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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 MILLENIUM GOLF MANAGEMENT,
14 LLC;
15 Plaintiff,
16 v.
17 CITY OF TEMPE,
18 Defendant.

Case No. CV2017-007833

ANSWER AND COUNTERCLAIMS

(Assigned to the Hon. Daniel Martin)

19 The Defendant City of Tempe (“Tempe”), by and through undersigned counsel, in
20 answering Plaintiff’s Complaint, admits, denies and affirmatively alleges as follows:

- 21 1. Responding to paragraph 1, Plaintiff’s Complaint, Tempe admits the same.
- 22 2. Responding to paragraph 2, Plaintiff’s Complaint, Tempe is without
23 knowledge or information sufficient enough to develop a belief as to the truth of the matters
24 asserted and therefore denies the same.
- 25 3. Responding to paragraph 3, Plaintiff’s Complaint, Tempe admits the same.
- 26 4. Responding to paragraph 4, Plaintiff’s Complaint, Tempe admits the same.
- 27 5. Responding to paragraph 5, Plaintiff’s Complaint, Tempe admits the same.
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1 6. Responding to paragraph 6, Plaintiff's Complaint, Tempe is without
2 knowledge or information sufficient enough to develop a belief as to the truth of the matters
3 asserted and therefore denies the same.
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5 7. Responding to paragraph 7, Plaintiff's Complaint, Tempe admits that this
6 Court has subject matter jurisdiction over the issues herein and that venue is proper in this
7 Court.
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9 8. Responding to paragraph 8, Plaintiff's Complaint, Tempe denies the same.
10 Further responding, Tempe affirmatively states that it did nothing other than instruct
11 Plaintiff to stop breaching the then existing contract.
12

13 9. Responding to paragraph 9, Plaintiff's Complaint, Tempe admits that after a
14 public Request for Proposals process, Plaintiff was awarded a contract to manage Tempe's
15 two golf courses, Ken McDonald and Rolling Hills (together as "the golf courses"). Tempe
16 also admits that the original contract, the official title of which is Golf Professionals Service
17 Contract #T11-129-01 ("the First Contract") was executed in 2011; was renewed, modified,
18 and superseded by contract in 2014; and, the 2014 contract was renewed, modified, and
19 superseded by contract in 2016. Tempe is not aware to which contract Plaintiff is
20 referencing in this paragraph and is, accordingly, without information or knowledge
21 sufficient to form a belief as to the truth of the matters asserted and therefore denies the
22 same. Further responding, Tempe is without knowledge or information sufficient enough to
23 develop a belief as to the truth of Plaintiff's stated motivations to enter into the First
24 Contract and therefore denies the same.
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1 10. Responding to paragraph 10, Plaintiff's Complaint, Tempe admits that
2 Plaintiff began to manage the golf courses, pursuant to the First Contract, in 2011. Tempe
3 affirmatively states that Plaintiff's authority to "manage the operations at both courses"
4 were specifically controlled and limited, depending on the year, by the then existing
5 contract. Further responding, Tempe denies each and every allegation contained in said
6 paragraph, save and except for those admitted specifically herein.
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8 11. Responding to paragraph 11, Plaintiff's Complaint, Tempe is without
9 knowledge or information sufficient to form a belief as to which contract Plaintiff is
10 referring and therefore denies the same. All contracts specified that Plaintiff was only to
11 have certain revenue streams in addition to its monthly management compensation, which
12 included all the revenues from fees up to \$2.00 per player for tournaments and league play
13 (First Contract limited to solely tournaments), golf instruction, fitting and making custom
14 golf clubs, renting pull carts and gold clubs provided by Plaintiff, pro shop receipts, food
15 and beverage receipts, retrieval of golf balls from lakes, and limited private functions.
16 Tempe admits that all contracts specify it was to receive all revenues from green fees and
17 associated tournament outing revenue, car revenue, practice/driving range revenue, and
18 facility advertising or naming revenues. Further responding, Tempe admits that Plaintiff
19 was to manage the golf course pursuant to, and limited by, the terms of the contracts. Further
20 responding, Tempe denies each and every allegation contained in said paragraph, save and
21 except for those admitted specifically herein.
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26 12. Responding to paragraph 12, Plaintiff's Complaint, Tempe admits the same.

27 13. Responding to paragraph 13, Plaintiff's Complaint, Tempe admits the same.
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1 14. Responding to paragraph 14, Plaintiff’s Complaint, Tempe admits the same.

