



DATE: June 23, 2010
TO: Honorable Mayor and City Council Members
FROM: Economic and Community Development Department
SUBJECT: **MANAGEMENT AND OPERATING AGREEMENT WITH OCEANSIDE GOLF, LLC, FOR THE OCEANSIDE MUNICIPAL GOLF COURSE**

SYNOPSIS

Staff recommends that the City Council approve a ten-year Management and Operating Agreement with Oceanside Golf, LLC, in the annual amount of \$155,000 for the management of the Oceanside Municipal Golf Course, terminate the existing Renovation and Operating Lease Agreement with Oceanside Golf, LLC and approve additional Contract Coordinator position; and authorize the City Manager to execute the Management and Operating Agreement.

BACKGROUND

In 1970 the City opened to the public the Oceanside Municipal Golf Course, an 18-hole regulation-length golf course, located at 825 Douglas Drive ("Golf Course"). In 1982, the City leased the Golf Course to the predecessor of American Golf Corporation ("AGC"), which lease expired on June 30, 2007. In anticipation of the lease expiration with AGC, in 2006, a Request for Proposals ("RFP") was initiated by staff. The RFP asked for proposals to lease and/or manage the Golf Course and contribute towards a significant capital improvement program to the Golf Course.

In response to the RFP, in July 2007, a Renovation and Operating Lease Agreement with Oceanside Golf, LLC ("OGL"), was approved by the City Council ("Lease"). Some of the more pertinent terms of the Lease are a 30-year initial lease term, with a 20-year performance-related option; OGL shall pay 20 percent of total gross revenue as monthly rent and \$4,525,000 capital improvement investment requirement by OGL over the initial term of the Lease.

To date, OGL has satisfactorily performed its obligations under the Lease without complaint from the golfing public and has upgraded the overall appearance and playability of the Golf Course. However, since the commencement of the Lease with OGL in July 2007, the golfing industry has experienced a significant drop in play due to the overall economic downturn both nationally and statewide. At the end of the first fiscal year of the Lease (2007-08), the rounds played at the Golf Course have

significantly decreased from 72,216 to 61,194 in FY 2008-09. For FY 2009-10 the rounds played are projected to further decrease to approximately 57,000.

Additionally, as part of the Lease obligations, OGL is required to provide substantial capital improvements to the Golf Course over the term of the Lease. The capital improvements were to take place in two phases. The first phase consisting of approximately \$1,125,000 was completed by Oceanside Golf in FY 2008-09. An additional \$3,400,000 is scheduled for the second phase, which was to begin in FY 2009-10.

Due to the severe economic downturn in the golfing industry and the lack of available financing in the commercial lending market, OGL has indicated that they will not be able to meet the capital improvement financial obligation. Accordingly, due to both the decrease in rounds played and the corresponding decrease in revenue, in addition to the unavailability of financing capital, OGL has inquired into a reduction in rent or a possible change in the contractual arrangement for the Golf Course from the Lease to a "Management Agreement".

ANALYSIS

Although the number of rounds decreased between FY 2007-08 and FY 2008-09, the actual gross revenue increased slightly due to the completion of the driving range and a small increase in rates. Unfortunately, without the benefit of additional improvements and a rate increase, the gross revenue is projected to be less for FY 2009-10. This corresponds to a lesser rental payment (calculated at 20 percent of gross revenue) to the City for FY 2009-10 compared to FY 2007-08 and FY 2008-09.

The reduction in revenue due to the fewer number of rounds played; the debt obligation for the completed capital improvements incurred to date; the inability to finance the second phase of improvements; together with rising cost of expenses (especially water) without a substantial increase in revenue to offset such expenses, prompted a request by Oceanside Golf to ask the City to consider a Management Agreement to operate OMGC. However, under a Management Agreement arrangement with Oceanside Golf, the City would also have to take on a portion of the existing debt obligation incurred for the first phase of capital improvements.

Inasmuch as the City does not want to reduce its revenue stream by reducing the rent under the Lease, entering into a Management Agreement could be viable option. Basically, under a Management Agreement, the City would pay a flat rate as a management fee to OGL (plus a small incentive bonus should revenues increase and controlled expenses remain relatively flat) with the City keeping all the revenue after expenses. This is in lieu of receiving a rental payment of 20 percent of gross revenue per the Lease. Further, a Management Agreement allows the City to continue its relationship with OGL as the operator of the Golf Course, thus creating a seamless transition in the eyes of the golfing public.

Under a Management Agreement, the \$3,400,000 second phase capital improvements would be postponed until such time as the revenue significantly increases at the Golf Course. The second phase improvements consist primarily of a new irrigation system, better drainage improvements to Pilgrim Creek, and a new clubhouse and maintenance facilities.

As revenues increase when the overall economy and golfing industry gets healthy again (inasmuch as all revenue belongs to the City under a Management Agreement), in order to construct the second phase of the capital improvements the City could:

- 1) Construct certain capital improvements for cash as revenue becomes available from year-to-year.
- 2) Incur debt in an amount, which if amortized, principal and interest payments can be made annually from the increased revenue stream.
- 3) Set aside a certain amount of "excess" revenue as a capital improvement reserve.
- 4) Terminate the Management Agreement and issue a RFP again for a lessee willing to construct capital improvements as part of a long-term lease.

There are other considerations to examine should the City maintain the Lease "status quo". Other significant ramifications to consider are:

- 1) OGL has indicated that they would not be in a position to begin the second phase of the capital improvement obligation, which would place them in default of the Lease.
- 2) Without a significant increase in revenue OGL would begin to operate the Golf Course at a deficit, which would put them at risk in defaulting on their rental payments and debt obligations.
- 3) Should OGL default under the Lease, their lender could attempt to "step into their position as lessee"; however, this would not relieve the lender from the second phase of capital improvements, which they too would most likely not be in a financial position to comply. Should this happen, the City could declare the lender in default.
- 4) Should the City prevail in a termination of the Lease as a result of a default, the City could then look to enter into a management agreement or new lease, albeit without the debt obligation incurred by Oceanside Golf.
- 5) Should there be legal action to terminate the Lease, court-ordered delays and/or a bankruptcy action could affect the amount of revenue the City could collect from OMGC until the City could proceed with finding a new lessee or a management company.

Another intangible to terminating the Lease and entering into a Management Agreement is shortening the term of the leasehold obligation. Under the Lease the initial term is 30 years, with an option of 20 years, subject to performance. Under the Management Agreement the new term is significantly shorter at 10 years. Thus, the Management

Agreement would give the City more options at the end of the shorter period depending on the golfing industry economics at that time.

A Management Agreement places more risk on the City for such items as payment of capital improvements. However, all liabilities associated with the day-to-day operations of a golf course continue to be the responsibility of the management company. Additionally, under the Management Agreement arrangement all the employees at the Golf Course would continue to work directly for the management company, thus any and all liabilities associated with such employees are the responsibility of the management company. Also, the Management Agreement will require the management company to obtain liability insurance that is typical under a lease arrangement, thereby continuing with the same layer of liability to assist in the protection of the City.

Due to the additional City oversight needed for a Management Agreement in lieu of the Lease there would be a slight cost added to the overall expense of operating a golf course. Due to the additional oversight needed for a Management Agreement as compared to a lease, a new position would be created in Property Management as a contract coordinator. This position would also be assigned other duties related to similar contract administration and could be partially funded from other sources.

FISCAL ANALYSIS

Under the current Lease the gross revenue is projected to be approximately \$1,950,000 for FY 2009-10. This corresponds to a rental payment (calculated at 20 percent of gross revenue) to the City of \$390,000 for FY 2009-10 compared to \$406,787 in FY 2007-08 and \$412,055 in FY 2008-09. The gross revenue for FY 2010-11 is projected to be \$2,075,000. Under the current Lease the rental payment projected for FY 2010-11 would be \$415,000.

Under a Management Agreement arrangement if the projected gross revenue for FY 2010-11 is \$2,075,000 the City would receive \$415,000, which is the same as the current Lease rental payment. However, for every \$1 collected above \$2,075,000, the City would get 100 percent, or the entire \$1 instead of 20 percent of each \$1 collected above \$2,075,000 as provided in the current Lease. See attachment for a more detailed analysis.

Under a Management Agreement arrangement, the City would pay OGL a fixed management fee of \$155,000 per year (with a Consumer Price Index ("CPI") annual escalation) in lieu of the current Lease which gave OGL all the revenue after paying the City its 20 percent of gross revenue Lease payment and payment of expenses. The Management Agreement arrangement would also pay to OGL an incentive bonus of 5 percent of gross revenues in excess of \$2,200,000 (with a CPI annual escalation) should there be an increase in gross revenue over the initial year of the Management Agreement.

INSURANCE REQUIREMENTS

Oceanside Golf, LLC will be required to maintain the City's standard insurance requirement over the term of the lease.

COMMISSION OR COMMITTEE REPORT

This item was presented to the Parks and Recreation Commission as a information-only item on June 10, 2010.

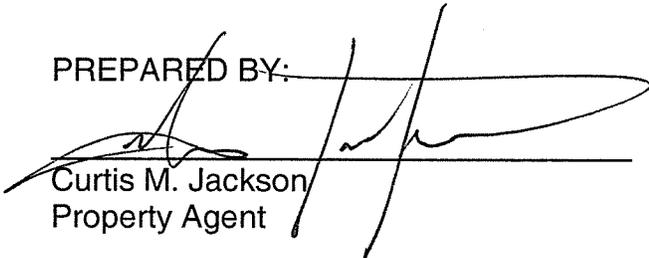
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

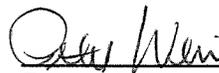
RECOMMENDATION

Staff recommends that the City Council approve a ten-year Management and Operating Agreement with Oceanside Golf, LLC, in the annual amount of \$155,000 for the management of the Oceanside Municipal Golf Course, terminate the existing Renovation and Operating Lease Agreement with Oceanside Golf, LLC and approve additional Contract Coordinator position; and authorize the City Manager to execute the Management and Operating Agreement.

PREPARED BY:


Curtis M. Jackson
Property Agent

SUBMITTED BY:


Peter A. Weiss
City Manager

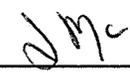
REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Doug Eddow, Real Estate Manager

Teri Ferro, Financial Services Director





Attachment

Set forth below is a brief summary of pertinent facts comparing the Lease arrangement to a management operation.

1. Revenue to City (based on different gross revenue estimates for 2010-11)*

| | (1) | (2) | (3) |
|--|---------------|-------------|-------------|
| A. Projected Gross Revenue (PGR) | \$1,950,000 | \$2,075,000 | \$2,120,000 |
| B. Lease Revenue (at 20% of PGR): | \$390,000 | \$415,000 | \$424,000 |
| C. Management Revenue: | | | |
| <u>Expenses</u> | | | |
| Operation/Maintenance** | (\$1,062,000) | | |
| Water*** | (176,000) | | |
| Insurance | (56,000) | | |
| Property Taxes | (45,000) | | |
| Management Fee | (155,000) | | |
| Debt Obligation**** | (131,000) | | |
| Capital Improvement Reserve | (40,000) | | |
| City Administration Cost***** | (40,000) | | |
| Offsets (e.g., no prop. taxes) | <u>45,000</u> | | |
| Subtotal Expenses | (\$1,660,000) | | |
| Net Revenue (PGR less Expenses) | \$290,000 | \$415,000 | \$460,000 |
| D. Management Agreement Difference:***** | (\$100,000) | \$-0- | \$36,000 |

Footnotes

* City gross revenue estimates for 2010-11 of:

- (1) \$1,950,000 – assumes same as estimate for 2009-10 (based on 9 months actual)
- (2) \$2,075,000 – reflects an amount where revenues to City are the same per a lease and a management agreement
- (3) \$2,120,000 – amount projected by Oceanside Golf for 2010-11

At this time, due to the economic condition of the golf course industry in San Diego County, it is probably not economically feasible to raise the rates. Nearby golf courses offering significantly more amenities have lowered their rates to stay competitive with the lower rates offered at OMGC.

** Operation/Maintenance Expenses are all expenses to operate the golf course (including all personnel costs), excluding water, insurance, property taxes,

management fee, debt obligation, capital improvement reserve and the City administration cost.

*** Water rates could possibly increase by 20 percent in the middle of FY 2010-11.

**** Annual debt payment is based on a loan of \$961,000 at 6 percent fixed amortized over 10 years (principal and interest).

***** Said amount offsets the additional City administrative oversight needed for a management agreement in lieu of the Lease.

