

Dianne H. Aubrey, MMC
Sandy City Recorder
10000 Centennial Parkway
Sandy, Utah 84070

10862488

TEMPORARY NONEXCLUSIVE LICENSE AGREEMENT

(Sidwell Parcel No. 28-05-176-007 - large triangle)

This Agreement entered into this 13 day of November, 2009 by and between **SANDY CITY**, a municipal corporation of the State of Utah, with its offices located at 10000 South Centennial Parkway, Sandy, Utah 84070 ("**City**" or "**Licensor**"), and **SCHNEITER ENTERPRISES, LTD.**, organized and existing under the laws of the State of Nevada ("**Schneiter**" or "**Licensee.**"), whose address is 2009 Brassy Drive, Las Vegas, Nevada 89142.

RECITALS:

- 14
- A. Licensee is the owner and operator of Schneiter's Pebblebrook Golf Course, located at 8968 South 1300 East, Sandy, Utah ("**Golf Course**"). Licensee has received a conditional use permit and site plan approval for the development and use of the Golf Course which site plan is stamped and signed as the Approved Site Plan on October 12 & 13, 2009 SPR #87-40 ("**Approved Site Plan**") **Exhibit "A"** which is on file in the Sandy City Recorder's Office; and
- B. Licensee wishes to license from the City, solely for golf course use, certain real property Sidwell parcel no. 28-05-176-007, described in **Exhibit "B,"** attached hereto, and located at approximately 8800 South 1200 East, Sandy, Utah (the "**City Property**") which the City owns and which the City acquired and intends to use for the future extension/relocation/expansion of a right of way known as Harvard Park Drive and various other purposes; and
- C. Licensee desires to obtain a license to use the City Property for a portion of its sixth green and its seventeenth tee box and the fence and rough surrounding the same in conjunction with play on the Golf Course by its patrons, employees, and officers as specifically shown on the Approved Site Plan; and
- D. The City is willing to grant Licensee a temporary revocable nonexclusive license to use the City Property for a portion of its sixth green and its seventeenth tee box and the fencing and rough surrounding the same in order to facilitate play on the Golf Course by its patrons, employees, and officers as specifically shown on the Approved Site Plan and not for any other purpose or in any other configuration.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and of the mutual covenants and promises herein contained, the parties agree as follows:

SPECIFIC TERMS

1. Grant of License: Description of Premises. Licensor hereby grants to Licensee a temporary revocable nonexclusive license ("**License**") to utilize the City Property for a portion of its sixth green and its seventeenth tee box and the fence and rough surrounding the same in

10862488
12/18/2009 02:29 PM \$0.00
Book - 9789 Pg - 9261-9274
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH

-1-

SANDY CITY
10000 CENTENNIAL PARKWAY
SANDY UT 84070
BY: ZJM, DEPUTY - WI 14 P.

BK 9789 PG 9261

order to facilitate play on the Golf Course as specifically shown on the Approved Site Plan and for no other purpose or in any other configuration from that shown on the Approved Site Plan. Licensee has no right to construct, reconstruct, operate, maintain, install, repair, replace, reroute, or remove any improvements to or on the City Property, including but not limited to fencing, landscaping, asphalt cart paths or structures, except with the **prior written approval** of the City Public Works Department and City Community Development Department. If such written approval is given, any such improvements shall comply with all applicable City laws and standards.

2. City Use. Licensee understands that this license is not exclusive, that the City may, in the future, use and may allow others to use the City Property for other purposes including, but not limited to construction, repair, and maintenance of existing and any new roadway, curb, gutter, sidewalk, parkstrip, landscaping, facilities, laying storm drain, water and electrical lines and other utility services, and the passage of vehicles, when needed in the City's discretion. The Licensee shall use the City Property by itself, its guests, and others so as not to interfere or cause inconvenience with use of the City Property by the City, the City's licensees, easement holders, or other users. Licensee shall at all times keep the City Property neat and clean, and free of trash, debris, rubbish, weeds, abandoned or damaged vehicles, structures, and unsightly items.

3. Term, Termination. The City Property may be used by Licensee during the period beginning on the date hereof and continuing until this License is terminated by either party as set forth herein.