2 15. Responding to paragraph 15, Plaintiff’s Complaint, Tempe admits that the
3 condition and fiscal performance of the golf courses were below desired levels. Further
4 responding, Tempe denies each and every allegation contained in said paragraph, save and
5 except for those admitted specifically herein.
6

7 16. Responding to paragraph 16, Plaintiff’s Complaint, Tempe admits that the
8 golf courses, car fleet, and driving ranges were improved. Further responding, Tempe
9 denies each and every allegation contained in said paragraph, save and except for those
10 admitted specifically herein.
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12 17. Responding to paragraph 17, Plaintiff’s Complaint, Tempe is without
13 knowledge or information sufficient enough to develop a belief as to the truth of the matters
14 asserted and therefore denies the same.
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16 18. Responding to paragraph 18, Plaintiff’s Complaint, Tempe is without
17 knowledge or information sufficient enough to develop a belief as to the truth of the matters
18 asserted and therefore denies the same.
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20 19. Responding to paragraph 19, Plaintiff’s Complaint, Tempe admits that it
21 received increased revenue from golf operations from 2011 until 2016. Further responding,
22 Tempe denies each and every allegation contained in said paragraph, save and except for
23 those admitted specifically herein.
24

25 20. Responding to paragraph 20, Plaintiff’s Complaint, Tempe admits that
26 Plaintiff created the website, golftempeaz.com, and that it was used to book tee times for
27 Tempe golf course online. Tempe affirmatively states that Plaintiff created such website on
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1 its own volition and Tempe did not request Plaintiff to do so. Tempe also affirmatively
2 states that Plaintiff's fee to utilize the website booking features was not a revenue stream
3 permitted under any of the contracts. Tempe also affirmatively states that, if the website
4 increased traffic to the golf courses, Plaintiff benefited from increased pro shop sales,
5 increased concession sales, and increased revenue in its other revenue streams. Further
6 responding, Tempe denies that it promised to compensate Plaintiff for the website. Further
7 responding, Tempe denies each and every allegation contained in said paragraph, save and
8 except for those admitted specifically herein.
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11 21. Responding to paragraph 21, Plaintiff's Complaint, Tempe admits the same.

12 22. Responding to paragraph 22, Plaintiff's Complaint, Tempe admits that the
13 First Contract was renewed, modified, and superseded by contract in 2014; and the 2014
14 contract was renewed, modified, and superseded by contract in 2016.
15

16 23. Responding to paragraph 23, Plaintiff's Complaint, Tempe admits that,
17 pursuant to its rights and obligations under the then existing contract, in its maintenance of
18 Ken McDonald, it applied a chemical to the grass. Tempe affirmatively states that every
19 contract forbids Plaintiff from reducing green fees, except under specific instances. The
20 discount of league rates is not within the specifically listed instances. By doing so, without
21 Tempe's permission, Plaintiff breached the then existing contract. Further responding,
22 Tempe denies each and every allegation contained in said paragraph, save and except for
23 those admitted specifically herein.
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26 24. Responding to paragraph 24, Plaintiff's Complaint, Tempe admits that,
27 pursuant to its rights and obligations under the contract, it conducted maintenance on Ken
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1 McDonald. Further responding, Tempe denies each and every allegation contained in said
2 paragraph, save and except for those admitted specifically herein.

3 25. Responding to paragraph 25, Plaintiff's Complaint, Tempe is without
4 knowledge or information sufficient enough to develop a belief as to the truth of the matters
5 asserted and therefore denies the same.
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7 26. Responding to paragraph 26, Plaintiff's Complaint, Tempe admits that it held
8 a meeting with MGM. Further responding, Tempe denies each and every allegation
9 contained in said paragraph, save and except for those admitted specifically herein.
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11 27. Responding to paragraph 27, Plaintiff's Complaint, Tempe is without
12 knowledge or information sufficient to form a belief as to which contract Plaintiff is
13 referring is said paragraph and therefore denies the same. Tempe affirmatively states that it
14 demanded Plaintiff to stop breaching the then existing contract. Further responding, Tempe
15 denies each and every allegation contained in said paragraph, save and except for those
16 admitted specifically herein.
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18 28. Responding to paragraph 28, Plaintiff's Complaint, Tempe denies the same.

