf Course.

5. Indemnity.

5.1 Donor's Indemnity. Donor agrees that it shall indemnify and hold harmless Donee and its permitted successors and assigns and their respective directors, officers, members and employees (collectively, the "City's Indemnified Parties") from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings, and all attorneys' fees incurred by the City's Indemnified Parties in connection therewith, arising from or out of any acts, omissions or other conduct of Donor or any of its officers, agents, employees, members, invitees, contractors or subcontractors in connection with (i) property damages or personal injury to the extent arising out of Donor's negligence or willful misconduct, and (ii) any claim by third parties that arise during Donor's or Donor's officers, agents, employees, members, invitees, contractors or subcontractors use of the Golf Course. Donor shall not, however, be required to reimburse or indemnify any City Indemnified Party for any loss or claim to the extent such loss or claim is due to the negligence or willful misconduct of any City Indemnified Party.

5.2 Donee's Indemnity. Donee agrees that it shall indemnify and hold harmless Donor, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Donor's Indemnified Parties") from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings, and all attorneys' fees incurred by the Donor's Indemnified Parties in connection therewith, arising from or out of any acts, omissions or other conduct of Donee or any of its officers, agents, employees, contractors or subcontractors in connection with property damage or personal injury at the Golf Course arising out of Donee's use, possession or ownership of the Golf Course. Donee shall not, however, be required to reimburse or indemnify any Donor Indemnified Party for any loss or claim to the extent such loss or claim is due to the negligence or willful misconduct of any Donor Indemnified Party.

6. Default Remedies.

6.1 Default. Failure by either party to perform any term or provision of this Agreement for a period of fifteen (15) days (the "Cure Period") after written notice thereof from the other party shall constitute a default under this Agreement. Any notice of default shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured, if possible.

6.2 Remedies. If any party to this Agreement is in default under any provision of this Agreement after any applicable notice and cure periods, the non-defaulting party shall be entitled, without prejudice, to exercise any and all rights or remedies available to it under law or in equity, including, without limitation, the right to seek specific performance by the defaulting party. In addition, each party hereby waives the defense that the other party has an adequate remedy at law.

7. Notices.

7.1 All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express or Airborne; or (v) sent by facsimile transmission, addressed as follows:

If to Donor: Arizona Golf Systems, LLC
Attn: Tom Hartley
13990 W. 44th Avenue, Unit A
Golden, CO 80403
FAX: (303) 271-9038

With a copy to: Spencer A. Smith
DeConcini McDonald Yetter & Lacey, P.C.
2525 E. Broadway, Suite 600
Tucson, AZ 85716-5300
FAX: (520) 322-5585

If to Donee: City of Benson
Attn: _____

Benson, Arizona _____
FAX: (520) _____

With a copy to: Michael Masee
City Attorney

120 West 6th Street
Benson, AZ 85602
FAX: (520) _____

If to Escrow Agent: _____

FAX: _____

7.2 All notices shall be deemed delivered and received upon the earliest of (a) actual receipt, (b) the third day after the day of mailing, (c) the next business day after the date of deposit with a nationally recognized overnight courier service, or (d) upon confirmation of error-free facsimile transmission. Any notices received on a Saturday, Sunday or on an Arizona state or federal holiday, or after 5:00 p.m., Arizona Time, on a business day shall be deemed received on the next succeeding business day. Any party may change its address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this Section. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

8. General.

8.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Donee or Donor of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

8.2 Attorneys' Fees. In the event either party finds it necessary to bring any action at law, arbitration or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or by reason of any breach or default hereunder, the party prevailing in any such action, arbitration or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees and litigation or arbitration related expenses by the other party, and in the event any judgment is secured by the prevailing party, all such costs, attorneys' fees and litigation or arbitration related expenses shall be included therein, with the fees to be set by the arbitrator or court and not by jury.

8.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages may all be attached to a single instrument.

8.4 Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next date which is not a Saturday, Sunday or holiday.

8.5 Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof

8.6 Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the intent of the parties contemplated by this Agreement.

8.7 Covenants. Except as otherwise provided in this Section, Donor and Donee hereby declare their express intent that the provisions of this Agreement shall be deemed covenants running with the land and shall inure to the benefit of and be binding upon Donor and Donee and their successors and permitted assigns.

