

AGREEMENT

This agreement entered into at Glen Cove, New York as of January 1, 2016 by and between the City of Glen Cove, hereinafter referred to as "CITY," and RC Golf Corp., hereinafter referred to as "PROFESSIONAL."

Whereas, the CITY is desirous of engaging the services of a golf professional, and,

Whereas, the PROFESSIONAL is a qualified "golf professional" experienced in golf, operation of pro shops, driving ranges, teaching of golf, proper organization and conducting of golf tournaments and outings; and

Whereas, the PROFESSIONAL is desirous of undertaking the duties of the golf professional of the CITY,

Now, therefore, the parties, in consideration of the mutual covenants and agreements herein contained, agree as follows:

I. Term

The CITY hereby engages the services of the PROFESSIONAL as its CITY golf professional for the golf facility operated by it at Lattingtown Road, Glen Cove, New York 11542, hereinafter referred to as the "GOLF COURSE") for a term of one year (12 months), commencing January 1, 2016 and ending December 31, 2016.

II. Duties of the PROFESSIONAL

A. The PROFESSIONAL, except as may otherwise be set forth herein, shall devote his full time, attention and energies to the performance of duties as golf professional at the GOLF COURSE during the term of this agreement. He further agrees to utilize his best efforts and time to advance the interests of the CITY and the GOLF COURSE. He shall perform his duties to the best of his abilities with the understanding that the nature of his duties and responsibilities hereunder are such that his physical presence at the GOLF COURSE is critical to the performance of his obligations under this Agreement and require that he spend substantially all of his normal working hours at the GOLF COURSE.

B. In cooperation with Elm Consulting and/or the Golf Course Administrator (collectively "MANAGER"), the PROFESSIONAL shall conduct all golf tournaments and shall initiate and promote golf activities for members, CITY residents, non-residents, guests, visitors, golf officials and tournaments/outings.

- C. The PROFESSIONAL shall cooperate with members, CITY residents, nonresidents, guests, visitors, golf officials and tournaments/outings and the Mayor and CITY Council and render professional advice, opinions, assistance and services as required.
- D. The PROFESSIONAL shall maintain a credit rating with suppliers and manufacturers and others so as not to discredit the reputation or name of the CITY.
- E. The PROFESSIONAL shall supervise, direct and train a staff of employees, including assistant professionals, so as to perform duties and meet requirements for sales, rentals and services that are, in the opinion of the CITY and the PROFESSIONAL, necessary.
- F. The PROFESSIONAL shall operate and maintain a golf shop for repairs, handling, storage, sales and services related to golf equipment/accessories.
- G. The PROFESSIONAL shall operate the driving range for the benefit of the public at hours set by the PROFESSIONAL, to be constrained within the hours from sunrise to sunset (except as modified by Terms of Section 3 C. below), seven days per week for the duration of the season.
- H. The PROFESSIONAL shall supply golf balls at its own cost and expense for the driving range
- I. The PROFESSIONAL shall provide free golf balls for each participant at every golf outing. For the purposes of this Agreement, a golf outing shall be defined as a round of golf to be played by a group of golfers numbering twenty four or more people which has been sanctioned, approved or solicited by the CITY or MANAGER,.
- J. The PROFESSIONAL shall be permitted to operate its own summer golf camp at fees commensurate with the charges of other municipal golf courses within Nassau County, New York.
- K. The PROFESSIONAL shall arrange to have E-range software installed herein and shall receive a credit for and honor all prepaid golf cards presented for credit from prior golf seasons. Either party shall be entitled to a full and certified audit upon request.
- L. The Professional shall provide complimentary golf balls for all groups awarded a certificate for free play by the Mayor.
- M. The PROFESSIONAL will cooperate and work closely with the GOLF COURSE Manager, Mayor and other CITY employees, consultants and other concessionaries.
- N. The PROFESSIONAL agrees to be available at reasonable times and with reasonable notice to attend meetings with the Mayor and the Golf Course Manger, as well as with the CITY Council, to discuss areas both within the realm of the PROFESSIONAL'S duties and those for the benefit of the CITY.

