AGREEMENT

THIS RESTATED LEASE AGREEMENT made and entered into this ____ day of June, 2009, by and between CITY OF COSTA MESA, a body corporate and politic hereinafter referred to as "CITY" and MESA VERDE PARTNERS hereinafter referred to as "LESSEE."

WITNESSETH:

WHEREAS, CITY owns the Los Lagos and Mesa Linda Golf Courses ("Golf Course");

WHEREAS, the CITY is authorized by the provision of Government Code Section 37396 to lease CITY park and recreation real property for the provision of services and property improvements consistent with public park and recreation purposes;

WHEREAS, a lease of the Golf Course property providing for the improvements to existing facilities, overall management, collection of fees, and provisions of golf course professional and food/beverage services, and containing appropriate controls to ensure public use of the facilities is consistent with said purposes;

WHEREAS, CITY and LESSEE agree that the primary objective for LESSEE'S performance under this Agreement is to maximize: (1) the public use of CITY Golf Course, and (2) the revenue to be received by the CITY as a result thereof;

WHEREAS, LESSEE entered into a Lease with CITY on August 6, 1992 to lease the Golf Course property, for the provision of general golf and related services and for property improvements;

WHEREAS, said Lease has been modified by six (6) addendum since its execution; and

WHEREAS, it is the intent of CITY and LESSEE to enter into a Restated Lease that incorporates all of the revisions provided for in the six (6) addenda, provide further revisions to the Lease and extend the current Lease for an additional ten (10) years.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1. DEMISED PREMISES

1.01 CITY hereby leases to LESSEE for its management and operation the real property consisting of Golf Course and office space and maintenance yard space at the CITY corporate yard as designated by CITY. The name of the golf course shall remain the same unless otherwise changed by CITY.

1.02 The demised premises, as 'shown on Exhibit A, and designated at the CITY corporate yard (Exhibit A-1), shall be used only and exclusively for golf course operations and such other purposes as are related thereto provided express approval therefore is granted by the City Manager and for no other purposes whatsoever.

1.03 LESSEE acknowledges personal inspection of the demised premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the operation of the golf course. LESSEE accepts the demised premises in their present physical condition and agrees to make no demands upon CITY for any improvements or alteration thereof. LESSEE agrees to evaluate and correct, at its expense, all state and municipal building code violations existing at the premises.

1.04 LESSEE shall construct upon the demised premises the Capital Improvements in accordance with the provisions set forth in Sections 6.01 through 6.06.

1.04.01 Any other improvements, additions, alterations or changes to the demised premises shall be subject to prior written approval by the City Manager, securing of applicable permits and compliance with such terms and conditions as may be imposed thereon by the City Manager.

1.05 LESSEE hereby acknowledges the title of CITY, and/or any other public agencies having jurisdiction thereover, in and to the demised premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

1.06 Ownership of all existing structures, and of all structures, buildings and/or improvements constructed by LESSEE upon the demised premises and all alterations, additions or betterments thereto, shall immediately vest and be vested in CITY at all times during and after the term hereof, without compensation being paid therefor. Such structures, buildings and/or improvements shall be surrendered to CITY with the remainder of the demised premises upon termination of this Agreement.

2. TERM

2.01 The term of this Agreement shall be for a period of thirty-seven (37) years commencing on the first day of September, 1992 and terminating August 31, 2029.

2.02 In the event LESSEE holds over beyond the term herein provided with the consent, express or implied of CITY, such holding shall be from month to month only, subject to the conditions of this Agreement; shall not be a renewal thereof, and shall be at the monthly compensation provided herein.

2.03 LESSEE may apply for an extension of the term of this Agreement provided that prior to the expiration of the term CITY receives a written request therefore, signed by LESSEE, no later than sixty (60) days before the expiration of the term. CITY'S City Council shall have

exclusive discretion to determine whether to grant or deny LESSEE'S application for an extension of this Agreement or to go out for new proposals. Prior to taking action on LESSEE'S application for an extension of this Agreement, CITY shall conduct a public hearing to receive public comments on the performance of LESSEE under the terms of this Agreement. CITY shall have the right to condition the grant of an extension of this Agreement and to renegotiate the terms of this Agreement, including, but not limited to, basic service obligations, minimum rental amounts, percentages for rental amounts, Capital Improvement Trust Fund balance and monthly set aside, and required Capital Improvement Program. LESSEE'S option to request an extension of the term of this Agreement shall also be conditioned on all of the following:

A. LESSEE is in good faith compliance with the terms of this Agreement;

B. This Agreement has not been canceled by CITY prior to the expiration of the term of this Agreement;

C. LESSEE has not been found by CITY to be in default due to insolvency of LESSEE;

D. LESSEE has not been found by CITY to have abandoned, vacated or discontinued operations for a period in excess of twenty-four hours; and

E. LESSEE has received satisfactory performance evaluations from CITY.

3. LESSEE'S BASIC SERVICE OBLIGATIONS:

3.01 Golf Professional Services

A. Use Granted

LESSEE is hereby authorized and required to sell, rent, store and/or repair golf equipment; sell golf related clothing and supplies; provide instructional services in the playing of golf; rent golfmobiles and golf carts; and operate a driving range.

B. Merchandise

LESSEE shall provide and maintain such inventory of golf merchandise as is deemed necessary by the City Manager to adequately meet the public demand therefor. The City Manager shall have the right to prohibit the sale or rental of any item of merchandise on finding(s) that the item(s) is of such inferior quality as to not be in the public interest to be offered for sale, or that such item(s) is not necessary for proper service to the public.

C. Golf Instructions

The playing of the game of golf shall be taught only by qualified instructors whose qualifications have been approved in writing by the City Manager. Golf instructors shall comply with the rules and regulations for the play of golf set forth in the Golf Course Manual included as Exhibit B, during their use of the golf course for instructional purposes.

D. Golfmobiles and Golf Carts

LESSEE shall provide at least one hundred (100) power driven golfmobiles, and a sufficient number of manually operated golf carts to meet the public demand therefor. All of the required golfmobiles shall have shade tops. LESSEE may prohibit the use of golfmobiles on the golf course whenever weather conditions expose the user to danger, or the golf course to damage arriving from operation thereon. All golfmobiles and the maintenance thereof shall comply with the specifications and maintenance requirements, if any, as set forth in Exhibit B. Further, LESSEE shall comply with the City Manager's policy statement(s) regarding the issuance of golf cart rental receipts, and the system of accountability and procedures therefor.

E. Golf Tournaments

LESSEE shall cooperate with the City Manager or his designee in the promotion and operation of four (4) annual tournaments: Costa Mesa City Championship, Toys for Fairview Tournament, Costa Mesa City Junior Championship and City/State Chamber of Commerce Tournament by providing CITY or participants therein with the personnel, equipment and facilities necessary for the operation of such tournaments. LESSEE shall be entitled to be reimbursed from the tournament sponsor for the actual cost of providing personnel, equipment and facilities necessary for the operation of such tournaments. With respect to the Costa Mesa City Championship, LESSEE shall provide up to 45 complimentary rounds of play for volunteers, waive tournament fees, and close both courses during tee-off. With respect to the Costa Mesa City Junior Championship, LESSEE shall subsidize fees in the amount of $8.00 per player, waive tournament fees, and donate the use of ten carts.

LESSEE shall be entitled to be reimbursed from the tournament sponsor for the actual cost of providing personnel, equipment and facilities necessary for the operation of such tournaments. Notwithstanding the foregoing, to the extent LESSEE is not reimbursed for its costs for the Costa Mesa City Championship and the Costa Mesa Junior Championship, both of which will be managed by LESSEE, LESSEE and CITY agree to bear one-half of such cost, up to a maximum as is agreed upon by LESSEE and the City Manager.

3.02 Food and Beverage Services

A. Use Granted

LESSEE is hereby authorized and required to: sell food and beverages, including alcoholic beverages, on the golf course, within the coffee shop, midway house, banquet/meeting rooms and cocktail lounge; and schedule the use of the banquet/meeting rooms.

B. LESSEE'S Staff

LESSEE shall file with the City Manager a certificate for each member of its food and beverage staff showing that within the last two (2) years such person has been examined and has been found to be free of communicable tuberculosis. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the California Business and Professions Code or a notice from a public health agency or unit of the Tuberculosis Association which indicates freedom from active tuberculosis.

C. Days and Hours of Operation

LESSEE shall open the coffee shop for business each and every day. LESSEE shall open for business the on-course refreshment building on Saturdays, Sundays, holidays and on such additional days of heavy play as the City Manager deems necessary to serve the public demand. LESSEE shall submit for the City Manager's approval, a schedule setting forth hours of operation for both the coffee shop and on-course refreshment building. Any curtailment or decrease of this service is subject to the prior written approval of the City Manager. In addition, the cocktail lounge and the banquet/meeting rooms may, at the discretion of LESSEE, be available for catered events at times when the golf course is not open and it is not necessary to give first priority service to golfers. The banquet rooms shall be available for banquets, meetings and other events. LESSEE shall submit for City Manager's approval, a schedule setting forth hours of operation for the cocktail lounge, banquet rooms and the banquet sales office. Any curtailment or decrease of this service is subject to the prior written approval of the City Manager.

D. Food-and Beverage Products

LESSEE shall provide and maintain the necessary inventory of food and beverage products required to satisfy the public demand therefor. All such products sold or kept for sale by LESSEE shall be first class in quality, wholesome and pure, and shall conform to the Federal, State, County and CITY food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by LESSEE and all food and beverage products kept on hand by LESSEE shall be stored and handled with due regard for sanitation. In the event that LEESEE'S food and beverage products are deemed by the City

Manager to be less than first class in quality, said officer shall have the right to order the improvement of the quality of any such kept or offered for sale.

3.03 Golf Course Starter Services

A. Use Granted

1. LESSEE is hereby required to render and provide golf course starter services. Said services are to include, but not limited to: open and close Golf Course; collect greens fees; collect golf tournament fees; record of reservations from the telephone and from patrons at the course and the record same on starter sheets; place golfer's names on a call sheet as necessary; send golfers to the tee and start them off at proper intervals in groups of five, four, three and two, as applicable; receive requests from groups for tournaments, book tournaments and collect appropriate fees fifteen (15) days prior to tournament starting date; take all actions as necessary to speed play on course; enter all golfers names on the starter's sheet and issue a cash register receipt to each golfer as he pays his greens fee; total golf starter sheet at end of each day's play and reconcile with fee category totals on cash register detail tape; and record in the daily log book the number of rounds of play and total amount of cash collected by fee category. Totals from the daily log book on the number of rounds of play by fee categories shall be submitted to the City Manager on a weekly basis.

2. LESSEE acknowledges that major tournaments are currently and customarily held at Golf Course and agrees to continue to accommodate and encourage such tournaments and favorably consider suggestions for additional events intended to accommodate the public, increase golf play at the demised premises, and otherwise mutually benefit the parties hereto. LESSEE shall schedule reserved starting times for tournaments in accordance with established procedures as indicated in Exhibit B.

B. Marshalling

LESSEE shall implement a marshalling program developed to speed up play. The marshals shall be trained to assist as well as monitor the golfer and to expedite play on the course. LESSEE shall provide two (2) specially-designed golf carts and three (3) marshals (one (1) full-time and two (2) part-time). There will be one (1) marshal on week days and two (2) marshals on weekends and holidays.

1. Marshal

The marshal may be a paid employee. The marshal will work with the golf starter and be part of the golf shop team. He must be trained and easily identifiable on the course. CITY shall assist LESSEE with the initial training criteria and expertise for commencement of LESSEE'S marshalling program.

2. LESSEE must provide two (2) specially-designed golf carts that will be used only for marshalling. These carts will be maintained with the regular fleet. Said carts shall be signed with the word "Marshal" painted in letters on the front and rear.

3. Special Equipment follows: All carts are to carry special equipment as follows:

a. First aid kit and blanket
b. Scorecards and pencils
c. Golf rule book
d. Communication equipment (Walkie-Talkie)

4. Training

All marshals shall attend at least sixteen (16) hours of training including instruction in: CPR; basic first aid; rules of golf courtesy; CITY rules and how to assist the golfers; golf course local rules and conditions.

5. Identification

All marshals will wear a uniform consisting of specified color, shirt and hat. All marshals will carry identification cards.

C. Days and Hours of Operation

LESSEE shall keep the starter's office open every day, including Sundays and holidays. The minimum hours of operation shall be 5:30 a.m. to sunset on weekdays and 5:00 a.m. to sunset on weekends and holidays. Any changes in the days and hours for operation heretofore prescribed shall be subject to approval by the City Manager.

D. Starter Service Supplies/Equipment

LESSEE shall provide all necessary golf starter sheets, golf pencils and an adequate number of golf scorecards. All of the aforementioned items shall be in form and content acceptable to the City Manager. CITY shall provide to LESSEE an adequate number of golf cart rental receipts and senior citizen discount cards and stickers.

