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DATE: June 11, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **APPROVAL OF A RENOVATION AND OPERATION AGREEMENT WITH JOHN ASHWORTH FOR THE CENTER CITY GOLF COURSE AND REIMBURSEMENT OF \$68,869 TO THE DEPARTING CURRENT OPERATOR OCEANSIDE GOLF, LLC**

**SYNOPSIS**

Staff recommends that City Council approve a two-year renovation and operation agreement with a 30-year extension option and two additional 10-year extension options, with John Ashworth, or an entity to be assigned later, to manage the Center City Golf Course; reimbursement of \$68,869 to the departing current operator of the golf course, Oceanside Golf, LLC; and authorize the City Manager to execute the agreement.

**BACKGROUND**

In 1982 the City of Oceanside ("City") entered into a 20-year lease agreement with Oceanside Golf Institute ("OGI") for the Center City Golf Course ("Premises"). After two additional five-year extensions, the lease was set to expire in November 2012. OGI's failure to pay rent when due caused the City to terminate the lease with OGI in 2010. To keep the golf course open to the public, the City entered into an Operation and Management Agreement ("Management Agreement") with Oceanside Golf, LLC ("OGL").

In March 2012 the City issued a request for proposals ("RFP") to explore development and long-term options related to the Premises, providing recreational amenities or commercial services to the citizens of Oceanside, as well as providing revenue generating opportunities. Four proposals were received in response to the RFP. Two proposals were for "golf related uses" and two proposals were for "alternate uses" that would require a vote of the citizens.

The four proposals were presented to the City Council for their consideration and direction in a workshop in August 2012. At the City Council's direction, staff was directed to enter into negotiations with a group led by John Ashworth ("Ashworth") for a Renovation and Operation Lease Agreement ("Agreement"). Negotiations with Ashworth have taken longer than initially anticipated. A significant delay in negotiations was caused when Ashworth's corporate structure changed with the inclusion of a

financial partner, Lyon Communities., who requested additional modifications to the terms of the Agreement.

Additionally, during negotiations with Ashworth, staff was approached by San Diego USL Holdings, LLC ("SDUSL") about an alternate use for the Premises. Staff was directed to put a 90-day hold on negotiations with Ashworth. Subsequently, in March 2014, the City Council directed staff not to pursue the alternate use proposed by SDUSL and resume negotiations with Ashworth. In May 2014 Ashworth, who had previously terminated its relations with Lyon Communities, agreed to the terms of the Agreement as originally proposed.

Throughout the negotiations, OGL has continued to operate the Premises. Per the terms of the Management Agreement, OGL is responsible for paying all operating expenses at the Premises on behalf of the City. Staff was given direction to continue to keep the golf course open pending the Agreement with Ashworth, albeit at a minimal level of operation.

## **ANALYSIS**

The Agreement with Ashworth would provide for the continued operation of the Premises as a golf course, while requiring significant improvements to the Premises. The Agreement would also require Ashworth to provide additional amenities such as making the Premises more accessible to the general public by having a botanical/sculpture garden, providing an area for a community garden, allowing walks on the golf course on days when no golf is played, and creating a "grass pavilion" for concerts and outdoor movies.

The significant improvements to the golf course that are required by the Agreement include redesigning and renovating the golf course, adding a six-hole "kid's course" and constructing a new clubhouse to include a restaurant and related facilities to house tournaments and events. Also, by having Ashworth operate the Premises, the City would relieve itself of the responsibility to pay for and operate the golf course.

The pertinent terms of the proposed Agreement are summarized as follows:

- Initial two-year term, with an option to extend the term for 30 years upon achieving certain milestones, and two additional performance-based 10-year extension options
- Funding commitment milestones include: \$100,000 in six months; \$1,200,000 in 18 months and \$2,400,000 in 24 months
- Construction milestones include: contract for design and complete due diligence with 12 months; complete construction drawing for the clubhouse improvements and start construction within 27 months; complete construction of clubhouse improvements within 48 months
- Ashworth to provide a minimum capital improvement investment of \$3,600,000 to the Premises

- Beginning in the sixth year, Ashworth shall pay 2 percent of total gross revenues into a capital improvement reserve
- Beginning in the seventh year, Ashworth shall pay rent of 5 percent of all gross revenue over \$1,000,000 annually
- Rent for the two 10-year extension options will be negotiated prior to approval of each respective extension option

As a result of keeping the golf course open pending the Agreement with Ashworth, the golf course continued to operate at a deficit. While the City absorbed a portion of the deficit by paying for the cost to water the golf course, OGL funded the remaining portion of the operating deficit to keep the golf course open until the Agreement with Ashworth was complete. Accordingly, staff is requesting a repayment of said amount funded by OGL by an offset from revenue generated at the City's other public golf course, Oceanside Municipal Golf Course. Said amount is anticipated to be \$73,799 at the time the Agreement with Ashworth commences.

### **FISCAL IMPACT**

The immediate fiscal impact to the City as a result of the Agreement with Ashworth is that the City will no longer be responsible for the costs associated with operating the golf course such as water, payroll, maintenance and general merchandise. The estimated cost of water that will be incurred by the City in FY 2013-14 is approximately \$105,000. The other operating costs, for FY 2013-14 were anticipated to be around \$85,000.

Under the Agreement with Ashworth, beginning in the seventh year of lease term, the City will receive 5 percent of gross revenues over \$1,000,000 generated at the Premises. The rent under the Agreement could increase during the two 10-year extension option periods, as Ashworth is required to pay, as rent, the fair market rent at the time of the start of the respective option period. Lease revenue generated from the Agreement will be deposited into General Fund, Account No. 1101.4353.0001 with sub-ledger S 100004.

An indirect benefit as a result of the Agreement is that the City will receive additional value to the Premises in the amount of \$3,600,000 in capital improvements to the Premises to be constructed by Ashworth. Further, under the Agreement Ashworth is also required to set aside two percent of gross revenue into a capital improvement reserve account which will be established in the sixth year of the lease term.

As part of the Agreement, the City will provide Ashworth with approximately \$23,055 of golf course operating equipment (e.g., mowers, range ball pickers, etc.) that is currently at the golf course and is not needed by the City at the Oceanside Municipal Golf Course. Further, as condition to entering into the Agreement with Ashworth, the City will agree to repair a portion of the irrigation system up to \$20,000. Said funds will be expensed out of General Fund unassigned reserves, Account No. 101.3100.0001, which has sufficient funds.

The funds for the reimbursement payment to OGL in the amount of \$73,798 are available from the gross revenues generated by the Oceanside Municipal Golf Course in Fiscal Year 2013-14 in the amount of \$80,000. Said funds are in General Fund unassigned reserves, Account No. 101.3100.0001, and will be appropriated to Account No. 320000101.5305, which has sufficient funds to reimburse OGL.

**INSURANCE REQUIREMENTS**

Ashworth will be required to maintain the City's standard insurance requirements over the term of the Agreement.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

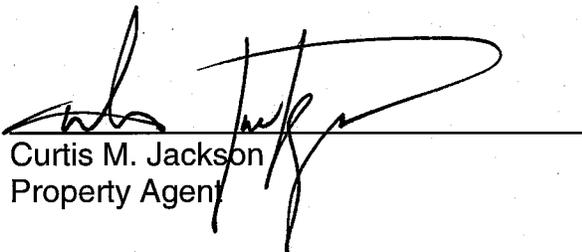
**CITY ATTORNEY'S ANALYSIS**

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

**RECOMMENDATION**

Staff recommends that City Council approve a two-year renovation and operation agreement with a 30-year extension option and two additional 10-year extension options, with John Ashworth, or an entity to be assigned later, to manage the Center City Golf Course; reimbursement of \$68,869 to the departing current operator of the golf course, Oceanside Golf, LLC; and authorize the City Manager to execute the agreement.