8.8 Time of the Essence. Time is of the essence of this Agreement and each and every provision hereof.

8.9 No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Donor and the Donee. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

8.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

8.11 Amendment. No changes or additions may be made to this Agreement except by a written amendment executed by the parties hereto.

8.12 Good Standing; Authority. The parties hereby represent and warrant to one another as follows: (i) each party is a legal entity, duly formed, validly existing and in good standing under the laws of the State of Arizona; (ii) each party has the necessary power and organizational authority to execute, deliver and accept this Agreement and any other documents and instruments required to be executed, delivered or accepted pursuant to this Agreement, and to perform its respective obligations under this Agreement; (iii) this Agreement has been duly authorized, executed and delivered by all necessary organizational or governing board action by each party and constitutes the legal, valid and binding obligations of each party, enforceable against such party in accordance with its terms; and (iv) the persons executing this Agreement on behalf of such party is duly authorized and empowered to bind the party on whose behalf each such person is signing.

8.13 Governing Law. This Agreement is entered into in Arizona and shall be governed by, and construed and interpreted in accordance with the laws of the State of Arizona.

8.14 Commissions. Donor and Donee acknowledge that no real estate sales, brokerage or other commissions or finder's fees are or may become due and payable by Donor or Donee, respectively, in connection with the transaction contemplated by this Agreement. Donor and Donee are solely responsible for payment to third parties for any work contracted by each of them respectively.

8.15 Nondiscrimination. The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DONOR:

ARIZONA GOLF SYSTEMS, LLC, a
Colorado limited liability company

By: _____

Name: Tom Hartley

Title: Manager

DONEE:

CITY OF BENSON, a political subdivision of the
State of Arizona

By: _____

Name: _____

Title: _____

DRAFT ONLY

EXHIBIT A-1
Golf Course Drawing

DRAFT ONLY



- LEGEND**
- EXISTING PROPERTY BOUNDARY
 - PROPOSED PROPERTY BOUNDARY
 - 1000' SETBACK FROM SLUDGE BEDS
 - EXISTING I-2 ZONE BOUNDARY
 - EXISTING AT ZONE BOUNDARY
 - EXISTING EASEMENTS
 - PROPOSED MULTI-FAMILY RESIDENCES
 - PROPOSED AREA TOM HARTLEY TO ACQUIRE
 - PROPOSED AREA CITY OF BENSON TO ACQUIRE
 - FLOOD PLAN ZONE X
 - PROPOSED BIRD WATCHING AREA
 - 1 --- PROPOSED LOT NUMBERS
 - --- EXISTING HOLE NUMBERS
 - --- EXISTING GREENS
 - --- EXISTING TREE BOXES
 - --- PROPOSED TREE BOXES



REVISIONS

TOM HARTLEY

TRUeline
ENGINEERING
Civil & Surveying Materials
1000 W. Camelback Rd., Suite 100, Phoenix, AZ 85015
P: 602.998.8888

**PROPOSED DEVELOPMENT AND
SEWER PLANT REVISIONS
EXHIBIT**

DATE: JUN 2018
JOB NO: 00018-210
DRAWN BY: CLF
CHECKED BY: CLF

SHEET
1 OF 1

10/18/18

Exhibit A-1

EXHIBIT A-2
Golf Course Legal Description
[to come]