3.04 Building and Equipment Maintenance

A. LESSEE shall, at its expense, keep and maintain the premises and all building, structures, improvements, fixtures, trade fixtures, equipment and utility systems which may now or hereafter exist thereon, in good, operable, useable and sanitary order and repair and in a good, safe and first-class condition throughout the term of this Agreement, providing for such repairs, replacements, rebuilding and restoration as may be required by the City Manager to comply with

the requirements hereof. All such repairs and/or any modifications or additions to the facilities shall have the approval by the City Manager prior to their implementation by LESSEE.

B. Should LESSEE fail, after ten (10) days notice from CITY of the need thereof, to perform its obligations required hereunder, CITY in addition to all other available remedies may, but shall not be obligated to; exercise its Right-of-Entry as provided hereinafter in Section 24.01, enter upon the premises and perform Lessee's said failed obligations, using any equipment or materials on the premises suitable for such purposes. LESSEE shall forthwith on demand reimburse CITY for its costs so incurred including direct and indirect overhead costs as determined by the City Manager.

C. It is hereby understood and agreed by LESSEE that CITY does not have any duty nor shall it be called upon to make any improvements, replacements or repairs whatsoever to the premises and any structures, improvements, fixtures, trade fixtures, equipment and utilities during the term hereof.

3.05 Grounds Maintenance Service

A. LESSEE is hereby required to provide grounds maintenance services, including, but not limited to, the obligation to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, topdress, raise divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder; as well as to provide weed, disease and pest control, tree maintenance, maintenance or irrigation system including mainlines, pumps, boosters and controllers, keep swales in good repair and to provide the necessary maintenance of any appurtenant structures and equipment, and other duties as set forth in the Maintenance Standards attached as Exhibit C.

B. In regard to the level of maintenance, all work shall be performed in accordance with the highest golf course industry-wide maintenance standards at established frequencies so as to maintain the aesthetic level and proper playing condition of the golf course. Standards and frequencies may be modified from time to time as deemed necessary by the City Manager for the proper maintenance of this course.

1. Regularly scheduled inspections of the premises and of LESSEE'S operations authorized herein shall be made by CITY. The written report of such inspections shall be recorded, retained for reference, and forwarded to LESSEE upon request.

2. LESSEE shall provide and maintain in its employ a Golf Course superintendent and maintenance crew at the demised premises daily during normal working hours, as determined by CITY. All of LEESEE'S maintenance personnel shall be supervised by a Class "A" superintendent. LESSEE must employ sufficient personnel to perform all work as scheduled and required by CITY. All personnel shall be clean and neat at all times and wear appropriate clothing.

3. In regard to emergency services, LESSEE will provide CITY with the names and telephone numbers of at least two (2) qualified persons who can be called by CITY representatives when emergency maintenance conditions occur during hours when LESSEE'S normal work force is not present. CITY shall call for such assistance only in the event of a genuine and substantial emergency. This section does not pertain to conditions rendering the course unusable as otherwise set forth herein.

4. In regard to the Golf Course being out of operation, whenever play must be temporarily suspended on the Golf Course facility due to inclement weather conditions, the decision on when to allow play to resume, and when to allow golf carts to go out on the course, will be made by LESSEE.

5. LESSEE at its sole cost and expense shall furnish all necessary equipment, supplies and material of good quality and in sufficient number to fulfill the requirements of this Agreement and to accomplish an acceptable and professional level of maintenance. LESSEE shall secure the City Manager's approval of the type of each supply, material, or equipment prior to its use or installation on the Golf Course facilities. The list of items of equipment, supplies and materials shall include, but not be limited to:

a. All necessary gas, oil, and spare parts for all equipment.
b. All necessary seed, fertilizers, fungicides, insecticides, herbicides, and for greens.
c. Parts necessary for the repair and maintenance of all irrigation systems, and appurtenant equipment.
d. Tee towels, soap, ballwashers, putting green cups and flags, benches, trap rakes, tee markers, tee mats, trash receptacles, trash receptacle liners, cleat brushes, and all other pertinent golf course equipment.
e. Materials for the installation and maintenance of drains.
f. Silica sand for all greens traps and an acceptable substitute for fairway traps on an as-needed basis as determined by the City Manager.

3.06 Driving Range Operations

A. Use Granted

LESSEE shall keep the driving range open daily, including weekends and holidays, except during days of inclement weather. The maximum hours of operation shall be between 5:30 a.m. and 10:00 p.m. daily, unless approved otherwise by the City Manager.

4. **PAYMENT OF RENTAL**:

4.01 LESSEE shall pay CITY for the use granted herein a monthly amount that shall be equal to the greater of the sum of percentages of monthly gross receipts herein after provided or the monthly minimum amounts as set forth in Exhibit D.

4.01.01 The percentages to be used in the determination of said monthly payments are six percent (6%) of the monthly gross receipts from the sale, rental, repair and storage of golf equipment, clothing, manually operated golf carts and supplies: eleven percent (11%) of the monthly gross receipts from the sale of food and non-alcoholic beverages; eleven percent (11%) of the monthly gross receipts from the sale of alcoholic beverages; eleven percent (11%) of the monthly gross receipts from vending machine sales and/or commissions, sale of tobacco products, and any other miscellaneous sales; eleven percent (11%) of the monthly gross receipts from the rental of banquet and meeting rooms, and all ancillary food and beverage services and equipment related thereto, provided that CITY shall receive fifty percent (50%) of any payments to LESSEE under a subcontract for banquet and meeting room rental and services where LESSEE obtains a rental of the monthly gross receipts from the subcontractor in an amount greater than eleven percent (11%) of the monthly gross receipts herein; thirty percent (30%) of the monthly gross receipts from the driving range for the first $20,000 per month and thirty-five percent (35%) for any amount in excess of $20,000 per month; thirty percent (30%) of the monthly gross receipts from the rental of golf carts and golfmobiles for the first $40,000 per month and thirty-five percent (35%) for any amount in excess of $40,000 per month; thirty percent (30%) of the monthly gross receipts of all fees required to be collected including greens fees, tournament fees and/or fees for all other uses of the golf course for the first $150,000 per month and thirty-five percent (35%) for any amount in excess of $150,000 per month; six percent (6%) of the resale of golf balls retrieved from the golf course.

Beginning in the eighteenth year (2010) of the Agreement the following changes shall be effective for the next ten years of the Agreement (2019): Thirty-five percent (35%) of the monthly gross receipts from the driving range; thirty-five percent (35%) of the monthly gross receipts from the rental of golf carts and golf mobiles; thirty-five percent (35%) of the monthly gross receipts of all fees required to be collected including greens to modification as allowed for fees, tournament fees and/or fees for all other uses of the golf course; six percent (6%) of the resale of golf balls retrieved from the golf course. These rates will be subject to Section 4.02 of the Agreement.

4.01.02 There shall be credited against the monthly payments due herein an amount equal to the number of carts rented at the senior rate times the dollar difference between the senior cart rate and the regular cart rate; and the number of opposing team players who play without charge pursuant to EXHIBIT "B" times the applicable rate that would have been charged. LESSEE shall be responsible for accounting for and submitting to CITY the appropriate monthly credit amount.

4.02 Commencing with the sixth (6th) operational year, the monthly minimum amounts provided for herein shall be subject to readjustment on the anniversary date of the fifth operational year and at the end of every two (2) year period following said anniversary date for the remainder of the term herein provided. The adjusted monthly minimum amount shall never be less than the preceding operational year's monthly minimum amount. The adjusted monthly minimum shall be an amount equal to one-twelfth (1/12) of eighty percent (80%) of the percentage rental due over the preceding operational year. The words "percentage rental due" mean LESSEE'S liability for the operational year under review as determined by the calculation of rental due to CITY through the application of the percentages set forth in Section 4.01.01 over the operational year under review. Pending final resolution on this adjusted monthly minimum amount LESSEE shall pay on the basis of the actual percentage rental paid with any delinquency being paid and/or refund being credited at the time of the next succeeding calendar month's rental payment following the date of mutual agreement or final judgment. The adjusted monthly minimum shall be calculated by adding the percentage rental paid for the operational year under review, multiplying that amount by eighty percent (80%) and dividing the product by twelve (12).

4.03 The minimum monthly amount(s) provided for herein shall be subject to readjustment upon demand thereof by CITY within ninety (90) days next preceding the fifth (5th) anniversary date of this Agreement as provided in Section 4.03. Thereafter, rentals shall be subject to readjustment negotiation upon demand thereof by either party within ninety (90) days of the end of every two (2) year period following said anniversary date. Said minimum monthly amount(s) shall be a readjustment to take effect on the first day after the end of each biennial period succeeding said anniversary date, as the case may be. The City Manager shall prepare and execute, and LESSEE shall execute the agreement for readjustment and said document shall thereafter be incorporated into this Agreement.

4.04 Upon approval of this Agreement, CITY shall establish a Golf Course Capital Improvement Trust Fund. The Trust Fund shall be funded as provided in Section 4.05. in an amount to be paid by LESSEE. The Trust Fund shall name, and be administered by CITY as its sole trustee. Fifty (50%) percent of the distribution of monies deposited and any interest earned thereon shall be on CITY'S and LESSEE'S approved Capital Improvement Program as set forth in Section 6 herein and the remaining fifty (50%) percent shall be used as determined by CITY'S City Council.

4.05 In order to ensure the LESSEE'S performance of the Capital Improvement Program, commencing with the sixth (6th) operational year, LESSEE shall make a monthly Trust Fund payment to be deposited into the aforementioned Trust Fund. The Trust Fund payment, in an amount equal to five percent (5%) of the monthly gross receipts of greens fees, tournament fees and/or fees for all other uses of the golf course, shall be made whether the total monthly payment is the sum of percentages or the minimum amount due. Said Trust Fund payment shall be in addition to the monthly rental payments and shall be paid by separate check or draft and submitted with the monthly rental payment.

4.05.01 It is expressly understood by both parties that any and all distributions from said Trust Fund for golf course capital improvement projects and any interest thereon shall be used exclusively for Capital Improvements involving the golf course facilities. At the termination of this Agreement, all unexpended monies shall be retained by CITY.

4.06 When the City Manager and LESSEE find that a percentage of gross receipts are not suitable or applicable for a particular activity, not otherwise provided for herein, the City Manager may establish a minimum monthly amount and/or percentage of gross receipts as payment for a privilege of engaging therein. Said amount shall be set by mutual consent of the City Manager and LESSEE and shall be reasonable in accordance with the revenue to be generated therefrom. LESSEE agrees that no commercial advertising shall be permitted outside of the clubhouse and starter shack facilities unless such advertisement is previously approved by CITY'S City Council.

4.07 Payment shall be made to CITY on or before the fifteenth (15th) day of the calendar month following each month of the term provided for herein. Payment of the rent may be made on the first business day following the fifteenth (15) of the month when the fifteenth (15) falls on a weekend or City holiday. Payment shall be made by check or draft issued and payable to the City of Costa Mesa and received by the City's Finance Director, 77 Fair Drive, Costa Mesa, California 92626, or such other place as may hereafter be designated in writing to LESSEE. A late payment charge of two percent (2%) per month shall be added to any late payment that is received after the due date in which payment is due. However, the late payment charge herein provided may be waived whenever the City Manager makes written findings that the late payment is excusable by reason of extenuating circumstances. CITY shall not be obligated at any time during the term provided to notify LESSEE of the accumulation of late payment charges.

5. ACCOUNTING RECORDS

5.01 All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. Said cash register shall in all cases have locked-in sales totals and transactions counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash register, LESSEE shall record by hand all collections, and issue a sequentially pre-numbered customer's receipt in like manner. Under no circumstances shall LESSEE conduct sales where such sales are not recorded and customer receipts are not issued.

5.02 LESSEE shall be required to maintain a method of accounting, to the satisfaction of CITY, which correctly and accurately reflects the gross receipts, and disbursements, construction costs, and construction financing of LESSEE in connection with the authorized operations. The method of accounting, including bank accounts established for the authorized operations, shall be separate from the accounting system used for any other business operated by LESSEE or for

recording LESSEE'S personal financial affairs. Such method shall include the keeping of the following documents:

a. Regular books of accounting such as general ledgers.
b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
c. State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown which shall be kept in confidence by CITY.
d. Cash register tapes (daily tapes may be separate but shall be retained so that from day to day the sales can be identified), golf starter sheets and golf cart rental forms.
e. Any other reporting records that the Finance Director and/or City Manager deems necessary for proper reporting of receipts.

5.03 All documents, books and accounting records shall be open for inspection and reinspection at any reasonable time during the term of this Agreement and for four (4) years thereafter. In addition, CITY may from time to time conduct an audit and reaudit of the books and business conducted by LESSEE and observe the operation of the business so that accuracy of the above records can be confirmed. All information obtained in connection with CITY'S inspection of records or audit shall be treated as confidential information and exempt from public disclosure thereof to the extent possible under law.

5.04 In the event that an audit or review conducted by the Finance Director and/or City Manager finds that due to LESSEE'S non-compliance with its obligation to report gross receipts in connection with its operations authorized herein, an actual loss and/or a projected loss of revenue to CITY can be determined, the City Manager may, at his option, (1) bill LESSEE for said losses, said amount to be paid to CITY within thirty (30) days following billing therefor unless otherwise extended by the City Manager, and/or (2) use the Security Deposit as provided for herein; and/or (3) assess liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of LESSEE to correctly report gross receipts; and a projected loss of revenue due to CITY. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is $500.00 per day for each day of the loss period as determined by CITY, and that LESSEE shall be liable to CITY for liquidated damages in said amount.