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James R. Riley, Financial Services Director


**RENOVATION AND OPERATING  
LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**GOAT HILL PARK, LLC**

**FOR THE**

**CENTER CITY MUNICIPAL GOLF COURSE**

**Goat Hill Drive**

**Oceanside, California 92054**

**DATED**

**June 11, 2014**

## TABLE OF CONTENTS

### SECTION 1 - PREMISES

1.1	Premises	1
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### SECTION 2 - TERM

2.1	Commencement	2
2.2	Renewal Option	2
2.3	Termination Provisions	4
2.4	Holdover	4
2.5	Abandonment by Lessee	4
2.6	Quitclaim of Lessee's Interest	5
2.7	Surrender of Premises	5
2.8	Time is of Essence	5

### SECTION 3 - USES

3.1	Uses	5
3.2	Improvements and Major Renovations	5
3.3	Related Discretionary Actions	8
3.4	Quiet Possession	8
3.5	Reservation of Rights	8

### SECTION 4 - CONSIDERATION

4.1	Time and Place of Payment	9
4.2	Consideration	9
4.3	Available Funding	10
4.4	Inspection of Records	10
4.5	Delinquent Rent	11

### SECTION 5 - INSURANCE RISK/SECURITY

5.1	Indemnity	12
5.2	Insurance	12
5.3	Accident Reports	13

### SECTION 6 - MAINTENANCE/REPAIRS

6.1	Acceptance of Premises	13
6.2	Waste, Damage, or Destruction	14
6.3	Maintenance	14
6.4	Improvements/Alterations	16
6.5	Utilities	16

6.6	Liens	16
6.7	Encumbrance	17
6.8	Taxes	17
6.9	Signs	17
6.10	Ownership of Improvements and Personal Property	17
6.11	Eminent Domain	18

## **SECTION 7 - GENERAL PROVISIONS**

7.1	Notices	19
7.2	City Approval	19
7.3	Nondiscrimination	19
7.4	Equal Opportunity	20
7.5	Entire Agreement	20
7.6	Interpretation of the Agreement	20
7.7	Agreement Modification	20
7.8	Waiver	20
7.9	Attorney's Fees	21
7.10	Assignment and Subletting - No Encumbrance	21
7.11	Defaults and Termination	21
7.12	Bankruptcy	23
7.13	Section Headings	23
7.14	Gender/Singular/Plural	23

## **SECTION 8 - SPECIAL PROVISIONS**

8.1	Standards of Operation	23
8.2	Sale of Alcoholic Beverages	23
8.3	Hours of Operation	23
8.4	Manner of Providing Service	24
8.5	Merchandise and Equipment	24
8.6	Continued Occupancy	24
8.7	Controlled Prices	24
8.8	Hazardous Substances	24

## **SECTION 9 – EXCUSABLE DELAY**

9.1	Definition	25
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## **SECTION 10 - SIGNATURES** 26

### **EXHIBITS**

- Exhibit "A" A legal description of the Premises, attached hereto and incorporated herein by reference.
- Exhibit "B" A sketch of the Premises, attached hereto and incorporated herein by reference.

- Exhibit "C"     Asset Schedule of the existing improvements, equipment and fixtures
- Exhibit "D"     General description of the improvements, to be constructed or reconstructed, or major renovation attached hereto and incorporated herein by reference.
- Exhibit "E"     Improvements to be constructed or reconstructed or major renovations to be addressed, phase of development, and budgeted costs attached hereto and incorporated herein by reference.
- Exhibit "F"     Technical Maintenance Specifications attached hereto and incorporated herein by reference.

**CITY OF OCEANSIDE  
RENOVATION AND OPERATING LEASE AGREEMENT**

**THIS RENOVATION AND OPERATING LEASE AGREEMENT**, dated June 11, 2014, hereinafter called "Lease," is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "City," and Goat Hill Park, LLC, or an entity to be assigned later, hereinafter called "Lessee."

**RECITALS**

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

**WHEREAS**, City believes the public interest can best be served by contracting with a private business entity for the operation and maintenance of the Center City Municipal Golf Course; and

**WHEREAS**, Lessee is desirous of leasing the Center City Municipal Golf Course for the purpose of operating and maintaining said property as a municipal golf course open to the general public; and

**WHEREAS**, City, for the consideration hereinafter set forth, hereby leases to Lessee and Lessee hereby leases said real property from City for the term and upon the conditions hereinafter set forth.

**NOW THEREFORE**, the parties in considerations of the covenants, conditions and provisions as set forth herein, mutually agree as follows:

**AGREEMENT**

**SECTION 1: PREMISES**

**1.1 Premises.** City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as Center City Municipal Golf Course and more particularly described in **Exhibit "A" & "B"** attached hereto and by this reference made part of this Lease including all improvements, equipment and fixtures located on that real property. A general description of the improvements, equipment and fixtures ("the Asset Schedule") is set forth on **Exhibit "C"** attached hereto and by this reference made part of this Lease. The Asset Schedule will be prepared by the parties within ten (10) days before the Commencement Date of this Lease. Said real and personal property is hereinafter called the "Premises".

## SECTION 2: TERM

**2.1 Commencement; Initial Term.** The initial term of this Lease shall be for a period of **two (2) years**, commencing on July 1, 2014 (the "Commencement Date") and terminating June 30, 2016 (the "Initial Term").

**2.2 Extension Terms.** Lessee is hereby granted an option to extend the term of this Lease as follows:

(a) Upon expiration of the Initial Term, provided that Lessee has satisfied the conditions set forth in Section 3.2 and is not otherwise in default under this Lease, Lessee may extend the term of this Lease for **thirty (30) years** (the "First Extension Term") under the terms and conditions of this Lease. Lessee agrees that during the First Extension Term, Lessee will invest in improvements to the clubhouse building, golf course and other facilities, in the amount of **three million six hundred thousand dollars and no cents \$3,600,000** (the "Capital Improvement Commitment"). The Capital Improvement Commitment may include in-kind contributions, including but not limited to, labor, materials, and professional fees. The value of the Capital Improvement Commitment shall be reviewed by the City to determine reasonable allocation of costs. During the initial two (2)-year term of the Lease, Lessee and City will agree on the future improvements and their timelines which are to be completed by Lessee during the First Extension Term in accordance with subsection 3.2(b).

(b) Upon expiration of the First Extension Term, provided that Lessee is not in default under this Lease, Lessee shall have an option (the "Second Extension Term Option") to extend the term of this Lease for an additional **ten (10) years** (the "Second Extension Term"). To exercise such option, Lessee shall provide City with three hundred sixty (360) days advanced written notice of its intent to exercise such option (the "Second Extension Term Notice") and shall provide documentation demonstrating that it invested amounts equal or greater to the Capital Improvement Commitment. In the event Lessee exercises its option to extend the Lease term for the Second Extension Term pursuant to this Section 2.2(b), the City may nonetheless terminate the Lease effective upon the Expiration of the First Extension Term if the City determines to change the use of the Premises to a use other than the use contemplated by this Lease. Such termination by the City will be effective upon satisfaction of the following conditions: (1) The City provides written notice to Lessee of its intent to terminate the Lease at the end of the First Extension Term based on the City Council's determination to change the use of the Premises to a use other than the use contemplated by this Lease, such notice to be provided within thirty (30) days of the City receiving Lessee's Second Extension Term Notice, and (2) on or prior to the expiration of the First Extension Term, the City shall pay to Lessee an amount equal to the "Second Extension Option Buy-Out Amount". The "Second Extension Option Buy-Out Amount" shall be an amount equal to the unamortized portion of the cost of Lessee's Capital Improvements (as hereinafter defined), which amortization of the cost of Lessee's Capital Improvements shall be based on a straight line depreciation basis as determined by Generally Accepted Accounting Principles.

(i) **Procedure to Determine Second Extension Option Buy-Out Amount.** Within thirty (30) days after City notifies Lessee that City is exercising its right to terminate the Lease as set forth above, Lessee shall furnish City with the amount of the Second Extension Option Buy-Out Amount together with a written explanation in reasonable detail of the basis for Lessee's

calculation of the Second Extension Option Buy-Out Amount (“Lessee’s Second Extension Buy-out Calculation Notice”). If Lessee’s Second Extension Buy-out Calculation Notice is timely received by City within said thirty (30) day period and in the event the City agrees with the amount of the Second Extension Option Buy-Out Amount proposed by Lessee, such amount of the Second Extension Option Buy-Out Amount shall be established. However, in the event City disagrees with the Lessee’s Second Extension Option Buy-Out Amount set forth in Lessee’s Second Extension Buy-Out Calculation Notice”, then City shall provide written notice of its disagreement to Lessee within thirty (30) days of receipt of Lessee’s Second Extension Buy-Out Calculation Notice and the Second Extension Option Buy-Out Amount shall be determined in accordance with subparagraphs (1) through (6) of this Section 2.2(b)(i) set forth below. If Lessee fails to furnish its calculation of the Second Extension Option Buy-Out Amount within such thirty (30) day period, then City shall notify Lessee in writing of the City’s calculation of the Second Extension Option Buy-Out Amount together with reasonable detail of the basis for City calculation of such amount (the “City’s Second Extension Option Buy-Out Amount”). In the event that Lessee disagrees with the City’s Second Extension Option Buy-Out Amount, by providing written notice thereof within thirty (30) days of City’s notification, the Second Extension Option Buy-Out Amount will be determined in accordance with subparagraphs (1) through (6) of this Section 2.2.(b)(i) set forth below. In the event the City and Lessee are not in agreement as to the Second Extension Option Buy-Out Amount as described above, then the City and Lessee agree that the Second Extension Option Buy-Out Amount shall be determined as follows:

(1) No later than sixty (60) days following the receipt of City’s notice that it disagrees with Lessee’s Second Extension Buy-Out Calculation notice, or the City’s Second Extension Option Buy-Out Amount, as the case may be, Lessee shall select an individual or entity of its choice to serve as an expert under this Section 2.2(b) and give City such expert’s name and contact information.