***** Essentially, under a management agreement, for each \$1 over the gross revenue amount of \$2,075,000 (assuming Expenses at \$1,660,000) the City gets the entire \$1 (\$0.80 more compared to a lease payment of 20 percent of gross revenue, which would net the City only \$0.20 of each \$1).

GOLF COURSE MANAGEMENT & OPERATION AGREEMENT

THIS GOLF COURSE MANAGEMENT & OPERATION AGREEMENT, hereinafter called "Agreement," is made and entered into this 23rd day of June, 2010 ("Effective Date") by and between the City of Oceanside, a municipal corporation, hereinafter called "City" and Oceanside Golf, LLC., an Arizona limited liability company, hereinafter called "OGL."

RECITALS

WHEREAS, the City is the lawful owner of that certain real property commonly known as the Oceanside Municipal Golf Course, located in the City of Oceanside, California, as more particularly described hereinbelow; and

WHEREAS, the City and OGL are currently parties to a Renovation and Operating Lease Agreement dated June 6, 2007 ("Lease") for the lease of the Oceanside Municipal Golf Course;

WHEREAS, City believes the public interest can be best served by entering into a management & operation agreement for the management and operation of the Oceanside Municipal Golf Course in lieu of the Renovation and Operating Lease Agreement; and

WHEREAS, the City and OGL are desirous of terminating the Renovation and Operating Lease Agreement and entering into a management & operating agreement for the management and operation of the Oceanside Municipal Golf Course, consisting of an 18-hole golf course, a driving range, golf course clubhouse, pro shop, and maintenance facilities.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and OGL hereby agree as follows:

AGREEMENT

SECTION 1: USES

1.1 Premises. City hereby enters into this Agreement with OGL, in accordance with the terms, conditions, covenants, and provisions of this Agreement, to manage and operate all that certain real property situated at 825 Douglas Drive, in the City of Oceanside, County of San Diego, State of California, commonly known as Oceanside Municipal Golf Course and more particularly described in **Exhibit "A"** attached hereto and by this reference made part of this Agreement, including all improvements and fixtures located on that real property. Said real and personal property is hereinafter called the "Premises". The Premises consists of an 18-hole golf course, a driving range, golf course clubhouse, pro shop, and maintenance facilities (collectively, the "Golf Course").

1.2 Parking Lot and Other Common Areas. It is expressly understood that portions of the Premises, which includes the entrance off Douglas Drive and the parking lot ("Common Areas") may be used in common with a lessee of city-owned real property adjacent to the Premises. Said Common Areas are more particularly described on Exhibit "A-1" attached hereto and by this reference made a part of this Agreement. The City reserves the right, in its sole and absolute discretion, as to how said Common Areas will be used, maintained and repaired.

1.3 Uses. The City and OGL agree that, during the Term (as hereinafter defined), OGL will manage and operate the Premises as a Golf Course, in accordance with the terms, conditions,

covenants, and provisions of this Agreement. OGL shall have authority and responsibility to: (a) implement the policies and standards for the Golf Course as approved by the City; (b) manage and supervise all day-to-day operations of the Golf Course, including starting, course marshals, pro shop, building and course maintenance, security, cart rental, driving range, food and beverage service, golf instruction, and administration management; (c) subject to Section 4.7, set, from time to time, greens fees and fees and charges for other uses and items charged to Golf Course customers; (d) hire, train, and supervise all employees required to carry out OGL's responsibilities, including, with City approval, the General Manager, Course Superintendent, Assistant Superintendent, and Director of Golf; (e) acquire all goods and services necessary to carry out OGL's responsibilities; (f) acquire all necessary licenses and permits for the operation of the Golf Course including related to food preparation and alcoholic beverages; (g) manage all course reservations, tee times, and tournaments, including special events or other activities requested by City; (h) manage all marketing and promotional activities and customer service relations; (i) manage accounting and payroll procedures and functions; and (j) prepare such annual and other plans and reports as set forth in this Agreement.

1.4 Annual Plan Preparation and Approval.

- a. OGL shall submit, on or before May 1 of each year, an annual plan ("Annual Plan") for the Golf Course for the next operating year commencing on July 1 and continuing through the following June 30 ("Operating Year"). The Annual Plan shall include:
 - i. an operating budget containing bona fide good faith estimates of all Golf Course Expenses (as hereinafter defined) for the next Operating Year (expenses will be separated into controllable expenses and expenses that are out of the City and OGL's control, including expenditures for (a) property operation and maintenance, (b) Capital Repairs (as hereinafter defined) which do not constitute Capital Improvements (as also hereinafter defined), (c) furnishings and equipment and operating inventory, and (d) advertising, sales, and business promotion, and
 - ii. a Capital Improvement Plan as described in Section 3.2.

The Annual Plan shall also include the course maintenance plan, the marketing and business plan for the Golf Course and hours of operation for the next Operating Year.

The parties agree that they shall use their best efforts to limit the increase in Golf Course Expenses during the term of this Agreement. Both parties acknowledge that certain expenses are out of OGL's control, including, but not limited to, regional water rates, insurance, and increases in taxes. Any annual expense increase above the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California shall be thoroughly documented in the Annual Plan. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. The Annual Plan shall be subject to the prior written approval of the City. It is contemplated by the parties that the Annual Plan will be agreed upon by OGL and the City not later than sixty (60) days following delivery of the Annual Plan by OGL to the City. If the City fails to either approve the Annual Plan within said 60-day period or to advise OGL in writing of his/her objections to the Annual Plan within such period, then the City shall be deemed to have approved the Annual Plan as submitted.

In the event of a dispute with regard to the Annual Plan, pending the resolution of such dispute, OGL shall continue to manage and operate the Golf Course in accordance with

the standards set forth in this Agreement at a level of expenditures comparable to those of the preceding Operating Year plus up to an additional two percent (2%) of such amount. This two percent (2%) shall apply to Golf Course Expenses authorized pursuant to this Agreement, but shall not include the Fixed Management Fee as defined in Section 6.2, or the Percentage Management Fee defined in Section 6.3. The Fixed Management Fee shall be subject to the aforementioned Index adjustment only in the manner described in Section 6.2. The Annual Plan shall be reviewed and approved by the City prior to the commencement of each Operating Year.

- b. **Quarterly Review of Annual Plan.** Every three (3) months, the City and the General Manager of the Golf Course shall meet and discuss the operating results of the Golf Course, and the parties shall agree in writing upon any amendments or revisions to the Annual Plan to take into consideration variables or events that did not exist, or could not be anticipated by OGL or the City, at the time the Annual Plan was prepared. The Annual Plan and any material amendments or revisions to the Annual Plan shall require the approval of the City, which approval shall not be unreasonably withheld.

1.5 Reservation of Rights. Notwithstanding any rights to the use of the Premises by OGL as provided in this Agreement, the City specifically retains the following rights:

- a. **Subsurface Rights.** City hereby reserves the right to pursue and drill for any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- b. **Easements.** City shall retain the right to establish access or utility easements through the Premises; provided, however, City shall not unreasonably interfere with OGL's management and operation of the Golf Course. Reasonable notice shall be provided to OGL and such installation of utilities shall be coordinated with OGL.
- c. **Right to Enter.** City has the right to enter upon the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. If City is required to make a repair caused by the gross negligence or willful misconduct of OGL, OGL will be liable for costs associated for such repairs. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.1 Commencement. The term of this Agreement shall be for a period of ten (10) years, commencing **July 1, 2010** (the "Commencement Date") and terminating **June 30, 2020**, such period of time and all subsequent renewals being referred to as the "Term".

If, during the Term of this Agreement, OGL is unable to manage and operate the Premises for any reason whatsoever, City shall not be liable to OGL for any loss or damage resulting therefrom.

2.2 Renewal Option. OGL may request an extension of the term of this Agreement, for an additional five (5) years under the terms and conditions of this Agreement, provided that OGL is not in default or breach of any term, condition, covenant or provision of this Agreement.

OGL may request one (1) five-year extension by providing the City with its written request no later than ninety (90) days prior to the expiration of the Term. Provided that OGL is not in default or material breach of any term, condition, covenant or provision of this Agreement, OGL shall be entitled to the Extension and the Term shall be extended accordingly. The City shall notify OGL not later than thirty (30) days after receipt of such request whether such request will be recommended to the City Council for approval. Recommendation by the City does not constitute City Council approval of the extension request. The City shall, in its sole discretion, have the authority to deny any such request. Any such denial shall be sent to OGL not later than thirty (30) days from receipt of the request for extension.

Should OGL elect not to request an extension of the Term, OGL shall provide the City with written notice not later than ninety (90) days prior to expiration of the Term. In such event, or if the City should deny any request for an extension, the City may elect to retain OGL on a month-to-month basis after expiration of the Term until such time the City or OGL gives the other party thirty (30) days prior written notice of its intent to terminate this Agreement under this Subsection.

SECTION 3: CAPITAL IMPROVEMENT AND REPAIR EXPENDITURES

3.1 Capital Improvement Funds. Subject to the availability of funds in the Golf Course Accounts (as defined in Section 7.1 below), OGL shall disburse to City monthly from the Golf Course Accounts an amount equal to two percent (2%) ("Capital Improvement Fund Percentage") of that portion of the Gross Revenues for the previous month ("Capital Improvement Funds"). Capital Improvement Funds shall be disbursed to City within ten (10) days after the delivery to the City of the monthly profit and loss statements required by Section 7.7 below. In the event there are insufficient funds in the Golf Course Accounts to pay all or any portion of the Capital Improvement Funds for any particular month, then the unpaid Capital Improvement Funds shall be accrued and paid in the next succeeding month or months when sufficient funds exist in the Golf Course Accounts to pay such Capital Improvement Funds. City shall establish and maintain a separate reserve account for the Capital Improvement Funds received by City pursuant to this Section, and these Capital Improvement Funds shall be used for the purposes described in this Agreement. The parties hereby acknowledge and agree that the Capital Improvement Funds shall belong to the City, and City shall have complete control over the Capital Improvement Funds. The parties hereby agree that prior to each Operating Year, in connection with the preparation and approval of the "Capital Improvement Plan" as described in Section 3.2 below, the parties shall discuss whether the Capital Improvement Fund Percentage should be changed. Any decision to change the Capital Improvement Fund Percentage shall be in the sole discretion of the City, and in making such decision the City shall consider such factors as the amount of Capital Improvement Funds currently available and the projected capital improvement requirements of the Golf Course.

3.2 Capital Improvement Plans. During the Term, OGL shall submit on or before May 1 of each year, a "Capital Improvement Plan" for the Golf Course for the next Operating Year, which shall include OGL's recommendation of Capital Improvement Projects and Capital Repairs for the next Operating Year and the estimated costs of such Capital Improvement Projects and/or Capital Repairs.

3.3 Implementation of Capital Improvement Projects. The parties acknowledge and agree that all Capital Improvement Projects over One Thousand Dollars (\$1,000) are in City's sole control and discretion, and all costs and expenses of Capital Improvement Projects shall be paid from the Capital Improvement Funds or from other City funds (and not from the Golf Course Accounts). The costs and expenses of Capital Improvement Projects shall not be considered Golf Course Expenses. The parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of OGL with respect to any aspect of a Capital Improvement project, including design, construction or supervision. In the event the City desires OGL to be involved in any capacity in a Capital Improvement project, the City shall be authorized to enter into a separate agreement with OGL setting forth the terms

and conditions of such involvement, including without limitation fees to be received by OGL for such involvement.

3.4 Implementation of Capital Repairs. The parties acknowledge and agree that all annual Capital Repairs over One Thousand and No/100 Dollars (\$1,000.00) are also in City's sole control and discretion, but all decisions related to Capital Repairs shall be made by the City with reasonable promptness. All costs and expenses of Capital Repairs shall be paid from the Capital Improvement Funds (and not from the Golf Course Accounts). The costs and expenses of Capital Repairs shall not be considered Golf Course Expenses.