5.04.01 Should the City Manager find that the additional rental payment due to CITY exceeds two percent (2%) of the total amount which should have been paid as determined by such review or audit and observation, and there being no reasonable basis for the failure to report and pay thereon, LESSEE shall also pay the cost of the audit as determined by CITY and pay any penalty heretofore provided for the delinquent payments.

5.05 LESSEE shall furnish the City Manager with a monthly gross receipts report showing the amount payable therefrom to CITY. Such a report shall accompany each monthly

payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of this Agreement. In addition thereto, LESSEE shall furnish the City Manager with monthly profit and loss statements and an annual profit and loss statement and a balance sheet prepared by a person and in a form acceptable to said City Manager. The monthly profit and loss statements shall be submitted with the monthly rental payment. The annual financial statement shall be submitted within sixty (60) days of the close of an Agreement year. Said closing date shall be determined by reference to the date for commencement of the term herein provided.

6. REQUIRED CAPITAL IMPROVEMENT PROGRAM

6.01 When requested by the City Manager, LESSEE shall prepare a Capital Improvement Program which shall indicate the description of each improvement project, the estimated improvement costs, and the projected time frame for commencement and completion of the improvement project to be mutually agreed upon by both parties. The City Manager and LESSEE may meet on an annual basis to determine additions, deletions or adjustments to the Capital Improvement Program. LESSEE is obligated to construct the agreed upon capital improvements by the completion date approved in the Capital Improvement Program allowing for the provisions in Section 6.03 and 6.05.

6.02 Prior to commencement of construction, LESSEE shall obtain the City Manager's written approval of all plans, specifications and construction cost estimates (minimum of three bids or proposals) for the improvements to be constructed upon the demised premises. No modification of said plans, specifications, or improvements, including landscaping, shall be made by LESSEE without approval thereof by the City Manager. LESSEE agrees that CITY may have on the site at any time during the construction improvement period an inspector who shall have the right of access to the premises and the construction work.

6.03 The parties agree that any delay in the construction due to fire, earthquake, war, labor dispute or other events beyond the control of LESSEE shall extend the time in which said construction must be completed by the length of time of such delay.

6.04 LESSEE shall construct, perform, complete and maintain all construction and installations covered by this Agreement in a good and workmanlike manner and with high quality materials, and shall furnish all tools, equipment, labor and material necessary to perform and to complete same. Upon completion of the improvements, LESSEE shall furnish the City Manager with one (1) complete set of as-built construction drawings on Mylar or its equivalent (all circuit breakers, mechanical equipment, switches, plumbing and fire sprinkler section and main valves shall be plainly labeled and a master index shall be provided); operating manuals for building equipment and systems; and copies of all written warranties. Upon termination of this Agreement whether by expiration of term or cancellation, LESSEE shall assign to CITY all express warranties furnished by other persons in connection with the provision of labor and/or material to the works of improvement covered by this Agreement. Upon review by and consultation with

CITY'S Risk Manager or City Attorney, LESSEE shall provide such insurance coverage as City Manager reasonably deem necessary for the contemplated construction project.

6.05 It is understood that the construction and/or improvements required herein may, at the discretion of LESSEE be constructed in phases, each phase being separated from the other by a period of time to be mutually agreed upon by LESSEE and the City Manager. Should the required construction be phased as herein provided, diligent prosecution thereof shall require commencement of each phase on or before the date selected for commencement thereof.

6.06 For capital improvements commenced in the fifth (5th) operational year and beyond of this Agreement and upon final approval by the City Manager of the plans, specifications and construction cost estimates for Capital Improvement(s), the City Manager will authorize the issuance of a warrant from the Capital Improvements Trust Fund to LESSEE in the amount of ninety percent (90%) of the construction cost estimate. Upon completion of such capital improvement(s) and acceptance thereof by the City Manager, said officer shall authorize the issuance of a warrant from the Capital Improvements Trust Fund to LESSEE in the amount of the remaining balance of the actual construction cost as verified by the City Manager.

7. **BONDS**

7.01 During any period of construction herein required or otherwise authorized, LESSEE shall provide a performance bond in an amount of not less than one hundred percent (100%) of the cost for the construction to be performed as evidenced by construction contracts for all required work, payable to the City of Costa Mesa and executed by a corporate surety authorized, to conduct business as a surety in the State of California and acceptable to the Risk Manager or City Attorney. The performance bond shall be deposited by LESSEE with the City Manager prior to the commencement of work on the capital improvements construction project. The condition of the bond shall be such that if LESSEE completes the required construction specified herein in accordance with approved plans and specifications and receives a permanent certificate of occupancy for the building, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect by LESSEE until said works of improvement have been accepted by the Risk Manager or City Attorney.

7.02 During any period of construction herein required or otherwise authorized, LESSEE shall provide a payment bond in an amount of not less than one hundred percent (100%) of the costs for the construction to be performed as evidenced by construction contracts for all required work, payable to the City of Costa Mesa and executed by a corporate surety authorized to conduct business as a surety in the State of California and acceptable to the Risk Manager or City Attorney. The payment bond shall be deposited by LESSEE with the City Manager prior to the commencement of work on the capital improvements construction project. The payment bond shall also inure to the benefit of all claimants, as said term is presently defined by Section 3085 of the California Civil Code, or may hereafter be amended, so as to give such claimants a right of action to recover thereon in any suit brought to foreclose the liens provided for in Title 15 of Part 4, of Division 3 of the California Civil Code or in a separate suit brought upon the bond. The

condition of the bond shall be such that if LESSEE shall well and truly pay, or cause to be paid, all claims for labor, materials, appliances, teams, or power, or either or all, performed, furnished, or contributed in connection with said works of improvement, then surety shall no longer be bound thereon. Said bond shall be maintained in full force and effect until all claims for labor, materials, appliances, teams, or power have been paid, as evidenced by release of mechanic's liens by all claimants.

7.03 The Risk Manager or City Attorney may accept in lieu of the bonds heretofore described, the performance and payment bonds of corporations duly authorized to issue surety bonds by the State, naming as principal a licensed contractor employed by LESSEE to construct works of improvement on the demised premises provided each bond is in an amount equal to the percentage herein above provided: names CITY as an additional obligee; contains terms and conditions substantially similar to the requirements heretofore specified; and is satisfactory to the Risk Manager or City Attorney as to sufficiency and liability of sureties named thereon.

7.04 The Risk Manager or City Attorney may also accept in lieu of the bonds heretofore described, the deposit and assignment to CITY of investment certificates and shares of a savings and loan institution provided the deposits are in an amount equal to the face value of the bonds and comply with the requirements, conditions and procedures prescribed for the assignment of such accounts by Costa Mesa Municipal Code.

7.05 LESSEE shall have the option to deposit with CITY cash or United States Government securities in all respects satisfactory to the Risk Manager or City Attorney in lieu of the surety obligations herein required. Said cash or securities shall be deemed deposited with CITY to secure full and satisfactory performance of the principal obligations heretofore described for which surety is required, and shall be released upon satisfactory performance thereof, as evidenced by certification of completion by the City Manager and release of mechanic's liens by all claimants. In lieu thereof, LESSEE may deposit the required amount in a bank whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) or a savings and loan institution whose deposits are insured under Title 4 of the National Housing Act (12 U.S.C. 1724 et seq.), provided the account is made payable to CITY on demand and the certificates of deposit is delivered to the City Manager. LESSEE shall be entitled to all interest on the deposit and to return of the certificate of deposit upon satisfactory performance as heretofore defined.

8. **OPERATING RESPONSIBILITIES**

8.01 Compliance with Laws

LESSEE shall conform to and abide by all CITY and county ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the golf course operation hereunder and/or any construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction thereover. LESSEE shall create, have on site, and make available to CITY or

other authorized governmental agencies upon request or as required by law a Business Emergency Plan, "Right-to-Know" book meeting the "Hazardous Material Communication" requirements to workers and employees (Material Safety Data Sheets), and Hazardous Material manifests.

8.02 Compliance with Rules and Regulations

LESSEE shall conform to and abide by all rules and regulations of the City Council and the City Manager insofar as the same or any of them are applicable. LESSEE shall conform to CITY'S Drug Free Workplace Policy, Policy No. 100-5, which is attached hereto and incorporated herein by this reference. Failure to establish a program, notify employees, or inform CITY of a drug related workplace conviction will constitute a material breach of this Agreement upon which CITY may immediately terminate this Agreement.

8.03 Disorderly Persons

LESSEE shall exercise every reasonable effort not to allow any loud, boisterous or disorderly persons to loiter about the demised premises.

8.04 Illegal Activities

LESSEE shall not knowingly permit any illegal activities to be conducted upon the demised premises.

8.05 Signs

LESSEE shall not post signs upon the demised premises or improvements thereon, unless prior written approval therefore is obtained from the City Manager.

8.06 Public Use

LESSEE shall use its best efforts to maximize the public use of Golf Course and the facilities thereon.

8.07.01 LESSEE'S Staff and Employment Practices

LESSEE shall maintain an adequate and proper staff. The City Manager may at any time give LESSEE written notice to the effect that the conduct or action of a designated employee of LESSEE is, in the reasonable belief of the City Manager, detrimental to the interest of the public patronizing the premises. Following City Manager's written notice therefor LESSEE shall, at City Manager's discretion: (1) terminate such employee's work assignment at the demised premises or (2) LESSEE shall meet with representatives of the City Manager to consider the appropriate course of action with respect to such matter and LESSEE shall take reasonable

measures under the circumstances to assure the City Manager that the conduct and activities of LESSEE'S employee will not be detrimental to the interest of the public patronizing the premises.

8.07.02 LESSEE shall establish an identification system for personnel assigned to the golf course starter service which clearly indicates to golf course patrons the name of the person(s) on duty and responsible for collecting greens fees. The identification system shall be furnished at the LESSEE'S expense and may include appropriate attire, name badges and/or name plates as specified by the City Manager.

8.07.03 LESSEE warrants that it fully complies with all laws regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). LESSEE shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. LESSEE shall retain such documentation for all covered employees for the period prescribed by law. LESSEE shall indemnify, defend, and hold harmless, the CITY, its officers and employees from employer sanctions and any other liability which may be assessed against LESSEE or CITY or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

8.08 Utilities

8.08.01 LESSEE shall provide for the transfer of all applicable utility accounts from CITY to LESSEE, and thereafter shall provide and pay for any necessary utilities at demised premises.

8.08.02 It is hereby acknowledged and agreed that the utility accounts transferred from CITY to LESSEE include utilities servicing portion of the CITY corporation yard utilized for the golf course, showers, restrooms and appurtenant equipment. LESSEE, at any time during the term of this Agreement, may install or cause to be installed separate metering equipment for said utilities. CITY shall thereafter assume the responsibility for payment of said utility costs not associated with the golf course.

8.08.03 All existing telephone numbers that identify Golf Course to the public at the commencement of the term of this Agreement shall be placed in the name of the LESSEE and shall not be changed or be transferable to any other location. LESSEE waives any and all claims against CITY for compensation for loss or damage caused by a defect, deficiency or impairment of any utilities system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the demised premises.

8.08.04 LESSEE acknowledges that the golf course will be required by CITY to be converted to an effluent water irrigation system over the term of this Agreement. LESSEE agrees to accept and cooperate with CITY in any study necessary for the delivery, storage and distribution of an effluent water irrigation system for the golf course facility. LESSEE agrees that funds from the Capital Improvement Trust Fund shall be used for the cost of the study, design and construction of delivery, storage and distribution facilities for an effluent water irrigation system for the golf course. LESSEE also agrees to comply with all applicable health regulations concerning the operation of an effluent water irrigation system at the golf course.

8.09 Sanitation

No offensive matter or refuse or substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health shall be permitted to remain on the premises and LESSEE shall prevent any accumulation thereof from occurring.

8.10 Security Devices

LESSEE may provide any legal devices, mechanism, or equipment designed for the purpose of protecting the premises from theft, burglary or vandalism, provided written approval for installation thereof is first obtained from the City Manager. All purchases and installation thereof shall be at LESSEE'S expense. During the last thirty (30) days preceding the termination of this Agreement, LESSEE shall remove same from the premises, other than for those items of personalty which have been furnished by CITY or have been so affixed that their removal therefrom cannot be accomplished without damage to the realty as determined by the City Manager.

8.11 Safety

LESSEE shall immediately correct any unsafe condition of the premises, as well as any unsafe practices occurring thereon. LESSEE shall obtain emergency medical care for any member of the public who is in need thereof, because of illness, or injury occurring on the premises. LESSEE shall cooperate fully with CITY in the investigation of any injury or death occurring on the premises, including a prompt report thereof to the City Manager.

8.12 Days and Hours of Operation

LESSEE shall keep the golf course open daily, including Sundays and holidays. The minimum hours of operation shall be the same as for the golf course starter office on each day said operation is required to be open. Any changes in the days and hours of operation heretofore prescribed shall be subject to approval by the City Manager.