(2) Within thirty (30) days after receipt of Lessee’s choice of expert, City shall select such an expert of its choice and give Lessee written notice of such expert’s name and contact information.

(3) The respective experts so selected by City and Lessee shall then select an individual or entity as a third expert within thirty (30) days of City’s notice to Lessee of its selection of its expert, and furnish Lessee and City written notice of such third expert’s name and contact information. All experts selected pursuant to this Section shall be independent experts with at least ten (10) years experience in the field of valuation of similar improvements used in such operations in the United States.

(4) The expert that is mutually selected as such third expert shall then determine, within sixty (60) days of mutual selection, the compensation amount of the unamortized portion of the cost of Lessee’s Capital Improvements in order to terminate the Agreement as set forth in this Section 2.03 (“Second Extension Final Buy-Out Amount”). The opinion of the third expert selected shall be binding on the Lessee and the City as to the Second Extension Final Buy-Out Amount.

(5) Lessee and City shall each be responsible for all fees, costs and expenses of their respective expert as well as their own attorney's fees incurred with respect to this procedure, and the parties shall share equally in the fees, costs and expenses of the third expert.

(6) In the event City disagrees with the Second Extension Final Buy-Out Amount, City has the option to withdraw its right to terminate the Lease pursuant to this Section 2.2, by providing Lessee with written notice of such election within sixty (60) days of obtaining the Second Extension Final Buy-Out Amount.

(c) Upon expiration of the Second Extension Term, provided that Lessee is not in default under this Lease, Lessee may shall have an option (the "Third Extension Term Option") to extend the term of this Lease for an additional **ten (10) years** (the "Third Extension Term"). To exercise such option, Lessee shall provide City Three Hundred Sixty (360) days advanced written notice of its intent to exercise such option (the "Third Extension Term Notice"). In the event Lessee exercises its Third Extension Term Option for the Third Extension Term pursuant to this Section 2.2(b), the City may nonetheless terminate the Lease effective upon the Expiration of the Second Extension Term if the City determines to change the use of the Premises to a use other than the use contemplated by this Lease. Such termination by the City will be effective upon satisfaction of the following conditions: (1) The City provides written notice to Lessee of its intent to terminate the Lease at the end of the Second Extension Term based on the City Council's determination to change the use of the Premises to a use other than the use contemplated by this Lease, such notice to be provided within thirty (30) days of the City receiving Lessee's Third Extension Term Notice, and (2) on or prior to the expiration of the Second Extension Term, the City shall pay to Lessee an amount equal to the Third Extension Option Buy-Out Amount. The "Third Extension Option Buy-Out Amount", City's "Third Extension Option Buy-Out Amount" or the "Third Extension Final Buy-Out Amount", as applicable, shall be an amount as determined by the same process as set forth above to determine the Second Extension Buy-Out Amount, the City's Second Extension Buy-Out Amount or the Second Extension Final Buy-Out Amount, as applicable.

**2.3 Termination Provisions.** No special termination options are available except those described elsewhere in this Lease. In connection with the termination of this Lease pursuant to this Section 2.3, the City shall pay all expenses related to the termination of any agreements or leases applicable to the Premises.

**2.4 Holdover.** Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall pay adjusted annual rent at the rate of one hundred twenty percent (120%) of the immediately prior lease year's annual rent.

**2.5 Abandonment by Lessee.** Even though Lessee has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

**2.6 Quitclaim of Lessee's Interest.** On termination of this Lease for any reason, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor, unless Lessee has a good faith dispute as to whether the Lease has been terminated. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City shall provide the Lessee written notice of its intent to prepare and record a notice reciting Lessee's failure to execute this lease provision. Unless Lessee disputes in writing to the City within thirty (30) days of receiving such notice as to the termination of the Lease, then the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Lease and all Lessee's rights to the Premises.

**2.7 Surrender of Premises.** At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

**2.8 Time is of Essence.** Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

### **SECTION 3: USES & IMPROVEMENTS**

**3.1 Uses.** City hereby authorizes Lessee to improve, construct improvements on, reconstruct, manage, operate, and maintain the Premises as a golf course and for business and social activities directly or indirectly related to, or complimentary to, the operation of a golf course, the sport of golf, recreational activities, social events, and the operation of parkland.

#### **3.2 Capital Improvements and Major Renovations.**

*(a) Existing Documentation.* City agrees that within ten (10) days of the Commencement Date, it shall deliver to Lessee certain documents related to the Premises in the City's possession or available to it, including golf course designs, drawings, topographical maps, surveys, legal descriptions, and such other documents as may be requested by Lessee.

*(b) Improvements.* It is understood Lessee intends to spend \$3,600,000 on improvements to the Premises, including without limitation the Clubhouse (the "Clubhouse Improvements"), and maintenance buildings, other buildings, parking facilities, and the golf course (the "Golf Course Improvements" and, collectively with the Clubhouse Improvements, the "Capital Improvements"). A general description of the Capital Improvements is set forth on **Exhibit "D"** attached hereto and by this reference made part of this Lease. The phases of development and associated budgeted costs are set forth on **Exhibit "E"** attached hereto and by this reference made part of this Lease. However, such expenditures are not restricted to each specific improvement.

(c) **Additional Capital Improvements.** For the purpose of determining the Buy-Out Amounts referenced in Sections 2.2(b)(i) and 2.2(c) above, Capital Improvements can also include new and/or additional Capital Improvements which are not included in the definition of Capital Improvements described above (hereinafter "Additional Capital Improvements") provided Lessee notifies City of its desire to amend Exhibit "D", which notice shall include a description of the Additional Capital Improvement, an explanation as to the need to add and/or replace said Additional Capital Improvement and the value (including the useful life) of said Additional Capital Improvement. City shall review Lessee's request to amend Exhibit "D" and should the City approve Lessee's changes to the Capital Improvements by informing Lessee in writing, the parties shall replace Exhibit "D" with a new Exhibit "D-1" and amend the Lease accordingly. In the event the City does not approve Lessee's Additional Capital Improvements, the parties agree to hire an impartial third party expert familiar with the practices in the industry to determine the need for said Additional Capital Improvements together with a determination of the value associated therewith. The process to select said third party expert and to determine the costs associated therewith shall be the same as described in Section 2.2(b)(i) above. The opinion of the third party expert selected shall be binding on the Lessee and the City as to the need for the Additional Capital Improvements and the value associated therewith.

Lessee shall have an initial **two (2)-year** term from the Commencement Date of the Lease to obtain a commitment for the funding of the Capital Improvements. Lessee shall be solely responsible to raise funds necessary for the design and construction of any new Capital Improvements and/or other renovation of the property. The City shall not be obligated to provide funding of any kind to Lessee for completion of the Capital Improvements. The phases and schedule for the Capital Improvements are as follows:

- i. On or before **six (6) months** from the Commencement Date, Lessee shall have raised **One Hundred Thousand dollars and no cents (\$100,000)** to apply towards the design of the Capital Improvements.
- ii. On or before **twelve (12) months** from the Commencement Date, Lessee shall have completed, with respect to the Clubhouse Improvements:
  1. All contracts executed with the primary consultants assisting with the design of the Clubhouse Improvements;
  2. All engineering and soil investigations with respect to the area in which the Clubhouse Improvements are to be located.
- iii. On or before **eighteen (18) months** from the Commencement Date, Lessee must satisfy the following conditions:
  1. Provide to the City a reasonably detailed description (e.g. lender/investor term sheet) of the funding source(s) that will commit to fund 33% of the Capital

Improvements Budget (i.e., **One Million Two Hundred Thousand Dollars \$1,200,000**).

2. Provide to the City the renderings and site design for the Clubhouse Improvements and the Golf Course Improvements.
- iv. On or before **two (2) years** from the Commencement Date, Lessee must satisfy the following conditions:
1. Submit plans for the Clubhouse Improvements to the City, with cost estimates;
  2. Provide to the City a reasonably detailed description (e.g., lender/investor term sheet) of the funding sources that will commit to fund seventy-five percent (75%) of the Capital Improvements Budget (i.e., **Two Million Seven Hundred Thousand Dollars \$2,700,000.**)

In the event the Lessee cannot satisfy the above conditions due to an Excusable Delay (as defined in Section 9), then the Initial Term shall be extended accordingly for the length of the Excusable Delay.

