

DISC GOLF COURSE LICENSE AGREEMENT

THIS DISC GOLF COURSE LICENSE AGREEMENT (this "Agreement") is dated as of August 24, 2012, by and between LANDWAVES, INC., an Oregon corporation ("Licensor"), and the CITY OF NEWPORT, OREGON, a municipal corporation ("Licensee").

1. License.

(a) Grant. In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Licensor hereby grants to Licensee a non-exclusive license (the "License") over and across an approximately a 30-acre portion of a piece of real property located in and adjacent to the Wilder development in the South Beach area of Newport, Lincoln County, Oregon generally depicted on the attached **Exhibit A** (the "License Area") for recreation use by the public as an 18-hole disc golf course ("Disc Golf Course" or "Course") in accordance with the terms of this Agreement. The course shall be known as "Wilder Disc Golf Course". The layout of the Course is shown on the attached **Exhibit A**.

(b) Term. This Agreement shall be effective upon full execution by both parties. Either party may terminate this Agreement for any reason by providing not less than ninety (90) days advance written notice to the other party in accordance with Section 13 below. Upon the effective date of termination under this Section 1(b), this Agreement and the License shall be automatically terminated and the parties released from any and all obligations hereunder except for those provisions, which by their terms, survive termination of this Agreement.

(c) Termination for Breach. In addition, in the event of Licensee's breach of the terms of this Agreement, Licensor shall have the right to terminate this Agreement by providing Licensee not less than thirty (30) days written notice of Licensor's election to terminate, which shall describe the breach and which shall give Licensee thirty (30) days in which to cure the breach. If Licensee fails to cure the breach within the 30-day period, the License shall be automatically terminated. In the event that Licensee, after receipt of the written notice of breach from Licensor, does not promptly begin curing of the breach and the breach is of such a nature that it presents a dangerous or unsafe situation for the public, Licensor may elect to perform maintenance or repair so that the dangerous or unsafe situation is remediated.

(d) Removal of Improvements. Upon termination, improvements made to the Disc Golf Course may be kept in place or removed at the option of Licensor. Licensee shall be responsible for the cost of removing the improvements.

2. Installation. Licensor has made no improvements to make the License Area suitable for a Disc Golf Course. Licensee shall be responsible for making any necessary improvements to the License Area. Before beginning any improvements, Licensee shall obtain Licensor's written approval of Licensee's construction plans, which approval shall not be unreasonably withheld. Licensee shall, to the extent reasonable possible, avoid cutting standing timber in the License Area, and in any event, Licensee shall obtain prior written consent from Licensor before cutting any trees in the License Area. Licensee shall obtain written permission from Central Lincoln Peoples' Utility District prior to creating portions of the Disk Golf Course that will result in play within 50 feet of power transmission lines and supports in the License

Area. Use of concrete to anchor goal nets at each hole shall be avoided to the extent reasonably practicable. Licensee shall provide garbage and recycle containers as reasonably necessary to keep the Course litter free. No dedicated parking for the Disc Golf Course is required to be provided by Licensor or Licensee.

3. Maintenance; Operation. Licensee shall have the obligation to maintain the License Area in good condition and repair at its sole cost and expense, including without limitation the regular emptying of trash receptacles, trimming of low vegetation and removal of hazards on the Disc Golf Course. Maintenance shall be performed in a good and workmanlike manner, and solely by persons working under contract with Licensee or under the supervision and control of Licensee, including, without limitations, any contractors or volunteers of Licensee. Licensee shall not make any changes or alterations to the License Area without the written consent of Licensor, which consent shall not be unreasonably withheld. Licensee shall be responsible for the cost of any water installation or usage on the Disc Golf Course. Licensee may use motorized vehicles on the License Area as reasonably necessary in connection with the construction, operation and maintenance of the Disc Golf Course.

3.1 Community Group Involvement. The City intends to enter into an agreement with Central Oregon Coast Disc Golf League (“the League”), a community group interested in promoting Disc Golf in Newport and assisting with operation of the Disc Golf Course. Licensor shall have the right to review and approve the agreement between Licensee and the League, which approval shall not be unreasonably withheld. The agreement between Licensor and the League shall, among other provisions, require the League to agree to comply with, and be bound by the terms of, this Agreement and to perform the obligations of Licensee under this License. In no event shall such agreement release Licensee from its obligations under this Agreement.