III. Duties of the CITY

The CITY agrees:

- A. To be responsible for the salaries and supervision of the personnel, maintenance staff and other employees who shall manage the golf course, with the exception of the driving range pursuant to the terms and conditions set forth in Paragraphs D, E and F of this Section.
- B. To encourage all tournaments/outings, members, CITY residents, non residents, guests, visitors and golf officials to purchase prize requirements from the golf pro shop.
- C. To furnish to PROFESSIONAL and maintain for his use and sole occupancy all necessary facilities, for the operation of his business, as set forth herein, including, but not limited to, areas on the GOLF COURSE premises for the golf shop and the driving range operation. The parties agree that nothing contained herein shall require the CITY to maintain night lighting for the purpose of operating the driving range herein, however the CITY shall put forth its best effort to provide such night lighting, in order to maximize the availability of the driving range for the benefit of the public. PROFESSIONAL agrees to reimburse the City for the cost of maintaining the consumable components of the lights for the driving range herein. Upon use by PROFESSIONAL Lights are to run a cost of \$2.00 per hour for each pole in use.
- D. To furnish and maintain facilities to store, house and maintain the required golf equipment necessary to the facilities subject to this agreement.
- E. To furnish and maintain both practice areas and driving range as necessary for the PROFESSIONAL to conduct his lessons and golf camp as well as those of his assistant professionals.
- F. To maintain the lawn at the driving range, and to maintain the fixed equipment and personal property and machinery associated with operation of the driving range, which equipment, personal property and machinery is specifically enumerated in Schedule A, attached hereto. The shed adjacent to the driving range shall be shared by city and Professional herein.
- G. The CITY shall indemnify, defend and hold harmless PROFESSIONAL against any and all claims, suits, liabilities and damages, including reasonable attorneys fees and costs, resulting from the use of the golf course by the members or general public, except, however, for loss, damages or injuries due to the negligence of the Professional or any of its agents, servants or employees.

IV. Compensation

The PROFESSIONAL shall pay the CITY for the use of the driving range, the sum of \$15,000.00 per year, said sums which shall be payable in six (6) equal monthly installments as follows:

May 1, 2014-----\$2,500.00

June 1, 2014-----\$2,500.00

July 1, 2014 -----\$2,500.00

August 1, 2014-----\$2,500.00

September 1, 2014----\$2,500.00

October 1, 2014 -----\$2,500.00

The PROFESSIONAL shall be compensated the sum of \$500.00 directly by the outing organization (the "Outing Fee") for every golf outing/tournament held at the golf course in accordance with Section II, paragraph I of this agreement.

The PROFESSIONAL shall be entitled to all revenues generated or collected by the ball dispenser machines, whether such revenue is transacted in cash or by credit card or token and shall be credited for all e-range credits redeemed and utilized by golfers from prior seasons. The PROFESSIONAL shall have sole and exclusive access and control of the ball dispenser machines.

V. Independent Contractor Status

During the term of this agreement, the PROFESSIONAL shall be under the supervision and directly responsible to the Mayor of the CITY. PROFESSIONAL shall regularly report and consult with the Mayor, or his designee, with regard to the services he renders pursuant to this Agreement and shall execute and carry out any directives given by the Mayor in connection with the duties to be performed by him under this Agreement.

It is the express understanding of the parties that this Agreement does not constitute an employer-employee arrangement. PROFESSIONAL is an independent contractor, and covenants that he will conduct himself consistent with said status. PROFESSIONAL will neither hold himself, or any of his agents or employees, out as, or claim to be, an employee of the CITY by reason hereof, and shall not make any claim, demand or application to and for any right of privilege applicable to an employee of the CITY, including, but not limited to, health insurance, worker's compensation coverage, unemployment benefits, social security coverage, or retirement or pension membership of credit.

VI. Concessions

PROFESSIONAL shall be given exclusive rights to and a concession to operate the "pro-shop" located at the GOLF COURSE with the obligation upon the PROFESSIONAL to maintain a proper stock to adequately serve the members, CITY residents, non-residents, guests, visitors, golf officials and tournaments/outings. Failure to maintain proper stock shall be deemed a breach of this Agreement! It is expressly understood and agreed by the parties hereto that all inventory and proceeds from the sale of the said inventory are the sole and exclusive property of PROFESSIONAL. This exclusive concession is pursuant to the following terms:

A. The "pro-shop" shall be open not later than one-half hour after the GOLF COURSE opens and should remain open until the GOLFCOURSE closes.