- v. If Lessee has satisfied the conditions set forth above, then upon the end of the Initial Term, Lessee may, but shall not be required to, exercise its option to extend the lease term for the First Extension Term as described in Section 2.2. If Lessee fails to achieve the milestones prior to the end of the Initial Term, either party may terminate this Agreement with thirty (30) days written notice.
- vi. In the event Lessee exercises the option for the First Extension Term, then on or before the date within ninety (90) days after the commencement of the First Extension Term (the "First Extension Commencement Date"), Lessee shall have:
1. Completed the initial construction documents for the Clubhouse Improvements;
  2. Commenced the bidding process for the Clubhouse Improvements; and
  3. Started the construction of Capital Improvements.
- vii. On or before the second (2<sup>nd</sup>) anniversary of the First Extension Term Commencement Date, Lessee shall have completed the Capital Improvements with full occupancy, subject to Excusable Delays (as defined in Section 9).
- viii. Lessee agrees to demonstrate its ability to finance the Capital Improvements prior to each phase of construction. The Lessee shall not proceed with any construction activity without first accomplishing the related funding milestone. Should the Lessee fail to meet its funding milestone related to any particular phase of the project, the parties agree to meet to discuss another agreeable adjusted schedule.

- ix. Beginning in Year 4 of the First Extension Term, Lessee shall pay an additional two percent (2%) of the total gross revenue on a monthly basis into a separate account maintained in the name of Lessee for the purposes of making expenditures on small capital improvement projects which become necessary from time to time, including, but not limited to landscape upgrades, irrigation repairs, and parking lot repairs (“Capital Improvement Reserve”).

(c) **Annual Review.** The City and Lessee shall meet annually on a mutually agreeable date on or before July 1<sup>st</sup> of each year to discuss a Routine Operating Maintenance Plan for the following year and capital improvements which shall be undertaken during the following calendar year. In the event the parties cannot agree on said annual Routine Operating Maintenance Plan, the procedure as set forth in Subsection 6.3 below shall apply.

**3.3 Related Discretionary Actions.** By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

**3.4 Quiet Possession.** Lessee, performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises. If City for any reason cannot deliver possession of the Premises to Lessee at the commencement of the term of this Lease, or if during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City Manager a thirty (30) day written notice together with its justifications for such termination. The City Manager shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

**3.5 Reservation of Rights.** City shall not unreasonably interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

(a) **Subsurface Rights.** City hereby reserves all right, title and interest in any and all subsurface natural gas, oil, and minerals on or within the Premises. As between the City and Lessee, Lessee is hereby granted to all subsurface water rights on or within the Premises.

(b) **Right to Enter.** City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements that had been constructed by the City provided that City does not unreasonably interfere with the improvements on the Premises, including without limitation the Capital Improvements, or the operations of Lessee.

(c) **Easements.** City shall retain the right to establish access or utility easements through the Premises; provided, however, City shall not unduly interfere with Lessee's use of the Premises or the improvements on the Premises. Reasonable notice shall be provided to Lessee and such installation of utilities shall be coordinated with the Lessee. Within ten (10) days after the completion of the installation, the City shall in a timely manner begin and complete the restoration of the Premises to the condition existing prior to the installation of the utilities at City's sole expense. Relocation of any existing utilities by Lessee shall be coordinated with, and prior written approval obtained from City. Said relocation, if requested by Lessee, shall be at the expense of Lessee. As-built drawings of all utility installations by Lessee shall be furnished to City. As-built drawings of all utility installations by City shall be furnished to Lessee upon request. The City shall defend and hold harmless Lessee for claims arising from the sole negligence or sole willful misconduct of the City, its officers, agents, or employees in connection with accessing the Premises to construct, repair or maintain any easement areas or facilities within such easement areas granted pursuant to this Section 3.5(d).

#### **SECTION 4: CONSIDERATION**

**4.1 Time and Place of Payment.** The Lessee, if applicable, shall make any type of consideration payments annually on or before the end of the first (1<sup>st</sup>) month of each lease year.

**4.2 Consideration.**

(a) **General.** City hereby agrees that the programs, services and operations provided by Lessee at the Premises are valuable consideration received from Lessee, that the providing of such programs and operations, services and activities shall constitute all the consideration to be paid by Lessee for its use of the Premises in accordance with the terms, covenants, conditions and provisions of this Lease, and that Lessee shall not be required to make any monetary payments to City for its use and occupation of the Premises, so long as such use is pursuant to Section 1.02 herein, except as hereinafter set forth.

(b) **Gross Income.** Gross income as used herein shall mean the total amount of all sales, the total amount charged or received for the performance or any act, service or employment of whatever nature it may be, whether such service, act, or employment is done as a part of or in connection with the sale of goods, wares, merchandise or not, for which a charge is made or credit allowed, including all receipts, cash, credits, and property of any kind or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expenses whatsoever; provided, the cash discounts allowed or taken on sales shall not be included. Gross Income shall not include the amount of any tax imposed on or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether or not the amount of tax is stated to customers as a separate charge, or any state, or local sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part of payment on any property so accepted for resale. Also, Gross Income does not include the following:

- \* Receipts from the sale or the trade-in value of any furniture, trade fixtures or equipment used on the Premises, and owned by Lessee;

- \* The value of any merchandise, supplies or equipment exchanged or transferred from or to other business locations of Lessee where such exchanges or transfers are not made for the purpose of avoiding a sale by Lessee which would otherwise be made from or at the Premises;
- \* Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers;
- \* The amount of any cash or quantity discounts received from sellers, suppliers, or manufactures;
- \* The amounts of any discounts given to Lessee's employees;
- \* Revenues from golf lessons, group instruction or learning center fees which are conducted by authorized golf course staff personnel or other authorized teaching professionals approved by Lessee;
- \* Reasonable and verifiable purchases by employees or their immediate family members of supplies and equipment for personal use; and
- \* Funds held for prepaid tournament deposits or like events, including deposits for gift certificates.

The monthly gross income shall be calculated at the end of each month of the term of this Lease. The first monthly gross income calculation shall be made one month after the Commencement Date of this Lease.

**4.3 Available Funding.** Notwithstanding Section 4.2 above, City and Lessee acknowledge that Lessee may generate revenue throughout the term of the Lease. Commencing on the fifth anniversary of the First Extension Commencement Date, should Lessee generate greater than \$1,000,000 annual gross income, Lessee shall pay to City 5% of the gross income (as described in subsection 4.2(b)), and shall be payable as set forth in Section 4.1 above. No consideration will be due prior to the fifth (5<sup>th</sup>) anniversary of the First Extension Commencement Date.

**4.4 Inspection of Records.** Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

Lessee shall initially install an IBS point of sale system, or equivalent software system, for all retail sales and thereafter agrees to maintain and operate a comparable point of

sale system which is the standard or exceeds the standards in the industry. All such systems shall have the capacity to consolidate sales, inventory, and event activities into a central location for reporting and tracking purposes. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers provided such system is approved in writing by the City Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges, whatsoever, Lessee shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Premises or City's offices, at City's sole discretion, and will be complete and accurate showing all income and receipts from Lessee's use of the Premises. City shall have the right to audit such books and records no more than once in any twelve (12) month period. Lessee's failure to keep and maintain such records and make them available for inspection by City shall be deemed a default of this Lease subject to the provisions of Section 6.11. These records shall include, but are not limited to, Federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records.

Lessee shall maintain its books, records and accounts for each lease year for a period of eight (8) years. This provision shall survive the expiration or sooner termination of this Lease.

**4.5 Delinquent Rent.** If Lessee fails to pay the rent within ten (10) days of the due date, Lessee will pay in addition to the unpaid rent, five percent (5%) of the delinquent rent, which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the City audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then Lessee shall pay City the cost of the audit plus five percent (5%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due City as compensation to City for administrative costs and loss of interest as previously described herein. Lessee agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that City will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee's default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.

**SECTION 5: INSURANCE RISKS/SECURITY**

**5.1 Indemnity.** Lessee 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 conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful misconduct of the City, its officers, agents, or employees. Lessee'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, Lessee 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.** Lessee shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:

- (a) Lessee shall maintain the following minimum limits:

**General Liability**

**Combined Single Limit Per Occurrence** \$1,000,000

**General Aggregate** \$3,000,000

(b) All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

(c) All insurance companies affording coverage to the Lessee shall be insurance organizations reasonably 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 provide thirty (30) days written notice to the City of Oceanside 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) Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form reasonably satisfactory to the City Attorney, concurrently with the submittal of this Lease.

