

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2013-70

A RESOLUTION OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, APPROVING AND ADOPTING THE “AGREEMENT TERMINATING THE PROFESSIONAL SERVICES AGREEMENT TWIN LAKES GOLF COURSE” BETWEEN THE CITY OF WILLCOX, “LESSOR”, JASON JONES AND CARRIE JONES, D.B.A. JNC VENTURES, L.L.C., LESSEE AND JOHN PETERSON AND BETTY PETERSON, D.B.A. ENCORE CATERING UNLIMITED, L.L.C., “SECURED PARTY”.

WHEREAS, LESSOR is empowered pursuant to Arizona Revised Statutes, Title 9, Section 9-240(A) to have control of the finances and property of the corporation and further is vested with all powers of incorporated towns as set forth in Title 9 or other provisions of law relating to cities and towns pursuant to A.R.S. § 9-499.01, et seq.; and,

WHEREAS, LESSOR is authorized pursuant to A.R.S. § 9-241, et seq. to exercise control of the property of the corporation and to erect, purchase or lease property for the purposes of the corporation, including the operation of public parks and other lands for public purposes pursuant to § 9-494; and,

WHEREAS, JASON JONES and CARRIE JONES, d.b.a. JNC VENTURES, L.L.C., as LESSEE, of the Twin Lakes Golf Course under the “Professional Services Agreement Twin Lakes Golf Course”, approved October 4, 2010, which was amended on December 17, 2012, under the “2012 Amendment to the Professional Services Agreement Twin Lakes Golf Course” no longer wish to continue to operate the Twin Lakes Golf Course; and,

WHEREAS, LESSOR and LESSEE, desire to execute the “Agreement Terminating the Professional Services Agreement Twin Lakes Golf Course”, attached hereto as Exhibit “A” and incorporated herein for the termination of the terms and conditions of the original “Professional Services Agreement for Twin Lakes Golf Course” and the “2012 Amendment to the Professional Services Agreement Twin Lakes Golf Course”; and,

WHEREAS, the Mayor and City Council desire to have this Resolution presented at the Regular Council Meeting on November 4, 2013, and has determined that approval of the “Agreement Terminating the Professional Services Agreement Twin Lakes Golf Course” is in the best interest of the CITY and its residents.

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NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: The Mayor and City Council of the City of Willcox, Arizona, hereby approve and adopt the “**Agreement Terminating the Professional Services Agreement Twin Lakes Golf Course**” attached hereto as Exhibit “A” and incorporated herein, as presented to Mayor and Council; and,

SECTION 2: The Mayor is authorized and empowered to execute the “**Agreement Terminating the Professional Services Agreement Twin Lakes Golf Course**” attached hereto as Exhibit “A” and incorporated herein, as presented to Mayor and Council; and,

SECTION 3: The Mayor is authorized and empowered to execute this Resolution as presented.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, this 4th day of November, 2013.

APPROVED/EXECUTED:

/s/ Robert A. Irvin
ROBERT A. IRVIN, MAYOR

ATTEST:

/s/ Virginia A. Mefford
VIRGINIA A. MEFFORD, City Clerk

APPROVED AS TO FORM:

/s/ Ann P. Roberts
ANN P. ROBERTS, City Attorney

RESOLUTION 2013-70

WHEN RECORDED MAIL TO:

Virginia A. Mefford, City Clerk
City of Willcox, Arizona
101 S. Railroad Avenue, Ste. B
Willcox, Arizona 85643