19 29. Responding to paragraph 29, Plaintiff's Complaint, Tempe denies the same.
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21 30. Responding to paragraph 30, Plaintiff's Complaint, Tempe admits that it
22 exercised its rights under a termination of convenience clause, which terminated the 2016
23 contract on June 30, 2017. Further responding, Tempe denies that it exercised the
24 termination of convenience clause in January, 2017. Tempe affirmatively states that it
25 exercised the termination for convenience clause in December, 2016.
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27 31. Responding to paragraph 31, Plaintiff's Complaint, Tempe denies the same.
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1 32. Responding to paragraph 32, Plaintiff's Complaint, Tempe admits that
2 Plaintiff filed Notices of Claim with Tempe; however, specifically denies that said Notices
3 complied with A.R.S. § 12-821.01.
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5 33. Responding to paragraph 33, Plaintiff's Complaint, Tempe is without
6 knowledge or information sufficient enough to develop a belief as to the truth of the matters
7 asserted and therefore denies the same.
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9 34. Responding to paragraph 34, Plaintiff's Complaint, Tempe denies the same.
10 Tempe affirmatively states that many of the alleged incidents in said paragraph are not
11 actionable for failure to comply with A.R.S. § 12-821.01.
12

13 35. Responding to paragraph 35, Plaintiff's Complaint, Tempe denies the same.
14 Tempe affirmatively states that many of the alleged incidents in said paragraph are not
15 actionable for failure to comply with A.R.S. § 12-821.01.
16

17 36. Responding to paragraph 36, Plaintiff's Complaint, Tempe denies the same.
18 Tempe affirmatively states that many of the alleged incidents in said paragraph are not
19 actionable for failure to comply with A.R.S. § 12-821.01.
20

21 37. Responding to paragraph 37, Plaintiff's Complaint, Tempe admits that
22 Plaintiff created a website called golftempez.com and that such website would allow for
23 booking tee times at Tempe golf courses. Tempe also admits that, pursuant to all of the
24 contracts, Plaintiff was neither required to nor prohibited from creating and implementing
25 golftempez.com. Tempe affirmatively states that if golftempez.com increased traffic to
26 the Tempe golf courses, Plaintiff benefited from the same in the form of increased pro shop,
27 lessons, custom club sales, and concession revenue streams. Further responding, Tempe is
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1 without knowledge or information sufficient enough to develop a belief as to the truth of
2 the remaining matters asserted therein and therefore denies the same.

3 38. Responding to paragraph 38, Plaintiff's Complaint, Tempe denies the same.

4 39. Responding to paragraph 39, Plaintiff's Complaint, Tempe denies the same.

5
6 Tempe affirmatively states that in September and October of 2016, it insisted that Plaintiff
7 operate the golf courses pursuant to the terms of the 2016 contract.

8 40. Responding to paragraph 40, Plaintiff's Complaint, Tempe is without
9 knowledge or information sufficient to form a belief as to which contract Plaintiff is
10 referring in said paragraph and therefore denies the same.

11 41. Responding to paragraph 41, Plaintiff's Complaint, Tempe is without
12 knowledge or information sufficient to form a belief as to which contract Plaintiff is
13 referring in said paragraph and therefore denies the same.

14 42. Responding to paragraph 42, Plaintiff's Complaint, Tempe reincorporates and
15 answers the same as in paragraphs 1 through 41 above.

16 43. Responding to paragraph 43, Plaintiff's Complaint, Tempe is without
17 knowledge or information sufficient to form a belief as to which contract Plaintiff is
18 referring in said paragraph and therefore denies the same. Tempe affirmatively states that
19 much of the alleged damages in said paragraph arise from alleged incidents that are not
20 actionable for failure to comply with A.R.S. § 12-821.01.

21 44. Responding to paragraph 44, Plaintiff's Complaint, Tempe is without
22 knowledge or information sufficient to form a belief as to which contract Plaintiff is
23 referring in said paragraph and therefore denies the same. Tempe affirmatively states that
24

1 much of the alleged damages in said paragraph arise from alleged incidents that are not
2 actionable for failure to comply with A.R.S. § 12-821.01.