3.2 Lands Surrounding the License Area. Licensor and its related entities own other land surrounding the License Area, much of which is managed as a sustainable yield forest (“Forest Land”). Licensor and its related entities allow the public pedestrian and bicycle access to the Forest Land, but, at the request of law enforcement officials, issue permits to people wishing to walk or bicycle on the Forest Land. Licensee shall use good faith efforts to ensure that members of the public using the Disc Golf Course obtain permits before going on the Forest Lands.

3.3 Signage and Sponsorships. Licensee and the League intend to construct signage at the entrance of the Disc Golf Course which shall show the name and general layout of the Course, indicate that the Course is a City of Newport Parks and Recreation facility, and contain other information about Disc Golf and the Course. The signage shall recognize Licensor for granting use of its property at no cost for recreational purposes. Licensee and the League also intend to offer commercial sponsorships of each of the 18 holes, constructing at each hole signage recognizing the sponsor of that hole and also recognizing sponsors on the entrance sign. Licensor consents to the construction of such signage, but Licensor

reserves the right to approve the signs in advance, which approval shall not be unreasonably withheld.

4. Scope of Use. The License is granted to provide authority to the Licensee to maintain and operate a public Disc Golf Course for recreational purposes. The only use of the License Area that may be made by the general public is non-vehicular pedestrian access for recreational purposes consistent with ORS 105.682. All activities of the general public, other than those specifically allowed by this Section 4, are prohibited in the License Area, including, without limitation, commercial activities, loitering, vehicle access or parking, public assemblies or any activity that would be a constitutionally protected activity if performed on public property. All activities of Licensee, other than those specifically permitted by this Agreement, are prohibited in the License Area.

5. Relocation. Licensor intends that portions of the License Area be developed in the future for other uses. Licensor shall advise Licensee in writing that it wishes to relocate the License Area to a different location in Wilder or on the Forest Land ("Future License Area"). If the parties are unable to agree upon such relocation within thirty (30) days, then either party may terminate this Agreement by giving written notice in accordance with Section 1(b) above. If the parties agree upon such relocation in writing, (a) Licensor and Licensee shall execute and deliver such documents as Licensor reasonably requires to reflect such relocation; and (b) Licensee shall be solely responsible, at its own cost and expense, for relocating all improvements to the Future License Area. If the Future License Area is developed, the parties may, but neither shall be obligated, to relocate the Future License Area to another location on property owned by Licensor or one of its related entities.

6. Reservation of Rights by Licensor; Closure. For so long as this Agreement remains in effect, Licensor and its authorized users shall have the right to use the License Area for activities related to preparation for development, including without limitation surveys and due diligence studies. Licensee shall not damage or cause interference with the operations of any improvements or facilities installed by Licensor or other authorized users of the License Area. Licensor shall be entitled to temporarily close access to the License Area for any reason. If reasonably possible, Licensor will provide to Licensee notice and other relevant details related to the closure prior to closure of the License Area.

7. Liens. Licensee shall not permit any claim, lien or other encumbrance arising from Licensee's use of the License Area to accrue against or attach to the License Area or the interest of Licensor in adjacent lands.

8. Insurance. Licensee shall keep in force at Licensee's expense, a commercial general liability insurance including bodily injury, property damage, personal injury and contractual liability with limits of not less than a combined single limit of Two Million and No/100 Dollars (\$2,000,000.00) with standard (ISO) cross liability and a separation of insureds provision to be adjusted from time to time for inflationary purposes. Such insurance policy shall name Licensor as an additional insured. Licensee shall deposit the policy or policies of such insurance or a certificate or certificates thereof with Licensor no less than five (5) days after the full execution of this Agreement and evidence of all renewals of same shall contain a written cancellation notification of not less than thirty (30) days before such policy is to be terminated.

9. Indemnity. To the extent permitted by the Oregon Constitution and Oregon Tort Claims Act, Licensee shall also indemnify, protect, defend with counsel reasonably acceptable to Licensor, and hold harmless Licensor, its successors and assigns for, from and against any and all actual or threatened claims, liabilities, liens, injuries, actions, damages, costs, expenses (including attorney fees) and losses to persons or property or to natural resources to the extent directly or indirectly arising out of, or resulting from: (a) the use by Licensee [and its respective agents, employees, contractors, or any others working under its supervision and control, including the League, (collectively, the "Licensee Parties")] of the License Area; or (b) the failure of Licensee or any of the Licensee Parties to comply with the terms and provisions of this Agreement including, without limitation, as a result of any violation of Section 7 relating to liens. Notwithstanding the foregoing, in no event shall Licensee be obligated to indemnify Licensor from any liability, claim, action, damage or loss arising from the gross negligence or misconduct of Licensor or its respective agents, employees or contractors. The terms of this Section 9 shall survive termination of this Agreement.