- a. This License shall terminate if:
- (1) the City Property is not used by the Licensee for the purposes allowed herein;
 - (2) Licensee no longer operates the Golf Course;
 - (3) Licensee alters the configuration of the Golf Course from the Approved Site Plan;
 - (4) Licensee interferes with the City's use of the City Property;
 - (5) there is a violation of the terms of this License which is not remedied by the Licensee within ten (10) days following written notice from the City, or if the violation cannot be remedied with diligent effort within ten days, then such longer time as is reasonably needed to remedy the violation as determined by the City;
 - or(6) the City determines that the property is to be used for another purpose which will not accommodate Licensee's use, in the City's sole discretion.
- b. Termination of this License for any reason shall not affect any legal rights, nor the obligations, of the Parties hereto which may have accrued, or the liabilities, accrued or otherwise, which may have arisen prior thereto, do not arise under or are not based upon this Agreement, and the Parties shall not be deemed to have waived, nor shall the parties be estopped from asserting any such independent rights or remedies available to them pursuant to law or in equity

- c. This license may be terminated by either party upon 30 days written notice to the other.

4. Cost of Removal on Termination. Upon termination of this Agreement for any reason, Licensee, at Licensee's sole cost and expense, shall immediately remove from the City Property such improvements as determined and directed by City and shall restore, to the satisfaction of City, the City Property to good, level, and smoothly graded condition and to at least as good condition as the same were in before the commencement of Licensee's use of the City Property. Any improvements or facilities not so removed by Licensee may, at City's election, be deemed forfeited and abandoned. If Licensee fails to perform such removal and restoration, or if the work performed by Licensee is not satisfactory to City, City may cause such work to be performed at Licensee's sole cost and expense and Licensee agrees to promptly reimburse City or its agent(s) for any such removal, disposal and restoration work within thirty (30) days after the receipt of the bill therefor. City may cause the improvements so removed to be disposed of in any manner it deems appropriate. In the event of the removal by City of the property of Licensee and of the restoration of City property as herein provided, City shall in no manner be liable to Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner limit, prejudice or impair any right of action for damages or otherwise that City may have against Licensee. Any and all past due amounts owed by Licensee shall accrue interest at 12% per annum.

5. Limitation to Described Purpose. The City Property may be occupied and used by Licensee solely for the Golf Course purposes as specifically described in Paragraph 1 above. During all such occupancy and use, the Licensee must operate, maintain, or repair the City Property to a condition as least as good as the condition it was in at the date of this License. This license shall be a nonexclusive license and Licensor reserves the right in itself, or to grant to others the right to use, occupy and cross, the City Property for all lawful purposes. Licensee understands that the City or other parties may from time to time need to excavate or place utility, water, storm drain, or other utility lines within or under the surface of the City Property, and that the City or other parties may from time to time use the City property to cross or drive over or use for the maintenance of the City's facilities even though such use or work may interrupt, limit or inconvenience use of the City Property by Licensee or its invitees.

6. Interference. Licensee shall not use the City Property in any way which interferes with the ownership, use or occupancy by Licensor of its real property, or by grantees, tenants or licensees of Licensor who have rights to any portion of Licensor's real property, and if, at any time, the operation or maintenance of the Licensee's use results in any interference with the operation of the installations or facilities, as now existing or which may hereafter be provided or allowed by City and/or its tenants or licensees, Licensee shall, at its sole expense, immediately take such action as may be necessary to eliminate such interference.

7. If Modifications of City Property Required. Licensee shall bear the cost of any modifications to City's landscaping, structures, telecommunication lines, roads, bridges, pipelines, canals, ditches, valves, meters, head gates, water lines, and other facilities or

improvements, required by the construction, maintenance, and operation and/or existence of the Licensee's use. Licensee shall not make any modifications to any of the above or to the property without the **prior written approval** of the City.

8. No Barriers or Improvements. Licensee must not erect any structures, buildings, barriers or improvements of any kind whatsoever upon the City Property without the **express written consent** of the City's Director of Public Works and the City's Director of Community Development.