(f) Lessee shall provide a substitute certificate of insurance no later than fifteen (15) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

(g) Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

(h) If Lessee 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. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, name of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

(i) City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice, provided that City is requiring the same revision of amounts and coverage from all other persons similarly situated as the Lessee in relation to the City. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease provided that City is requiring the same revision of amounts and coverage from all other persons similarly situated as the Lessee in relation to the City. .

**5.3 Accident Reports.** Lessee 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.

## **SECTION 6: MAINTENANCE/REPAIRS**

**6.1 Acceptance of Premises.** Except as set forth in this Section 6.1, Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises. Notwithstanding the foregoing, City will to the extent permitted by law hold Lessee harmless for any environmental liability created prior to the Commencement Date. City will otherwise indemnify, to the extent permitted by law, Lessee for any environmental liability created prior to the Commencement Date. Prior to the Commencement Date City will complete a Phase One Assessment of the Premises. If the Lessee determines that the environmental condition of the Premises prior to the Commencement Date is not acceptable in its sole discretion, then Lessee can elect to postpone the Commencement Date until the Premises are acceptable. If the Lessee exercises its right to postpone the Commencement Date, then the Lessee and the City shall enter into a mutually acceptable management agreement pursuant to

which Lessee shall manage and operate the Premises until the environmental condition of the Premises is acceptable to Lessee. If a contaminant/hazardous substance is found on, in or under the Premises which was present on the site prior to commencement of Lessee's activities, the identified past operator or other identified party responsible for the contamination will bear all cost for the assessment and subsequent remediation. Specifically, if non-friable asbestos containing materials are determined to be contained in any of the structures anticipated to be renovated or demolished, a licensed asbestos abatement company will remove and dispose of the materials at City's expense. City will not seek compensation or restitution from Lessee as a "Potentially Responsible Party" for any release of a contaminant/hazardous substance on the Premises prior to the Commencement Date.

## **6.2 Waste, Damage, or Destruction.**

(a) Lessee shall give notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City.

(b) Except as set forth below, if the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage to the extent that funds from insurance are available. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises to the extent of insurance proceeds received by Lessee as a result of the event necessitating the repair or restoration or to the extent that the City agrees to pay for the repairs or restoration at a rate and on terms mutually acceptable to the parties. Notwithstanding the foregoing, either party shall have the right to terminate this Lease if the party determines in its sole judgment that it is not economically feasible to restore the Premises by giving notice of termination within thirty (30) days after the event causing the destruction. Provided, however, should Lessee elect to terminate the Lease, Lessee shall not be entitled to reimbursement of its capital improvement investment as set forth in Section 2.3.

(c) If neither party determines that the Premises are not capable of restoration, the Agreement shall continue in full force and effect, except that the payment to City by Lessee may, to the extent not covered by insurance, be abated and/or other relief afforded to the extent that Lessee can demonstrate, and that City may corroborate, that the damage and/or restoration interferes with Lessee's operations. The aforesaid provisions for abatement and/or the relief shall also be applicable to a total or partial destruction of the Premises by the aforementioned causes.

## **6.3 Maintenance.**

(a) As part of the consideration for the leasing thereof, Lessee agrees to assume full responsibility and cost for the operation, maintenance, including general day to day repairs of the Premises, throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

(b) For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must commence planning for the necessary maintenance, repair or replacement work within ten (10) days after written notice from City and complete such maintenance, repair or replacement work within a reasonable period of time, not to exceed forty (45) days or such longer period due to an Excusable Delay (as defined below). In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

(c) Within **sixty (60) days** after the Commencement Date, Lessee will provide to City a Routine Operating Maintenance Plan. This plan shall identify all proposed projects which require regular repair or on-going maintenance of existing facilities and other structures. The City and Lessee agree that the Routine Operating Maintenance Plan for the initial year of the term shall generally be in accordance with the Technical Maintenance Specifications as set forth on **Exhibit "F"**, attached hereto and by this reference made a part hereof and shall follow a maintenance schedule generally used by other similar municipal golf courses in the Southern California area.

(i) If the City and the Lessee cannot agree within thirty (30) days thereafter to a Routine Operating Maintenance Plan, then within fifteen (15) days after the deadline to approve the Routine Operating Maintenance Plan, the City and the Lessee shall each designate a qualified consultant or other expert in the field of golf course management and/or golf course maintenance and the two designated experts shall name a third expert within ten (10) days after their appointments to form a panel (the "Expert Panel"). The Expert Panel shall then approve a Routine Operating Maintenance Plan, which is consistent with **Exhibit "F"** within thirty (30) days after the formation of the panel. The City and Lessee shall share the cost associated with the Expert Panel equally.

(ii) If changes other than minor adjustments are made to this plan, Lessee will provide an amended Routine Operating Maintenance Plan to City at the time of implementation for City approval. If the City and the Lessee cannot agree within thirty (30) days thereafter to an amended Routine Operating Maintenance Plan, then within fifteen (15) days after the deadline to approve amended the Routine Operating Maintenance Plan, the procedure set forth in subsection 5.3(c)(i) above shall be implemented to form an Expert Panel to approve an amended Routine Operating Maintenance Plan, which is consistent with Exhibit E within thirty (30) days after the formation of the panel. The City and Lessee shall share the cost associated with the Expert Panel equally.

Examples of maintenance projects which may be included in the Routine Operating Maintenance Plan may include, but are not limited to the following:

- \* Painting or repairs to the pro shop and other facilities;
- \* Repairs of vandalism;
- \* Overseeding if necessary;
- \* Purchase/lease of mechanical equipment (carts, mowers, food & beverage items etc.);
- \* Regular maintenance and repairs of pumps or sprinklers; and
- \* General maintenance of facilities and improvements to protect against disrepair or obsolescence.

**6.4 Improvements/Alterations.** No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager not to be unreasonably withheld. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations not listed on **Exhibit "D"** may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

**6.5 Utilities.** Lessee agrees to order, obtain, and pay for all utilities including telephone, internet service, water, electricity, cable, and gas. Additionally Lessee will pay for any service and installation charges in connection with the development, occupation and operation of the Premises.

**6.6 Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager, which shall not be unreasonably withheld. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or

claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

**6.7 Encumbrance.** Lessee may at any time and from time to time encumber this Lease, its leasehold estate and its improvements thereon including furniture, fixtures, equipment and inventory related to operation of its business by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee so long as the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such financing, development and construction. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease. City agrees to reasonably cooperate with any requests of any lender of Lessee, including without limitation providing a consent and estoppel reasonably requested by Lender. Within sixty (60) days of encumbering this Lease, Lessee shall give the City written notice of the name, address and contact person of any entity which has a lien on the Lease.

**6.8 Taxes.** Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

**6.9 Signs.** Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

**6.10 Ownership of Improvements and Personal Property.**

(a) Any and all improvements and installations or additions to the Premises now existing or constructed on the Premises by Lessee, excepting such fixtures and trade fixtures which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease. All structures and items on the Asset Schedule shall become the City's property.

(b) If City elects not to assume ownership of all improvements or installations, City shall so notify Lessee in writing three hundred sixty five (365) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. Such election by the City must be with respect to all improvements unless otherwise agreed to by Lessee. If City makes such election under this Section 6.10(b), then Lessee shall not be required to pay any consideration to City during the period from when City makes such election through such termination date. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal. This Section 6.10 shall not be applicable during the Initial Term.

(c) Lessee owned machines, merchandise, inventory, general office supplies, appliances, equipment, trade fixtures, and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items.

(d) If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

**6.11 Eminent Domain.** If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

(a) **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs and the City shall have the obligations to Lessee upon termination as set forth in this Lease including but not limited to Section 2.3.

(b) **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs and the City shall have the obligations to Lessee upon termination as set forth in this Lease including but not limited to Section 2.3.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

(c) **Award.** All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in installations or improvements of Lessee, including without limitation any damages based on loss of revenues.

(d) **Transfer.** City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in (i) the fair market value of any improvements placed by it on the Premises in accordance with this Lease and (ii) any value attributable to Lessee based on loss of revenue as if such eminent domain occurred.