3.5 Responsibilities of OGL. Without in any way limiting OGL's right to manage and operate the Golf Course in accordance with the terms of this Agreement, OGL shall, in addition to other obligations and responsibilities set forth in this Agreement, perform the following services, or cause the same to be performed for the Golf Course, and all expenditures of OGL and costs and expenses incurred by OGL in performing these services shall be Golf Course Expenses:

- (a) Manage and market the Golf Course;
- (b) Consummate arrangements with concessionaires, licensees, tenants, or other intended users of the Golf Course;
- (c) Negotiate and execute on behalf of the City contracts for the furnishing of utilities and maintenance and other services to the Golf Course;
- (d) Make all repairs, decorations, replacements, additions, revisions, alterations and improvements to the Golf Course as shall be reasonably necessary for maintenance of the Golf Course in good order, condition and repair, subject to the terms of this Agreement;
- (e) Manage payment of Golf Course Expenses as identified in the Annual Plan or as otherwise provided in this Agreement;
- (f) Incur such expenses as shall be necessary for the proper operation and maintenance of the Golf Course, including without limitation rental expenses for leased Furnishings and Equipment pursuant to the Golf Course Operations and Maintenance Standards;
- (g) Maintain a level of Operating Inventory deemed appropriate by OGL for supplying the needs of the Golf Course and its customers;
- (h) Apply for, and use its best efforts to obtain and maintain, all licenses and permits required of OGL in connection with the operation and management of the Golf Course; and City agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with OGL in the application for, and obtaining and maintenance of, such licenses and permits. Upon termination or expiration of this Agreement, OGL shall cooperate in transferring all licenses, permits and accreditations in the name of OGL to City as permitted by law;
- (i) Use its best efforts to do, or cause to be done, all such acts and things in and about the Golf Course as shall be reasonably necessary to comply with all insurance requirements and legal requirements;

- (j) Pay all Impositions and insurance premiums when due;
- (k) Implement a marketing, advertising, and promotional plan for the Golf Course;
- (l) Purchase Furnishings and Equipment necessary to operate and maintain the Golf Course in the manner provided in this Agreement;
- (m) Maintain the landscaping within the boundaries of the Golf Course pursuant to the Golf Course Operations and Maintenance Standards; and
- (n) Defend and settle claims, lawsuits, and demands relating to the Golf Course and Golf Course personnel (as further provided in and subject to Section 4 below), and retain legal counsel (and pay legal fees and costs as Golf Course Expenses) who, under the direction of OGL, will represent the City and/or OGL, and the Golf Course on all questions relating to legal requirements, will defend any claims or actions brought against OGL and/or the City relating to the Golf Course or Golf Course personnel, and will institute and defend any and all legal actions or proceedings as shall be reasonably necessary to collect charges, rent or other income for the Golf Course; to dispossess tenants or other persons in possession from all or any portion of the Golf Course; to cancel or terminate any lease, license or concession agreement on the grounds of default by the tenant, licensee, or concessionaire; or to contest property taxes. OGL shall notify the City of any claims or lawsuits relating to the Golf Course within three (3) days after OGL receives notice of such claims or lawsuits. Any legal fees paid by OGL and charged as a Golf Course Expense shall be for legal services directly related to the Golf Course and shall not include any OGL corporate overhead or administrative fee or charge. The City Attorney shall have the right to pre-approve any legal counsel retained by OGL to defend OGL and the Golf Course in connection with such matters.

For all claims naming the City, OGL shall cooperate with the City's General Counsel/City Attorney who at his discretion may represent the City or retain any outside counsel to assist in the representation of the City as a Golf Course Expense.

- (o) During the Management Term, OGL shall: (i) maintain all books, records, and other data associated with the financial activities of the Golf Course, (ii) prepare all operating budgets, cash flow budgets, and other financial projections and forecasts, and (iii) be responsible for the day-to-day financial affairs of the Golf Course.

SECTION 4: PERSONNEL; SPECIFIC OPERATING PROCEDURES

4.1 Personnel. OGL shall employ all of the employees of the Golf Course. OGL shall recruit, hire, train, discharge, promote and supervise the management staff of the Golf Course (i.e., the General Manager, the Course Superintendent, and other key personnel), and OGL shall supervise through the management staff the recruiting, hiring, training, discharge, promotion and work of all other employees of the Golf Course. All employees of the Golf Course shall be properly qualified for their positions. The employee compensation of the management staff and all other Golf Course employees shall be a Golf Course Expense.

4.2 Temporary Assignment of Other OGL Personnel. If the position of General Manager, Course Superintendent, or other key management positions of the Golf Course are not filled for whatever reason, OGL may temporarily assign to these positions the staff of other golf courses operated by OGL or other qualified OGL staff; provided, however, that said temporary assignment shall not exceed sixty (60) days without the written approval of the City. During such time as these employees

are temporarily assigned to the Golf Course, all such employees will be paid their regular Employee Compensation, and the pro-rata share of such Employees' Compensation equal to the actual time such employees worked at the Golf Course shall be a Golf Course Expense.

4.3 Management Staff. The General Manager of the Golf Course shall be responsible for the day-to-day management and operation of the Golf Course. The name and telephone number (both home and business) of the General Manager shall be provided, in writing, to the City and shall be current at all times. The General Manager shall be reasonably available during normal working hours to meet with the City. After normal working hours, the General Manager shall be reasonably available to appear at the Golf Course if deemed necessary by the City. The Course Superintendent for the Golf Course shall be a member of the Golf Course Superintendents Association. The Director of Golf for the Golf Course shall be a current Class "A" member in good standing of the Professional Golf Association or the Ladies Professional Golf Association. The City shall have the right to approve the individuals who OGL intends to hire to fill the positions of General Manager, Golf Course Superintendent, Assistant Superintendent and Director of Golf (regardless of the titles given for such positions by OGL), which approval shall not be unreasonably withheld.

4.4 OGL Acknowledgment of Regulatory and Permit Documents. OGL acknowledges that it has been provided copies of the regulatory permits pertaining to the Golf Course.

4.5 Publicity. Any commercial advertisements, press releases, articles, or other media information using City's name shall be subject to the prior approval of the City, which approval shall be given or withheld in the City's sole and absolute discretion.

4.6 Golf Course Hours of Operation. Except upon the occurrence of the events described in Article 10 of this Agreement, the Golf Course shall be operated on a daily basis all year and shall not be closed on holidays. The Golf Course shall be kept open during all hours necessary to adequately serve the public utilizing the Golf Course, and except for instances in which normal maintenance requires temporary closure. The driving range may be open when the Golf Course is closed. The inside food and beverage services of the Golf Course clubhouse shall be open as determined in the Annual Plan. The permitted hours for food and beverage services in the Golf Course clubhouse restaurant shall be as provided in the Annual Plan.

4.7 Golf Course Hours of Operation. Except upon the occurrence of the events described in Article 10 of this Agreement, the Golf Course shall be operated on a daily basis all year and shall not be closed on holidays. The Golf Course shall be kept open during all hours necessary to adequately serve the public utilizing the Golf Course, and except for instances in which normal maintenance requires temporary closure. The driving range may be open when the Golf Course is closed. The inside food and beverage services of the Golf Course Clubhouse shall be open as determined in the Annual Plan. The permitted hours for food and beverage services in the Golf Course Clubhouse restaurant shall be as provided in the Annual Plan.

4.7 Setting of Fees. OGL shall, from time to time, set the amount for fees and charges for services at the Golf Course, including greens fees, use of a golf cart, golf club rental, and driving range. All fees, charges, and prices at the Golf Course set by OGL shall be comparative and competitive with other municipal golf courses in located in or near North County San Diego County and approved by the City. All fees and charges shall be set first to ensure coverage of Golf Course Expenses, the Financial Obligation (as hereinafter defined), Management Fees, and other debt obligations and capital replacement, and secondarily, to provide a benefit to residents of Oceanside. The green fees shall be recommended in the Annual Plan and subject to approval by the City.

4.8 Food and Beverage Operations. OGL shall operate the restaurant located in the Golf Course clubhouse. Temporary fixed food stands shall not be installed on the Golf Course except for special events or during construction projects. OGL shall provide a staffed food service and beverage cart for the service of players on the Golf Course during peak hours of operation. OGL shall comply with all requirements of state and local law governing the sale and distribution of alcoholic beverages. OGL shall obtain and maintain all permits from all governmental agencies having jurisdiction for all food and beverage operations at the Golf Course, including holding a liquor license in the name of OGL. Upon termination or expiration of this Agreement OGL shall cooperate in transferring all licenses, permits and accreditations in the name of OGL to City as permitted by law. OGL shall comply with all health law and regulations as existing or as may be established by the federal, state, county, and city governmental agencies. All food service employees shall possess valid food handler cards, and a copy of these cards shall be maintained in the administrative office at the Golf Course. OGL, for all food and beverage employees, shall comply with all applicable codes and regulations as relates to tuberculosis and other health and disease testing - as now or hereafter required by applicable law. Prices of food and beverages sold at the Golf Course shall be market rate and competitive with prices charged at comparable public golf courses in San Diego County.

4.9 Office Operations. OGL shall employ sufficient staff at the Golf Course to permit OGL to competently perform OGL's obligations under this Agreement. Upon City's written request, OGL shall provide the City with a written job description for each management position at the Golf Course. The City shall keep these job descriptions in strict confidence, subject to applicable public records disclosure laws. OGL shall maintain at the Golf Course copies of all OGL corporate policies and procedures, as such may be changed from time to time.

4.10 Safety and Security. The Golf Course shall comply with all safety regulations of federal, state, and local governmental agencies, including without limitation, any requirements imposed by California Labor Code 6300 et seq. and regulations promulgated with respect thereto, and applicable federal occupational, health, and safety laws and regulations. OGL shall take all reasonable actions to protect the safety of all Golf Course employees and customers. The Golf Course shall contain appropriate security systems, including video monitoring of cash operations, security alarm systems, and locks for the maintenance yard and perimeter gates. OGL shall keep for seven (7) days computer back-up tapes for all accounts payable and accounts receivable information. All records at the Golf Course shall be kept in fireproof files and made available to the City upon request.

4.11 Contracts and Agreements. Except as provided below, all leases and financing agreements for furnishings and equipment located at the Golf Course in order to operate the Golf Course, and all contracts and agreements relating to the operation and maintenance of the Golf Course (including, without limitation, golf professional contracts, contracts for maintenance and repair services, pest control, supplies, and landscaping services, and agreements for tournaments, banquets, and other group functions), entered into during the Term shall be entered into by OGL as the contracting party. If the term of the lease, financing agreement, or other contract or agreement extends beyond the Term, or if the date for performance under such contract is after the Term, then OGL shall obtain the prior written approval of the City for such agreements and the City agrees, upon expiration of this Agreement, to assume all such agreements it has so approved.

4.12 Alterations to Buildings. OGL shall not make any substantial alterations, additions, or changes to the exterior appearance or the structural nature of the Golf Course clubhouse, golf pro shop, maintenance building, or other buildings located at the Golf Course without the prior consent of the City.

4.13 Operations and Maintenance Standards. The parties acknowledge and agree that the Golf Course shall be operated and maintained as a municipal golf course comparable to other municipal golf courses located within or near North County San Diego, as they existed on the Effective Date of this

Agreement. In addition to all other responsibilities of OGL under this Agreement, OGL agrees that at all times during the Term, the Golf Course shall be operated and maintained in accordance with the standards set forth in the Golf Course Operations and Maintenance Standards attached hereto as **Exhibit "B"** and incorporated herein by this reference, consistent with the approved Annual Plan.

4.14 City Inspection and Evaluation. Not more than quarterly from time to time, the City, or his designee shall inspect some or all of the Golf Course for purposes of compliance with the Golf Course Operations and Maintenance Standards and this Section 4.14. City agrees that it shall act reasonably and in good faith in making the determination of whether the Golf Course Operations and Maintenance Standards, or applicable portions thereof, have been met.

The City and OGL shall use a Golf Course Operations and Maintenance Evaluation Form ("Evaluation Form"). The Evaluation Form, attached to this Agreement as **Exhibit "C"** and incorporated herein by this reference, is to be used to evaluate OGL's adherence to the Golf Course Operations and Maintenance Standards. A City rating of an item as "Unacceptable" shall be considered a deficiency ("Deficiency Item"). The proposed action to correct a Deficiency Item and the time schedule shall be reasonably approved by the City. The cost for correcting any Deficiency Item shall be a Golf Course Expense unless said Deficiency is caused the gross negligence or willful misconduct of OGL.

It is mutually understood and agreed that OGL will be in default under the Operation and Maintenance Standards of the Golf Course per this Section 4.14 if a Deficiency Item is not remediated by OGL within ten (10) business days after written notice thereof; provided, however, that OGL shall not be in default if the delay to remediate any Deficiency Item within the ten (10) day period is the result of additional requirements imposed by a government entity, the need to obtain permits, or if a longer period is reasonably necessary to cure such matter and OGL takes reasonable steps to begin to cure the Deficiency Item and continues to make reasonable progress in curing the matter thereafter. If OGL fails to cure a Deficiency Item within the cure period or such longer period of time set forth in this Section 4.14, City shall have the right to terminate this Agreement upon an additional ten (10) day written notice to OGL, subject to OGL's right to dispute the City's determination pursuant to the mediation procedures set forth in Section 11.11; and in the event of such termination, OGL shall have no further rights hereunder and OGL shall thereupon forthwith remove itself from the Golf Course and shall have no further right or claim thereto, and City shall immediately thereupon have the right to reenter and take possession of the Golf Course. City shall further have all other rights and remedies as provided by law, including without limitation, the right to recover damages from OGL in the amount necessary to compensate City for all the detriment proximately caused by OGL's failure to perform its obligations under the Agreement or which in the ordinary course of things would be likely to result therefrom.