10. Exculpation. Except as otherwise set forth herein, Licensor shall have no liability to Licensee or the public arising out of the condition, improvement, operation, maintenance, repair or replacement of the License Area, the improvements or landscaping located thereon, or the use thereof, except to the extent arising from the gross negligence or misconduct of Licensor. Licensee accepts the License Area in its "AS IS" condition, with all faults, and hereby releases and waives any and all claims that Licensee, its employees, invitees, contractors or agents may have or hereafter acquire in connection with use of the License Area as set forth in this Agreement. This exculpation is in addition to immunity conferred upon Licensor by ORS 105.682 for recreational use of the License Area by the general public. The terms of this Section 10 shall survive termination of this Agreement.

11. Compliance With Laws. Licensee shall cause its use of the License Area to be in accordance with all applicable laws, rules and regulations, *provided, however*, in the event Licensee's obligations to comply with laws violates any other term or provision of this Agreement, the parties will cooperate in using reasonable efforts to modify this Agreement so that Licensee may comply with all laws. If the parties are unable to modify this Agreement after making reasonable efforts to do so, this Agreement shall automatically terminate.

12. Assignments. Licensee may not assign or transfer its interest in the License Area without Licensor's prior written consent, which shall not be unreasonably withheld. Licensor shall have the right at any time to delegate any of Licensor's rights and remedies under this Agreement to its successors and assigns.

13. Notices. All notices given under this Agreement shall be sent in writing to the following addresses with applicable delivery or postage charges prepaid by personal delivery, overnight courier service, registered or certified United States mail (return receipt requested), facsimile or email and such notices shall be deemed received on the earlier to occur of actual delivery or refusal of a party to accept delivery thereof:

Licensor: Landwaves, Inc.
Attn: Bonnie Serkin
2712 SE 20th Ave.
Portland, Oregon 97202

Phone: 503-221-0167
Email: bonnie@eenw.com

Licensee: City of Newport
Attn: City Manager
169 SW Coast Highway
Newport, Oregon 97365 –
541.574.0604/
Email: J.Voetberg@NewportOregon.gov

14. Time is of the Essence. The time of the performance of all covenants, conditions and agreements of this Agreement is of the essence in this Agreement.

15. Entire Agreement; Amendment. This Agreement and the Exhibits attached hereto constitute the sole and exclusive agreement between the parties with respect to the Agreement. This Agreement may not be modified or amended except by the written agreement of the parties.

16. Waiver. One or more waivers of any covenant or condition by Licensor shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Licensor to or of any act by Licensee requiring Licensor's consent or approval shall not be construed to waive or render unnecessary Licensor's consent or approval to or of any subsequent similar act by Licensee.


17. Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

18. Survival. The provisions of this Agreement with respect to any indemnity obligation or exculpation shall survive the termination of this Agreement. In addition, Termination of this Agreement shall not diminish the immunity provided to Licensor under ORS 105.682.

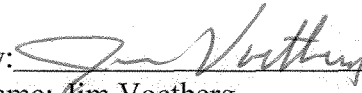
19. No Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement, and no party, other than Licensor and Licensee, shall be entitled to enforce or claim reliance on this Agreement.

IN WITNESS whereof Licensor and Licensee herein have executed this Agreement as of the date first indicated above.