(e) **No Inverse Condemnation.** The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

## SECTION 7: GENERAL PROVISIONS

7.1 **Notices.** All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City: CITY OF OCEANSIDE  
Property Management  
300 North Coast Highway  
Oceanside, CA 92054

To Lessee: Goat Hill Park, LLC  
Attn: John Ashworth  
530 South Coast Highway  
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

7.2 **City Approval.** The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to Property Management Manager.

7.3 **Nondiscrimination.** Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, or disability in Lessee's use of the Premises.

**7.4 Equal Opportunity.** Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex or national origin. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

**7.5 Entire Agreement.** This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

**7.6 Interpretation of the Agreement.** The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

**7.7 Agreement Modification.** This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties and approved by the City Council.

**7.8 Waiver.** Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any

failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**7.9 Attorney's Fees.** In the event a suit is commenced in connection with this Lease to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, the prevailing party shall be entitled to its reasonable attorneys' fees and costs and the non-prevailing party shall pay such prevailing party all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

**7.10 Assignment and Subletting - No Encumbrance.** This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City, except that no consent shall be required for a transfer, assignment or sublease with or to any affiliate of Lessee, provided that such affiliate possesses the same or similar qualifications as Lessee to maintain and operate a golf course, or to a golfing academy approved by a national golfing association, and that John Ashworth continues to maintain a controlling interest in said affiliate for as long as this Lease is in effect. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**7.11 Defaults and Termination.**

(a) It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within thirty (30) business days after written notice thereof if default is in the submittal of rent as required in this Lease; or ten (10) business days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 3.1 of this Lease; or thirty (30) calendar days after written notice thereof if default is in the performance of any other covenant, condition and agreements provided that Lessee shall not be in default after thirty (30) calendar days if the delay is the result of additional requirements imposed by a government entity, the need to obtain permits or if a longer period as is reasonably necessary to cure such matter and Lessee takes reasonable steps to begin to cure the failure within the thirty (30) day period and continues to make reasonable progress in curing the matter thereafter (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by

law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

(b) In the event the Lease is encumbered in accordance with Section 5.7 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within thirty (30) days, if the default is for the failure to submit rent as required, or within sixty (60) days following the expiration of the period within which Lessee may cure such default if the default requires affirmative action other than or in addition to the payment of money and if such default cannot be cured within sixty (60) days or without possession of the premises, such additional time as agreed upon by the parties to be reasonable, under the circumstances, to complete the cure providing lender diligently pursues the cure. The City shall further:

- \* Permit transfer of Lessee's rights, duties and obligations under the same terms as Lessee provided that at all times after such transfer, lender retains a manager or operator as follows:
- \* The manager or operator is an experienced golf course manager or operator and is recognized in the golf business community as such and,
- \* Such manager or operator agree to manage and are capable to operate the golf course in a manner and at a level suitable to City and consistent with the standards of the golf business community.

If such conditions are met, the approval of City will not be unreasonably withheld or delayed.

(c) If Lessee is placed in default by lender and said lender has notified City, in writing, of its security interest in this Lease, and upon notice to City of such default, City will permit lender to assume the rights, duties and obligations of this Lease under the same terms as Lessee provided that after foreclosure or other exercise of lenders' remedies, lender shall install a manager or operator that meets the following conditions:

- \* The manager or operator is an experienced golf course manager or operator and is recognized in the golf business community as such and,
- \* Such manager or operator agree to manage and are capable to operate the golf course in a manner and at a level suitable to City and consistent with the standards of the golf business community.

If such conditions are met, the approval of City will not be unreasonably withheld or delayed.

In the event of the termination of this Lease pursuant to the provisions of this section, City and Lessee shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of Sections 2.3 and 5.11 of this Lease.

**7.12 Bankruptcy.** In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.2 of this Lease.

**7.13 Section Headings.** The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

**7.14 Gender/Singular/Plural.** The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

## **SECTION 8: SPECIAL PROVISIONS**

**8.1 Standards of Operation.** Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a manner similar to or better than other comparable municipal or public access golf courses charging similar fees in the Southern California area.

**8.2 Sale of Alcoholic Beverages.** Lessee has the right to sell alcoholic beverages at the Premises. In the event of such sales, Lessee shall, at its own expense, obtain and keep current licenses as required for the lawful on-Premises sale and serving of alcoholic beverages and comply with all regulations promulgated by the California Alcoholic Beverage Control Board for the sale of alcoholic beverages. Lessee shall establish an Alcoholic Awareness Training Program for its employees. Additionally, Lessee shall maintain insurance coverage providing alcohol service liability in accordance with the provisions of Section 4.2 of this Lease.

**8.3 Hours of Operation.** The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the City.

**8.4 Manner of Providing Service.** Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

**8.5 Merchandise and Equipment.** City retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City, in the City's reasonable discretion.

**8.6 Continued Occupancy.** Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterruptedly during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

**8.7 Controlled Prices.** Lessee shall at all times maintain a complete list or schedule of the prices charges for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by Lessee or by Lessee's sublessee(s), assignee(s), lessee(s), permittee(s) or licensee(s).

*(a) Fees and Charges:* It is the intent of the City that the services and facilities shall be made available to the general public at reasonable fees and charges. Lessee agrees to make the facilities available to the general public at reasonable fees and charges. In general the market shall determine rates for fees and charges and the price of merchandise sold. After the first year of the. If an annual increase in fees is more than five percent (5%) over fees charged for the prior year, and the City, through its City Manager, in its reasonable discretion, deems such fees to be excessive based upon rates charged at other municipal public golf courses in San Diego County that are of similar quality and geographic surroundings, with similar improvements, taking into account the capital improvements, City may, after consultation with Lessee, deny such fee increases in excess of the 5% increase.

**8.8 Hazardous Substances.** No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such

materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City except as needed for the normal maintenance and operations of the golf course and the clubhouse.

#### **SECTION 9: EXCUSABLE DELAY.**

**9.1. Definition.** For purposes hereof, "Excusable Delay" means (1) any delay caused by unusually adverse weather conditions which have not been taken into account in a construction schedule, fire, earthquake or other acts of God, strikes, labor or industrial disturbance, civil disturbance, lockouts, acts of public enemy, war, riots or insurrections, blockade, embargo, or any other unforeseen circumstances or events beyond the reasonable control of Lessee, and as to which Lessee notifies City in writing within ten (10) business days after such occurrence, and (2) any delay in Lessee receiving planning and zoning land use entitlements and approvals required to be obtained from governmental authorities for the construction, or modification of any improvements on the Premises (the "Entitlements and Approvals"). The Entitlements and Approvals shall be deemed received and complete only if such Entitlements and Approvals are not subject to further appeal, and there shall be no proceeding or litigation pending to appeal the issuance of the Entitlements and Approvals, or to enjoin or restrain the performance of the Capital Improvements.

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**SECTION 10: SIGNATURES**

The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee 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 Renovation and Operating Lease Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

City:

THE CITY OF OCEANSIDE

Date: \_\_\_\_\_

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

Its: City Manager

APPROVED AS TO FORM:

By: *Robert Hamilton, ASST.*  
City Attorney

Lessee:

GOAT HILL PARK, LLC

Date: 6/3/14

By: *John Ashworth*  
John Ashworth, Manager

**NOTARY ACKNOWLEDGMENTS OF  
LESSEE'S SIGNATURE(S) MUST BE ATTACHED**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California

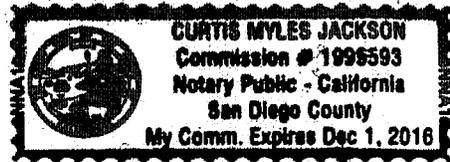
County of San Diego )SS.