4.15 OGL Purchases. In connection with any purchases made by OGL or an Affiliate of OGL on behalf of the Golf Course and in conjunction with the Annual Plan, it is understood that OGL or such affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings shall be passed on to the City, including representatives' fees. In addition, all trade discounts, rebates and refunds pertaining directly to purchases for the Golf Course shall accrue to the benefit of the City. If any purchases of goods or services for the Golf Course are made from or through an affiliate of OGL, that fact shall be disclosed to the City in the monthly report required by Section 7.7, and the charges to the Golf Course for such goods or services shall be on the same terms as those made to other golf courses operated by OGL and such charges shall not exceed the market prices for such goods and services.

SECTION 5: INDEMNITY AND INSURANCE

5.1 Indemnity. OGL shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the gross negligence or willful misconduct of OGL or its employees in connection with its use and occupation of the Premises under this Agreement, except for those claims arising from the negligence or willful misconduct of the City, its officers, agents, or employees. OGL's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, OGL at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

5.2 Insurance. OGL shall take out and maintain at all times during the Term of this Agreement the following insurance coverages and limits on behalf of the Golf Course, the cost of which shall be a Golf Course Expense:

- a. OGL shall maintain the following minimum limits:

General Liability

| | |
|--------------------------------------|-------------|
| Combined Single Limit per occurrence | \$1,000,000 |
| General Aggregate | \$3,000,000 |

Worker's Compensation and Employer's Liability

Statutory amount required by law

Property Insurance

One hundred percent of fair market value of Golf Course

Automobile Liability

| | |
|--------------------------------------|-------------|
| Combined Single Limit per occurrence | \$1,000,000 |
|--------------------------------------|-------------|

- b. All insurance companies affording coverage to OGL on behalf of the Golf Course shall be required to add the City of Oceanside, its directors, officers, employees, contractors, agents and authorized volunteers, as "additional insured" under the insurance policy(s) required in accordance with this Agreement. Insurance coverage provided to City as additional insured shall be primary insurance to City, its directors, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to City, its directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by City, its directors, officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this Section.
- c. All insurance companies affording coverage to OGL on behalf of the Golf Course shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

- d. All insurance companies affording coverage shall endeavor to provide **thirty (30) days** written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- e. OGL shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- f. OGL shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by OGL to provide such a substitution and extend the policy expiration date shall be considered a default by OGL and may subject OGL to a termination of this Agreement in accordance with the terms of Section 8.1.b. below.
- g. If OGL fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid and names of the insurer(s). The City shall be reimbursed from Golf Course Accounts on the later to occur of (i) the **first (1st) day** of the month following the notice of payment by City or (ii) ten (10) days after receipt of notice from City.

Notwithstanding the preceding provision of this Subsection, any failure or refusal by OGL to take out or maintain insurance on behalf of the Golf Course as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement as provided by Section 8.1.b. below.

- h. City, at its discretion, may require reasonable and good faith revision of amounts and coverage at any time during the term of this Agreement by giving OGL **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Golf Course. OGL also agrees to obtain any additional insurance required by City for new improvements in order to meet the requirements of this Agreement, the cost of which shall also be a Golf Course Expense.

5.3 Accident Reports. OGL shall, within **seventy-two (72) hours** after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

5.4 Environmental Indemnity. City agrees to indemnify, defend and hold OGL harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term in connection with the presence or suspected presence of any substance which is toxic, ignitable, reactive or corrosive and/or which is regulated by any local government, the State of California or the United States Government ("Hazardous Materials") in or on the Golf Course, unless the Hazardous Materials are present solely as the result of the negligence, willful misconduct or other acts of OGL, OGL's agents, employees, subcontractors or invitees. Without limitation of the foregoing, this indemnification shall include any and all costs incurred between investigation of the site through the time of completion of any clean-up, removal or restoration mandated by a federal, state or local agency or political subdivision, unless the Hazardous Materials are present solely as a result of the negligence, willful misconduct or other acts of OGL's agents, employees, subcontractors or invitees.

This indemnification shall specifically include any and all costs due to Hazardous Materials which flow, diffuse, migrate or percolate into, onto or under the Golf Course after the Term commences.

SECTION 6: FEES DURING MANAGEMENT TERM: NET INCOME TO CITY

6.1 Forms of OGL Compensation. OGL shall receive as compensation for its services during the Term, the following: (i) a fixed management fee (the "Fixed Management Fee"); and (ii) a percentage management fee (the "Percentage Management Fee"). The Fixed Management Fee and the Percentage Management Fee are collectively referred to hereinafter as the "Management Fees". The Management Fees are further defined below.

6.2 Fixed Management Fee. For each annual period during the Term, OGL shall receive from City a Fixed Management Fee in the amount of One Hundred Fifty Thousand Dollars (\$150,000). The annual Fixed Management Fee shall be payable in twelve monthly installments, payable in advance on the first day of the month for which such installment pertains. The Fixed Management Fee shall be adjusted annually based on the semi-annual Consumer Price Index (CPI) for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of City and OGL. If the parties cannot agree within **sixty (60) days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Agreement to "CPI" or "Index" shall mean the index used in accordance with this Section. In no event, however, shall the Fixed Management Fee, as such amount may be increased by any increase in the Index, be adjusted downward to reflect a percentage decrease in the Index.

6.3 Percentage Management Fee. During the Term, OGL shall also receive from City, as the Percentage Management Fee, five percent (5%) of that portion of the "Gross Revenues" (as defined in Section 6.4 below) derived from the operation of the Golf Course that is in excess of Two Million Two Hundred Thousand and No/100 Dollars (\$2,200,000.00) (the "Percentage Management Fee Threshold") for any Operating Year; provided, however, that in no event shall the Percentage Management Fee, for any Operating Year during the Term, be greater than One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

The Percentage Management Fee Threshold shall increase Fifty Thousand and No/100 Dollars (\$50,000.00) annually on the first day of each Operating Year beginning in 2011 and in each successive year during the Term.

Example:

| | |
|--------------------------------------|--------------------|
| Gross Revenues: | \$2,750,000 |
| Percentage Management Fee Threshold: | <u>\$2,200,000</u> |
| Difference: | \$ 550,000 |

Percentage Management Fee of 5% X \$550,000 = **\$27,500**,

If applicable, the Percentage Management Fee shall be paid to OGL annually in arrears following the delivery to the City of the Operating Year profit and loss statement required by Section 7.7 below. Any

Percentage Management Fee owing as of the expiration or earlier termination of this Agreement shall be payable concurrently with the delivery to the City of the final profit and loss statement.

6.4 Gross Revenues Defined. For the purposes of this Agreement, the term "Gross Revenues" means, except as provided below, all money received as a result of the operation of the Golf Course and the sale of goods and services at the Golf Course, determined on an accrual basis in accordance with generally accepted accounting principles consistently applied. By way of example, and without limitation, Gross Revenues shall include all green fees; rental fees for golf carts, golf clubs and bags, and other rental items; bag storage fees; range balls; reservation fees; fees for golf handicap service; rental and concession payments; revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments, and other group gatherings; golf instruction fees; revenues from golf schools; and proceeds from business interruption insurance. Gross Revenues shall be reduced by any cash refunds or credits allowed on returns by customers.

Gross Revenues shall not include the following:

- (a) Sales taxes, excise taxes, gross receipts taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid to the appropriate taxing authority, whether added to or included in the selling price;
- (b) Fees charged by a golf professional functioning as an independent contractor for the teaching of golf lessons and instruction which are not paid by the golf professional to the Golf Course operation;
- (c) Receipts in the form of refunds from, or the value of merchandise, supplies or equipment returned to, shippers, suppliers or manufacturers;
- (d) The amount of any gratuities paid or given by customers to Golf Course employees, or service charges added to customer billings, which represent gratuities to Golf Course employees;
- (e) Gross receipts received by licensees or concessionaires, except to the extent any portion of such receipts is received by the Golf Course;
- (f) Proceeds of insurance other than business interruption insurance or similar types of insurance;
- (g) Receipts from public telephones and vending machines, except to the extent of commissions paid to OGL or City;
- (h) Proceeds of any borrowings by OGL or City;
- (i) Any amount received by OGL in connection with any claim, demand, or lawsuit, except when such amount is for interruption or loss of Golf Course business or;
- (j) Any additional funds provided by the City for, or paid by the City for, any Golf Course purpose.

6.5 Net Income to City. If after payment of the Golf Course Expenses, the Financial Obligation, the Fixed Management Fee, the Percentage Management Fee (if applicable) and all Capital Improvement Funds, and provided there are sufficient funds available in the Golf Course Accounts to satisfy the daily working capital needs of the Golf Course as defined in the Annual Plan, then any excess funds in the Golf Course Accounts ("Net Income") shall be disbursed by OGL to City. The Net Income shall be disbursed to City upon request within ten (10) days.

SECTION 7: ACCOUNTS; WORKING FUNDS; DISBURSEMENT OF FUNDS; RECORDS AND REPORTS; ASSIGNMENT OF DEBT OBLIGATION

7.1 Golf Course Accounts. OGL shall establish bank accounts for the Golf Course at a banking institution or institutions reasonably approved by the City (which banking institution or institutions shall have branches located in close proximity to the Golf Course), such accounts to be in the City's name (the "Golf Course Accounts"). Individuals designated and approved in writing by the City shall be signatories on the accounts, and employees designated by the City and OGL will not change the

signatories of such accounts or close such accounts without the prior written consent of the City and OGL. OGL shall deposit in the Golf Course Accounts all monies received from the operation of the Golf Course. Any interest earned on monies in the Golf Course Accounts shall be the property of the Golf Course and shall be included in Gross Revenues. The funds in the Golf Course Accounts shall be disbursed by OGL for the purposes set forth in Section 7.3 below. Notwithstanding the provisions of the foregoing sentence, OGL shall be entitled to maintain funds in reasonable amounts in "cash register banks" or in petty cash funds at the Golf Course.

7.2 City Assumption of Existing Golf Course Debt Obligation. City will assume the existing Golf Course debt obligation from West Gate Bank relating to the driving range and other capital improvements made during the Lease (the "Financial Obligation"). West Gate Bank, the City and OGL will re-negotiate the Financial Obligation to include the City in the Financial Obligation and to change the terms of repayment, collateral and other pertinent terms and conditions to reflect a debt obligation in the amount of One Million and No/100 Dollars (\$990,000.00), with interest at the variable rate of National Prime with a average rate of six (6%) percent per annum, amortized over ten (10) years, with fixed principal and interest payments of approximately Ten Thousand Nine Hundred Ninety-One Dollars and 03/100ths Dollars (\$11,145.03) per month through June, 2020 ("Revised Financial Obligation"). The Revised Financial Obligation will be evidenced by an Assumption Agreement and Promissory Note. The terms or repayment, collateral and other pertinent terms and conditions of the Revised Financial Obligation ("Terms and Conditions") shall be provided by West Gate Bank as set forth below. The Terms and Conditions shall be similar to those terms and conditions that are reasonably associated with the repayment of an unsecured debt obligation typically used in the banking industry in the United States.

OGL will have sixty (60) days following the Effective Date to secure and provide, for approval by the City, which approval shall not be unreasonably withheld, the Revised Financial Obligation, Terms and Conditions and the Assumption Agreement and Promissory Note. Upon agreement and execution of the Revised Financial Obligation, Terms and Conditions and the Assumption Agreement and Promissory Note said documents will be attached to the Agreement as **Exhibit "D"** to be incorporated therein and made a part thereof. If the Revised Financial Obligation, Terms and Conditions, and the Assumption Agreement and Promissory Note from West Gate Bank cannot be provided, agreed upon and executed within sixty (60) days of the Effective Date, City, in its sole and absolute discretion, has the right to elect not to assume the Financial Obligation, create a Revised Financial Obligation, Terms and Conditions and execute an Assumption Agreement and Promissory Note. Further, any and all reference to said obligation by the City shall no longer be applicable in the Agreement. Further, this Section 7.2 shall become null and void and of no force or effect.

Payment of the Financial Obligation will be an expense of the Golf Course as set forth in Section 7.3 below. If this Agreement is terminated prior to the Financial Obligation being paid in full, the Financial Obligation will stay with the Golf Course and continue to be paid through Golf Course Revenues.