3 45. Responding to paragraph 45, Plaintiff's Complaint, Tempe is without
4 knowledge or information sufficient to form a belief as to which contract Plaintiff is
5 referring in said paragraph and therefore denies the same. Tempe affirmatively states that
6 much of the alleged damages in said paragraph arise from alleged incidents that are not
7 actionable for failure to comply with A.R.S. § 12-821.01.
8

9 46. Responding to paragraph 46, Plaintiff's Complaint, Tempe is without
10 knowledge or information sufficient to form a belief as to which contract Plaintiff is
11 referring in said paragraph and therefore denies the same. Tempe affirmatively states that
12 much of the alleged damages in said paragraph arise from alleged incidents that are not
13 actionable for failure to comply with A.R.S. § 12-821.01.
14

15 47. Responding to paragraph 47, Plaintiff's Complaint, Tempe reincorporates and
16 answers the same as in paragraphs 1 through 46 above.
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18 48. Responding to paragraph 48, Plaintiff's Complaint, Tempe is without
19 knowledge or information sufficient to form a belief as to which contract Plaintiff is
20 referring in said paragraph and therefore denies the same.
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22 49. Responding to paragraph 49, Plaintiff's Complaint, Tempe is without
23 knowledge or information sufficient to form a belief as to which contract Plaintiff is
24 referring in said paragraph and therefore denies the same.
25

26 50. Responding to paragraph 50, Plaintiff's Complaint, Tempe reincorporates and
27 answers the same as in paragraphs 1 through 49 above.
28

1 2. Counterdefendant Millenium Golf Management, LLC (“MGM”) is an
2 Arizona Limited Liability Company, organized and existing pursuant to the laws of the
3 State of Arizona and has its principal place of business in Maricopa County.
4

5 3. In the Spring of 2011, Tempe, pursuant to Arizona law, published a Request
6 for Proposals for the operation of its two golf courses, Rolling Hills and Ken McDonald
7 (together as “the golf courses”).
8

9 4. MGM submitted a bid, which was selected by Tempe.

10 5. As a result of MGM winning the bidding process, MGM and Tempe executed
11 a contract, titled Golf Professional Contract #T11-129-01 (“First Contract”), on June 2,
12 2011. A true and accurate copy of the First Contract is attached hereto as Exhibit 1, and
13 incorporated by this reference as if fully rewritten at length herein.
14

15 6. The term of the First Contract was three years and was to begin June 3, 2011.
16 Exhibit 1, Contract Term, ¶ 1.

17 7. The First Contract detailed the parties’ rights and obligations.

18 8. MGM was required to collect and account for all golf fees as established by
19 Tempe. MGM was specifically prohibited from waiving any fees owed to Tempe, with a
20 few limited and specifically delineated exceptions. Exhibit 1, Scope of Work, ¶ 1(U).
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22 9. MGM was provided certain revenue streams, including: a monthly
23 management fee per golf course, a performance bonus, a \$2.00 per player fee for
24 tournaments, fees for golf instruction, fees for fitting and making custom clubs, fees from
25 pull cart and golf club rental (on pull carts and golf clubs provided by MGM), pro shop
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1 sales, concession sales, retrieval of golf balls from lakes, and receipts from private
2 functions. Exhibit 1, Scope of Work, ¶¶ 3 - 4.

3 10. The golf courses' operating hours were controlled by the First Contract.
4 Exhibit 1, Scope of Work, ¶ 7.

5 11. The First Contract could only be modified by a written contract modification
6 issued by Tempe's Procurement Office and countersigned by MGM. Exhibit 1, Terms and
7 Conditions, ¶ 9.
8

9 12. On or about May 22, 2014, the parties renewed and modified the First
10 Contract through a document entitled Golf Professional Services Contract #11-129-01
11 (Updated for Renewal Effective June 2, 2014) ("Second Contract"). The Second Contract
12 superseded the First Contract. A true and accurate copy of the Second Contract is attached
13 hereto as Exhibit 2, and incorporated by this reference as if fully rewritten at length herein.
14

15 13. The Second Contract's term was from June 2, 2014 through June 2, 2016.
16 Exhibit 2, Contract Term, ¶ 1.
17

18 14. The Second Contract slightly modified MGM's compensation structure,
19 mainly adjusting the monthly management fee it was to receive for the golf courses and
20 allowed for MGM to charge \$2.00 per golfer for league play in addition to tournament play.
21 Exhibit 2, Scope of Work, ¶ 3(A) – (E); ¶ 4(A).
22

23 15. The Second Contract also modified the Operating Hours in two distinct ways.
24 First, the First Contract required the golf courses to be open 365 days per year, whereas the
25 Second Contract required the golf courses to be open 364 days per year (closed on
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1 Christmas Day). Second, MGM was to comply with the operating hours dictated by
2 Attachment A to the Second Contract. Exhibit 2, Scope of Work, ¶ 7.