B. It is understood and agreed that PROFESSIONAL shall repair and maintain the fixed equipment and personal property for the operation of the pro shop. Equipment and property shall consist of display counters, shelves *and* personal phones. The CITY shall repair and maintain the buildings for use by the PROFESSIONAL.

C. Any additional fixed equipment not deemed necessary by the CITY, but desired by PROFESSIONAL, may be purchased by PROFESSIONAL, who shall make prompt and full payment of the same. Such fixed equipment so purchased by PROFESSIONAL, including the terms of purchase, shall first be approved by the CITY, before being delivered or installed on the GOLF COURSE or in the pro shop; and the installation shall be subject to inspection and approval by the CITY. Title to all fixed equipment shall immediately vest in the CITY. Before such fixed equipment is installed, PROFESSIONAL shall exhibit to the CITY a paid, receipted, bill for the same or letter from the supplier providing such equipment that the CITY has no obligation and responsibility for payment of the same.

D. PROFESSIONAL agrees to supply and maintain, at his own cost and expense, all additional expendable equipment and such other equipment necessary for the proper operation of the concession. Such equipment must be approved by the CITY before it is delivered to the GOLF COURSE premises, and an inventory of same furnished to the CITY. The title to such equipment supplied or purchased by PROFESSIONAL shall remain in PROFESSIONAL, and such equipment shall be removed by him at the termination of this Agreement, except as hereinafter provided. Upon PROFESSIONAL'S failure to remove same, the CITY may cause it to be removed and harbored at the sole cost and expense of PROFESSIONAL, and the CITY shall have a lien thereon for the cost and expense of such removal and storage until paid.

E. PROFESSIONAL warrants and agrees that all material or supplies sold pursuant to this Agreement shall be of good, merchantable quality and shall be sold at the current, fair market prices of such articles. PROFESSIONAL shall submit to the CITY, on request, a list or schedule of the articles to be offered for sale pursuant to this Agreement, and the CITY reserves the right to disapprove such items as the CITY may consider not appropriate for public sale in the pro shop. PROFESSIONAL agrees to include in the schedule and keep on hand for sale, at the request of the CITY, additional articles offered for sale at like prices outside the GOLF COURSE for which there is public demand.

F. PROFESSIONAL agrees that at all times free access will be given to representatives of the CITY or of the Department of Health, for inspection purposes.

G. PROFESSIONAL and any qualified assistant designated by him shall have the exclusive right to give golf lessons at the GOLF COURSE. Charges for such lessons shall be fixed by the PROFESSIONAL and shall be commensurate with the charges of other municipal golf courses within Nassau County, New York. PROFESSIONAL shall have unlimited use of *any and all* booths at the range and range balls for giving said lessons as such unlimited use for his staff to practice. PROFESSIONAL and his assistants shall have reasonable personal use of and access to the golf course and golf carts at reasonable times and at no charge. In regard to his role as the "golf professional," PROFESSIONAL agrees to be present, in person or through a qualified assistant, at the GOLF COURSE for five (5) days per week, plus Monday tournament /outings, plus be present in person or through a qualified assistant at any time there is a tournament or days when the course is being rented to organizations for outings. On those days PROFESSIONAL is not personally present at the GOLF COURSE in his capacity as the "golf professional," he must have a qualified representative/assistant to maintain a presence at the GOLF COURSE. Any expenses associated with said representative's / assistant's presence at the GOLF COURSE, including salary, if any, shall be paid by PROFESSIONAL. The above attendance schedule shall apply during the "golfing season" which is defined for the purposes of this Agreement to be from May 1 through October 31.