On 6/3/14 before me, Curtis Jackson, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared John Ashworth  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

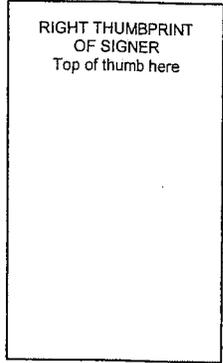
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

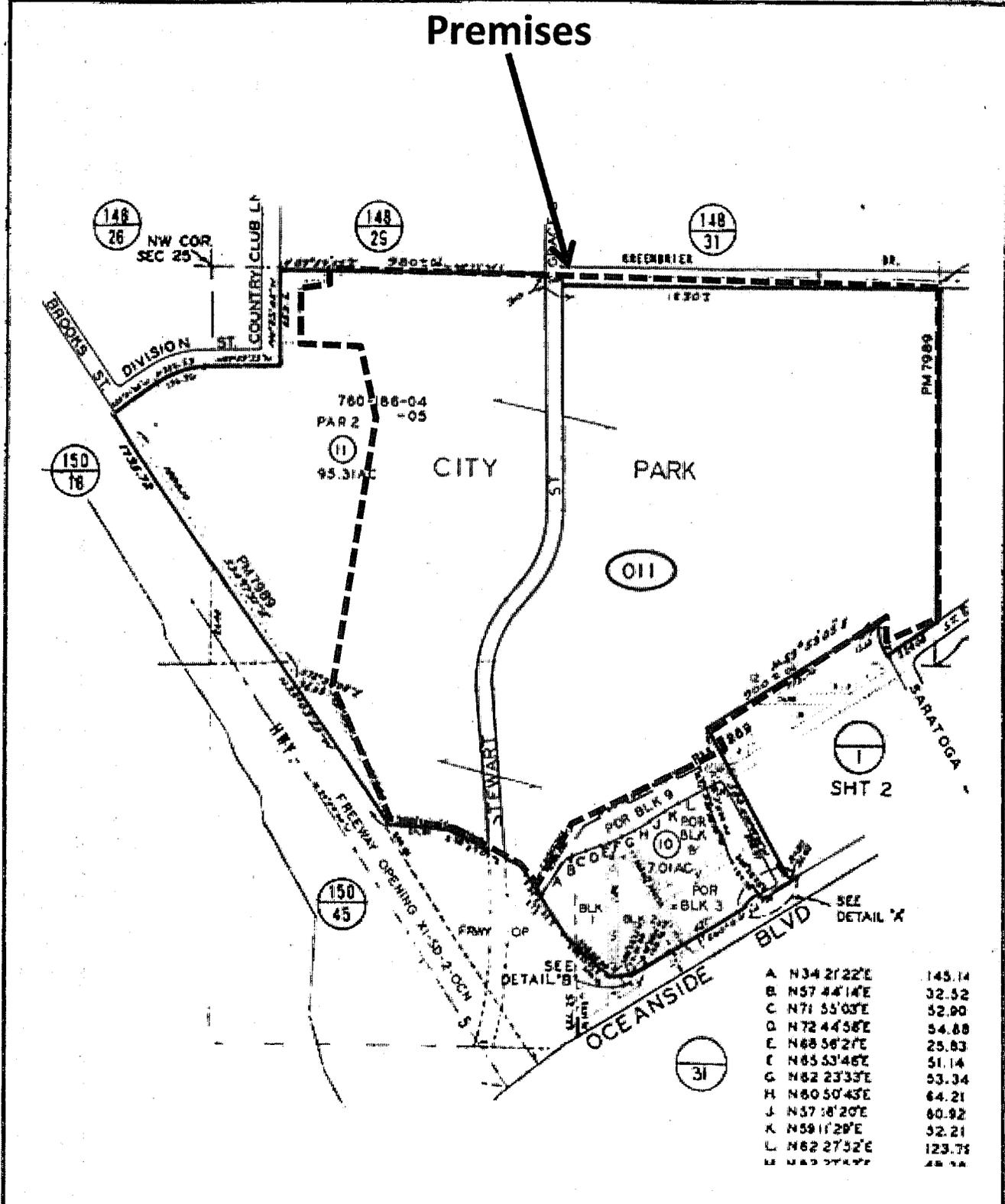


## **Exhibit A**

APN: 151-011-11-00

A portion of APN 151-011-11-00, containing a regulation 18-hole municipal golf course situated on approximately 72 acres located at the end of Goat Hill Drive in Oceanside, California, including golf course improvements and amenities and as more particularly depicted on the plat map attached as Exhibit "A-2".

# Premises



Revision	By	Approved	Date	CITY OF OCEANSIDE	
				Exhibit "B"	
				Premises	

**EXHIBIT "C"**  
**ASSET SCHEDULE**

<b>MAINTENANCE EQUIPMENT (FUNCTIONAL)</b>
Air Compressor
Vice
Round Shop fan
Ladders x3
Grain Shovels x6
Rakes x7
Shovels x9
Pitchfork x4
Fertilizer spreader x4
Coco drag mat
Steel drag mat x2
Backlapper x2
Portable air tank x1
Sawsall
2 Man hand saw
Torch with tanks
Gas Can x4
Cup Cutter x6
Flags x30
Hoist
80 Gallon Diesel tank
Hoses x6
Trash Cans x14
Quick coupler with head x8
Quick Coupler HEAD ONLY x8
Misc. Belts 15+
Oil Catch 36"x60"
Air Hoses 3+
Misc. Nuts and Bolts
Other hand tools x16
Toro 4000D (Fairway)
Toro 3200D Greens Mower (Diesel)
Toro 3000 Greens Mower (Gas)
AD Williams Turf Sprayer
MULE 3010 Kawasaki Green (Diesel)
EZGO Ball Picker
Ball picker assembly
John Deere 6.75 rotary

<b>MAINTENANCE EQUIPMENT (SALVAGE VALUE)</b>
TORO 6500D (fairway)
MULE 3010 Kawasaki Red (Gas)
John Deere 220B with trailer
Drill Press
Floor Jack
Old Reels x8

<b>PROSHOP EQUIPMENT (FUNCTIONAL)</b>
ELO touchscreen Monitor 17"
Ipad
Cash Drawer
Starr TSP100 Reg Printer
HP Officejet 6500A printer
Coffe Maker- Hamilton Beach
Microwave - Sharp Carousel
1- Cordless VTECH Phone
Eclipse DROP Safe
Coffe Cart-Wheeled-Stainless Steel Top 48"x24"
Stainless Steel- Wheeled-Dry Storage Shelf 77"x47.5"
3 plastic waste baskets (range)
2 benches (range)
Scorcards (approx 3000)
Pencils (29 Boxes)

<b>MAINTENANCE EQUIPMENT (SALVAGE VALUE)</b>
Dell Vostro 200 - Coputer
Dell flatscreen monitor 22"
PA System - radio Shack MPA46
2- Batt Backup
2- Cisco Router
Spead Stream- modem
Sanyo HDTV 23"
Value / Office Depot paper shredder
Wooden Cart-Wheeled 42"x18"
Desk- Wood top 48"x 30"
Grey Sectional Corner Desk
4 drawer File cabinet (black)
2 drawer File cabinet (grey)
Dry erase board
8 bag stands (range)
2 metal waste baskets (range)
Easy Picker Range ball dispenser
Range balls (approx 8000)
6 Rental Sets (Adult)
2 Rental Sets (Junior)
Oval coffee table
2 cushioned chairs
2 club washers (range)

## **EXHIBIT D PROPOSED IMPROVEMENTS**

### **Goat Hill Golf Course Restoration**

Golf course restoration will consist of making improvements to enhance the condition, features and play of the course, while keeping the cost low and adding environmental maintenance practices. The intent of the restoration is to make Goat Hill a short course golf destination. Because the layout of Goat Hill is already very good and is diverse and challenging for a course of its size, restoration of the course will consist of basic course improvements, better water distribution, and a small amount of restructuring.

### **Six-Hole Kids Course**

In addition to the course restoration, the eastern part of the existing driving range will be allocated to create a six-hole Kid's Course. Kids' courses are donation only and are a great starting point for kids to get into the game and spend time with their parents.

### **Modern Clubhouse / Bar & Grille**

The current clubhouse will be replaced with a two-story Clubhouse/Bar & Grille with contemporary environmental design, and balconies with views of the ocean and the city.

The upper-level modern restaurant will be another great dining destination for Oceanside, in a relaxed setting with awesome views for miles in all directions. The menu would include local foods from Oceanside's agricultural suppliers, bakers, and brewing companies. Also, the facility will have the capacity to hold large tournaments, events, dinners and luncheons.

### **Community Supported Agriculture**

The Community Supported Agriculture plan at Goat Hill is to utilize the land adjacent to the course to cultivate farmland to be cared for by local youth organizations. Using already successful models such as the San Pasqual Academy CSA, local youth organizations like The Boy's and Girl's Club and North County Lifeline would be given the responsibility of cultivating their own organic gardens. Gardens will be located in different locations at Goat Hill. Local residents will be able to 'subscribe' to the gardens, receiving a box of produce bi-weekly for a fixed cost. The produce will also be used in the on-site Bar & Grille, and portions would be donated to local charities, such as Brother Benno's Soup Kitchen.

### **Botanical / Sculpture Gardens**

On and adjacent to the course will be areas that will be improved with gardens and will be opened to local landscape artists and sculptors. These areas would be located on the course and off, provide a 'gallery' of sorts for local outdoor artists, and a peaceful space in which residents could walk or relax.

### **Improvements to Vacant Parcel**

The vacant parcel at Goat Hill will be improved with professional, office and retail space that will consist of uses that are related or otherwise complimentary to the sport of golf.