THE ABOVE SPACE RESERVED FOR RECORDING INFORMATION

AGREEMENT TERMINATING THE
PROFESSIONAL SERVICES AGREEMENT
WITH THE CITY OF WILLCOX
FOR THE TWIN LAKES GOLF COURSE

DO NOT REMOVE THIS PAGE IT IS PART OF THE OFFICIAL RECORDED DOCUMENT

**AGREEMENT TERMINATING THE
PROFESSIONAL SERVICES AGREEMENT
TWIN LAKES GOLF COURSE**

This Agreement for the termination of the Professional Services Agreement for the Twin Lakes Golf Course, hereinafter known as the "**Termination Agreement**" is entered into this 4th day of November, 2013 by and between the **CITY OF WILLCOX**, an Arizona municipal corporation, hereinafter referred to as "**LESSOR**", and **JASON JONES** and **CARRIE JONES**, d.b.a. **JNC VENTURES, L.L.C.**, an Arizona limited liability company, hereinafter referred to as "**LESSEE**" and **JOHN S. PETERSON** and **BETTY L. PETERSON**, d.b.a. **ENCORE CATERING UNLIMITED, L.L.C.**, an Arizona limited liability company, hereinafter referred to as "**SECURED PARTY**".

RECITALS

A. The Original Lease Agreement for the Twin Lakes Golf Course was entered into for a period of operation from June 1, 2003 until December 31, 2010, by and between the **LESSOR** and the original lessee, now **SECURED PARTY, JOHN PETERSON** and **BETTY PETERSON**, d.b.a. **ENCORE CATERING UNLIMITED, L.L.C.**, with the right to amend and thereafter, said Lease was amended; and,

B. **LESSOR** approved an Assignment and Consent Agreement on October 4, 2010, assigning, transferring and conveying all of the original lessees', now **SECURED PARTY, JOHN PETERSON** and **BETTY PETERSON**, d.b.a. **ENCORE CATERING UNLIMITED, L.L.C.**, rights, obligations, title, interest and liabilities in and to the Lease Agreement to **JASON JONES** and **CARRIE JONES**, d.b.a. **JNC VENTURES, L.L.C.**, as **LESSEE**, to fulfill the Lease Agreement terms and conditions until the extended termination date of December 31, 2015; and,

C. **LESSEE** and **SECURED PARTY**, entered into a Buy/Sell Agreement, Security Agreement and a UCC-1 Financing Statement dated October 7, 2013, for the sale and security of personal property and goods associated with the operation of the golf course in an original secured amount of One Hundred Twenty Six Thousand Eight Hundred Fifty Dollars (\$126,850.00); and,

D. **LESSEE** no longer wishes to operate the Twin Lakes Golf Course and **LESSOR**, is willing and able to resume operation of such; and,

E. **SECURED PARTY** must agree to release all security interest in the personal property and goods associated with the operation of the golf course which will as a result of this Termination Agreement becomes the property of **LESSOR**.

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NOW THEREFORE, in consideration of the mutual benefits to be derived by all parties herein, it is agreed that the Professional Services Agreement for the Twin Lakes Golf Course, executed October 6, 2010, as amended December 17, 2012, is hereby terminated upon fulfillment of the following terms and conditions:

1. **LESSOR** shall pay to **LESSEE** the sum of \$0.00 as and for unused pro shop inventory, depreciated value of the trade fixtures and equipment belonging to **LESSEE** that City wishes to retain that there are no liens upon, the depreciated rate for any capital improvements made by **LESSEE** to Clubhouse facility or any other capital improvements made on the course which were approved by the **LESSOR**, and the cost of usable inventories not limited to but including remaining inventories in the restaurant and bar. An inventory of all items included in the aforementioned paragraph shall be attached as **Exhibit "A"** and by reference, included herein.

2. **LESSEE** shall execute in favor of **LESSOR**, a Bill of Sale for all items of property being convey to **LESSOR**. Said Bill of Sale shall include the inventory attached hereto as **Exhibit "A"**.

3. **LESSOR** shall assume **LESSEE'S** obligations under contracts, if any, for the purchase or rental of capital equipment used by **LESSEE** in performing services under the Lease Agreement, at the course, including, but not limited to any contracts for the purchase or rental of golf carts, provided the **LESSOR** had approved the contracts prior to execution. An inventory of all obligations and/or contracts included in the aforementioned paragraph shall be attached as **Exhibit "B"** and by reference, included herein.

4. **LESSEE** shall relinquish all rights to perform operations at the Twin Lakes Golf Course as of the 4th day of November, 2013, and all property not being conveyed to **LESSOR** to **LESSEE** under the terms of this Termination Agreement shall be removed from the Twin Lakes Golf Course as of that date. Any property of the **LESSEE** that is not removes from the Twin Lakes Golf Course by **LESSEE** as of that date shall be deemed to be forfeited and shall become the property of the **LESSOR**.