8.13.01 Prices

LESSEE shall at all times maintain a complete list or schedule of the prices charged for all goods and services, or combinations thereof, supplied to the public on or from the demised premises. Said prices shall be fair and reasonable based upon the following considerations: that said operation is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied in the Orange County area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this Agreement. In the event the City Manager notifies LESSEE that the prices being charged are not fair and reasonable, LESSEE shall have the right to confer with the City Manager and justify said prices. Following reasonable conference and consultation thereon, LESSEE shall make such price adjustments as may be ordered by the City Manager. LESSEE may appeal the determination of the City Manager to the City Council, whose decision thereon shall be final and conclusive. However, LESSEE shall comply with the ordered price adjustment pending the appeal and final ruling thereon by the City Council.

8.13.02 CITY hereby reserves the right to establish the greens fees schedule and to establish the maximum allowable golf cart rental fees for patrons using the golf course. The greens fees shall be reviewed annually. Said fees shall be established by the City Manager after consulting with the LESSEE concerning the reasonableness of the profit margin and the cost of the operations under this Agreement. At the City Manager's request, LESSEE is to provide a survey of fees charged by comparable golf courses in the surrounding area. LESSEE may appeal the determination of the City Manager to the City Council, whose decision thereon shall be final and conclusive.

8.13.03 Only the categories of green fees as stated in the agreement may be adjusted and requests for the establishment of new categories of green fees may only be approved by action of both parties to this agreement.

8.14 Quality of Goods and Services

Services to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to CITY and is considered a part of the consideration for this Agreement. Therefore, LESSEE agrees to operate and manage, during the entire term of this Agreement, the golf course and facilities in a first-class manner, and comparable to other first-class golf courses providing similar facilities and services. Where such facilities are provided, LESSEE shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of other establishments in CITY golf courses and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. LESSEE, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the City Manager based on findings that the provision of such goods or services are harmful to the public welfare.

8.15 Use of Facilities: Restrictions

LESSEE shall obtain City Manager's prior written approval of (1) any events or activities not otherwise specifically provided for and authorized herein, or (2) any events or activities requiring the exclusive use of the demised premises or any portion thereof, including, but not limited to: Exclusive-Use Golf Tournaments; and use of facilities by Special Groups.

8.16 Reporting

The LESSEE or his representative shall meet with the City Manager or his representative once every four (4) weeks, and at such other times as may be required by the CITY to review LESSEE'S performance under this Agreement and to discuss any problems or matters as determined by CITY.

8.17 Trade Fixtures

LESSEE at its own expense shall provide and install all appliances, furniture, fixtures, equipment, door locks and padlocks that are required for the operation of the demised premises. Upon expiration of the term of this Agreement, as provided in Section 2, CITY agrees to require any subsequent lessee (other than LESSEE), who is leasing the demised premises "as is" for the purpose of operating a Golf Course, to purchase the aforesaid fixtures and equipment from LESSEE. The purchase price for such fixtures and equipment shall be fair market value as determined by one appraiser selected by both CITY and LESSEE.

8.18 Habitation

The premises shall not be used for human habitation, other than a night watchman or patrolman as approved by the City Manager.

8.19 Golf Clubs/Organizations

LESSEE acknowledges that at Golf Course there is presently organized, active and participating responsible golf organizations that have over long periods, been helpful to CITY in the operation and improvement of the golf course. Without granting any special privileges to any person or group, LESSEE agrees to encourage and cooperate with these organizations, and to consult with their authorized representatives on matters of mutual interest. Similarly, LESSEE agrees to encourage formation of such additional, responsible organizations by users of the golf facilities and to consult with them in the same manner.

8.20 Discounts and Starting Times

LESSEE shall comply with CITY'S current practice of limiting starting time intervals to no less than seven (7) minutes. Members of the Golf Clubs may be given preferred starting times

as mutually agreed upon between LESSEE and CITY'S City Council. Discounts on greens fees and complimentary play shall be provided by LESSEE as set forth in Exhibit B. Costa Mesa residents shall be allowed to make tee times one hour ahead of the general public at the beginning of the week for up to 50% of the starting times available in concert with the other applicable provisions in the agreement between MVP and City.

9. ADVERTISING AND PROMOTIONAL MATERIALS

9.01 LESSEE shall not promulgate nor caused to be distributed any advertising or promotional materials containing advertising of tobacco products or alcoholic beverages, and/or advertisements that display or depict any specified sexual activity or specified anatomical area which are obscene matters as defined in California Penal Code sections 311 through 312.5, inclusive, and determined by a court. Such materials include, but are not limited to: advertising in newspaper, magazines and trade journals, and radio and/or television commercials.

9.02 Credit in Promotional Materials

LESSEE agrees that any advertising or promotional materials promulgated by LESSEE which contain the words "Costa Mesa Golf Course" or any derivative thereof, shall also include the phrase "a unit of the City of Costa Mesa" unless specifically approved otherwise by the City Manager.

9.03 Sales of Advertising Space

LESSEE shall not offer for sale, rent, or lease any space on the demised premises or golf course equipment for advertising without the approval of the City's City Council. The CITY shall receive an agreed upon portion of any advertising revenue generated from the sale of advertising space.

10. DESTRUCTION OF DEMISED PREMISES

10.01 In the event the demised premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, LESSEE shall either restore the premises or terminate this Agreement. CITY shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. If the destruction is from a risk for which insurance coverage is not required or provided under said policy of insurance, CITY shall either restore the premises or terminate this Agreement. Said insurance proceeds, if any, shall be held for the benefit of LESSEE only in the event of an election by LESSEE to restore the premises and shall be disbursed in installments as construction progresses for payment of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the City Manager and release of mechanic's liens by all persons furnishing labor and materials thereon. If the proceeds of insurance are insufficient to pay the actual costs of restoration, LESSEE shall deposit the amount of the deficiency with the CITY upon demand therefor by the City Manager, and said sums shall be held for payment of said costs

and disbursed in the manner heretofore provided. Any undistributed funds shall be retained by CITY and credited to the rental reserved over the remaining term of this Agreement. If LESSEE elects to restore the demised premises, plans, specifications, and construction cost estimates for the restoration thereof shall be prepared by LESSEE and forwarded to City Manager for approval prior to the performance of any work thereon. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance by CITY. The required construction shall be performed by LESSEE and/or licenses and bondable contractor(s) thereof who shall be required to carry comprehensive liability and property damage insurance, workers' compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by CITY. Said construction shall be commenced promptly following the approval thereof by the City Manager, issuance of permits therefor by governmental agencies having jurisdiction thereover, and posting of the construction site by CITY with notice of nonresponsiblity, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes therein are approved in advance thereof by City Manager. LESSEE agrees that CITY may have on the site at any time during the construction period an inspector who shall have the right of access to the demised premises and the work occurring thereon. LESSEE, at the commencement of the construction work, shall notify City Manger in writing of the identity, place of business, and telephone number of responsible person(s) in charge of the construction to be occurring thereon. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, LESSEE shall immediately record a notice of completion with the Registrar-Recorder.

10.02 If the premises are restored, this Agreement shall continue in full force and effect, except that the payment to be made by LESSEE shall be abated and/or other relief afforded to the extent that the City Manager may determine the damage and/or restoration interferes with the golf course operation provided a claim therefor is filed with the City Manager within one hundred (100) days of notice of election to restore premises. Any such claim shall be denied if the destruction of the demised premises is found by the City Manager to have been caused by the fault or neglect of LESSEE. LESSEE agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the golf course operation, and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

10.03 LESSEE shall cooperate in the restoration of the demised premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

10.04 The aforesaid provisions for abatement and/or other relieve shall also be applicable to a total or partial destruction of the demised premises by the aforementioned causes, except that the relief to be provided shall be based upon the extent the City Manager may determine that the reduction in the public's use of the demised premises due to the partial or total closure thereof has affected the golf course operation.

10.05 LESSEE agrees to accept the remedy heretofore provided in the event of a destruction of the demised premises and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may hereafter be made available under the laws and statutes of this State.

11. CONSTRUCTION BY CITY AFFECTING DEMISED PREMISES

11.01 In the event CITY shall construct or cause to be constructed a new facility on the demised premises, this Agreement shall continue in full force and effect, except that the payments to be made by LESSEE shall be abated and/or other relief afforded to the extent that the City Manager may determine the construction interferes with the authorized operations, provided a claim therefor is filed with the City Manager within one hundred (100) days of the commencement of construction. LESSEE agrees that the provisions of Section 11 shall not apply to improvements constructed pursuant to the Initial Capital Improvements Plan or Capital Improvements Plan.

11.02 LESSEE agrees to cooperate with CITY in the event the construction affects the demised premises by vacating and removing therefrom all items of inventory trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. LESSEE further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

11.03 Following completion of the new facility, LESSEE shall resume its operations therefrom within thirty (30) days of written notice from the City Manager that the demised premises are tenantable.

11.04 The aforementioned provisions of this section shall also be applicable in the event of performance of work on the demised premises that requires a partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the City Manager may determine that the reduction in the public's use of the demised premises due to the partial or total closure thereof, has affected LESSEE'S operations.

11.05 LESSEE agrees to accept the remedy heretofore provided in the event of construction upon the demised premises, and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may be made available hereafter under the laws and statutes of this State.

12. INDEPENDENT CONTRACTOR

12.01 This Agreement is by and between the CITY and LESSEE and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between CITY and LESSEE.

12.02 LESSEE understands and agrees that all persons furnishing services to LESSEE pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of LESSEE and not of CITY.

12.03 LESSEE shall bear the sole responsibility and liability for furnishing and shall furnish Workers' Compensation benefits to any person for injuries from or connected with services performed on behalf of LESSEE pursuant to this Agreement.

13. SECURITY DEPOSIT

13.01 Prior to the commencement of the term of this Agreement, LESSEE shall pay to the CITY a sum equal to one (1) month's minimum rent as set forth in Exhibit D. In lieu thereof, LESSEE may deposit said amount in a bank whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), provided that a certificate of deposit is delivered to the City Manager giving CITY the exclusive right to withdraw any or all of said amount during the term of this Agreement. LESSEE shall be entitled to any and all interest accruing from said certificate of deposit.

13.01.01 Said sum shall serve as security for faithful performance of all covenants, promises and conditions assumed by LESSEE herein, and may be applied in satisfaction and/or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments; correction of maintenance deficiencies; securing required insurance; loss of revenue due to abandonment, vacation or discontinuance of golf course operations; completion of construction; and payment of mechanic's liens. Application of amounts on deposit in satisfaction and/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

13.01.02 In the event any or all said amounts is applied in satisfaction and/or mitigation of damages LESSEE shall immediately deposit such sums as are necessary to restore the security deposit to the full amount required hereunder.

13.01.03 Said sum shall be returned to LESSEE upon termination of this Agreement less any amounts that may be withheld therefrom by CITY as heretofore provided.

13.02 Additionally, LESSEE shall furnish to CITY a faithful performance bond in the sum of not less than a sum equal to two (2) month's minimum rent as set forth in Exhibit D payable to the City of Costa Mesa and executed by a corporate surety authorized to conduct business as a surety in the State of California. Such bond shall be satisfactory to CITY in all

respects and shall be conditioned upon the faithful performance by LESSEE of the terms and conditions of this Agreement and shall provide for continuing liability in the above amount. Provided, however, that the surety shall have the option to non-renew said performance bond on its anniversary date by giving CITY and LESSEE sixty (60) days prior notice of such non-renewal. The aggregated liability of said Surety on all claims whatsoever shall not exceed the penal sum of its bond.

13.02.01 The City Manager may also accept from LESSEE, in lieu of the bond heretofore described, the deposit of the required amount in a bank whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), provided the amount is made payable to CITY on demand and the certificate of deposit is delivered to the City Manager, or such other instrument such as an irrevocable letter of credit payable only to CITY and in form and content acceptable to the City Manager. LESSEE shall be entitled to all interest on the deposit and return of the certificate of deposit upon satisfactory performance as heretofore defined.

14. HOLD HARMLESS AND INDEMNIFICATION

14.01 LESSEE agrees to indemnify, defend and save harmless CITY, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with LESSEE'S operations or its services hereunder, including any worker's compensation suits, liability or expense., arising from or connected with services performed on behalf of LESSEE by any person pursuant to this Agreement. LESSEE'S duty to indemnify CITY shall survive the expiration or other termination of this Agreement.

15. INSURANCE

15.01 Without limiting LESSEE'S indemnification of CITY, LESSEE shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to CITY'S Risk Manager or City Attorney and evidence of such programs satisfactory to CITY shall be delivered to the City Manager on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that CITY is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance. Such insurance, with the exception of Workers' Compensation insurance, shall be primary to and not contributing with any other insurance maintained by CITY, and shall name CITY and its officers and employees as additional insured.

15.01.01 During the periods of time of normal operations and non-construction periods, LESSEE shall provide and maintain the following forms and amounts of insurance:

a. Liability: Comprehensive General Liability insurance endorsed for Independent Contractor, Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than FIVE MILLION DOLLARS ($5,000,000.00) per occurrence. If such insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than five years following termination of this Agreement.

b. Workers' Compensation: A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability with a $500,000 limit covering all persons providing services by or on behalf of LESSEE and all risks to such persons under this Agreement.

c. Property Coverage: (1) Real Property – All Risk insurance, including flood, for the full insurable replacement value with a deductible no greater than five percent(5%) for all risk related coverage, and (2) Personal Property Insurance for the actual cash value against the hazards of fire, theft, burglary, vandalism and malicious mischief.