7.3 Disbursements from Golf Course Accounts. From the Golf Course Accounts (or, if appropriate, from cash register banks or petty cash funds available at the Golf Course), OGL is authorized to pay the following:

- a. Golf Course Expenses as and when incurred; provided, however, that (1) the amount disbursed shall constitute a Golf Course Expense, and (2) OGL shall provide the City, within ten (10) days following the end of each calendar month, an accounting delineating the Golf Course Expenses disbursed from Golf Course Accounts for such preceding calendar month (e.g., accounting due not later than August 25 covering the immediately preceding month of July);

- b. the Financial Obligation, as well as any future debt obligations incurred by or on behalf of the City in its sole discretion for additional Capital Improvement Projects;
- c. the Fixed Management Fee; provided, however, that such disbursement/payment to OGL shall be paid in accordance with the terms of Section 6.2;
- d. the Percentage Management Fee, if applicable; provided, however, that
 - (1) such disbursement/payment to OGL shall be paid in arrears on not more than an annual basis pursuant to Section 6.3, and (2) OGL shall provide the City, in accordance with the reporting requirements of Section 7.7, an accounting delineating the calculation of the Percentage Management Fee for the Operating Year for which the Percentage Management Fee is disbursed/paid to OGL;
- e. all accrued (but undisbursed) Capital Improvement Funds as provided in Section 3.1; and
- f. the Net Income payable to the City at any time upon request pursuant to Section 6.5 .

OGL shall maintain at all times, in accordance with the Annual Plan, sufficient funds in the Golf Course Accounts to satisfy the daily working capital needs of the Golf Course. OGL shall only disburse funds from the Golf Course Accounts to pay accrued Capital Improvement Funds when there are sufficient funds available in the Golf Course Accounts to satisfy the daily working capital needs of the Golf Course.

In the event Gross Revenues are insufficient to pay the amounts set forth in the foregoing Subsections (a), (b), (c), and (d), City, after reviewing Golf Course Accounts and confirming the insufficiency of Gross Revenues to meet the obligations to pay (a), (b), (c), and (d) above, shall remit to OGL such funds as necessary for (a), (b), (c), and (d) to be paid. City acknowledges and agrees that OGL shall not be obligated to advance any of its own funds to, or for the account of, the City or incur any liability, unless the City shall have furnished OGL with funds necessary for the full discharge thereof.

7.4 Remaining Funds. Upon the expiration of the Term or earlier termination of this Agreement, all funds remaining in the Golf Course Accounts after payment of the Golf Course Expenses, the Financial Obligation, the Fixed Management Fee, and the Percentage Management Fee (if applicable), shall be disbursed by OGL to City within ten (10) days after OGL delivers to the City the final profit and loss statement.

7.5 Books and Records. OGL shall keep full and accurate books of account and such other records as are necessary to reflect the results of the operation of the Golf Course. For this purpose, OGL agrees it will make available to City, or City's representatives, all books and records in OGL's possession relating to the Golf Course including Golf Course construction plans and specifications and as-built drawings and construction records. All accounting records shall be maintained in accordance with generally accepted accounting principles and shall be maintained in an accrual format. All such books, records, and reports shall be maintained separately from other facilities operated by OGL. OGL agrees to maintain reasonable and necessary accounting, operating, and administrative controls relating to the financial aspects of the Golf Course and such controls shall provide checks and balances designed to protect the Golf Course, OGL, and City. The cash registers used by OGL shall be approved by the City. OGL shall maintain all financial and accounting books and records for a period of at least three (3) years after the expiration of the Term, or earlier termination of this Agreement and City shall have the right to inspect and audit such books and records during such period.

7.6 Inspection. Upon five (5) business days prior written notice to OGL, which notice shall set forth the date and time that City desires to inspect the books and records, City or its authorized agents, auditors, or representatives shall have the right during normal business hours to review, inspect, audit, and copy the books, records, invoices, deposit receipts, canceled checks, and other accounting and financial information maintained by OGL in connection with the operation of the Golf Course. All such books and records shall be made available to City at the Golf Course or at OGL's offices in Arizona, unless City and OGL agree upon another location. City shall have the right to retain an independent accounting firm to audit the books and records of the Golf Course, the cost of which shall be a Golf Course Expense.

7.7 Reports to City. OGL shall deliver to City the following financial statements, in a form acceptable to City:

- a. Within ten (10) calendar days after the end of each month, a golf rounds report and Golf Course revenue statement showing the results of operation of the Golf Course for such month; and
- b. Within twenty-five (25) calendar days after the end of each month, a profit and loss statement showing the results of operation of the Golf Course for such month and for the Operating Year to date, which statement shall include sufficient detail to reflect all Gross Revenues, Golf Course Expenses, the Financial Obligation, Fixed Management Fee, Percentage Management Fee (if applicable), Capital Improvement Funds, and Net Income; and
- c. Within sixty (60) calendar days after the end of each Operating Year, a profit and loss statement, set of financial statements in a form acceptable to the City, including a balance sheet and income statements, showing the results of operation of the Golf Course for such Operating Year, which statement shall include sufficient detail to reflect all Gross Revenues, Golf Course Expenses, the Financial Obligation, Fixed Management Fee, Percentage Management Fee (if applicable), Capital Improvement Funds, and Net Income. If requested by City, these financial statements shall be certified by an independent certified public accountant acceptable to City, the cost of which shall be a Golf Course Expense.

SECTION 8: TERMINATION RIGHTS

8.1 Termination by City. In addition to any other rights of City to terminate this Agreement that are set forth in this Agreement, City shall also have the right to terminate this Agreement upon the occurrence of any of the following events if such events are not cured within the applicable cure periods set forth below:

- a. if (i) OGL commits any Prohibited Act (as hereinafter defined); (ii) OGL commits an act of fraud against City as determined by a court of competent jurisdiction; or (iii) OGL has made any materially false or misleading representation or warranty in this Agreement; then in any such event, City shall have the right to immediately terminate this Agreement; or
- b. if OGL fails to maintain the insurance for the Golf Course required by Section 5.2 and such failure continues for a period of ten (10) days after receipt of written notice of such default by City to OGL, in which event City shall have the right to immediately terminate this Agreement; or

- c. if OGL fails to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by OGL, and OGL fails to cure or commence to cure such default within thirty (30) days after receipt of written notice of such default by City to OGL, in which event City shall have the right to immediately terminate this Agreement; or
- d. if (i) OGL applies for or consents to the appointment of a receiver, trustee or liquidator of OGL or of all or a substantial part of its assets; (ii) OGL files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) OGL files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against OGL; (iv) OGL admits in writing its inability to pay its debts as they come due; (v) OGL makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating OGL a bankrupt or insolvent or approving a petition seeking reorganization of OGL or appointing a receiver, trustee or liquidator of OGL or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days. In any of such events, OGL shall provide written notice to City of the occurrence of such event and City shall have the right to terminate this Agreement upon ten (10) days written notice to OGL.

For the purposes of this Agreement, "Prohibited Act" shall mean (a) any theft or misapplication of Gross Revenues, insurance proceeds or other deposits received in connection with the Golf Course; (b) a material violation by OGL of any applicable law or regulation respecting the Golf Course; or (c) OGL is found guilty of a felony.

8.2 Termination by OGL. In addition to any other rights of OGL to terminate this Agreement that are set forth in this Agreement, OGL shall also have the right to terminate this Agreement upon the occurrence of any of the following events if such events are not cured within the applicable cure periods set forth below:

- a. if (i) City commits an act of fraud against OGL as determined by a court of competent jurisdiction, or (ii) City has made any materially false or misleading representation or warranty in this Agreement; then in any such event, OGL shall have the right to immediately terminate this Agreement; or
- b. if City fails to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by City, and such default continues for a period of sixty (60) days after receipt of notice of such default by OGL to City, in which event OGL shall have the right to immediately terminate this Agreement; or
- c. if (i) City applies for or consents to the appointment of a receiver, trustee or liquidator of City or of all or a substantial part of its assets; (ii) City files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) City files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against City; (iv) City admits in writing its inability to pay its debts as they come due; (v) City makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating City a bankrupt or insolvent or approving a petition seeking reorganization of City or appointing a receiver, trustee or liquidator of City or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for

any period of sixty (60) consecutive days. In any of such events, City shall provide written notice to OGL of the occurrence of such event and OGL shall have the right to terminate this Agreement upon ten (10) days written notice to City.

8.3 Effect of Termination. The termination of this Agreement under the provisions of this Section shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

8.4 Remedies Cumulative. Neither the right of termination, nor any other remedy available to a party under this Agreement shall be exclusive of any other remedy given under this Agreement or now or hereafter existing at law or in equity.

8.5 Actions to Be Taken Upon Termination. Upon termination of this Agreement for any reason, the parties covenant and agree to comply with the provisions of this Section 8.5, which shall expressly survive termination of this Agreement. The provisions set forth in this Section 8.5 shall not be deemed to impair the rights of the non-defaulting party to pursue any other remedies available under applicable law.

- a. OGL shall peacefully vacate and surrender the Premises to City promptly upon City's written request that OGL do so.
- b. OGL shall assign and transfer to City and City shall assume and accept from OGL:
 - (i) all books and records respecting the Golf Course and all Contracts, and other documents respecting the Facility;
 - (ii) all of OGL's right, title and interest in and to all liquor, operating and any other licenses and permits used by OGL in the operation of the Golf Course, to the extent such assignment or transfer is permitted under California law; and
 - (iii) to the extent assignable under applicable law, all contracts, leases, permits, licenses, documents or other agreements relating to the Golf Course shall be assigned to City to the extent the same were not assigned or transferred to City prior to the termination of this Agreement. City agrees to assume obligations of OGL for all contracts, leases, permits, licenses, documents or other agreements relating to the Facility, including any guarantees associated therewith.
- c. OGL shall provide City with a certificate from OGL, dated as of the date of the expiration of the Term or earlier termination of this Agreement, certifying to City that all OGL's employees' accrued benefits, if any, including, without limitation, any compensation for vacation days or sick days have been paid in full.
- d. City shall pay to OGL any accrued but unpaid Management Fees outstanding as of the date of termination of this Agreement.
- e. City shall assume the Financial Obligation.

SECTION 9: TITLE MATTERS: ASSIGNMENT

9.1 Ownership of Improvements and Personal Property. All improvements to the Golf Course, and all furnishings and equipment purchased or leased by OGL prior to the Effective Date shall be conveyed to the City and considered personal property ("Personal Property") owned by City as of the

Commencement Date. OGL shall create an inventory list of all Personal Property on the Premises as of the Effective Date, which shall be attached hereto and by reference made part of this Agreement as **Exhibit "E"**. In connection herewith, OGL shall assign and the City shall assume all leases for the Personal Property, and lease payments shall be a Golf Course Expense.

All improvements to the Golf Course made during the Term and all furnishings, equipment and operating inventory purchased by OGL during the Term shall be considered property owned by the City at such time as the improvements are made or the furnishings, equipment or operating inventory are purchased.

9.2 No OGL Assignment or Subcontracting. OGL shall not assign this Agreement, or subcontract any work, without the prior written consent of the City. Any assignment by OGL, whether or not requiring the prior consent of the City, shall not be effective unless and until OGL and such assignee execute an assignment and assumption in a form acceptable to the City Attorney. It is understood and agreed that any consent granted by the City to any such assignment by OGL shall not be deemed a waiver of any consent required under this Section as to any future assignment. Any assignment by OGL of this Agreement in violation of the provisions of this Agreement shall be null and void and shall result in the termination of this Agreement. In addition to any other remedies available to the parties, the provisions of this Section shall be enforceable by injunctive proceeding or by suit for specific performance.

9.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

9.4 Golf Course Name. The Golf Course shall be known by such trade name and/or trademark or logo as may from time to time be determined by the City. The parties acknowledge and understand that the names, logos, and designs used in the operation of the Golf Course together with appurtenant goodwill, are the exclusive property of the City. OGL may identify the Golf Course as a golf course managed and operated by OGL; provided, however, that any display of any OGL logo or other corporate identification shall first be approved by the City in its sole discretion.

SECTION 10: DAMAGE OR DESTRUCTION; EMINENT DOMAIN; FORCE MAJEURE EVENTS

10.1 Damage or Destruction. Should the Golf Course be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, City, by written notice to OGL given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement on the basis that City does not choose to rebuild or restore the Golf Course, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section, the Golf Course shall be deemed to have been substantially damaged if the estimated length of time required to restore the Golf Course substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of twelve (12) months, as indicated by an architect's certificate or other evidence reasonably satisfactory to City and OGL. If this Agreement is not terminated in the event of damage to the Golf Course either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding destruction of or substantial damage to the Golf Course, City elects to restore the Golf Course, then City shall proceed, at City's own expense, with all due diligence to commence and complete restoration of the Golf Course to its condition and character just prior to the occurrence of such casualty. The Management Fee payable to OGL shall be abated accordingly during said period of restoration but such Fee shall not be reduced below fifty percent (50%) of the amount otherwise payable under Section 6.

