

Golf Programming Location Use Agreement  
The First Tee of Greater Houston

**THIS GOLF PROGRAMMING LOCATION AGREEMENT** (the "Agreement") dated as of this \_\_\_\_\_ day of \_\_\_\_\_ (the "Date Hereof"), by and between **The FIRST TEE OF GREATER HOUSTON, INC.**, a Texas nonprofit corporation, doing business as The First Tee of Greater Houston (hereinafter the "Chapter"), the Texas Non-Profit Corporation Act, and **The BATTLEGROUND GOLF COURSE**, Chapter 394, Texas Local Government Code, (the "Operator").

**WHEREAS**, the Owner is the owner of the golf facilities at described in Exhibit A attached hereto and incorporated herein by reference (the "Golf Facility");

**WHEREAS**, the Owner has contracted with the Operator for the Operator to operate the Golf Facility;

**WHEREAS**, the Chapter is a licensee of The First Tee, a division of World Golf Foundation, Inc. ("The First Tee"), pursuant to which the Chapter is responsible for introducing the game of golf, life skills and character education to young people in Houston metropolitan area which includes the counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller (the "Program Participants") by combining affordable access to golf together with The First Tee brand of curriculum which emphasizes golf's unique ability to instill and develop essential values such as honesty, integrity, sportsmanship, self-discipline, respect and a solid work ethic, and to give those young people the confidence and skills to pursue broader goals in life;

**WHEREAS**, the Chapter, the Operator, and the Owner desire to work cooperatively to raise funds for the design and construction of a green-grass learning center at the Golf Facility;

**WHEREAS**, the Chapter desires to establish The First Tee Education Program (the "First Tee Program") at the Golf Facility; and

**WHEREAS**, the Operator and the Owner find that it is in the public interest to allow the Chapter to have access to and use of the Golf Facility in order to provide the Chapter a location at which it may operate the program.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein below, the receipt and sufficiency of which is hereby acknowledged, the Operator and the Chapter agree and covenant as follows:

**1. Term of Agreement.** The term of this Agreement shall be from the \_\_\_\_\_ day of \_\_\_\_\_ (the "Commencement Date"), continuing until the \_\_\_\_\_ day of \_\_\_\_\_, subject to termination as set forth in this Agreement.

**2. Services to be provided by Operator.** Operator agrees to provide the Chapter and the Program Participants access to and use of the Golf Facility for operation of the First Tee Program in accordance with the provisions of this section.

a. The Chapter shall be allowed to use the Golf Facility (i) to provide golf instruction, life skills and character education training to Program Participants at the Golf Facility for not less than \_\_\_\_\_ hours per year and not more than 750 hours per year; (ii) to organize the scheduling of all programming for Program Participants; (iii) to coordinate the certification process for all interested Participants; (iv) to prepare youth participants for The First Tee's National Life Skills Academy or other Program Participant opportunities, as applicable; (v) to coordinate all documentation for Participants eligible for college scholarships, (vi) to deliver other junior golf and educational programs the Chapter offers, and (vii) to coordinate all necessary transportation for Participants, if required.

b. Each of the Program Participants shall be allowed to play up to eight (8) rounds of nine (9) holes of golf or eighteen (18) holes of golf, as applicable, in order to obtain certification under the First Tee Program. Tee times for these rounds will be at the discretion of management from of Operator.

c. Each of the Program Participants shall be allowed to use the Golf Facilities to play non-certification rounds of golf for the reduced price of five dollars (\$5.00) per round. Such non-certification rounds of golf may be for up to eighteen (18) holes of play.

d. Each of the Program Participants shall be allowed to use the Golf Facilities for shooting practice by purchasing range balls at the reduced price of two dollars and fifty cents (\$2.50) per bag of balls per Program Participant.

e. Except for the costs set forth as the responsibility of the Chapter or as otherwise provided in this Agreement, Operator shall pay all operating costs for operating the Golf Facilities. These costs include utilities (such as water, sewer, electricity, garbage, telephone and internet; building, security system, and road maintenance costs) and management costs. Operator will also provide the applicable office, storage, and indoor programming space.

f. Nothing in this agreement shall require Operator to provide transportation for Participants.

g. Any access to or use of the Golf Facilities by the Chapter or the Program Participants shall be scheduled so as to not conflict with previously-scheduled events. The access to or use of the facilities may be limited or rescheduled by the Operator as the Operator deems necessary. Such limiting or rescheduling shall not change the total time available to the Chapter and the Program Participants to an amount of time that is less than the minimum or greater than the maximum provided for in this Agreement. Such limiting or rescheduling shall operate only to move such access to or use of the Golf Facilities to a later time or date.