15.01.02 During the period(s) of construction as required herein, LESSEE shall provide the following forms and amounts of insurance:

a. Builder's All-Risk Insurance: including flood coverage, covering the entire work, against loss or damage until completion and acceptance by the City Manager. Insurance shall be in an amount for the replacement value of the improvements and endorsed for broad form property damage, breach of warranty, explosion, collapse, and underground hazards. Deductibles not exceeding five percent (5%) of the construction cost will be permitted.

b. Comprehensive General Liability: insurance endorsed for Independent Contractor, Architect's Professional Liability, Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than Five Million Dollars ($5,000,000.00) per occurrence.

c. Comprehensive Auto Liability: endorsed for all owned and non-owned vehicles with a combined single limit of at least Three Hundred Thousand Dollars ($300,000.00) per occurrence.

d. Workers' Compensation: a program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with a $500,000 limit covering all persons providing services by or on behalf of LESSEE and all risks to such persons under this Agreement.

15.02 Failure on the part of LESSEE to procure or maintain required insurance shall constitute a material breach of contract upon which CITY may immediately terminate this Agreement.

15.03 Conduct of LESSEE'S operations shall not commence until LESSEE has complied with the aforementioned insurance requirements. Further, said operations, whether in whole or in part, shall be subject to suspension by the City Manager during any period that LESSEE fails to maintain said policies in full force and effect.

15.04 The specified amount of liability insurance required herein may be subject to renegotiation on an annual basis. Should either party request renegotiation with respect to the amount of liability insurance to be provided, the determination thereof shall be established through mutual negotiations between the parties. LESSEE shall continue to provide liability insurance in the amount currently being provided pending final renegotiation thereof in the manner heretofore provided.

15.04.01 Subsequent to such renegotiation as hereinbefore described, and with the concurrence of CITY'S Risk Manager and City Attorney, the City Manager shall prepare and execute, and the LESSEE shall execute, the appropriate amendment to this Agreement.

15.05 No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of LESSEE to furnish insurance during the term of this Agreement. At least thirty (30) days prior to the expiration of any such policy, a signed and complete certificate of insurance, with all endorsements required by this Section, showing that such insurance coverage has been renewed or extended shall be filed with the City Manager.

16. TAXES AND ASSESSMENTS

16.01 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereon, and in the event thereof, LESSEE shall pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the State, County, CITY or any other tax assessment-levying body upon the premises and any improvements located thereon.

16.02 LESSEE shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.

17. TRANSFERS

17.01 LESSEE shall not, without the prior written consent of the City Manager assign, hypothecate, or mortgage this Agreement or sublease or license any portion of the premises. Any attempted assignment, hypothecation, mortgage, sublease or license without the consent of the City Manager shall render this Agreement null and void.

17.02 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by LESSEE shall be binding upon any transferee thereof.

17.03 The operations herein authorized shall not be transferable, by testamentary disposition or the state laws of intestate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of LESSEE occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment. or execution against LESSEE or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against LESSEE, or by any process of law including proceedings under Chapter X and XI of the Bankruptcy Act.

17.04 Shareholders and/or partners of LESSEE may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of LESSEE to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, approval thereof shall be required. Consent to any such transfer shall only be refused if the City Manager finds that the transferee is lacking in experience and/or financial ability to render and provide services for the operation of the golf course.

17.05 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the City Manager.

17.06 In reference to Section 17.05 hereinbefore, the CITY'S consent with regard to successive transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure, pursuant to the terms of a deed of trust previously approved by CITY, shall not be unreasonably withheld.

17.07 In the event LESSEE shall request the prior written consent of City Manager to give, assign, transfer or grant control of this Agreement, and subsequently the City Manager gives written consent to the assignment, a transfer fee equal to one percent (1%) of the gross sales price shall be paid to CITY. Said sum shall be payable to CITY in full either within thirty (30) days after said consent is given or prior to the close of any escrow, whichever occurs first. Prior to the City Manager's consent to such assignment, the assignor (1) shall deliver to assignee a written schedule of all sums due and owing to CITY from the assignor with such schedule being in form and content subject to the approval of the City Manager in all respects and (2) shall deliver to the City Manager, as part of the acceptance of the assignment, a written acknowledgment by the assignee that the assignee (a) affirms the sums due and owing to CITY and (b) accepts responsibility for payment of such sums directly to CITY.

18. NON-DISCRIMINATION AND CIVIL RIGHTS COMPLIANCE

18.01 LESSEE hereby certifies and agrees that it will comply with Title VI of the civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans With Disabilities Act of 1991, Title IX of the Education Amendments of

1972, where applicable, and Title 43, part 17 of the Code of Federal Regulations Subparts A and B, to the end that no persons shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.

18.02 LEESEE certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; the State Fair Employment Practices Act and Americans With Disabilities Act.

18.03 LESSEE certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or handicap.

18.04 All employment records shall be open for inspection and reinspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of non-discrimination by LESSEE in the areas heretofore described.

18.05 If CITY finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which CITY may determine to cancel, terminate, or suspend this Agreement. While CITY reserves the right to determine independently that the non-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Department or the Federal Equal Employment Opportunity Commission that LESSEE has violated State or Federal non-discrimination laws or regulations shall constitute a finding by CITY that LESSEE has violated the non-discrimination provisions of this Agreement.

18.06 The parties agree that in the event LESSEE violates the non-discrimination provisions contained herein, CITY shall, at its option, be entitled to a sum of One Thousand Dollars ($1,000.00) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement. LESSEE further agrees that One Thousand Dollars ($1,000.00) is a reasonable sum under all of the circumstances existing at the time of the execution of this Agreement.

19. **EASEMENTS**

19.01 CITY reserves the right to establish, grant or utilize easements or rights-of-way over, under, along and across the demised premises for utilities and/or public access to the demised premises provided CITY shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive LESSEE of the use of a portion of the premises, an

abatement of payments shall be provided in an amount proportional to the total area of the premises in the before and after conditions.

20. CANCELLATION

20.01 Upon the occurrence of any one or more of the events of default hereinafter described, this Agreement shall be subject to cancellation. As a condition precedent thereto, the City Manager shall give LESSEE ten (10) days notice by registered or certified mail of the date set for cancellation thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made therefor.

20.02 Upon cancellation CITY shall have the right to take possession of the premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

20.03 Action by CITY to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

20.04 Any trustee, beneficiary, mortgagee or lender (hereinafter: Lender) under a hypothecation or mortgage previously approved by the City Manager all have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a cancellation of this Agreement and a forfeiture of the operation. Accordingly, the City Manager shall send a copy of any intended cancellation of this Agreement to any of the aforementioned parties whose security would be affected thereby; and upon request thereof for postponement, extend the date set therefor by such time as the City Manager finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new LESSEE under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the City Manager.

20.05 In reference to Section 20.04 of this Agreement, the City Manager shall provide a notice of default to Lender, provided that such Lender shall have previously registered with the City Manager by written notice specifying the name and address of said Lender, at the same time the City Manager provides such notice to the LESSEE. With regard to monetary defaults and other non-monetary defaults which are curable by Lender, the City Manager shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and within a reasonable time after the expiration of LESSEE'S curative periods to cure the defaults as provided in Section 21., commences promptly to pay or to institute foreclosure proceedings to foreclose the deed of trust and proceeds with the due diligence thereafter to prosecute such proceedings to a conclusion or to cure the defaults. With regard to defaults which cannot be cured by Lender, the City Manager shall not terminate this Agreement so long as Lender, after receiving notice of such defaults and with a reasonable time after the expiration of the LESSEE'S curative periods to cure the defaults as provided to in Section 21., institutes promptly for foreclosure proceedings to

foreclose the deed of trust and proceeds with due diligence thereafter to prosecute such proceedings to a conclusion. In the event that this Agreement is rejected by a trustee in bankruptcy due to LESSEE'S bankruptcy, CITY shall provide to Lender or its assignee an option to enter into a new lease agreement with CITY upon the same terms and conditions as are contained in this Agreement and for the balance of the term thereof.

21. EVENTS OF DEFAULT

21.01 The abandonment, vacation or discontinuance of golf course operations on the demised premises for more than twenty-four (24) consecutive hours.

21.02 The failure of LESSEE to punctually pay or make the payments herein when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.

21.03 The failure of LESSEE to operate in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the City Manager to correct the condition therein specified.

21.04 The failure to maintain the premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than ten (10) days after written notice from the City Manager for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and LESSEE shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City Manager.

21.05 The failure of LESSEE to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the City Manager for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and LESSEE shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City Manager.

21.06 The filing of a voluntary petition in bankruptcy by LESSEE; the adjudication of LESSEE as a bankrupt; the appointment of any receiver of LESSEE'S assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of LESSEE under any Federal Reorganization Act, including petitions or answers under Chapters X or XI of the Bankruptcy Act; the occurrence of any act which operates to deprive LESSEE permanently of the rights, powers and privileges necessary for the proper conduct and operation of the golf course; the levy of any attachment or execution which

substantially interferes with LESSEE'S operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

21.07 Determination by the City Manager, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by LESSEE in violation of state and/or federal laws thereon.

21.08 Transfer of the majority controlling interest of LESSEE to persons other than those who are in control at the time of the execution of this Agreement without approval thereof by the City Manager.

21.09 LESSEE'S material misrepresentation of fact(s) in its "Affidavit to Accompany Proposals", which was required to be submitted in response to the Request For Proposals", which was to be submitted in response to the Request for Proposals used in the solicitation process for this Agreement, and which by this reference is incorporated herein as if fully set forth.

21.10 Failure to have submitted schematic plans and/or working drawings on or before the date(s) designated in this Agreement for submission thereof.

21.11 Failure to have commenced required construction or any phase thereof on or before the date designated in this Agreement for commencement thereof.

21.12 Failure to have completed construction on or before the date designated in this Agreement for completion thereof.

22. DEFAULT FOR INSOLVENCY

22.01 CITY, through its City Manager, may immediately terminate this Agreement for default in the event of the occurrence of any of the following:

(a) The City Manager determines that LESSEE is insolvent. LESSEE shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether insolvent within the meaning of Federal Bankruptcy Law or not.

(b) The appointment of a Receiver or Trustee for LESSEE.

(c) The execution by LESSEE of an assignment for the benefit of creditors.

22.02 The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

22.03 Any discretion vested in the City Manager pursuant to the provisions of Section 22.01 shall be reasonably exercised.

23. WAIVER

23.01 Arty waiver by CITY of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or` agreement herein contained, nor shall failure on the part of CITY to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping CITY from enforcing the full provisions thereof.

23.02 No delay, failure, or omission of CITY to re-enter the premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

23.03 No notice to LESSEE shall be required to restore or revive "time of the essence" after the waiver by CITY of any default.

23.04 No option, right, power, remedy or privilege of CITY shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, privileges and remedies given CITY by this Agreement shall be cumulative.

24. RIGHT-OF-ENTRY

24.01 Should LESSEE be deemed deficient, as determined by City Manager, in its performance of its obligations required hereunder, CITY in addition to all other available remedies may, but shall not be so obliged, enter upon the premises and correct LESSEE'S deficiencies using CITY forces, and equipment and materials on the premises suitable for such purposes, or by employing a separate private contractor. CITY'S costs so incurred, including direct and indirect overhead costs as determined by the City Manager, shall be reimbursed to CITY by LESSEE and/or its sureties within thirty (30) days of demand thereof.

24.02 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours, LESSEE hereby irrevocably appoints CITY as an agent for continuing operation of the services granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the premises, including all improvements, equipment and inventory thereon; and (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of LESSEE; and (3) sublease or license the premises; and (4) after payment of all expense of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from LESSEE'S breach of this Agreement. Entry by the officers and employees of CITY upon the premises for the purpose of exercising the authority conferred

hereon as agent of LESSEE shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

25. SURRENDER

25.01 Upon expiration of the term hereof, or cancellation thereof as herein provided, LESSEE shall peaceably vacate the premises and any and all improvements located thereon and deliver up the same to CITY in a reasonably good condition, ordinary wear and tear expected, subject to the right of CITY to demand removal thereof to the extent that paragraph 1.06 may be applicable thereto.

25.02 Upon expiration of the term of this Agreement, LESSEE shall execute and deliver to CITY within thirty (30) days after service of written demand, a good and sufficient quitclaim deed of the LESSEE'S interest in this Agreement and the demised premises. Should LESSEE fail or refuse to deliver to CITY a quitclaim deed as aforesaid, a written notice by CITY reciting the failure of the LESSEE to execute and deliver the quitclaim deed, shall after ten (10) days from the date of recordation of the notice be conclusive evidence against LESSEE and all persons claiming under LESSEE of the termination of this Agreement.