H. PROFESSIONAL assumes all risk in the operation of the pro shop and use of driving range by PROFESSIONAL and/or his assistants, and agrees to comply with all Federal, State and local laws, rules and regulations and all rules, regulations and ordinances of the CITY, affecting said premises in regard to all matters, and especially in the sale, use and storage of athletic equipment, clothing and sports merchandise, and the limitation of parts of the premises to special uses, and hereby covenants and agrees to indemnify and save harmless the CITY and its officers and employees from any kind and all claims, suits, losses, damages or injury to person or property of whatsoever kind and nature, whether directly or indirectly arising out of the operation of the pro shop or the range by PROFESSIONAL and/or his assistants or the carelessness, negligence, or improper conduct of PROFESSIONAL or any servant, agent or employee or PROFESSIONAL, which responsibility shall not be limited to the insurance coverage provided therein and shall hold the CITY harmless from any claims arising out of any violation of law ordinances and regulations, and from any and all claims for loss, damages or injury to persons or property of whatever kind or nature, inclusive of reasonable attorneys' fees, arising from the operation of the pro shop and use of the driving range by PROFESSIONAL and/or his assistants except, however, for loss, damages or injuries due to the negligence of the CITY or any of its agents, servants or employees.

I. PROFESSIONAL shall, at his own cost and expense, procure insurance for the term of this agreement, from companies licensed to do business in the State of New York, to protect PROFESSIONAL from claims under the Workman's Compensation Law, and shall also procure such public liability insurance as will protect PROFESSIONAL and the CITY from any and all claims for damages to property and for personal injuries, including death, which may arise from PROFESSIONAL'S contemplated actions hereunder and the actions of anyone directly employed by PROFESSIONAL in connection therewith. All policies shall be delivered to the

CITY with full premiums paid before the commencement of any operations under the Agreement, and all policies shall be subject to the prior written approval of the CITY as to adequacy and form protection. In connection therewith, all liability policies: (i) shall provide limits of One Million (\$1,000,000.00) Dollars for one person and One Million (\$1,000,000.00) Dollars for more than one person injured or killed in any one accident, and property damage in limits of One Million (\$1,000,000.00) Dollars; (ii) shall name the CITY as an "additional insured" with respect to this operation; and (iii) shall contain an endorsement that such insurance may not be cancelled except upon thirty (30) days prior written notice to the CITY.

J. The PROFESSIONAL shall be permitted to operate its own golf camp during the summer months.

K. The PROFESSIONAL shall supervise all golf activities in connection with outside tournaments and outings and shall provide the participants with adequate services as may be required. The PROFESSIONAL shall charge a \$500 tournament/outing fee for each tournament/outing played at the GOLF COURSE with no minimum charge required to be paid in the pro-shop .

L. The CITY shall use reasonable efforts to include golf course email notifications to its members, a section or column dedicated to promotion of the pro shop and driving range concessions, the language of such section or column to be submitted by PROFESSIONAL and approved by CITY or MANAGER, such approval not to be unreasonably withheld.

VII. Tournament Play and Meetings

The PROFESSIONAL shall have the right and is expected to represent the CITY in various golf competitions to be agreed upon by the PROFESSIONAL and the Mayor. He shall submit his proposed tournament schedule (exclusive of events during his vacation periods) for prior approval by the Mayor which approval, in his sole discretion, the Mayor may deny. In the event is approved and he qualifies, he shall have the right to play in the event.

VIII. Termination

This agreement will terminate upon the happening of any of the following events:

A. Upon its normal termination if not renewed.

B. Upon the death of the PROFESSIONAL.

C. Upon the physical disability of the PROFESSIONAL. Said disability shall be such as will incapacitate the PROFESSIONAL for an aggregate of three (3) months during the working period of this agreement. After such period the CITY can elect to terminate this agreement within thirty (30) days after notice is delivered to the PROFESSIONAL.

D. Upon written notice by the CITY of termination for good and sufficient cause. Such good and sufficient cause shall include, but not be limited to, the following:

1. Dishonesty detrimental to the best interests of the CITY.
2. Continuing inattention or negligence of duties.
3. Serious illegal or immoral conduct.
4. The City notifying PROFESSIONAL of the City's intent to contract with a third party to administer and manage the GOLF COURSE, such contracting to commence no earlier than April 1, 2016. Notice to PROFESSIONAL of CITY's intention to enter into such contract shall be no less than 90 days prior to commencement of the golf season which shall be deemed May 1, 2016 for this agreement.

In the event of termination of this agreement, the PROFESSIONAL shall be paid his compensation to and including the month of death or, in the event of disability, shall be paid to the last day of a month in which termination occurs.