LICENSOR: LANDWAVES, INC., an Oregon Corporation

By: 
Name: WILL EVERY
Title: president
Date: 8/21/12

LICENSEE: CITY OF NEWPORT, OREGON

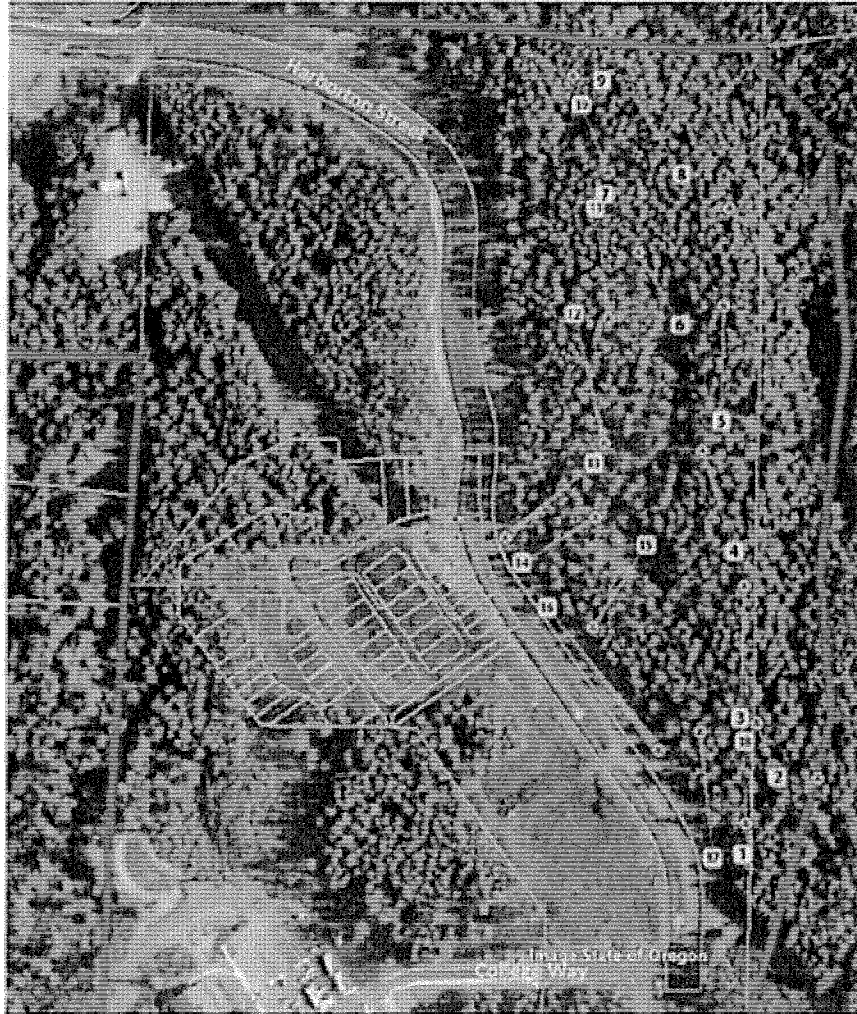
By: 
Name: Jim Voetberg
Title: City Manager
Date: 8/24/12

APPROVED AS TO FORM FOR THE CITY:

By: _____
Name: _____
Title: City Attorney
Date: _____

EXHIBIT A

License Area, including Course Layout



**AMENDMENT TO DISK GOLF
COURSE LICENSE AGREEMENT**

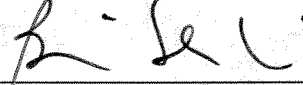
THIS AMENDMENT TO DISC GOLF COURSE LICENSE AGREEMENT (this "Amendment") is dated as of August 29, 2012, and is by and between LANDWAVES, INC., an Oregon corporation ("Licensor"), and the CITY OF NEWPORT, OREGON, a municipal corporation ("Licensee"). Licensor and Licensee are parties to a Disc Golf License Agreement dated August 24, 2012 (the "Agreement"). Licensor and Licensee agree to amend the Agreement as follows:

1. Term. Licensor and Licensee agree not to terminate the Agreement pursuant to the provisions of Section 1(b) of the Agreement until the earliest of August 24, 2017.
2. Substitution of Property. Licensor retains the right, from time to time, to delete portion(s) of the License Area and substitute such portion(s) of the License Area with other land owned by Licensor (or its affiliate) in the vicinity of the Disc Golf Course by giving Licensee 30 days' prior written notice of such substitution. Such notice shall describe the deleted land and the replacement land. The replacement land may be outside of City limits.
3. Effect of Amendment. The Agreement is amended only as described in this Amendment. Except as expressly amended in this Amendment, the Agreement remains unmodified and in full force and effect.

Licensor and Licensee have executed this Amendment effective as of the date first set forth above.


LICENSOR:

LANDWAVES, INC., an Oregon Corporation

By: 
Name: Bonnie Serkin
Title: Chief Operating Officer

LICENSEE:

CITY OF NEWPORT, OREGON

By: 
Name: Jim Voelker
Title: City Manager

APPROVED AS TO FORM FOR THE CITY:

By: _____
Name: _____
Title: _____