9. Construction, City Protective Services. Except for the routine maintenance which does not violate the requirements or prohibitions in Paragraph 1, Licensee shall submit detailed and complete plans for the design, construction and use or modified construction on the City Property, which must be approved in advance and in writing by the City's Director of Public Utilities or his designee, the Community Development Director and other authorities as provided in City ordinances before any construction, maintenance, repair, replacement, or other work is commenced on the City Property. The Licensee shall perform all work strictly in accordance with plans and specifications submitted to and approved by the City in a safe and workmanlike manner, and shall take reasonable precautions to protect persons who may come near the work area against injuries. Notwithstanding the foregoing precautions, in the event the Director of Public Works or a City Engineer determines, in his sole discretion, that flagging, lighting, flashing signal barricades or other protection is required in the construction, maintenance, or use of the City Property, or any access thereto from any street, any such protection shall be promptly furnished by the Licensee, and if the Licensee fails to do so to the satisfaction of the Director of Public Works or a City Engineer, then the City may provide such protection, which shall then be promptly paid for by the Licensee. All construction shall be performed according to City ordinances, and standard specifications and the Manual of Uniform Traffic Control Devices (MUTCD) to the extent applicable.

10. Repairs. Licensee shall promptly clean up and remove any rubbish, trash, damaged plants or limbs caused or resulting from construction or repair work by Licensee, its agents and contractors on the City Property, and shall regrade the City Property to its original contour, and generally restore the City Property to as good condition as it was in prior to the construction or repair work.

11. No Warranty on Ownership or Use. The City makes no warranty of title to or ownership of the City Property, nor any representation or warranty that the City Property is safe, healthful, or suitable for the purposes for which it is used or permitted to be used under the terms of the License. Licensee accepts the license to use the City Property in the condition in which it exists (that is, "as is" and "where is," "with all faults"), without any other representation or warranty, express or implied, in fact or by law, and without any other recourse against the City. The Licensee shall have the duty to determine its right to use the City Property and the suitability of the City Property for the purposes contemplated herein. The parties agree that in the event of a title defect, the Licensee's damages, including costs and attorneys fees, shall not exceed the license fee paid by Licensee herein.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, representatives, and permitted assigns.

13. Repair, Maintenance, City's Right to Perform. The Licensee shall maintain all improvements of Licensee on the City Property in a good, safe and serviceable condition at its sole expense. In the event that maintenance or repair, cleanup, grading, landscaping, or other work required hereunder on the City Property is not properly performed, or not performed in a timely manner after notice from the City, then the City may, in its discretion, enter upon the City Property and perform such repair or maintenance, or other obligation not performed by the Licensee. The Licensee shall then promptly pay the City for the cost of any such work the City thus performs upon receipt of an invoice from the City for such work.

14. Claims And Liens For Labor And Materials; Taxes. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon the City Property in connection with any construction regarding the licensed use, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature, or any claim against the City under §14-1-19, Utah Code Ann., to be enforced against the City Property for any work done by or on behalf of Licensee. The Licensee shall protect, defend, release, indemnify and hold harmless City from and against any and all liens, liability, claims, demands, fees, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished, including attorneys fees and expert witness fees.

15. Insurance. Licensee hereby covenants and agrees to obtain prior to going upon the City Property and to maintain during the term of this license insurance meeting the requirements of **Exhibit "C,"** attached hereto. For all construction, Licensee shall cause its contractor to maintain commercially reasonable limits of general liability, workers' compensation and employer's liability insurance.

16. Indemnity. Licensee agrees to indemnify, hold harmless and defend the City, its agents, volunteers, and employees, from and against all claims, mechanics liens, demands, damages, actions, costs and charges, for personal injury, death, or property damage and other liabilities, including attorney's fees, arising out of or by any reason of Licensee's use of the City Property or any activities conducted thereon by Licensee, his/her/its agents, employees, invitees or trespassers. This section shall survive the termination of this Agreement.

17. Environmental Indemnity. Licensee agrees to indemnify, hold harmless, and defend Sandy City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Licensee, Sandy City or any third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law regulation, or rule) in, on, or about the City Property caused by Licensee its employees, agents, tenants, or guests at any time, including prior to the time of the making of this License Agreement, or which preceded Licensee's occupancy of the City Property, or which comes from Licensee's property. This

indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA) or any other federal State or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean-up or disposal costs and attorneys' fees, and damages. Upon written notice from Sandy City, Licensee at Licensee's sole cost and expense, shall immediately assume the defense (with counsel experienced and competent in environmental litigation) of any claims, suit or action brought against Sandy City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph caused by Licensee, its employees, agents, or guests. Licensee's obligations under this indemnity shall survive the termination of the License.