26. INTERPRETATION

26.01 This Agreement shall be interpreted according to the rules which govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code commencing with Section 1635.

26.02 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.

26.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

"City Manager": City Manager or his designee.
"State": The State of California.
"Finance Director": Finance Director of the City of Costa Mesa.
"Golf Course Operation": The privilege of engaging in the activities authorized herein on the public property designated therefor.
"Beverage": Any liquid prepared by flavoring, heating and/or admixing in advance of consumption thereof, including alcoholic beverages as defined in the State Alcoholic Beverage Control Act.
"Capital Improvement": Any construction project which extends the useful life and/or increases the capacity of the golf course facilities. For the purposes of this Agreement, weeding and replacement or renovation of sod or grass shall not be considered a capital improvement with the exception that weeding and replacement or renovation of sod or grass which occurs as part of the Initial Capital Improvements Program may be considered to be a capital improvement

"Building Official": CITY'S Director of Development Services, his authorized representative, or his successor in interest.

"Gross Receipts": Except as specifically provided by policy statement issued by the City Manager, the term "gross receipts" as used in this lease, is defined to be all money, cash receipts, assets, property or other things of value, including but not limited to: gross charges, sales, rentals, fees, gratuities and commissions made or earned by LESSEE and/or all the assignees, sublessees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted, or performed in whole or in part, on the premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise. Gross receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even through the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

26.03.01 Except as specifically provided below or by written policy statement issued by the City Manager, there shall be no deduction from gross receipts for any overhead cost or expense of operations, such as, but without limitation to salaries, wages, commissions, gratuities, costs of goods, interest, debt amortization, credit, collection costs, discount from credit card operations, insurance and taxes. Bona fide bad debts actually incurred by LESSEE or its sublessees, assignees, licensees, concessionaires and permittees may be deducted from gross receipts. There shall however, be no deduction for bad debts based on past experience or transfers to a bad debt reserve. Subsequent collection of bad debts previously not reported as gross receipts shall be included in gross receipts at the time they are collected.

26.03.02 Except as specifically provided below or by written policy statement issued by the City Manager, gross receipts reported by LESSEE and its sublessees, assignees, licensees, concessionaires and permittees, must include the full usual charge for any services, goods, rentals or facilities provided by LESSEE or its sublessees, assignees, licensees, concessionaires or permitees. Gross receipts shall not include the following: free and discounted meals at the discretion of the concessionaire, direct taxes imposed upon the consumer and collected therefrom by LESSEE such as, but not limited to, Federal, State, or Municipal retail sales taxes, or related direct taxes, which are direct taxes paid periodically by LESSEE to a governmental agency accompanied by a tax return statement; receipts from fees or charges made for golfing instructions; receipts derived from the rental of golfmobiles which are leased by LESSEE specifically for tournament purposes but not to exceed the cost to LESSEE of leasing such golfmobiles; receipts from entry fees or charges made for special tournaments.

26.03.03 The City Manager, by written policy statement consistent with recognized and accepted business and accounting practices, upon consultation with LESSEE, and with the approval of the Finance Director and City Attorney, may further interpret the term "gross receipts" as used in this Agreement.

26.04 In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule between the Lease Agreement and the exhibits attached hereto,

said conflict or inconsistency shall be resolved by giving precedence in the following priority order: first to the Agreement; then to the Exhibits to the Agreement.

27. FORCE MAJEURE/TIME EXTENSIONS

27.01 Except as otherwise specifically provided hereinbefore, and in the event either party hereto shall be delayed or prevented from performance of any act required hereunder by reason of Acts of God, litigation to which LESSEE is not a plaintiff, or other cause without fault and beyond control of the party obligated, performance of such act shall be excused for the period of time of the delay as determined by the City Manager. An extension of time for any such cause shall only be for a period of time equivalent to the enforced delay. LESSEE'S inability to obtain financing shall not be grounds for an extension of time. City Manager shall prepare and execute, and LESSEE shall execute the appropriate document acknowledging any extension of time granted pursuant to this section.

28. LESSEE'S NON-COMPLIANCE AND LIQUIDATED DAMAGES

28.01 If the City Manager determines that there are deficiencies in LESSEE'S performance of the golf course operations authorized and required herein, the City Manager will provide, as specified in Sections 21.02, 21.03 and 21.04 (Events of Default) herein, a written notice to the LESSEE to correct said deficiencies within specified time frames, except for the repair of leaking valves which must be corrected within twenty-four (24) hours following notification.

28.02 In the event that LESSEE fails to correct the deficiencies within the prescribed time frames the City Manager may, at his option; (1) use the Security Deposit as provided for herein, (2) exercise its rights under paragraph 24.01 (Right-of-Entry) herein, and/or (3) assess liquidated damages pursuant to the schedule hereinafter listed.

28.02.01 The parties agree that it will impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the LESSEE to comply with the obligations for golf course operations herein required, authorized, and specified in Sections 3.01 (Golf Professional Services); 3.02 (Food and Beverage Services); 3.03 (Golf Starter Services); 3.04 (Building and Equipment Services Maintenance); 3.06 (Driving Range Operations); 9. (Operating Responsibilities); and Exhibit B (Golf Course Manual). The parties hereby agree that under the current circumstances a reasonable estimate of such damage is $250.00 per day for each day of the period of time that the deficiencies exist, and that LESSEE shall be liable to CITY for liquidated damages in said amount.

28.02.02 The parties further agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the LESSEE to comply with the obligations for demised premises grounds maintenance required and herein as specified in Section 3.05. The parties hereby agree that under the current circumstances a reasonable estimate

of such damages is $500.00 per day for each day of the period of time that the deficiencies exist, and that LESSEE shall be liable to CITY for liquidated damages in said amount.

29. GOLF COURSE EVALUATION REPORT

29.01 CITY and LESSEE agree that the overall condition and playability of the golf course, the quality of service provided by LESSEE, and the condition of the buildings thereon is of the primary importance to both parties. As this Agreement specifies, the standards of performance deemed necessary for proper maintenance and services, CITY will develop a Golf Course Evaluation Report to document LESSEE'S performance pursuant to said standards.

29.02 CITY'S Golf Course Evaluation Report will be completed by an authorized representative(s) of the City Manager after an inspection of the golf course by said representative(s). CITY shall make every reasonable effort to conduct such inspections on a regular basis and LESSEE or his authorized representative will be invited to participate in the inspection tour of the premises. On or before the third (3rd) anniversary of this Agreement and each three (3) years thereafter, CITY will present a Golf Course Evaluation Report to LESSEE based on the inspections conducted of the golf course for the preceding time period. LESSEE may provide comments to CITY on the Golf Course Evaluation Report prior to CITY'S City Council consideration of such report. The City Manager shall present the Golf Course Evaluation Report in a public hearing to CITY'S City Council within a reasonable time after providing the report to LESSEE. The Golf Course Evaluation Report may be accepted or modified by City Council based on evidence received at the public hearing. The Golf Course Evaluation Reports may be considered by City Council in determining whether to grant or deny LESSEE'S application for the extension of the term of this Agreement pursuant to Section 2.03.

29.03 The City Manager reserves the right to modify, update, and/or amend the general content and format of the Evaluation Report forms in order to provide for a suitable instrument for the documentation of LESSEE'S performance.

30. NOTICES

30.01 Any notice required to be given under the terms of this Agreement or any law applicable thereto may be: (1) delivered by personal service; or (2) placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, return receipt requested, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. The address to be used for any notice served by mail upon LESSEE shall be as indicated on signature page or such other place as may hereafter be designated in writing to the City Manager by LESSEE. Any notice served by mail upon CITY shall be addressed to the City Manager, 77 Fair Drive, Costa Mesa, California 92626, or such other place as may hereafter be designated in writing to LESSEE by the City Manager. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

31. SEVERABILITY

31.01 If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

32. CONTRACT ENFORCEMENT AND AMENDMENTS TO THIS AGREEMENT

32.01 The City Manager shall be responsible for the enforcement of this Agreement on behalf of CITY and shall be assisted therein by those officers and employees of CITY having duties in connection with the administration thereof.

32.02 Any officers and/or authorized employees of CITY may enter upon the demised premises at any and all reasonable times for the purpose of determining whether or not LESSEE is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of CITY within the demised premises.

32.03 In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs incurred in the action brought thereon.

32.04 This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by LESSEE and in the case of CITY, unless otherwise specifically authorized hereinbefore, until executed by the Mayor of CITY.

33. ENTIRE AGREEMENT

33.01 This document, and the exhibits attached hereto, constitutes the entire agreement between CITY and LESSEE for the Golf Course operations and use granted herein. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the golf course operation and the demised premises to be used in the conduct thereof.

IN WITNESS WHEREOF LESSEE has executed this Agreement, or caused it to be duly executed, and CITY, by order of its City Council, has caused this Agreement to be executed on its behalf by the Mayor of CITY and attested by the City Clerk of CITY on the day and year first above written.

CITY OF COSTA MESA
"CITY"

By:_____
Allan R. Mansoor, Mayor

Date: _____

ATTEST:

By:_____
City Clerk

APPROVED AS TO CONTENT:

By:_____
Recreation Manager

MESA VERDE PARTNERS
"LESSEE"

By:_____
General Partner

Date: _____

APPROVED AS TO FORM:

By:_____
Kimberly Hall Barlow,
City Attorney

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.

2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:

   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

   B. Establishing a Drug-Free Awareness Program to inform employees about:

      1. The dangers of drug abuse in the workplace;

      2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;

      3. Any available drug counseling, rehabilitation and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;

D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;

F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:

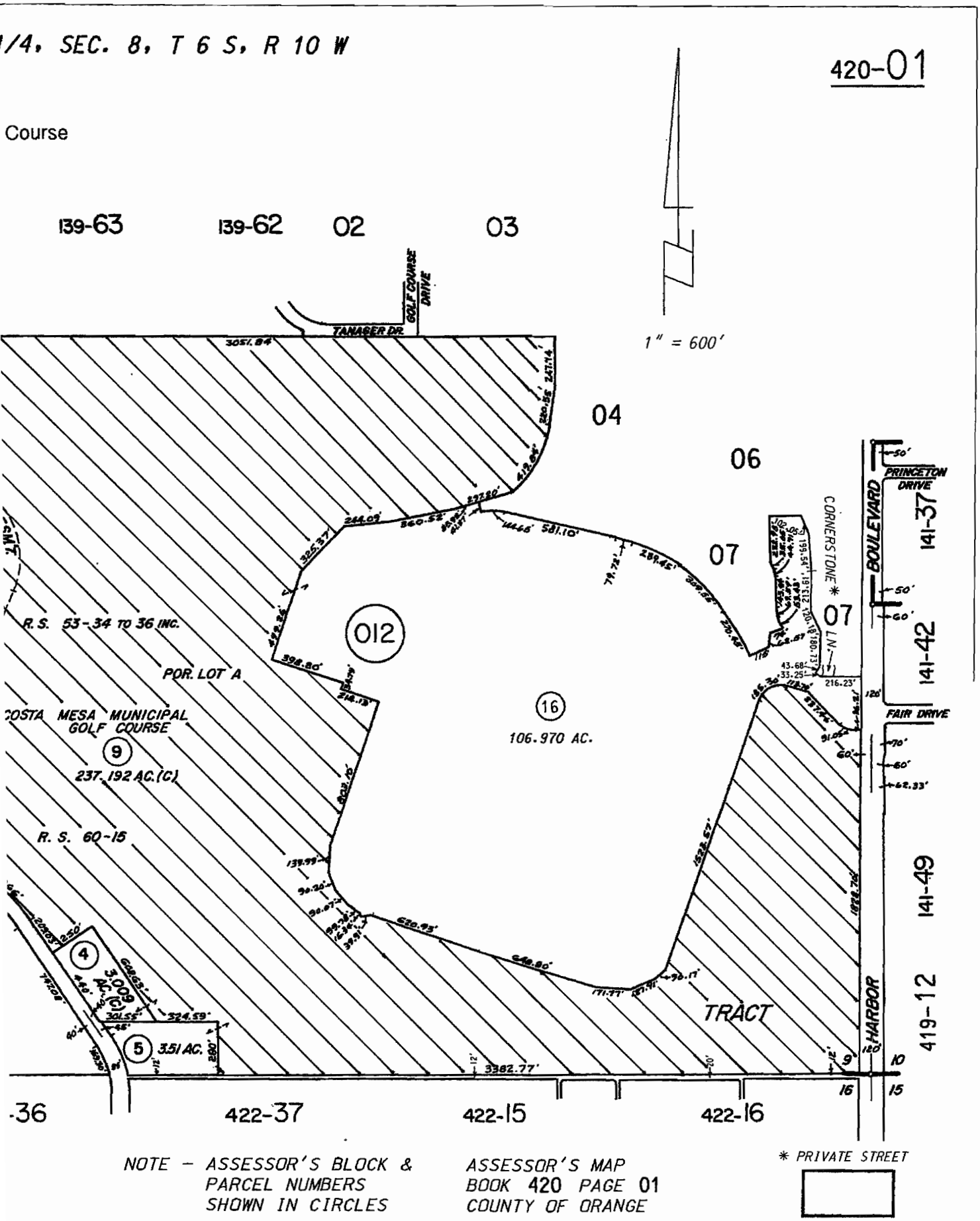
A. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;

B. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;

C. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

EXHIBIT A



NOTE – ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 420 PAGE 01 COUNTY OF ORANGE

EXHIBIT A.01

Costa Mesa Corporation Yard areas utilized by Mesa Verde Partners (Lessee) for Golf Course operations:

Building A – 1 Office - 12' x 12'

Building B – General repair/storage – indoor area approximately 3,450 sq. ft.