The PROFESSIONAL or his representative shall be responsible for all outstanding debts and obligations of the PROFESSIONAL. An escrow fund in the amount of \$5000.00 shall be established for the payment of any such unpaid debts and obligations submitted to the City or the PROFESSIONAL'S successor in interest subsequent to the termination date of this agreement. The escrow fund shall be held by the City for a period of one hundred and twenty (120) days from the termination date. Upon the expiration of the one hundred and twenty (120) day period the balance of the escrow fund, without interest, shall be remitted to the PROFESSIONAL.

IX. End of Term

PROFESSIONAL at the expiration or sooner termination of this Agreement shall quit and surrender the pro shop and any rights to the driving range and all property thereon belonging to the City in a good condition as when taking possession thereof, reasonable wear and tear and damage by the elements excepted.

X. Breach

A. In the event that either party claims that the other is guilty of a substantial breach of any of the provisions of this agreement, a conference will be called between the parties and every reasonable effort shall be made to reach an amicable solution. At said conference, either party shall be entitled to have representatives present.

B. Either party shall have 30 days within which to correct any activity or conduct claimed by the other to have constituted a substantial breach of the agreement.

C. In the event that either party notifies the other in writing within said 30-day period of its denial of said substantial breach, then the dispute shall be submitted for arbitration under and pursuant to the rules of the American Arbitration Association.

D. In the event that either party shall, within said 30-day period, fail to correct the activity claimed to constitute a substantial breach of this agreement, or to notify the other party in writing of its denial of said substantial breach of this agreement, then this agreement shall cease and terminate as of the expiration of said 30-day period.

XI. Notice

Any notice required or permitted to be given under this agreement shall be sufficient if in writing and sent by registered or certified mail, in the case of the PROFESSIONAL to his residence at 1 Beach 105 Street, Rockaway Park, New York 11694, and in the case of the CITY to its principal office located at 9-13 Glen Street, Glen Cove, New York 11542.

XII. Construction

This agreement shall be controlled by the laws of the State of New York and no defense given or allowed by the laws of any other state or country shall be interposed in any action herein unless such defense is also given or allowed by the laws of the State of New York.

XIII. Severability

The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

XIV. Waiver

Failure to insist upon strict compliance with any terms, covenants or conditions of the agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

XV. Waiver or modification

Any waiver, alteration or modification of any of the provisions of the agreement, or cancellation or replacement of this agreement, shall not be valid unless in writing and signed by the parties.

XVI. Benefit and assignment

This agreement shall inure to the benefit of and bind the parties hereto and their respective legal representatives, successors, heirs, personal representatives and assigns.

XVII. Entire agreement

This agreement contains the entire agreement between the parties and may not be amended or modified except by a subsequent agreement in writing. It supersedes any prior written agreement the parties hereto with respect to the subject matter hereof. All the parties hereto acknowledge and agree that no alleged representations, warranty, guaranty, letter or agreement, verbal or collateral, express and/or implied, not expressly set forth herein, unless attached hereto as an

exhibit or schedule, shall have any legal effect whatsoever. This Agreement and its provisions, exhibits, and schedules merge any prior agreements, if any, of the parties and is the complete and entire agreement.

XVIII. No Assignment, Subcontract or Sublet

PROFESSIONAL shall not assign, subcontract, or sublet this Agreement hereby made, or any interest therein, or consent, allow or permit any other person or party to use the premises, buildings or spaces, or perform any services covered by this Agreement; nor shall this Agreement be transferred by operation of law without prior approval in writing being obtained from the City. Any agreement or contract for assignment, subcontracting, or subletting this Agreement must incorporate all pertinent terms of this agreement, and a copy must be submitted to the City for approval.

XIX. Further Assurances

Each party shall execute, acknowledge, verify and deliver any and all further document and/or affidavits requisite or appropriate to effectuate the provisions and purpose of the Agreement.

XX. Counterparts

The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

XXI. Waiver of Jury Trial

THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT, AND AGREE THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

XXII. Venue

In the event of any dispute hereunder, any action or proceeding which any party shall commence shall be brought in the Supreme Court of the State of New York, County of Nassau.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

CITY of Glen Cove

By _____

(CITY)

(Date)

RC Golf Corp.

By: _____

(Professional – as President)

(Date)