DRAFT ONLY

EXHIBIT B

Inventory of Furniture, Fixtures and Equipment

DRAFT ONLY

San Pedro Golf Course
Furniture Fixtures and Equipment

MODEL YEAR	COND	MAKE	MODEL	COST
2002	NEW	LILLY	WFT SPREADER	3,435
2002	USED	TORO	WORKMAN (3)	5,946
2002	NEW	MULTIQUIP	TRASH PUMP	1,436
2002	NEW	SELECTCOM	2-WAY RADIOS (4)	400
2002	USED	KUBOTA	TRACTOR/LOADER	27,372
2002	USED	TYCROP	MH400 MATERIAL HANDLER	21,862
2002	USED	JOHN DEERE	220A WALK BEHIND MOWER	2,372
2002	USED	JOHN DEERE	TRAILER	431
1997	USED	JOHN DEERE	GREENS AERATOR	7,546
2002	NEW	BERNARD	RAPID FACER	809
2001	USED	TORO	3500D SIDEWINDER MOWER	24,182
2000	USED	TORO	5500D MOWER	29,025
2000	USED	TORO	SANDPRO 3020 16V GUARD (2)	9,571
2002	NEW	GANDY	110 LB FERT SPREADER (2)	574
2001	USED	TORO	WORKMAN 4300D	17,469
2002	USED	TYCROP	QUICK PASS 270 TOP DRESS	5,913
2002	USED	TORO	300 GAL SPRAYER W/ BOOM	7,735
2007	NEW	JOHN DEERE	COMMERCIAL WEED EATERS (3)	450
2002	NEW	RYAN	SO D CUTTER	3,000
2007	NEW	RANGE MAST	RANGE BALL WASHER	3,286
2002	USED	TORO	WALK BEHIND SPRAY BOOM	1,485
2002	NEW	STANDARD	BUNKER FLAGS, POLES	1,737
1999	USED	JOHN DEERE	TRIPLE MOWER 2653A	23,808
2002	USED	FOLEY	630 REEL GRINDER	18,334
2002	USED	FOLEY	660 BED KNIFE GRINDER	6,933
2002	USED		1000 GAL FUEL TANK METER (2)	6,756
2002	USED		FUEL TANK BOLLARDS	529
2002	NEW	BIG TEX	UTILITY TRAILER	2,011
1998	USED	JOHN DEERE	DIESEL GREENS MOWERS (1)	5,583
2002	USED	GOLF LIFT	EQUIPMENT LIFT	5,698
2000	USED	JOHN DEERE	BP50 BLOWER	431
2002	NEW	FRIGIDAIRE	18 CU REFRIG	542
1999	USED		500 GAL TANK/PUMP	2,703
2002	NEW	JOHN DEERE	4710 TRACTOR/LOADER	29,957
1999	USED	LANDPRIDE	BRUSH MOWER 1572	1,500
2001	USED	JOHN DEERE	JD GREENS MOWER (1)	9,085
2001	USED	AD WILLIAMS	140 GAL SKID SPRAYER	4,411
2001	USED	GANDY	10 FT SEEDER	1,500
1977	USED	DITCH WITCH	R65G-2 TRENCHER/HOE	6,500
2001	USED	JOHN DEERE	2500 GREENS MOWERS	8,624
2001	USED	JOHN DEERE	2500 GREENS MOWERS	16,226
2002	USED	JOHN DEERE	GREENS VERTICUT UNIT	4,703
2001	USED	JOHN DEERE	3235B FAIRWAY MOWER (2)	3,000
2004	USED	JOHN DEERE	TC 125 SWEEPER	6,500

2003	USED	JOHN DEERE	REELS	4,200
2004	USED	PRATT	SPRING RAKE	1,995
	NEW	MISC	SAMLL TOOLS	5,000
2003	NEW	TORO	IRRIGATION SYSTEM	770,000
2003	USED	AERWAY	TURF AERATOR	6,000
Subtotal				1,128,565
GOLF CARTS				
2002	NEW	CLUBCAR	2002 GAS GOLF CARTS (58)	176,400
2000	USED	CARRYALL	TURF CARS (2)	9,991
1999	USED	CARRYALL	TURF CAR	2,789
2005	NEW	CLUBCAR	2005 GAS GOLF CARTS (11)	39,789
Subtotal				228,969
OFFICE EQUIPMENT				
1995	NEW	NEC	PHONE SYSTEM	5,389
	USED	SONY STAR	COPIER W/FEEDER	2,679
YEAR	NEW/USED		EQUIP/DESCRIPTION	
2000	USED		10 HOOD, GREASE TRAP, FRYER	1,300
2001	USED		3 DOOR UNDERCOUNTER REFRIG	1,500
2007	NEW		MONITOWAC ICEMACHINE	3,800
1999	USED		SLOW COOKER	500
2000	USED		MISC USED EQUIP, COOLERS, FREEZER	38,959
2001	USED		GRANT REFRIGERATOR	1,000
1999	USED		BAR COOLER	2,525
1998	USED		GLYCOL TAP COOLER	2,386
2000	USED		OMEGA DISHWASHER	5,103
2005	NEW		FREEZER 32" 22 CU FT	1,297
YEAR	NEW/USED		CLUBHOUSE FURNITURE	COST
2000	USED		TABLES, CHAIRS	16,329
2002	NEW		BAR, WAIT STATION, FIXTURES	13,910
2002	NEW		PRO SHOP CABINETS	4,457
2002	NEW		GOLF SHOP FIXTURES	3,095
1999	USED		MISC GOLF SHOP FIXTURES	2,597
2002	NEW		BAR DISPLAY	610
2002	NEW		PATIO FURNITURE	3,455
Subtotal				110,891
Total Cost				1,468,425