10.2 Eminent Domain. If all of the Golf Course (or such a substantial portion of the Golf Course so to make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the Golf Course for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain, then upon the earlier of (i) the date that City shall be required to surrender possession of the Golf Course or of that substantial portion of the Golf Course, or (ii) the date when the Golf Course is no longer open, this Agreement shall terminate and neither party shall have any further obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the Golf Course shall not make it unfeasible, in the reasonable opinion of City, to restore and continue to operate the remaining portion of the Golf Course for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and City shall proceed, at City's own expense, with all due diligence to alter or modify the Golf Course so as to render it a complete architectural unit, which can be operated as a golf course of substantially the same type and character as before. The Management Fee payable to OGL shall be abated accordingly during said period of restoration. If as a result of any alteration or modification of the Golf Course as provided in this Section, the responsibilities of OGL under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Management Fees.

10.3 Force Majeure Events. As used in this Agreement, the term "Force Majeure Event" means a disruption in the operation of the Golf Course or the failure to perform by a party hereto due to declared or undeclared war, sabotage, riot or acts of civil disobedience, acts or omissions of governmental agencies (except acts of governmental agencies including, but not limited to, the City taken in accordance with this Agreement), accidents, fires, explosions, floods, earthquakes, or other acts of God, strikes, labor disputes, shortages of materials, or any other event not within the control of OGL and not caused by the gross negligence or intentional wrongful conduct of OGL.

SECTION 11: GENERAL PROVISIONS

11.1 Compliance. OGL shall comply with all applicable laws of governmental bodies having jurisdiction with respect to the Golf Course and OGL performance of this Agreement. OGL shall, at its expense, procure and maintain all licenses, permits, and approvals required to be obtained by it to perform the work under this Agreement. Upon termination or expiration of this Agreement, OGL shall cooperate in transferring all licenses, permits and accreditations in the name of OGL to City as permitted by law. Without the prior written consent of the City, the actual amount expended for any Golf Course Expense shall not be greater than two percent (2%) higher than the amount budgeted in the Annual Plan. Notwithstanding the foregoing sentence, OGL shall be entitled to make additional expenditures not authorized under the then applicable Annual Plan in the event of an emergency or in order to comply with any applicable event of an emergency or in order to comply with any applicable insurance requirements or legal requirements so long as the annual budget is not exceeded. OGL shall use its best efforts to notify and obtain approval from the City before acting, and in any event shall notify the City in writing of the need for an estimated amount of any such emergency expenditure as soon as possible.

11.2 Notices. All notices, demands, requests, consents, approvals, replies and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail return receipt requested, postage prepaid to the addresses stated below; or (c) by deposit with a same-day or overnight express delivery service that provides a receipt showing date and time of delivery. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by same-day or overnight express delivery service shall be deemed

effective upon receipt. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of Notices hereunder, the address of City shall be:

City of Oceanside
300 North Coast Highway
Oceanside, California 92054
Attention: Property Management

For purposes of Notices hereunder, the address of OGL shall be:

Oceanside Golf, LLC.
1415 North Mill Avenue
Tempe, AZ 85281
Attention: Jim Bellows

and to

Landscapes Golf Group
1201 Aries Drive
Lincoln, NE 68512
Attn: Mike Jenkins

Each party shall have the right to designate a different address by the giving of notice in conformity with this Section.

11.3 Independent Contractor. OGL shall at all times be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between City and its successors and assigns, on the one part, and OGL and its successors and assigns, on the other part.

11.4 Modification and Changes. This Agreement may be amended or modified only by a writing signed by both parties.

11.5 Entire Understanding and Agreement. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior understandings and agreements, whether written or oral, between City and OGL pertaining to the subject matter hereof.

11.6 Headings. The section, and subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

11.7 Consents. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified, except where such consent is expressly stated as within the party's sole and absolute discretion. Similarly, each party agrees that any provision of this Agreement, which permits such party to make requests of the other party, shall not be construed to permit the making of unreasonable requests.

11.8 Survival of Covenants. Any covenant, term, or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

11.9 Third Parties. None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than the party to this Agreement or by a party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement.

11.10 Waivers. No failure by OGL or City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

11.11 Dispute Resolution, Attorney's Fees. In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch or the federal district court serving San Diego County. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

11.12 No Presumption Regarding Drafter. City and OGL acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between City and OGL, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement.

11.13 Enforceability of Any Provision. If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

11.14 Counterparts. This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one Agreement.

11.15 Covenants Against Discrimination. OGL agrees that in connection with its performance under this Agreement, there shall be no discrimination by OGL against any person on account of race, color, creed, religion, sex, marital status, national origin or ancestry. OGL agrees to include a provision similar to this Section in all subcontracts entered into by OGL in connection with work being performed under this Agreement.

11.15 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to OGL, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to OGL or any successor, or for breach of any obligation of the terms of this Agreement.

11.16 Time of the Essence. Time is of the essence of this Agreement. The parties understand that the time for performance of each obligation has been the subject of negotiation by the parties.

11.17 Authority. The parties represent for themselves that (a) such party is duly organized and validly existing, (b) the person or persons executing this Agreement on behalf of such party is/are duly authorized to execute and deliver this Agreement on behalf of such party, (c) by so executing this Agreement, such party is formally bound to the terms and provisions of this Agreement, and (d) the execution of this Agreement does not violate any provision of any other agreement to which such party is bound.

11.18 Authorization to City Manager. In addition to such other authorizations granted the City Manager in this Agreement to act on behalf of City, the City Manager shall have the authority, in the event of a dispute involving the interpretation of the terms and provisions of this Agreement, to reasonably interpret the terms and provisions of this Agreement on behalf of City.

11.19 Termination of Renovation & Operating Lease Agreement. Upon approval of this Agreement by the City Council the Renovation & Operating Lease Agreement between the City and OGL ("Lease") shall be terminated effective as of the Commence Date of this Agreement, and shall be of no further force or effect, except as to those provisions that survive the termination of said Lease as set forth therein.

////

SECTION 12: SIGNATURES

12.1 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the OGL and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed on the day and year respectively written hereinbelow.

“City”

City of Oceanside, a municipal corporation

APPROVED AS TO FORM:
CITY ATTORNEY’S OFFICE

By: _____
City Manager

By: *Andrew J. Hamilton, 1887*
City Attorney

“OGL”

Oceanside Golf, LLC.
a Arizona limited liability corporation

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NOTARY ACKNOWLEDGMENTS OF OGL’S SIGNATURE(S) MUST BE ATTACHED

Oceanside Golf, LLC.
a Arizona limited liability corporation

By: [Signature]
Print Name: JAMES BELLOWES
Title: MANAGING MEMBER
Date: 6-14-10

By: _____
Print Name: _____
Title: _____
Date: _____

NOTARY ACKNOWLEDGMENTS OF OGL'S SIGNATURE(S) MUST BE ATTACHED

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 14 day of June, 2010, By James Bellows.

Notary Seal:

[Signature]
Notary Public



Oceanside Golf, LLC.
a Arizona limited liability corporation

By: Michael H Jenkins
Print Name: Michael H Jenkins
Title: Manager
Date: June 14, 2010

By: _____

Print Name: _____

Title: _____

Date: _____

NOTARY ACKNOWLEDGMENTS OF OGL'S SIGNATURE(S) MUST BE ATTACHED

STATE OF Nebraska)

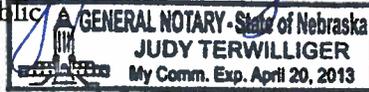
COUNTY OF Lancaster)

SS:

SUBSCRIBED AND SWORN to before me on this 14th day of June, 2010, by
Michael H. Jenkins.

Judy Terwilliger

Notary Public



Typed, printed or stamped name of Notary Public
My Commission Expires: April 20, 2013

EXHIBIT "A"

LEGAL DESCRIPTION

APNS: 157-020-91 AND 152-050-37

ALL THAT PORTION OF FRACTIONAL SECTION 5, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, TOGETHER WITH THAT PORTION OF SECTIONS 32 AND 33 IN TOWNSHIP 10 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ALL IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CORNER COMMON TO SAID SECTIONS 4, 5, 32 AND 33; THENCE NORTH 00°23'00" WEST ALONG THE COMMON LINE BETWEEN SECTIONS 32 AND 33; 286.77 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID COMMON LINE SOUTH 83°15'00" WEST 1679.83 FEET; THENCE SOUTH 25°45'00" WEST 355.71 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF THAT PARCEL OF LAND AS DEEDED TO JOHN JOHNSON, JR. AND DELL HALE JOHNSON BY DEED RECORDED DECEMBER 29, 1914 IN BOOK 674, PAGE 64 OF DEEDS OF SAID COUNTY; THENCE NORTH 83°15'00" EAST ALONG SAID SOUTHERLY LINE OF JOHNSON'S LAND, 99.60 FEET; THENCE LEAVING SAID SOUTHERLY LINE SOUTH 03°42'44" EAST 1126.84 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5; THENCE ALONG SAID NORTH LINE NORTH 89°48'04" WEST 1021.00 FEET TO THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, WHICH WILL BE REFERRED TO HEREIN AS POINT 'A'; THENCE SOUTH 0°21'25" EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, A DISTANCE OF 670.00 FEET; THENCE LEAVING SAID EAST LINE SOUTH 89°38'35" WEST 1038.98 FEET; THENCE NORTH 10°14'59" WEST 524.46 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY LINE OF THAT CERTAIN STRIP OF LAND 20.00 FEET IN WIDTH GRANTED TO JOHN JOHNSON, JR. AND DELL HALE JOHNSON BY THE AFOREMENTIONED DEED; THENCE NORTH 30°16'00" EAST ALONG SAID NORTHWESTERLY LINE A DISTANCE OF 210.00 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE NORTH 2°42'00" WEST 560.00 FEET; THENCE NORTH 37°18'00" EAST 170.00 FEET; THENCE NORTH 89°12'39" EAST 103.81 FEET; THENCE SOUTH 27°42'00" EAST 230.00 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY LINE OF THE HEREINABOVE DESCRIBED 20.00 FOOT STRIP OF LAND; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 30°16'00" EAST 160.00 FEET; THENCE NORTH 12°21'02" EAST 453.03 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE NORTH 12°07'34" EAST 259.55 FEET; THENCE NORTH 45°27'02" EAST 306.28 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF THE AFOREMENTIONED JOHNSON'S LAND; THENCE ALONG SAID WESTERLY LINE NORTH 6°24'19" WEST 260.00 FEET; THENCE LEAVING SAID WESTERLY LINE NORTH 47°20'08" EAST 851.17 FEET ; THENCE NORTH 74°49'39" EAST 1021.69 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF THE AFOREMENTIONED JOHNSON'S LAND; THENCE ALONG SAID NORTHERLY LINE

NORTH 74°45'20" EAST 159.82 FEET; THENCE LEAVING SAID JOHNSON'S LAND NORTH 57°43'23" EAST 367.69 FEET; THENCE SOUTH 85°01'38" EAST 1065.77 FEET; THENCE SOUTH 7°22'43" WEST 1194.21 FEET TO THE TRUE POINT OF BEGINNING.

SAID LAND BEING THAT LAND DESCRIBED IN THE GRANT DEED RECORDED JANUARY 27, 1977, AT FILE/PAGE 77-031584, AND IN THE FINAL ORDER OF CONDEMNATION, RECORDED DECEMBER 1, 1980, AT FILE/PAGE 80-403896, BOTH IN OFFICIAL RECORDS, SAN DIEGO COUNTY.

TOGETHER WITH:

PARCEL 4 OF PARCEL MAP NO. 8979, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 30, 1979 AS FILE NO. 79-315351 OF OFFICIAL RECORDS.