Covered outdoor storage – gated parking area with roof: 2,800 sq. ft.
Uncovered outdoor storage – 7 equipment parking spaces: 2,700 sq. ft.

Fuel Tank in bulk material storage bin: 225 sq. ft.

Mesa Verde Partners (Lessee) has shared use with City staff of the following Costa Mesa Corporation Yard areas/items:

Use of Building A restrooms and lunchroom
Use of City roll-off waste bin for golf course generated refuse disposal
Use of City vehicle wash area
Use of City steam cleaning area near the Fleet Services work area
Employee parking lot
Water, electricity and telephone (two lines) at no additional charge

EXHIBIT B

GOLF COURSE MANUAL

A. General:

1. The following activities are prohibited on the CITY golf course grounds or facilities as authorized by the City Manager (or in the case of the Concessionaire, by their contract) :

    a. Storage of private or personal property.
    b. Solicitation of any kind.
    c. Circulation or posting of handbills, petitions, advertising matter, promotional material and literature.
    d. Selling of any goods, ware, or merchandise.
    e. Carrying or discharging any firearm, air gun, sling shot, or fireworks of any kind.
    f. Use of the golf course for any other purpose than to play golf in the accepted manner.

2. Alcoholic beverages or soft drinks may be taken on the golf course, only if purchased from authorized concession facilities.

3. Throwing trash (paper cups, candy wrappers, etc.) anywhere on the golf course is prohibited.

4. It shall be unlawful for any person to loiter, linger, or loaf on the premises of any CITY golf course, and unauthorized persons are not permitted.

5. Dogs, cats, or other animals shall not be brought on the golf course under any circumstances.

6. Picnicking or recreational play, other than golf, is prohibited.

7. Overnight or day camping is not allowed on any part of the golf course.

8. Cars must be parked in designated parking areas only.

9. Reserved parking may be provided for the Golf Course Manager, Starters, Golf Professional, and Clubhouse Concessionaire, within the Clubhouse parking area.

10. If necessary, the local City Police Department may be called upon for assistance in enforcing these regulations.

11. Golf Starter shall not accept tips or gratuities.

B. Dress Code:

1. Swim trunks, bathing suits or robes are not allowed in the Clubhouse or on the golf course.

2. Shirts must be worn at all times.

3. Undershirts, tank tops, or halter tops are not allowed.

4. Short shorts, cutoffs, and jogging shorts are not acceptable.

5. Shoes worn on the golf course must be appropriate for golf.

C. Golf Play:

1. United States Golf Association (U.S.G.A.) Rules of Golf and posted local rules will govern play at all times.

2. No play is allowed on any golf course which has been closed for any reason by the Golf Course Manager or his designated representative.

3. All players must be registered with the Starter before playing any part of the golf course.

4. All players must have a current cash register receipt or a valid daily ticket in their possession during play.

5. Practicing anywhere on the golf course at any time is prohibited. Players must use the driving range, putting green, or other designated practice facilities.

6. Unless prior permission is given, golfers will tee off only between the tee markers.

7. Holes must be played in sequence and a golfer in the wrong fairway must give way to players playing that hole.

8. No more than one golfer shall play out of one bag. Each player must have his/her own set of clubs.

9. It is the responsibility of each player to replace divots, rake and smooth traps, and repair ball marks or other damage on the greens.

10. Players must play without delay, and keep their place on the course or allow following players to play through.

11. The City Manager reserves the right to cancel playing permits for individuals or organizations using CITY golf course facilities if at any time conditions justify such action.

12. Golfers may be refused playing privileges or they may be removed from the golf course for:

    a. Submitting false information for purpose of securing golf privileges.
    b. Playing golf without purchasing a greens fee ticket or registering with the Starter.
    c. Obvious inability to play golf and to maintain their position on the course.
    d. Intoxication, disorderly conduct, use of abusive or profane language, or other behavior detrimental to the normal and orderly operation of the golf course.
    e. Failure to comply with the existing rules and regulations governing golf play, practice, operation of golf cars or pull carts, personal conduct, and appropriate dress.

D. <u>Golf Cars and Hand Carts</u>:

1. <u>General Information</u>:
    a. Golf cars will be available for rental through the concessionaire.
    b. Golf cars are not permitted on the tees or the putting greens.
    c. During inclement weather when the golf course is wet, frozen, or muddy, golf cars will not be allowed on the course. The decision as to when the golf cars are restricted will be made by the Golf Course Manager or his designated representative.
    d. No more than two bags and two riders are permitted on a golf car at any time.
    e. Golf cars must be kept at least thirty (30) feet from greens and tees, and at least ten (10) feet away from sand traps when not on a paved cart path.
    f. Hand carts must not be taken over aprons, greens, tees, sand traps, or other areas between the green and traps surrounding the green.
    g. Carts of any king should not be driven or pulled through wet or muddy areas or over sprinkler heads.
    h. It is the responsibility of every golfer to be familiar with and to comply with the rules and regulations covering the use and operation of golf cars. Failure to observe such rules and regulations could result in the denial of golf car use and/or playing privileges.

E. <u>Closing Golf Course</u>:

1. The Golf Course Manager (or his designated qualified representative) is responsible for decisions concerning temporary or all day closing of any CITY golf course. In making such decision, due consideration will be given to the welfare of the general public and to potential revenue losses for CITY and operating concessionaire.

2. Before a final decision is made to close the golf course because of frost, frozen greens, rain or other unusual conditions, the Golf Course Manager will make a thorough inspection of the playing area. If it is determined that use of the playing area will cause excessive or permanent damage which cannot be readily repaired by assigned personnel, the golf course will be closed temporarily or all day as circumstances dictate.

3. The Golf Course Manager will notify the Starter on duty to delay opening or to close the course temporarily or all day. If possible, this notification should be

made prior to Starter opening time. The Starter will immediately notify all golf course personnel and the golfing public of the closure decision.

4. If the golf course has been closed temporarily, the Golf Course Manager shall remain in the area until the course is opened or until final determination has been made that it will remain closed all day.

5. If the golf course is kept open during or after a rain or other inclement weather, the Golf Course Manager will advise the Starter as to whether or not golf cars and/or hand carts are to be permitted on the golf course. If conditions warrant, the "Play Winter Rules" sign will be posted at the Starter desk.

6. Any decision to close the golf course on a weekend day or holiday shall be reported to the City Manager on the next regular working day.

7. "Policy for Inclement Weather":
   a. A waiting list for open golf will not be started until the course opens.
   b. During the time the course is closed and a reservation is canceled, players will be informed that their names will be placed on a standby list which will go into effect when the course opens for play.
   c. When the course opens, the players waiting for open play may be added to the standby list.
   d. When the course opens, all players on the standby list will be offered the opportunity to play the back nine, time permitting.
   e. When the course opens for play, starting times for that particular time and later times will be honored. All previous times will be cancelled.
   f. Reservations will automatically be cancelled when inclement weather results in a course too wet to play.
   g. Refunds will not be granted to players who are on the course when rain begins to fall. If it is raining or a player has an emergency prior to the start of play, the Starter may return any fees paid.

F. Refunds and Rain Checks:

1. There are no refunds or "rain checks" after play has commenced. Starters will post "No Rain Check" signs at the Starter's desk.
2. A player receiving a refund under the policies of this manual must surrender his/her cash register receipt to the Starter on the same day the greens fee was collected. The Starter will void the receipt and have the player sign it to indicate that he/she received the refund. The Starter will record the reason for the refund on the receipt, enter in "variations" and attach it to the starter sheet.

G. Holiday Schedule:

1. New Year's Day
2. Martin Luther King Jr. Birthday
3. Presidents' Day
4. ~~Cesar Chavez Day~~
5. Memorial Day
6. Independence Day
7. Labor Day
8. ~~Columbus Day~~
9. Veterans' Day
10. Thanksgiving Day
11. Friday after Thanksgiving
12. Christmas Day
13. Such other holidays as may be determined and mutually agreed upon by the City and MVP.

H. Green Fees:

Regular

1. Patrons using CITY golf courses will be charged greens fees in compliance with the fee schedule approved by the City Manager. Green fees are subject to annual review pursuant to the terms stated in the Agreement between MVP and City of Costa Mesa.
2. Since green fees are subject to change, current greens fees shall be maintained and posted in a conspicuous location.
3. A full 9 or 18 hole green fee must be paid by all golfers even though a full round is not completed.

Categories

1. Green fee categories shall be established by mutual consent of the City of Costa Mesa and MVP.

I. Complimentary Play and Discounts:

The purpose of complimentary or discount play is to afford approved individuals the opportunity to play the golf course. When granting complimentary or discount golf, the golf course starter will record the player's name and cash register number on the starter sheet. In addition, in the variation section on the starter sheet, the Complimentary Play ("C.P") player's place of employment and position will be recorded.

The City Manager and General Manager shall be responsible for the administration of all C.P. regulations.

1. The City shall be allocated 100 rounds of complimentary golf per year to be used at its discretion.
2. Mesa Verde Partners shall be allocated 100 rounds of complimentary golf per year to be used at its discretion.

J. School Team Play:

Mesa Verde Partners will permit the Newport-Mesa Unified School District and Orange Coast College school golf teams to play practice rounds and scheduled league matches at the Costa Mesa Golf Course under the following conditions:

Letter applications for school team play, for the following year, must be submitted to the golf course manager between September 15 and November 1. Applications will not be accepted prior to September 15.

In processing an application for school team play, the General Manager will:

Make every effort to comply with the school request.

Designate the particular golf course to be used, and assign the days and times for school play.

Prior to January 2 of each year meet with the golf coach or other designated faculty representatives of requesting schools to make necessary arrangements, discuss procedures, rules, and regulations, and to schedule the school team play.

Each school authorized for team play must submit a team roster and schedule for practice and league play to the General Manager at least two weeks prior to the opening of the season.

School golf teams will not be allowed on the golf course unless accompanied at all times by the golf coach or other designated faculty representative. Teams will be classified as a group, and the assigned coach or faculty member will represent them and be held accountable for their conduct.

Teams shall be eligible for complimentary practice rounds Monday through Thursday on the Mesa Linda course on an "as available" basis. Play shall be limited to four foursomes and two coaches per school. Teams wishing to participate will report to the starter between 2:00 and 3:00 p.m. Team practice rounds will be played on an "on call" basis.

Each school may be permitted to play without charge for a period of 20 weeks, between February 1 and May 31, of each year, with the exception of the Orange Coast College Women's Team which may be permitted to play without charge for a period of 20 weeks, between August 15 and December 15. Any team qualifying for the playoffs will receive an extension of times corresponding with their participation in the playoffs. Team members may play only one 18-hole round on the assigned day or days and at the assigned golf course. Each participating school is allowed four foursomes and two coaches for practice matches. In addition, opposing teams will be "comped" during matches.

School golf team members, golf coaches, and faculty representatives will be expected to observe and adhere to the rules of conduct, dress, and golf play prescribed by the CITY. CITY and Mesa Verde Partners reserve the right at all times to cancel a playing permit if conditions justify such action.

K. <u>Senior Citizens</u>:

Senior citizens residing in the City of Costa Mesa only, 60 years of age or older, may, on presentation of valid proof of age and residency, be eligible to play at the reduced fees as determined by the City and MVP.

Senior citizens may play at reduced rates under the following conditions:

The rates apply on weekdays only (exclusive of holidays).

Seniors paying the reduced rate cannot make or play on a reservation basis until after 10:00 a.m.

Only two senior rates per reservation and foursome will apply on the Los Lagos course while unlimited senior rates are allowed on Mesa Linda.

Upon receiving a senior citizen reduced green fee, the Starter will ring the fee on the Senior cash register key for the applicable golf course, and for 9-hole or 18-holes. The player's name will be recorded, along with the cash register receipt number, on the Starter sheet.

Seniors playing at the reduced fee will be afforded a reduced fee on golf car rental. This reduced fee will be determined by the City.

L. Student Rates:

Mesa Verde Partners will provide reduced-rate playing privileges at Costa Mesa Golf Course for any student with proper identification, who is 18 years of age or younger and attending Newport-Mesa Unified School District or Orange Coast Community College.
Eligible students may play 9 or 18 holes of golf, on the Mesa Linda course only at the prevailing student rate on weekdays only (Monday through Thursday, exclusive of holidays), but students doing so cannot play until after 12:00 noon.

M. Fivesome Play Policy:

Fivesome golf play is permitted at Costa Mesa Golf Course.