**The design, square footage and construction of this space will be determined concurrently with the golf course improvements.**

## **Exhibit E: Development Phases**

### **TRANSITION PHASE : FIRST 6 MONTHS FROM SIGNING OF THE LEASE**

Upon taking over the lease of the property through and until beginning of the first phase of renovation, estimated as a 6 to 8 month period.

- A.) Complete initial check list of things; switching out names on services, banking, etc.
- B.) Solidify cart lease and take delivery of new fleet
- C.) Transfer or apply for new beer & wine license
- D.) Begin Fundraising, grant writing and securing debt financing for all phases of renovation
- E.) Begin selling annual passes and promotion of Goat Hill Park and new management
- F.) Slight renovation to existing clubhouse
- G.) Begin well/irrigation design and schedule process
- H.) Begin renovation plans and schedule with Doak and team

### **PHASE ONE : RENOVATION OF NINE HOLES, RELOCATE AND INSTALL A NEW MAINTENANCE BUILDING, INSTALL NEW WELL/IRRIGATION SYSTEM, CARRY OUT MAJOR TREE WORK.**

- A.) Renovate the first nine holes, begin the process January '15.
- B.) Relocate and Install new maintenance building from the clubhouse area to down by the current 15th tee box so the maintenance workers will arrive to the site from the other street.
- C.) Install new well, pumps and whatever new irrigation equipment necessary for the long term economical and environmental use of irrigation on site to maintain the best turf and landscape practices.
- D.) Carry out major tree trimming and removal on the site.

### **PHASE TWO : RENOVATION OF THE REMAINING NINE HOLES, REDESIGN AND RENOVATE DRIVING RANGE, BUILD KIDS COURSE/SHORT GAME COMPLEX, INSTALL COMMUNITY GARDENS AND NEW OVERFLOW PARKING.**

- A.) Renovate the remaining nine holes
- B.) Renovate the driving range and build the kids course/short game complex.
- C.) Install Community Gardens and new overflow parking area that will be designed into a major portion of the land in the northeast corner of the site.

### **PHASE THREE : NEW BUILDINGS THAT WILL HANDLE THE FUNCTIONS OF GOAT HILL PARK. 1.) NEW CLUBHOUSE WITH FOOD AND BEVERAGE 2.) NEW EVENT CENTER, TO HANDLE EVENTS OF 200 PEOPLE 3.) NCJGA/PARK HQ BUILDING. PLUS INSTALLING SCULPTURE GARDENS WALK WAYS AND BENCHES AROUND THE PARK AND A RESTROOM.**

**2013-2014**  
**TECHNICAL MAINTENANCE SPECIFICATIONS**

I. PUTTING GREEN AND COLLAR MAINTENANCE

A. Mowing

Mowing will be done with tri-plex greens mowers seven (7) days per week. 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 Archerfield, Inc. ("Archerfield"). Collars and approaches shall be mowed three (3) complete cycles per week, or more often depending upon growth conditions. 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 dress (Apr and Sep). This shall be carried out with the minimum of interference to play.

C. Topdressing & Verticutting:

Light topdressing will be done in conjunction with vertical mowing bi-monthly 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 as needed to correct developing insect problem.

F. Disease Control

Controls will be done on a preventative basis. A corrective fungicide treatment shall be given as injury symptoms appear.

#### G. Irrigation

Each irrigation application shall be to a full depth of the root zone. Timing should be prior to the development of visual wilt symptoms. 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. Over Seeding

The teeing grounds will be over seeded with winter rye grass typically the second week of Oct, weather permitting, at a rate of 400 LBS per acre.

#### D. Thatch Control

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

#### E. Topdressing

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

#### F. 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.

G. Weed Control

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

H. Insect Control

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

I. Disease Control

Disease controls shall be on a curative basis. A corrective fungicide treatment shall be given as injury symptoms appear.

J. Irrigation

Application shall be to a full depth of root zone with each irrigation. Timing should be prior to the development of visual wilt symptoms. Mid-day syringing may be required to prevent wilt. Timing may be based on footprint symptom evidence.

K. 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" to 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. Over Seeding

The green surrounds will be over seeded with winter rye grass typically the second week of Oct, weather permitting, at a rate of 400 LBS per acre.

E. Weed Control

Controls will be accomplished by applying pre- and post-emergence herbicides as needed.

F. Insect Control

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

G. Disease Control

A corrective fungicide treatment shall be given, should any injury symptoms appear.

H. Irrigation

Application shall be to a full depth of root zone with each irrigation. Timing should be prior to the development of visual wilt symptoms.

I. 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 during the active growing season. 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 (Apr & Sep).  
Additional spot aerification may be needed on sited 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. Soil testing shall be taken one (1) time per year, typically in the spring with a focus on the worst areas 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 corrective fungicide treatment shall be given, should any injury symptoms appear

G. Irrigation

Application shall be to a full depth of root zone with each irrigation. Timing should be prior to the development of visual wilt symptoms.

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.)

J. Blowing

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

V. ROUGH MAINTENANCE

A. Mowing

Shall be performed a minimum of one (3) cycles per week during the active growing season, 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 sited 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.

E. 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 corrective fungicide treatment shall be given, should any injury symptoms appear.

G. Irrigation

Each irrigation application shall be to a full depth of root zone. Timing should be prior to the development of visual wilt symptoms.

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 four (4) times per week.

### B. Teeing Ground

Tee markers shall be moved as often as the cups are set on the greens. Litter containers shall be emptied daily. Tee towels shall be changed weekly. Ball washers shall be checked at least two (2) times per week, and filled as needed. Drinking water containers shall be filled daily, or more frequently as required, and checked weekly 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

Depending on the season bunker edging shall be performed monthly, or as required during the growing season. Care shall be taken to maintain the design outline of the bunkers to insure the integrity of the bunker shape.

### 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 no less than four (4") deep. Additional sand shall be added where there is less than four inches (4") of sand.

### 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'. 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 six to eight inch (6"-8") radius circle around the base of trees shall be free of weeds and 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, appropriate control measures shall be taken.

### IX. IRRIGATION SYSTEM MAINTENANCE

#### A. Scheduling

Watering shall be scheduled by the GOLF COURSE SUPERINTENDENT, and performed by the irrigation specialist, in quantities and frequencies consistent with seasonal requirements, and shall be done at night so as not to interfere with golf 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 and valves 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 ARCHERFIELD 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.

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 will be delivered to the irrigation lake three times a year (Winter, Spring & Fall) for algae control.

B. Litter Control

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

XII. CART PATH MAINTENANCE

A. Edging

Cart path edging will be done bi-monthly during the active growing season and as necessary during the slow growing season.

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 normal chemical applications as necessary.

C. Materials

All maintenance materials will be supplied by ARCHERFIELD, and shall conform to the standard specifications legally allowed.

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. "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.

XV. ITEMS NOT INCLUDED

A. Damage - Acts of God

Damage to the golf course as a result of acts of God may include, but are not necessarily limited to: removing blow-over trees, broken limbs, and stumps; or removing silt or debris deposited by floods. Damage from hurricanes or other unusual occurrences will be handled on an individual basis as a pre-approved extra cost. The maintenance staff shall make every effort to repair damage, and restore and clean the golf course within the framework of the Agreement, without extra cost.

B. Irrigation System and Pump Stations

All pumps or pump stations and controllers that need repairs or replacement shall be an extra cost approved by the city of Oceanside and paid from the annual capital improvement fund.

C. Tree, Shrub, and Flower Replacement

The loss of trees and shrubs may be considered as a capital improvement replacement program and will require approval by the representative of the city of Oceanside.

D. Arborist Work

Major tree pruning or other arborist related work shall be an extra cost item requiring prior approval by the representative of the city of Oceanside.

E. Capital Improvements

Work performed over and above the normal maintenance provided in the Agreement, such as excessive earth moving, reconstruction of a golf hole, tee, or green construction or reconstruction, brush clearing, and installation of French drains, including materials for the aforementioned work, shall be an extra cost item requiring prior approval by the representative of the city of Oceanside.

F. Bunker Sand

Removal of the old bunker sand and replacing the sand with a new sand shall be an extra cost item requiring prior approval by the representative of the city of Oceanside.

G. Golf Accessories

Any major accessory that has been stolen, damaged, or vandalized shall be replaced, repaired, and/or reinstalled after approval of the representative of the city of Oceanside as part of the annual capital improvement program.

H. Landscaped Areas

The installation of additional trees, shrubs, vines, and groundcover shall be an extra cost item requiring prior approval by the representative of the city of Oceanside as part of the annual capital improvement program.