EXCEPTING FROM THE ABOVE DESCRIBED PARCELS THAT PORTION LYING SOUTHERLY AND EASTERLY OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE HEREINABOVE DESCRIBED POINT 'A'; THENCE SOUTH 0°21'25" EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 670.00 FEET; THENCE AT A RIGHT ANGLE SOUTH 89°38'35" WEST, ALONG THE LINE HEREINABOVE REFERRED TO AS "SOUTH 89°38'35" WEST 1038.98 FEET", 260.56 FEET TO THE TRUE POINT OF BEGINNING OF SAID LINE; THENCE NORTH 7°21'58" EAST 115.57 FEET; THENCE NORTH 2°28'32" WEST 245.34 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 185.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 47°33'51" AN ARC LENGTH OF 153.58 FEET; THENCE TANGENT TO SAID CURVE NORTH 45°05'18" EAST 287.54 FEET; THENCE SOUTH 89°50'02" EAST 326.82 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 29.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°39'46" AN ARC LENGTH OF 45.38 FEET; THENCE TANGENT TO SAID CURVE SOUTH 0°10'16" EAST 11.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 130.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°09'26" AN ARC LENGTH OF 32.12 FEET; THENCE TANGENT TO SAID CURVE SOUTH 14°19'42" EAST 28.11 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY WHOSE RADIUS BEARS SOUTH 29°29'15" EAST 842.00 FEET SAID CURVE ALSO BEING THE SOUTHEASTERLY LINE OF SAID PARCEL 4 OF PARCEL MAP NO. 8979; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE AND ITS NORTHEASTERLY PROLONGATION THROUGH A CENTRAL ANGLE OF 29°35'35" AN ARC LENGTH OF 434.89 FEET; THENCE TANGENT TO SAID CURVE SOUTH 89° 53'40" EAST 229.81 FEET TO A COURSE HEREINABOVE REFERRED TO AS "SOUTH 03°42'44" EAST 1126.84 FEET" AND THE TERMINUS OF SAID EXCEPTION LINE.

CONTAINING A NET AREA OF 147.717 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART OF THIS LEGAL DESCRIPTION, IS A PLAT LABELED EXHIBIT "B".

THIS REAL PROPERTY DESCRIPTION AND PLAT HAVE BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

SIGNATURE

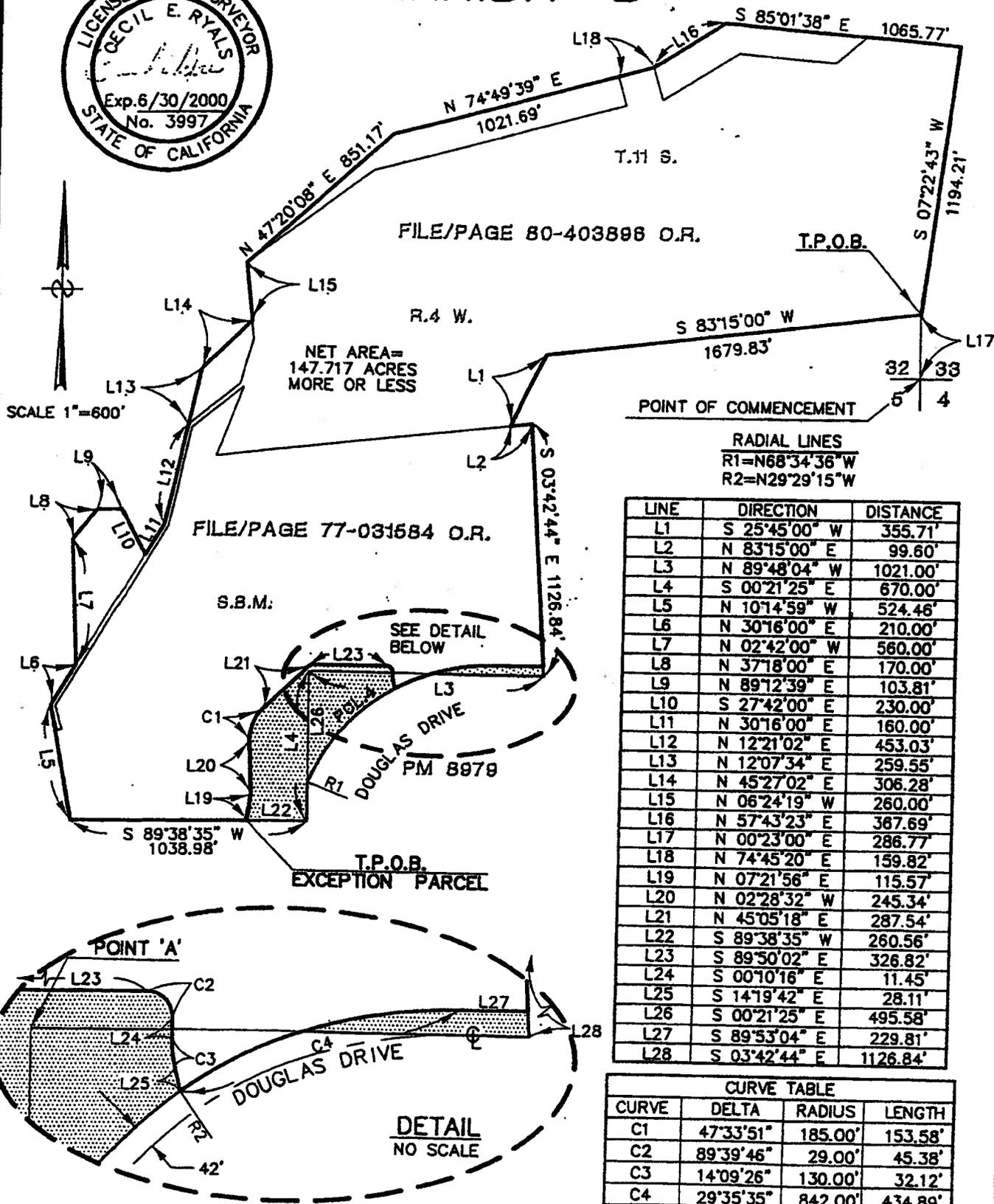
C. E. Ryals
LICENSED LAND SURVEYOR

DATE

2/08/2000



EXHIBIT 'B'



RADIAL LINES
 R1=N68°34'36"W
 R2=N29°29'15"W

| LINE | DIRECTION | DISTANCE |
|------|---------------|----------|
| L1 | S 25°45'00" W | 355.71' |
| L2 | N 83°15'00" E | 99.60' |
| L3 | N 89°48'04" W | 1021.00' |
| L4 | S 00°21'25" E | 670.00' |
| L5 | N 10°14'59" W | 524.46' |
| L6 | N 30°16'00" E | 210.00' |
| L7 | N 02°42'00" W | 560.00' |
| L8 | N 37°18'00" E | 170.00' |
| L9 | N 89°12'39" E | 103.81' |
| L10 | S 27°42'00" E | 230.00' |
| L11 | N 30°16'00" E | 160.00' |
| L12 | N 12°21'02" E | 453.03' |
| L13 | N 12°07'34" E | 259.55' |
| L14 | N 45°27'02" E | 306.28' |
| L15 | N 06°24'19" W | 260.00' |
| L16 | N 57°43'23" E | 387.69' |
| L17 | N 00°23'00" E | 286.77' |
| L18 | N 74°45'20" E | 159.82' |
| L19 | N 07°21'56" E | 115.57' |
| L20 | N 02°28'32" W | 245.34' |
| L21 | N 45°05'18" E | 287.54' |
| L22 | S 89°38'35" W | 260.56' |
| L23 | S 89°50'02" E | 326.82' |
| L24 | S 00°10'16" E | 11.45' |
| L25 | S 14°19'42" E | 28.11' |
| L26 | S 00°21'25" E | 495.58' |
| L27 | S 89°53'04" E | 229.81' |
| L28 | S 03°42'44" E | 1126.84' |

| CURVE TABLE | | | |
|-------------|-----------|---------|---------|
| CURVE | DELTA | RADIUS | LENGTH |
| C1 | 47°33'51" | 185.00' | 153.58' |
| C2 | 89°39'46" | 29.00' | 45.38' |
| C3 | 14°09'26" | 130.00' | 32.12' |
| C4 | 29°35'35" | 842.00' | 434.89' |

Right-Of-Way Engineering Services, Inc.
 4167 Avenida De La Plata Ste. 114 • Oceanside, CA 92056
 Drawing file name: osmunigolfse.dwg Plotted 2-8-2000

EXCEPTION PARCEL TO LEASEHOLD 5.887 ACRES MORE OR LESS

EXHIBIT "B"

GOLF COURSE OPERATION AND MAINTENANCE STANDARDS

I. PUTTING GREEN AND COLLAR MAINTENANCE

A. Mowing

Mowing will be done with triplex greens mowers on a normal basis six (6) days per week, or more often depending upon growth conditions, on all of the existing greens (21) weather and specific greens repairs permitting. The frequencies and height of cut shall be 0.125" to 0.140", and may be modified from time to time as deemed necessary by the GOLF COURSE SUPERINTENDENT with the approval of Oceanside Golf, LLC ("OG"). Collars and approaches shall be mowed two (2) complete cycles per week, or more often depending upon growth conditions in order to maintain the standard. Collars and approaches height of cut shall be between 0.5" to .75". The practice of alternating mowing patterns will be followed.

B. Aerification

Shall be done a minimum of two (2) times per year with ½ inch tines and top dressed to fill holes. This shall be carried out with the minimum of interference to play. .

C. Topdressing & Verticutting:

Top dress all greens as needed to maintain a smooth putting surface and manage thatch. Topdressing sand size and shape will be selected for compatibility with previously used sand and for improving the root zone profile. Light topdressing will be done in conjunction with vertical mowing to insure a smooth surface.

D. Fertilizing

Type of materials and analysis shall be determined from the results of soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, one half (1/2) to three quarters (3/4) pound of actual nitrogen per 1,000 square feet may be applied per growing month. Soil tests shall be taken at least one (1) time per year.

E. Insect Control

Applications of appropriate insecticide will be applied according to the product label as needed to correct developing insect problem. Disease Control Controls will be done on a preventative basis. A corrective fungicide treatment shall be given as injury symptoms appear.

F. Irrigation

The greens shall be irrigated as necessary to support proper growth and health of the turf grass in order to meet putting green standards. Mid-day syringing may be required to prevent wilt. Timing may be based on footprint symptom evidence.

II. TEE MAINTENANCE

A. Mowing

Mowing will be three (3) complete cycles per week, as required during the pre- and post season, depending upon climatic or growth conditions. Height of cut shall be between 0.5" to 0.6". Clippings will be removed.

B. Aerification

Tee aerifications will be performed at least two (2) times per year, or more often if needed. Spot aerifications may be done to relieve compaction.

C. Thatch Control

Light vertical mowing may be scheduled for grain control during the active growing season. Comb or brush attachment on greens mower may be utilized to minimize grain formation.

D. Topdressing

Topdressing shall be done two (2) times per year, or more as required. Divot repair shall be performed weekly or as needed.

E. Fertilizing

Types of material and analysis shall be determined from the results of soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, one half (1/2) to three quarters (3/4) of a pound of actual nitrogen per 1,000 square feet may be applied per growing month. Typically, poly-coat materials may be utilized.

F. Weed Control

Weed controls shall be accomplished by applying pre- and post-emergence herbicides as needed.

G. Insect Control

Applications of appropriate insecticide as needed to correct developing insect problem.

H. Disease Control

Disease controls shall be on a curative basis. A curative fungicide treatment shall be applied as injury symptoms appear. Preventative applications may also be used to control disease during times of high disease incidence.

I. Irrigation

The tees shall be irrigated as necessary to support proper growth and health of the turf grass in order to meet teeing ground standards. Mid-day syringing may be required to prevent wilt. Timing may be based on footprint symptom evidence.

J. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.).

III. SURROUNDS (Green and Tee Aprons)

A. Mowing

Mowing will be performed a minimum of two (2) cycles per week, or more often depending upon growth conditions. Normal cutting height shall be between 1-2”.

B. Aerification

Aerification procedures will be performed one (1) time per year, or more often if needed. Spot aerifications may be done to relieve compaction.

C. Fertilizing

Types of material and analysis shall be determined from the results of soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, one half (1/2) to three quarters (3/4) of a pound of actual nitrogen per 1,000 square feet may be applied per growing month. Typically, poly coat materials may be utilized.

D. Weed Control

Controls will be accomplished by applying pre-and/or post-emergence herbicides as necessary to achieve the standard.

E. Insect Control

Applications of appropriate insecticide as needed to correct developing insect problem.

F. Disease Control

A curative fungicide treatment shall be applied, should any injury symptoms appear. Preventative applications may also be used to control disease during times of high disease incidence.

G. Irrigation

Areas shall be irrigated as necessary to support proper growth and health of the turfgrass in order to meet standards. Mid-day syringing may be required to prevent wilt. Timing may be based on footprint symptom evidence.

H. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.)