### **3. Obligations of the Chapter and of Program Participants.**

a. The Chapter shall pay the Operator \$1.00 per year as consideration for the access to and use of the Golf Facility provided by the Operator for the Chapter.

b. The Chapter will, in ongoing good faith, attempt to secure donations of golf equipment, funding, and volunteers to assist with The First Tee program activities.

c. Program Participants will pay all green fees and range ball fees before play. Such green fees and range ball fees shall be paid to and become the property of the Operator.

#### **4. Fundraising.**

a. The Chapter, the Operator, and the Owner contemplate that interested parties that are not party to this Agreement may engage in fundraising efforts to support the First Tee Program activities at the Golf Facility. The Chapter, the Operator, and the Owner may choose to allow certain mutually agreed upon interested parties who are not a party to this Agreement to use the names, logos, and trademarks belonging to the Chapter, the Operator, and the Owner for such fundraising efforts. Any fundraising activity must be approved by the club management.

b. All funds raised shall be spent on The First Tee program curriculum, equipment, or supplies based at the Golf Facility.

#### **5. Trademarks.**

a. The Chapter is hereby granted non-exclusive permission to use name, trademark and logo as shown in Exhibit "B", attached hereto and incorporated herein by reference, and subject to trademark requirements. During the term of this Agreement, the Chapter is hereby granted temporary permission to refer to itself as "The First Tee of Greater Houston at and to refer to the Facility as a "proposed facility of The First Tee of Greater Houston".

b. Operator and Owner is hereby granted non-exclusive permission to use The First Tee of Greater Houston name, trademark and logo as shown in Exhibit attached hereto and incorporated herein by reference, and subject to trademark requirements of The First Tee. During the term of this Agreement, the Operator is hereby granted temporary permission to refer to itself as "The First Tee of Greater Houston at

c. In all promotional and development efforts during this Agreement period, the parties may use promotional materials published by the other parties. Each party may not use or otherwise incorporate a trademark owned by another party except as approved in writing in advance by the party owning such trademark.

## **6. Indemnity.**

a. The Operator does not waive or relinquish any immunity from liability, limitation of liability, or defense on its behalf, on behalf of the Owner, or on behalf of either entity's respective board members, directors, officers, managers, partners, employees, contractors, volunteers, or agents as such immunity from liability, limitation of liability, or defense may be provided by the Constitution and laws of the State of Texas as a result of the execution of this Agreement and the performance of the covenants contained herein. The Operator and the Owner shall have no liability whatsoever for the actions or omissions of the Chapter, regardless of where the actions occurred. Each party is solely responsible for the actions or omissions of its employees, officers, and agents.

b. The Chapter agrees to protect, indemnify and hold the Operator, the Owner, and their respective council members, board members, directors, officers, managers, partners, employees, contractors, volunteers, and agents harmless from and against any and all expenses, damages, claims, suits, actions, judgments, and costs including reasonable attorneys' fees, arising out of or in any way connected with the gross negligence, reckless, or intentional acts or omissions of the Chapter. The terms of this paragraph shall survive the termination of this Agreement.

c. To further protect the Operator and the Owner and to assure compliance with the provisions of this Agreement, the Chapter shall obtain and maintain or cause to be maintained at all times during the term hereof, with an insurer rated VI or higher by A.M. Best & Company, Commercial General Liability insurance, Workers

Compensation and Employers Liability and Business Auto Liability. These policies shall provide coverage against loss or liability for damages and expenses of the parties associated with or arising out of claims for damages which might result from the use or occupation or condition of the Golf Facility or of any portion thereof covered by standard Commercial General Liability Workers Compensation and Business Auto Liability policies. The kind and amounts of coverage shall be written with amounts of at least the following:

1. Commercial General Liability: \$1,000,000 per occurrence
2. Workers Compensation: Statutory
3. Employers Liability: \$500,000
4. Auto Liability (incl. property and bodily injury): \$1,000,000

d. The insurance described in this subsection shall be maintained throughout the term of this Agreement. The Chapter shall name each of the Operator and the Owner as an additional insured under the general liability policy. Upon request, the Chapter shall furnish a certificate evidencing such insurance policy and renewals thereof to the Operator and such policy shall not be canceled without written notice to the Operator provided no more than five (5) days after receipt of such notice of such cancellation by Chapter from the insurance company. Further, the Chapter shall obtain, at its sole cost and expense, such insurance coverage as it deems necessary and desirable with respect to its fixtures and personal property situated on, in or about the Golf Facility.

e. The Operator shall maintain throughout the term of this Agreement, such policy or policies of casualty insurance against such risks and in such amounts as are customary for a prudent owner or operator of like properties.

f. Each party hereby waives all claims, rights, demands or liabilities for recovery from the other party for any loss or damage whatsoever the nature, cause or extent insured under valid and collectible insurance policy or policies to

the extent of any recovery collectible under such policy or policies. The parties agree to request that their respective insurance companies waive any right of subrogation the insurance carriers may have against each other for loss sustained under the respective insurance policies.

**7. Assignment of Agreement.** Neither party may assign its rights under the Agreement without the express written consent of the other party, except that the Operator may assign its rights and obligations to the Owner.

**8. Choice of Law.** This Agreement shall be governed by Texas law and shall be binding upon and inure to the benefit of the Chapter, Operator and their duly authorized successors and assigns.

**9. Nonavailability of funds.** In the event the Operator or Owner fails or refuses to appropriate or expend funds necessary to perform any obligation thereunder, the Operator may terminate the contract without any penalty due by or from Operator or Owner. Notwithstanding this or any other provision of the Agreement, under no circumstances will the Operator or Owner be obligated under the Agreement to appropriate or expend funds for or in the performance of the Agreement.

**10. Modification.** This Agreement shall not be modified or amended except by a writing signed by all parties. This agreement constitutes the entire agreement of the parties and supersedes all prior written and oral agreements and understandings related to the subject matter herein.

**11. Termination.** This Agreement may be terminated upon ninety (90) days prior written Notice by either party.

**12. Agreement Nonexclusive.** Nothing in this Agreement shall be construed to restrict either the Chapter's activities at any other location. Nothing in this Agreement shall be construed to restrict the Operator's ability to offer any of the services or use of facilities provided to Chapter pursuant to this Agreement to any other entity, provided

that such services or use of facilities shall not infringe upon the Chapter's use of the Golf Facility.

**13. Notice.** The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to the other by this Agreement shall be given in writing addressed to the party to be notified using the contact information set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, (iv) by sending the same by fax with confirming copy sent by mail, or (v) by sending the same by electronic mail with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties, until changed by providing written Notice in accordance herewith, shall be as follows:

All notices and communications under this Agreement shall be sent to the Operator at the following:

Mike Shoelen or current General Manager

Touchstone Golf

1600 Georgia Ave

Deer Park, TX 77536



All notices and communications under this Agreement shall be sent to the Chapter at the following:

Doug Earle

Executive Director, The First Tee of Greater Houston

5810 Wilson Road, Ste. 112

Humble, TX 77396 281-454-7000 (office)

281-454-7070 (fax)

IN WITNESS WHEREOF, the parties hereby execute and deliver this Agreement as of the day and year first above written.

FIRST TEE OF GREATER HOUSTON, INC.

doing business as The First Tee of Greater Houston

By: \_\_\_\_\_

Name:

Title:

Date:

\_\_\_\_\_  
{Name, Title}

ATTEST:

\_\_\_\_\_  
{Name, Title}

\_\_\_\_\_  
Date

\_\_\_\_\_  
{Name, Title}

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
{Name, Title}

\_\_\_\_\_  
Date

**Exhibit "A"**  
**Golf Facility**

This is referred to on pg 1 paragraph 2, WHEREAS

**Exhibit "B"**

**Park/Programming Location Names in Text:**

The First Tee® of Greater Houston at Battleground Golf Course

**Golf Course Trademark/Logo:**



**Exhibit "C"**

**THE FIRST TEE OF GREATER HOUSTON NAME, TRADEMARK AND LOGO**

**Chapter/Programming Location Names in Text:**

The First Tee® of Greater Houston at \_\_\_\_\_

**Chapter Name in Text:**

The First Tee® of Greater Houston

**Chapter Logo:**