3
4 16. MGM's prohibition from waiving any fees owed to Tempe was not modified
5 by the Second Contract. Exhibit 2, Scope of Work, ¶ 1(U).

6
7 17. MGM's income streams were not modified by the Second Contract, except
8 for the modification set forth in paragraph 14 above. Exhibit 2, Scope of Work, ¶ 4.

9
10 18. The Second Contract could only be modified by a written contract
11 modification issued by Tempe's Procurement Office and countersigned by MGM. Exhibit
12 2, Terms and Conditions, ¶ 8.

13
14 19. On or about May 26, 2016, the parties renewed and modified the Second
15 Contract through a document entitled Golf Professional Services Contract #11-129-01
16 (Updated for 2nd Renewal Option Effective June 2, 2016) ("Third Contract"). The Third
17 Contract superseded the Second Contract. A true and accurate copy of the Third Contract
18 is attached hereto as Exhibit 3, and incorporated by this reference as if fully rewritten at
19 length herein.

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21 20. The Third Contract's term was from June 2, 2016 through June 30, 2019.
22 Exhibit 3, Contract Term, ¶ 1.

23
24 21. The Third Contract slightly modified MGM's compensation structure, mainly
25 by adjusting the monthly management fee it was to receive for the golf courses and the
26 performance bonus structure. Exhibit 3, Scope of Work, ¶ 3.

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28 22. MGM's prohibition from waiving any fees owed to Tempe was not modified
by the Third Contract. Exhibit 3, Scope of Work, ¶ 1(U).

1 23. MGM's income streams were not modified by the Third Contract. Exhibit 3,
2 Scope of Work, ¶ 4.

3 24. The Operating Hours were not modified by the Third Contract. Exhibit 3,
4 Scope of Work, ¶ 7.

5 25. The Third Contract made no other significant changes to the Second Contract.

6 26. After the Third Contract was executed, on or about December 14, 2016, the
7 parties modified the Third Contract's Golf Course Operating Hours provision. This
8 modification was in writing. A true and accurate copy of the Contract Modification is
9 attached hereto as Exhibit 4 and is incorporated by this reference as if fully rewritten at
10 length herein.
11

12 27. The Third Contract permitted Tempe to terminate the contract for
13 convenience with 180-day prior notice to MGM. Exhibit 3, Terms and Conditions, ¶ 13.
14

15 28. On December 20, 2016, Tempe terminated the Third Contract for
16 convenience. The termination was to become effective on June 30, 2017. A true and
17 accurate copy of the Contract Termination is attached hereto as Exhibit 5 and is
18 incorporated by this reference as if fully rewritten at length herein.
19
20

21 **COUNT I – BREACH OF CONTRACT**

22 29. Tempe re-alleges and incorporates each and every allegation contained in
23 paragraphs 1 through 28 as if fully rewritten at length herein.
24

25 30. Tempe was entitled to all green fees and car rental fees. Exhibit 3, Scope of
26 Work, ¶ 3(D).
27
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1 31. On or about October 17, 2016, MGM entered into two separate contracts with
2 non-party GolfNow, LLC (“GolfNow”). The contracts were for GolfNow’s Plus package.
3 A true and accurate copy of each GolfNow Contract is attached hereto as Exhibits 6 and 7
4 respectively, and are incorporated by this reference as if fully rewritten at length herein.
5

6 32. The GolfNow contracts, in exchange for the GolfNow Plus package, gave
7 GolfNow 3 trade rounds per golf course, broken down as follows: Ken McDonald – 11:52,
8 12:00, and 12:07; Rolling Hills – 11:50, 12:00, and 12:10. See email from Ralph Hawley to
9 Julie Hietter, a true and accurate copy is attached hereto as Exhibit 8 and is incorporated by
10 this reference as if fully rewritten at length herein. A “trade round” consists of 4 individual
11 18-hole rounds with car, to be sold exclusively by GolfNow at the agreed to times. GolfNow
12 has exclusive authority to set its own prices for said trade rounds and keeps all revenues
13 generated therefrom.
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16 33. MGM did not have permission from Tempe to enter into the GolfNow
17 Contracts or to give away trade rounds to GolfNow. By doing so, MGM breached the Third
18 Contract, specifically Scope of Work, ¶ 1(U). Exhibit 3, Scope of Work, ¶ 1(U).
19

20 34. Tempe has been damaged by MGM’s breach of contract.