IV. FAIRWAY MAINTENANCE

A. Mowing

Shall be performed a minimum of three (3) cycles per week on all of the fairways (17) during the active growing season as long as weather or special repairs permit. Normal cutting height shall be between 0.5" and .6", depending upon rate of growth. The practice of alternating mowing patterns may be followed.

B. Aerification

Coring or slicing may be done two (2) times per year. Additional coring may be scheduled as necessary to relieve compaction and create smooth surfaces whenever vigorous growing conditions exist.

C. Fertilizing

Types of material and analysis shall be determined from results of the soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, eighty (80) to one hundred sixty (160) pounds of actual nitrogen per acre may be applied in the growing season, split in two to four (2-4) applications. Typically, poly-coat materials may be utilized. Soil testing shall be taken one (1) time per year, typically in the spring with a focus for improving fairways of poorest density used for testing.

D. Weed Control

Weed controls will be accomplished by applying post-emergence herbicides as needed.

E. Insect Control

Apply an appropriate insecticide as needed when potentially serious insect injury symptoms first appear.

F. Disease Control

A curative fungicide treatment shall be applied, should any injury symptoms appear. Preventative applications may also be used to control disease during times of high disease incidence.

G. Irrigation

The fairways shall be irrigated as necessary to support proper growth and health of the turfgrass in order to meet fairway standards. Mid-day syringing may be required to prevent wilt. Timing may be based on footprint symptom evidence. J. Litter Control Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.)

J. Blowing

Blowing will be scheduled to remove leaves and clippings as conditions warrant.

V. ROUGH MAINTENANCE

A. Mowing

Mowing of actively growing primary rough areas shall be performed a minimum of one (1) cycle per week, or as dictated by the rate of growth. Roughs height shall be between 2" and 3".

B. Aerification

Coring or slicing may be one (1) time per year, or more often to correct soil compaction problems. Additional spot aerification may be needed on sites subject to intense golf cart traffic compaction.

C. Fertilizing

Types of material and analysis shall be determined from results of the soil nutrient level testing and growing conditions at the time of treatment. Under normal conditions, eighty (80) to one hundred sixty (160) pounds of actual nitrogen per acre may be applied in the growing season, split in two to four (2-4) applications. Typically, poly-coat materials may be utilized.

D. Weed Control

Weed controls will be accomplished by applying pre-and/or post-emergence herbicide as necessary to achieve the standard.

E. Insect Control

Apply an appropriate insecticide as needed when potentially serious insect injury symptoms first appear.

F. Disease Control

A corrective fungicide treatment shall be applied to the infected areas, as required to meet the primary rough standard.

G. Irrigation

The primary rough shall be irrigated as necessary to support proper growth and health of the turf grass in order to meet primary rough standards.

H. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.)

VI. COURSE SET-UP

A. Cups

Cups shall be changed every day the greens are mowed. During this operation, inspection of the putting surface shall be made, and any ball marks or other damage will be repaired. Practice green cups shall be changed as necessary in order to provide the standard for putting greens.

B. Teeing Ground

Tee markers shall be moved each day as golfer traffic requires. Markers may be moved more than once each day during the seasons of highest traffic. Litter containers shall be emptied daily. Tee towels shall be changed weekly or more often as necessary to achieve the standard. Ball washers shall be serviced at least two (2) times per week, and filled as needed. Drinking water containers shall be filled daily, or more frequently as required for safe and sanitary operation.

VII. SAND BUNKER MAINTENANCE

A. Raking

Bunker raking will be accomplished in its entirety three (3) days per week to maintain a semi-soft, dry condition of the desired smoothness. Checking and spot raking shall be done daily.

B. Edging

All bunkers will be maintained with an appropriate lip and groomed as necessary. Bunker edging shall be performed monthly, or as required during the growing season. Even though

the integrity of the design outline of the bunkers has been compromised, care shall be exercised when edging.

C. Weed Control

As required weed controls will be accomplished by applying a post-emergent herbicide where necessary.

D. Sand Depth

Bunkers shall be randomly checked monthly for depth of sand, and shall be maintained at a playable depth. A minimum of 4" of sand will be maintained, except on the severe slopes where maintenance of a 4" depth is not possible. (Future bunker modifications are anticipated so a 4" depth throughout the bunker is possible.) Replacement sand will be consistent with the original sand in appearance, size and playability.

E. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.)

VIII. TREE AND SHRUB MAINTENANCE

A. Pruning

Height limitation for tree pruning is 12 feet. Low hanging branches that present a hazard to golf carts or to the golfer, and can be reached with a pole pruner, shall be removed, where practical. Shrubs shall be shaped or pruned only as necessary to maintain the natural form of the plant. Stakes and ties are to be inspected monthly for correct installation and placement. When trees are stable enough and have developed caliper to stand alone, stakes and ties shall be removed. Trees staked (without ties) for protection from golfer damage may remain staked an additional period of time.

B. Tree Basins

A circle around the base of trees shall be maintained free of weeds and grass to protect the tree from mechanical damage and provide for the maximum vigor of the tree. The circle shall be maintained by the use of a legally approved herbicide. Stakes or guide wires shall be treated in the same manner at the base of trees described above.

C. Pest Control

Frequent inspections of all trees and shrubs shall be done. When insect or disease organisms are detected, generally accepted Integrated Pest Management principles will be applied for determining the course of action, which may include application of chemical control measures.

D. Tree Trimming

Trimming at heights on or below 12 feet on tree limbs at a size that the maintenance crew is qualified to work on will be done from time to time and on an as needed basis especially on trees that need growth enhancement or present safety concerns. Unusual circumstances such as excessive storm damage, active disease problems or major tree trimming programs will be addressed by qualified outside contractors approved by the City and charged to the annual capital improvement account.

IX. IRRIGATION SYSTEM MAINTENANCE

A. Scheduling

Watering shall be scheduled by the GOLF COURSE SUPERINTENDENT in quantities and frequencies consistent with seasonal requirements, and shall be done at night and when golfers are not present so as not to interfere with play, with the exception of mid-day syringing, when required.

B. Inspection

Irrigation coverage shall be reviewed and observed daily with acceptable adjustments made as necessary by the GOLF COURSE SUPERINTENDENT.

C. Sprinkler, Valve, Irrigation Lines, and Controller Repair

Replacement of small or repairable parts for sprinklers, valves, and controllers shall be repaired without extra charge where the entire sprinkler or valve does not require replacement. All down-stream irrigation lines shall be repaired without extra charge.

D. Damage

Any damages to the system caused by equipment or carelessness while carrying out maintenance operations shall be repaired. Where practical, repairs shall be made within one (1) watering period. Vandalism, excessive damage caused by others, or faulty controllers shall be reported promptly to OG by the GOLF COURSE SUPERINTENDENT. When applicable a police report will be filed and delivered to the insurance carrier. Cost of labor and material to perform repairs from vandalism, or accidental damage caused by unrelated third parties shall be an extra cost that will be paid from the annual capital improvement fund once authorized by the representative for the city of Oceanside.

X. DRAINAGE MAINTENANCE

A. Intake and Outflow Structures Maintenance

Mowing and edging shall be done as needed to keep structures clear of grass and weeds. Policing shall be done weekly to assure grates are clear of debris. Removal of vegetation in some outflow structures may be governed by outside agencies.

B. French Drains

Where applicable, French drains may be located and checked for proper operation.

XI. LAKE BANKS AND DITCHES MAINTENANCE

A. Slopes and Banks Maintenance

Slopes and banks shall be mowed a minimum of two (2) complete cycles per month during the active growing season and as needed during the slow growing season. Applications of copper sulfite, or equal control product, will be delivered to the irrigation lake three times a year, or more often as deemed necessary to meet the water quality standards (Winter, Spring & Fall) for algae control.

B. Litter Control

Shall be inspected on a daily basis, and debris removed as needed.

C. Tully Maintenance

Shall be done on an as needed, where needed basis at least once a year by clearing 10 foot sections every 100 feet as needed for Vector control to spray insecticides as long as the governing agencies allow the golf maintenance crew to work in the wetlands areas. The budget for this work shall not exceed 105 % of the previous expenses expended for this work. Any amounts above the budget limit will be paid from the annual capital improvements budget.

XII. CART PATH MAINTENANCE

A. Edging

Cart path edging will be done as often as necessary throughout the year to meet the standard.

B. Litter Control

Policing shall be done on a daily basis for the removal of all litter (i.e.: paper, leaves, cans, bottles, tree branches, etc.)

XIII. MISCELLANEOUS

A. Week-end and Holiday Schedule

Greens mowing and course set-up shall be performed in their regular sequence.

B. Practice Range

Move tee markers daily, fill divots with sand mix, police area, and remove litter. The range tee will be mowed three times a week and will receive cultivation and care equal to the tees on the course.

C. Materials

Maintenance materials will be supplied by OG, and shall conform to the standard specifications legally allowed and applied according to label specifications.

D. Accessories

Direction signs, ropes (permanent and temporary), stakes, OB, and hazard stakes, shall be maintained on a daily basis. Directional signs, putting green cups, pins, ball washer brushes, cleat brushes, and tee markers (that cannot be refurbished or repaired) shall be replaced no more than once per year without extra cost. Silk screened or screen printed flags may be replaced two (2) times per year without extra cost.

E. Burrowing Animals, and Insect and Disease Control

The GOLF COURSE SUPERINTENDENT shall take appropriate action to minimize the effects of burrowing animals, and insect and disease infestations.

F. Mulched Areas

Mulched areas shall be edged and kept free of litter.

G. On Course Restrooms

The golf course restrooms will be maintained, cleaned and supplied daily with additional services provided as needed.

XIV. CLUBHOUSE LANDSCAPE MAINTENANCE

A. Turf Care

The mowing of all turf areas shall be done 1 time per week under normal conditions. The rate of forty to one hundred sixty (40-160) pounds of actual nitrogen per acre may be applied in the growing season, split into two to four (2-4) applications. Typically, poly-cost materials may be utilized. The edging of all walks and other paved areas will be performed monthly during the active growing season.

B. Groundcover Care

Edge or prune groundcover as needed to keep from spreading over walks or curbs. Pruning to maintain a natural shape will be a continuous operation. Keep weed-free at all seasons of the year by the use of pre-emergent, selective herbicides and manual weeding.

C. Shrub Care

Trim to maintain a natural shape as a continuous operation, but not when the plant is in flower. A fertilizer program may be two to four (2-4) applications per year. Applications of pesticides shall be carried out on a curative "as needed" basis. IPM (Integrated Pest Management) program will govern rates and timing of applications. All applicable regulations shall be strictly adhered to, and all required reporting shall be the responsibility of the GOLF COURSE SUPERINTENDENT. Shrub beds will be kept weed free by the use of pre-emergent, selective herbicides, mulch, and manual weeding. Spent flowers, leaves, and other landscape debris shall be removed from plant areas as required.

D. Tree Care

All pruning cuts will be made flush with the branch collar. "Stubbing" will not be permitted. Pruning for general clean-up of trees is recommended in the winter and fall. Tree pruning is limited to trees 15' or less in height. Trees shall be inspected for staking and guides. A cleared circle shall be maintained at the base of any new trees to reduce competition for nutrients by lawns and ground covers, and to prevent damage from landscape equipment.

E. Litter Control

Paper, grass clipping, cans, and branches shall be removed from the landscape on a daily basis. All parking areas and/or walkways shall be kept clear of debris generated from the maintenance operation.

EXHIBIT "C"

OCEANSIDE MUNICIPAL GOLF COURSE

GOLF COURSE OPERATION AND MAINTENANCE EVALUATION FORM

DATE: _____

COURSE OFFICIAL: _____

AUDITOR: _____

| <u>AREA</u> | <u>UNACCEPTABLE</u> | <u>NEEDS IMPROVEMENT</u> | <u>ACCEPTABLE</u> |
|---------------------------------------|---------------------|--------------------------|-------------------|
| Greens | _____ | _____ | _____ |
| Fairways & Roughs | _____ | _____ | _____ |
| Tees | _____ | _____ | _____ |
| Driving Range | _____ | _____ | _____ |
| Maintenance Records & Schedules | _____ | _____ | _____ |
| Lakes & Other Bodies of Water | _____ | _____ | _____ |
| Maintenance Employees | _____ | _____ | _____ |
| Maintenance Shop & Equipment | _____ | _____ | _____ |
| Traffic Control | _____ | _____ | _____ |
| Clubhouse | _____ | _____ | _____ |
| Pro Shop | _____ | _____ | _____ |
| Common Area | _____ | _____ | _____ |
| OVERALL COURSE/ OPERATIONS | _____ | _____ | _____ |

EXHIBIT "D"

TO BE PROVIDED BY OGL WITHIN 60 DAYS OF EFFECTIVE DATE