EXHIBIT C
Special Warranty Deed

DRAFT ONLY

After recording, please return to:

Spencer A. Smith
DeConcini McDonald Yetwin & Lacy, P.C.
2525 E. Broadway, Suite 200
Tucson, AZ 85716-3300

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, Arizona Golf Systems, L.L.C., a Colorado limited liability company, GRANTOR, does hereby convey to the City of Benson, an Arizona municipal corporation, GRANTEE, the real property described on Exhibit A hereon, situated in Cochise County, Arizona,

TOGETHER WITH an easement for ingress, egress and utilities across the property of GRANTOR described on Exhibit B hereto. Such easement shall be of sufficient size, but in no event less than twenty (20) feet in width, to afford access for ingress, egress and utilities between each of the parcels described on Exhibit A. GRANTOR and GRANTEE understand and agree that the easement granted herein shall be generally located as depicted on Exhibit C hereto and that GRANTOR will be entitled to use the property subject to the easement for private roads and may dedicate the property covered by the easement for use as a public roadway.

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

And GRANTOR does warrant the title against all acts of GRANTOR and no other person or entity, subject to the matters above set forth.

DATED this ____ day of _____, 2010.

ARIZONA GOLF SYSTEMS, L.L.C.,
an Arizona limited liability company

By: _____
Its: Manager

STATE OF COLORADO)

)

ss:

County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____, Manager of Arizona Golf Systems, L.L.C.

My Commission Expires:

Notary Public

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DRAFT ONLY

EXHIBIT D

Concept Drawing of Revisions to Wastewater Treatment Plant

DRAFT ONLY



- LEGEND**
- EXISTING PROPERTY BOUNDARY
 - PROPOSED PROPERTY BOUNDARY
 - 1000' SETBACK FROM SLUDGE BEDS
 - EXISTING I-2 ZONE BOUNDARY
 - EXISTING AT ZONE BOUNDARY
 - EXISTING EASEMENTS
 - PROPOSED MULTI-FAMILY RESIDENCES
 - PROPOSED AREA TOM HARTLEY TO ACQUIRE
 - PROPOSED AREA CITY OF BENSON TO ACQUIRE
 - FLOOD PLAN ZONE X
 - PROPOSED BIRD WATCHING AREA
 - 1 --- PROPOSED LOT NUMBERS
 - 0 --- EXISTING HOLE NUMBERS
 - EXISTING GREENS
 - --- EXISTING TREE BOXES
 - --- PROPOSED TREE BOXES



REVISIONS

TOM HARTLEY

TRUeline
ENGINEERING
Civil & Surveying Materials
1000 W. Camelback Rd., Suite 100, Phoenix, AZ 85015
P: 602.998.8888

PROPOSED DEVELOPMENT AND
SEWER PLANT REVISIONS
EXHIBIT



DATE: JUN. 2018
JOB NO: 00018-210
DRAWN BY: CLF
CHECKED BY: CLF
SHEET
1 OF 1

1/2" Grid

Exhibit D

EXHIBIT E

Notice of Possession and Acceptance of Donation

DRAFT ONLY

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EXHIBIT E

Notice of Early Transfer of Possession

The City of Benson, a political subdivision of the State of Arizona ("City"), and Arizona Golf Systems, LLC, a Colorado limited liability company ("AGS"), are parties to that certain Charitable Donation Agreement (Golf Course) ("Donation Agreement") effective October ____, 2010. By this Notice of Early Transfer of Possession ("Notice"), the City hereby advises AGS that, pursuant to paragraph 2.7 of the Donation Agreement, the City gives notice that it will take possession of the Golf Course on October ____, 2010. The City acknowledges that, upon taking possession, it will become liable for damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings as set forth in paragraph 2 of the Donation Agreement, and further agrees that it will obtain and maintain appropriate insurance coverages on the Golf Course effective as of the date of possession.

Any notices required to be given pursuant to this Notice or pursuant to the Donation Agreement shall be as provided in paragraph 7.1 of the Donation Agreement.

CITY OF BENSON, a political subdivision
of the State of Arizona

By: _____
Its: _____

DRAFT ONLY