21 35. Tempe is entitled to compensatory and consequential damages, the exact
22 amount to be proven at trial.
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24 36. Tempe is entitled to recover its reasonable attorneys’ fees and costs incurred
25 herein pursuant to the contract and A.R.S. §§ 12-341 and -341.01.

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COUNT IV – BREACH OF CONTRACT

57. Tempe re-alleges and incorporates each and every allegation contained in paragraphs 1 through 56 as if fully rewritten at length herein.

58. Pursuant to the Third Contract, Tempe set tournament and league rates.

59. MGM, without authority from Tempe, renegotiated the league rates for the Summer of 2016.

60. By renegotiating the league rates without Tempe’s permission, MGM breached the Second and/or Third Contract.

61. Tempe has been damaged by MGM’s breach of contract.

62. Tempe is entitled to compensatory and consequential damages, the exact amount to be proven at trial.

63. Tempe is entitled to recover its reasonable attorneys’ fees and costs incurred herein pursuant to the contract and A.R.S. §§ 12-341 and -341.01.

COUNT V – BREACH OF CONTRACT

64. Tempe re-alleges and incorporates each and every allegation contained in paragraphs 1 through 63 as if fully rewritten at length herein.

65. MGM omitted senior and junior car fees from the point of sale system without Tempe’s permission.

66. By omitting senior and junior car without Tempe’s permission, MGM breached the Third Contract.

67. Tempe has been damaged by MGM’s breach of contract.

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COUNT VII – BREACH OF CONTRACT

78. Tempe re-alleges and incorporates each and every allegation contained in paragraphs 1 through 77 as if fully rewritten at length herein.

79. MGM’s income streams regarding the golf courses are specifically limited by the Third Contract. Exhibit 3, Scope of Work, ¶ 4.

80. MGM on its own volition created a website called golftempeaz.com, wherein golfers could book rounds of golf on the golf courses.

81. MGM began to charge golfers a \$1.99 booking fee.

82. The \$1.99 booking fee is not an authorized income stream.

83. By charging an unauthorized booking fee of \$1.99, MGM breached the Third Contract.

84. Tempe has been damaged by MGM’s breach of contract.

85. Tempe is entitled to compensatory and consequential damages, the exact amount to be proven at trial.

86. Tempe is entitled to recover its reasonable attorneys’ fees and costs incurred herein pursuant to the contract and A.R.S. §§ 12-341 and -341.01.

COUNT VIII – BREACH OF CONTRACT

87. Tempe re-alleges and incorporates each and every allegation contained in paragraphs 1 through 86 as if fully rewritten at length herein.

88. MGM’s income streams regarding the golf courses are specifically limited by the Third Contract. Exhibit 3, Scope of Work, ¶ 4.

89. MGM sought Off-Track Betting for the golf courses.

1 90. Tempe learned MGM was seeking Off-Track Betting for its golf courses.

2 91. Tempe instructed MGM to stop seeking Off-Track Betting for its golf
3 courses.

4 92. MGM refused to stop its pursuit of Off-Track Betting for the golf courses.

5 93. By continuing to pursue Off-Track Betting after Tempe's denial of the same,
6 MGM breached the Third Contract.
7

8 94. Tempe has been damaged by MGM's breach of contract.

9 95. Tempe is entitled to compensatory and consequential damages, the exact
10 amount to be proven at trial.
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12 96. Tempe is entitled to recover its reasonable attorneys' fees and costs incurred
13 herein pursuant to the contract and A.R.S. §§ 12-341 and -341.01.
14

15 **COUNT IX – BREACH OF CONTRACT**

16 97. Tempe re-alleges and incorporates each and every allegation contained in
17 paragraphs 1 through 96 as if fully rewritten at length herein.

18 98. MGM was to keep the golf courses, pro shops, and concessions open for
19 specific hours. Exhibit 3, Scope of Work, ¶ 7; Exhibit 4.

20 99. Without Tempe's approval, MGM would close the golf courses, pro shops,
21 and concessions during the required hours of operation.
22

23 100. By failing to keep the golf courses, pros shops, and concessions open during
24 the required hours, MGM breached the Third Contract.

25 101. Tempe has been damaged by MGM's breach of contract.
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