18. No Assignment or Subcontract. The Licensee's rights and obligations under this license agreement may not be assigned or transferred.

19. Captions. The captions at the beginning of paragraphs are for the convenience of the parties and the parties do not rely on the captions as a basis for interpretation of this Agreement.

20. Authorization. The individuals signing below in their official capacities represent and warrant that they are fully and lawfully authorized to execute this Agreement for and in behalf of their respective entities.

21. Non-Fiduciary or Agency Relationship. The parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as independent contractors and that the same is in all respects an "arms-length" transaction. No party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other party hereto, nor shall either party make any representation to any third party inconsistent with this section, except to the extent expressly permitted elsewhere in this Agreement.

22. Condemnation. In the event that all or any portion of the City Property is condemned or otherwise taken for public use, Licensee shall have no claim to any compensation or damages for the condemnation or taking of the City Property or any interest therein and any amount of such compensation or damages Licensee might otherwise be entitled to, and any legal claim Licensee may otherwise have thereto, are hereby automatically assigned to City by this Agreement and Licensee shall immediately deliver to City any such compensation or damages it receives.

23. Follow Laws. The Licensee warrants and represent that Licensee has no knowledge of any pending litigation involving the City Property; has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the City Property; and has no knowledge of any hazardous materials or substances stored, discharged, or otherwise present in,

on, or affecting the City Property. The Licensee will comply with all applicable laws in the use of the City Property and the construction of improvements thereon, including obtaining all statutorily required permits, approvals, and compliance with all processes. The Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality. The Licensee shall furnish the City satisfactory evidence of such compliance upon request. Licensee shall also notify the City immediately of any (a) violation of any laws relating to its use of the Licensed Property, (b) notice of violation of any laws Licensee may receive from a governmental authority (along with a copy of the notice of violation) relating to its use of the City Property, (c) claims made or threatened against Licensee alleging any violation of, or liability of Licensee under, any laws relating to its use of the City Property. Should any release, discharge, leakage, spillage, emission or pollution of any type occur upon or arise on the City Property or any other property as a result of the Licensee's negligence in the use, presence, operations, the exercise of the rights granted hereunder, Licensee shall, at its expense, be obligated to clean all property affected thereby, to the satisfaction of the City; to comply at its sole expense with all governmental or court orders associated therewith, and to indemnify, defend, and hold harmless the City, its officers, agents and employees harmless from and against all claims, loss, expense, and liability, including attorneys fees, associated therewith or arising therefrom.

The obligations and liabilities of the undersigned under this section of this Agreement shall survive and continue in full force and effect and shall not be terminated, discharged, or released, in whole or in part, due to sale of the City Property, and irrespective of any other fact or circumstance of any nature.

24. Notice. Any notice, election, or communication to be given under the terms of this Agreement shall be in writing and delivered in person, by a reputable courier, by certified mail (postage prepaid, return receipt requested), or facsimile transmission, addressed as follows:

Licensor: Attention: Director, Sandy Public Works Department, 8775 South 700 West, Sandy, Utah 84070;

Licensee: Schneiter Enterprises, Ltd., 8968 South 1300 East, Sandy, Utah 84094

or to such address as either party may hereafter designate by notice hereunder. Service of notice shall be deemed effective at the time of receipt thereof by the addressee, provided that service of notice by facsimile shall be deemed effective and complete upon the date of receipt of confirmation of the facsimile transmission.

25. Survival. The parties' respective obligations, covenants, indemnities, representations and warranties in this Agreement shall survive the termination hereof unless indicated otherwise by their express terms.

26. Amendments. This Agreement may be amended at any time upon mutual


agreement of the parties hereto, which amendment(s) must be reduced to writing and signed by all parties in order to become effective.

27. Severability. In the event that any provision of this Agreement, or any operation contemplated hereunder, is found by arbitration or a court of competent jurisdiction to be inconsistent with or contrary to any applicable law, ordinance, or regulation, the latter shall be deemed to control and the Agreement shall be regarded as modified accordingly, and the remainder of this Agreement shall continue in full force and effect.