5. **LESSOR** shall pay to **SECURED PARTY**, on behalf of the **LESSEE**, the sum of \$88,950.00 as and for release of the Security Agreement and a UCC-1 Financing Statement dated October 7, 2013, which was executed by **LESSEE** in favor of **SECURED PARTY**, for the sale and security of personal property and goods associated with the operation of the golf course in an original secured amount of One Hundred Twenty Six Thousand Eight Hundred Fifty Dollars (\$126,850.00).

6. **SECURED PARTY** shall execute in favor of **LESSOR**, a Bill of Sale for all items of property being convey to **LESSOR**. Said Bill of Sale shall include the inventory attached hereto as **Exhibit "A"**.

7. **SECURED PARTY** shall also execute a UCC-3, UCC Financing Statement Amendment, in favor of **LESSOR** for the termination of the previously executed UCC-1 Initial Financing Statement.

8. **LESSEE** shall indemnify, defend and hold harmless **LESSOR** from any and all liability or loss against all claims, or actions based on or arising out of damage or injury to persons or property, caused by or sustained in connection with the performance of **LESSEE'S** duties as performed under the terms of the Lease Agreement.

9. **LESSOR** agrees to indemnify, defend and hold harmless **LESSEE** for any and all liability and losses and against all claims or actions based on or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of the obligations and conditions of **LESSOR** as performed under the terms of the Lease Agreement.

10. **LESSEE** hereby affirms to **LESSOR** that **LESSEE** did not utilize or permit to be utilized, hazardous substances on the Twin Lakes Golf Course, during **LESSEE'S** performance under the terms of the Lease Agreement. **LESSEE** hereby agrees to indemnify and defend **LESSOR** from any and all liability, claims or causes of action arising out of or based on claims or alleged causes of action or damages that there was use of hazardous substances on the Course prior during **LESSEE'S** performance under the Lease Agreement.

11. **LESSOR** holds a Class 6, Governmental Liquor License which has been leased to **LESSEE** to sell alcoholic beverages at Course. **LESSEE** shall execute any and all documents necessary to terminate said license lease as determined by the State of Arizona.

12. **LESSEE** affirms to **LESSOR** that all taxes and/or fees due and payable as a result of/or associated with **LESSEE'S** operation of the Twin Lakes Golf Course have been paid or, if not yet due, shall be paid by **LESSEE** and **LESSEE** agrees to indemnify, defend and hold harmless **LESSOR** for any and all liability and losses and against all claims or actions based on or arising out of the non-payment of any taxes or fees due and payable by **LESSEE**.

13. No modification, amendment or addition to this Termination Agreement, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all of the parties.

14. This Termination Agreement shall be binding on the parties, their distributees, legal representatives and successors.

15. In any action or proceeding brought by any party under this Termination Agreement, the prevailing party shall be entitled to recover from the other party attorneys' fees, investigating costs, and other legal expenses and court costs incurred by such prevailing party in such action or proceeding as the court may find to be reasonable.

16. This Termination Agreement shall be interpreted, construed, and governed according to the laws of the State of Arizona.

IN WITNESS THEREOF, the parties hereto have affixed their signatures to this “**Termination Agreement**”, and intend for such to be effective as of this 5th, day of November, 2013.

LESSOR:
CITY OF WILLCOX:

LESSEE:
JNC VENTURES, L.L.C.:

ROBERT A. IRVIN, Mayor

JASON M. JONES, Member
Dated: _____

CARRIE A. JONES, Member
Dated: _____

SECURED PARTY:
ENCORE CATERING UNLIMITED, L.L.C.

JOHN S. PETERSON, Member
Dated: _____

BETTY L. PETERSON, Member
Dated: _____

ATTEST:

VIRGINIA MEFFORD, City Clerk

APPROVED AS TO FORM:

ANN P. ROBERTS, City Attorney