28. Entire Agreement. This Agreement, including all exhibits and schedules attached hereto, constitutes and represents the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, oral or written, between these parties are incorporated herein or superseded in their entirety by this Agreement. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.


SANDY CITY CORPORATION

By 
Tom Dolan, Mayor

Attest:

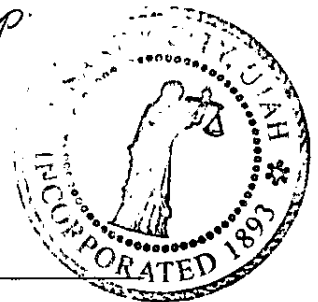
By 
City Recorder *Dep.*

**LICENSEE:
SCHNEITER ENTERPRISES, LTD.**


Title: Partner

ATTEST: (if corporation)

Title: _____



ACKNOWLEDGMENT

STATE OF UTAH)
: ss
County of Salt Lake)

On the 13th day of ~~August~~ ^{November}, 2009, personally appeared before me
George Schneider who, being by me duly sworn on oath did say that they are the
(title, for example, president) Partner, of Schneider Enterprises., a Utah
Limited Partnership, and that the foregoing instrument was signed in behalf of said corporation
by authority of _____; and said person acknowledged to me that said
George Schneider executed the same.

Kristi Stanley
NOTARY PUBLIC, Residing in
Sandy UT

My commission Expires:
10/09/12



EXHIBIT B

LEGAL DESCRIPTION

Beginning at a point which is South 1,380.00 feet and West 255.00 feet from the North quarter corner of Section 5, Township 3 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 48 deg. 51'00" West 460.00 feet; thence South 76 deg. 16'00" East 120.00 feet; thence North 85 deg. 30'00" East 160.00 feet; thence North 12 deg. 26'31" East 322.99 feet to the point of beginning.

Parcel No.: 28-05-176-007

EXHIBIT "C"

**INSURANCE REQUIREMENTS FOR
PARTIES CONTRACTING WITH SANDY CITY**

For: Licensee

TEMPORARY REVOCABLE LICENSE AGREEMENT

Contracting party shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contracting party's proposal.

A. MINIMUM LIMITS OF INSURANCE

Contracting party shall maintain limits no less than:

1. **GENERAL LIABILITY:** \$ 2,000,000.00 combined single limit per occurrence, personal injury and property damage. \$5,000,000.00 aggregate Broad Form Commercial General Liability is required. (ISO 1993 or better) "Limits to apply to this project individually".
2. **AUTOMOBILE LIABILITY:** \$1,000,000.00 per occurrence. "Any Auto" coverage is required.
3. **WORKERS' COMPENSATION and EMPLOYERS LIABILITY:** Workers' compensation statutory limits as required by the Workers Compensation Act of the State of Utah and Employers Liability limits at a minimum of \$1,000,000 per occurrence.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retention, exceeding 5% limit of policy, must be declared to and approved by Sandy City. At the option of Sandy City, either; the insurer may be required to reduce or eliminate such deductibles or self-insured retention as respects Sandy City, its officers, officials and employees; or the contracting party may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

C. NOTICE OF INCIDENT OR ACCIDENT

Contracting party shall agree to disclose to Sandy City, all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

I. General Liability and Automobile Liability Coverages

A. Sandy City, its officers, officials, employees and volunteers are to be covered as an additional insured as respects: liability arising out of activities performed by or on behalf of the contracting party; products and completed operations of the contracting party; premises owned, leased, hired or borrowed by the contracting party. The coverage shall contain no special limitations on the scope of protection afforded to Sandy City, its officers, officials, employees or volunteers.

B. The contracting party's insurance coverage shall be a primary insurance as respects to Sandy City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Sandy City, its officers, officials, employees or volunteers shall be in excess of the contracting party's insurance and shall not contribute with it.

C. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Sandy City, its officers, officials, employees or volunteers.

D. The contracting party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

II. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against Sandy City, its officers, officials, employees and volunteers for losses arising from work performed by the contracting party for Sandy City.

III. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Sandy City.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Bests' rating of no less than A-, VIII, and in the limits as listed in this document, unless approved by the City's Risk Manager.

F. VERIFICATION OF COVERAGE

Contracting party shall furnish Sandy City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by Sandy City before work commences. Sandy City reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

G. SUBCONTRACTORS

Contracting party shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.