N. Starting Time Reservation Policy:

Starting time reservation requests for daily play will be accepted by telephone at the golf course starter's office one week in advance of the playing date desired. Reservations for weekend play will be accepted on the Monday prior to the weekend desired. Costa Mesa residents may purchase a telephone reservation card which allows residents to reserve tee times 10 days in advance for up to 50% of the starting times available in concert with the other applicable provisions in the agreement between MVP and City. Telephone requests may be made daily from 6:00 a.m. until sundown. Reservations will be made only for groups of two, three, four and five players. Openings in a group will be filled from the call sheet on the day of play. Reservations will not be accepted for a single player. Only one reserved time per person is allowed and that person must be a member of the group for which the reservation is made.

Reservations are not transferable prior to or on the day of play. If a reservation is cancelled, the starter will offer the time to the next applicant, or if the time is open on the day of play, it will be filled with names from the call sheet in the order listed. Permanent starting times will not be assigned at any time; however, Mesa Verde Partners may have two reserved times on Saturday, Sunday, and holidays.

If for any reason the golf course is closed the entire day, all golf play reservations for that day will be canceled. If the course is closed only temporarily, the reservations due at the time of actual opening will be honored first, with others following in the order listed. Players whose reservations are cancelled must inform the Starter if they wish to be on the call sheet. The Starter will make every effort to get those players on the golf course as soon as possible.

The golf course Starter may switch or interchange starting times if in his/her judgment such change would prevent delays, eliminate confusion, correct a problem, or be of general benefit to the players involved and to those following. The Starter will call players to the tee by name. After calling the group due on the tee, the following group will be given a five minute warning call by name. The next group will then be given a ten minute warning call by name. Starting time intervals will be no less than seven minutes.

O. Golf Club Policy:

Mesa Verde Partners will not sponsor or co-sponsor any particular golf club; however, they may recognize and approve one club for men, two clubs for women and one club for seniors at Costa Mesa Golf Course. (Los Lagos and Mesa Linda) Men's' women's' and senior's golf clubs wishing to become the representative club

(s) at Costa Mesa Golf Course must request recognition and approval from Mesa Verde Partners. Any request for approval must include the club constitution and by-laws, and a copy of the club membership application form.

If the constitution, by-laws and membership application forms submitted meet established requirements, Mesa Verde Partners may designate the requesting club as a representative of the golf club with permission to use the Costa Mesa golf facility as its home golf course. Individual members of the approved men's, women's and senior golf clubs will not receive any special privilege with regard to starting times. At the beginning of each calendar year, Mesa Verde Partners will schedule and conduct a joint meeting with the incoming presidents of the men's, women's and senior golf clubs. Subject for discussion at these meetings shall include golf course related activities, plans for improvement and expansion, etc.

Only one tournament per calendar month will be permitted for any city authorized men's and senior clubs. The women's clubs, (Mesa Linda and Los Lagos), may each hold one tournament per week (exclusive of weekends and holidays). Tournament fees do not apply to these tournaments. The Men's Club and the Women's Club at Costa Mesa Golf Course may sponsor a special one-day tournament, or shotgun tournament under the following conditions:

The tournament may be held on any Monday available during the calendar year providing it does not interfere with any prescheduled tournament. The tournament is unlimited but requires multiple reserved starting times with a minimum of 128 players. The tournament fees will be required for these tournaments.

P. <u>Tournament Play Policy</u>:

It is the intention of Mesa Verde Partners to allow any golf club, company, golf association, or other organization to request holding a golf tournament at Costa Mesa Golf Course. Every effort will be made to avoid heavy concentration of tournaments which might interfere with access to tee times by the general public. Tournaments may be held under the following conditions:

All tournaments must have a Tournament Agreement requiring multiple reserved starting times with a minimum of 24 players.

Green fees and charges are subject to change without prior written notice. Tournament fees will be based on fees and charges in effect on the date of the tournament. All fees and charges in effect on date of tournament must be prepaid.

Refunds on tournament green fees will not be made except when the golf course is officially closed or carts are not allowed due to inclement weather or other adverse conditions. If the golf course is closed prior to a tournament, every effort will be made to reschedule the tournament. If the golf course is closed during a tournament fees for those participants who have not commenced play will be refunded in accordance with the Mesa Verde Partners' procedures.

Unless otherwise approved by the General Manager, written tournament requests must be mailed to the tournament director at Costa Mesa Golf Course. Requests must be postmarked no later than September 1 each year for tournament dates in the following calendar year. Each request must list the desired tournament date and an acceptable alternate date. Tournament requests

will be processed in the order received; however, priorities will be given to the Men's and Women's Clubs.

If when processing a tournament request it is determined that the desired date is available, the tournament director will complete the appropriate areas of the tournament contract. The contract will be mailed to the requesting organization. The applicant must complete his portion of the contract, sign and return the original and one copy with the required $100.00 deposit within 15 days. The non-refundable $100.00 deposit will be applied to the tournament's total fees. The tournament request letter showing the date the contract is mailed to the applicant will be kept on file.

If required copies of the tournament contract are received within the 15 day response period, including the $100.00 non-refundable deposit, the tournament date and starting times requested will be held pending payment of the full amount of the fees due.

Upon receipt of the full fees within the time allocated, the tournament director will return one copy of the agreement and receipt for fees paid. One copy will be placed on file. Organizations must obtain their own insurance.

All Exclusive Use tournaments must be approved in writing by Mesa Verde Partners and are subject to the following requirements:

Carts are mandatory (minimum of 75).

A minimum amount must be paid to the restaurant and golf shop. These amounts are not applicable to cart costs.

One course shall remain open except as provided in City Agreement.

Shotgun tournaments are also subject to the following requirements:

Use of golf carts by all golfers is mandatory.

A minimum amount must be paid to the restaurant and golf shop.

EXHIBIT C

COSTA MESA COUNTRY CLUB
GROUNDS MAINTENANCE SCHEDULE

MESA VERDE PARTNERS GOLF MANAGEMENT
1701 GOLF COURSE DRIVE, COSTA MESA, CA 92626

Mesa Verde Partners shall be responsible for performing all golf course maintenance services through the term of the Management Lease Agreement. Generally, the partnership will provide the required maintenance with its own employees. In certain instances, such as tree maintenance, the partnership may contract with outside firms to provide the required services.

In order to assure that all maintenance services are performed in accordance with the highest golf course industry standards, the partnership's maintenance department shall be supervised by a class A golf course superintendent, whose qualifications are well documented. The partnership's maintenance department will be composed of twenty-two (22) men. The following is a summary of the structure of the department:

(1) Class A Golf Course Superintendent
(1) Assistant Golf Course Superintendent
(2) Course Foreman/Irrigation Technicians
(16) Greensmen

The maintenance department shall perform the following maintenance services in accordance with City regulations at intervals no less frequent than that required to maintain the courses to current industry standards. In addition, the maintenance services shall be performed in a manner consistent with the high standards of operation currently implemented at other courses managed by partners of the partnership, including: Santa Anita Golf Course, Tijeras Creek Golf Course, Western Hills Golf Course and Willowick Golf Course.

Maintenance Services:

Greens Maintenance
Tee Maintenance
Fairway and Rough Maintenance
Driving Range Maintenance
Maintenance of Lawns and Other Turf Areas
Maintenance of Turfgrass Nurseries
Maintenance of Course Accessory Equipment
Irrigation System Maintenance
Tree Maintenance
Lake Maintenance
Bunker Maintenance
Landscape Maintenance
Other Maintenance including: Pest Control, Cart Paths, Etc.

Greens Maintenance

Greens will be maintained according to accepted industry wide standards and playability conditions at all times. Conditions are to be determined by the Golf Course Superintendent. The following minimum requirements will be observed.

- Change hole locations and repair ballmarks daily. Green equipment shall be kept cleaned, painted and refurbished or replaced as necessary.
- Mow greens daily (not less than 5/32 inch and not more than 1/4 inch) March through November and a minimum of five times per week December through February. Greens will be mowed with equipment designed specifically for that purpose.
- Groom all greens, as deemed necessary by the Golf Course Superintendent, to maintain a smooth, consistent putting surface.
- Aerify greens a minimum of three (3) times per year or more frequently, if needed, and remove plugs the same day. Topdress with an approved topdressing material following each aerification of the greens.
- Greens soil samples will be taken within thirty (30) days after the start of the contract and a minimum of once every three (3) years thereafter. Fertilizer will be applied in the quantity and type recommended by the soil analysis in order to provide soil fertility balance and uniform and healthy turfgrass growth.
- Greens will be treated with pesticides, when necessary, to control insects, diseases, weeds and other pests. Pesticides will be applied by state and federal regulations and will be used as recommended by university and industry guidelines. Pesticides will be applied only in accordance to the pesticide manufacturers label directions.

Tee Maintenance

Tees are to be maintained according to accepted playability and industry wide standards at all times. Conditions are to be determined by the golf course superintendent, observing the following minimum requirements:

- Service tees daily by moving tee markers, benches, and ball washers. Tee towels are to be changed and ball washers filled to the proper level, with an appropriate cleaning agent, on a weekly basis. Tee equipment shall be kept cleaned, painted and refurbished or replaced as necessary.
- Tees will be mowed three (3) times per week with greens mowing type equipment at a height of cut of 1/2 inch or less in order to maintain a good teeing surface and healthy turf.
- Verticut tees as necessary for thatch removal in order to maintain healthy turf.

- Tees are to be aerified and topdressed ~~tees~~ as necessary to control compaction, promote water infiltration and maintain good soil aeration.

- Repair worn and damaged areas as they occur by overseeding or resodding to ensure playable tees at all times.

- Pesticides are to be applied as needed to control insects, weeds, diseases and other pests in order to maintain healthy turf. Apply them according to the same procedures as outlined in the "Greens Maintenance" section of this schedule.

- Tees are to be fertilized to maintain proper turfgrass nutrition, health and growth rate.

Fairway and Rough Maintenance

Fairways and rough are to be maintained according to accepted playability and industry wide standards, observing the following minimum requirements:

- Fairways are to be mowed with a reel type mower with hydraulic driven reels at a height of cut of 3/4 inch or less depending on the time of the year and type of turfgrass involved.

- Roughs are to be mowed with reel type and rotary mowers at a height of cut of 2 inches or less.

- Fairways and rough are to be verticut as necessary to promote good turfgrass health and proper playing conditions.

- Fairways and rough are to be aerified as necessary to relieve compaction, promote water infiltration and to maintain good soil aeration.

- Pesticides are to be applied as needed to control insects, weeds, diseases and other pests in order to maintain healthy turf. Apply them according to the same procedures as outlined in the "Greens Maintenance" section of this schedule.

Driving Range Maintenance

The Driving Range will be maintained to provide a practice facility of high standards, observing the following minimum requirements:

- Turfgrass will be maintained as previously mentioned in the "Tees" and "Fairways and Rough" maintenance sections.

- Driving range equipment will be painted, refurbished and replaced in a timely manner, as needed.

Maintenance of Lawns and Other Turfgrass Areas

Lawns and other turfgrass areas will be maintained to similar standards as stated in the "Fairways and Rough" maintenance section.

Maintenance of Turfgrass Nurseries

Turfgrass nurseries will be maintained identically to golf course turfgrass in accordance with the type of turfgrass and the area of the golf course that the turfgrass is intended for use.

Maintenance of Accessory Equipment

Accessory Equipment will be maintained functionable at all times and kept in clean and safe condition. It will be painted, reconditioned and replaced (with prior City approval) as necessary. Accessory equipment includes, but is not limited to the following:

All signs
Teeing area benches
Tee markers and mats
Ball washers
Hazard and Out-of bounds markers
Directional flags and poles
Distance markers (150 yards, etc.)
Green flags, poles and cups
Practice green markers and cups
Trash receptacles
Cleat Brushes
Bunker rakes

Maintenance of Irrigation System

The entire irrigation system including: mainlines; automatic and manual valves; lateral lines; sprinkler heads; satellite and central controllers; and all electrical systems will be maintained in good repair, functioning properly and conforming to all codes and regulations at all times. Equipment owned and/or operated by others (i.e. water company meters, pipe systems and other equipment) is not considered part of the irrigation system. The courses will be irrigated as required to maintain adequate soil moisture for healthy turf, an acceptable growth rate and a good appearance. Adequate soil moisture shall be determined by visual observation, plant resiliency, turgidity, examining cores removed by soil probe and by using soil moisture sensoring devices. Irrigation controllers shall be programmed accordingly to replace lost soil moisture, promote deep watering and deep rooting for healthy turf growth.

Considerations must be given to soil texture, structure, porosity, water holding capacity, drainage, compaction, precipitation rate, run-off, infiltration rate, evapotransporation, seasonal temperatures, prevailing wind conditions, time of day or night, turfgrass type, root structure and water requirements. Irrigation may include hand-held hose syringing during the day and during periods of windy or extremely warm weather.

Maintenance of the irrigation systems will include:

- All irrigation systems within the leased premises shall be monitored and modifications made to correct poor coverage adjustment, clogs and the removal of obstructions, including plant material which may interfere with the spray stream.

- The systems shall be checked daily for any sprinklers causing run-off on sloped areas or throwing water directly on any walks or pavement. Adjustments or repairs to correct the problems shall be made expediently.

- All controllers shall be inspected on a daily basis and adjusted as required, considering the water requirements of each remote control valve or sprinkler station.

- A soil probe or tensiometer shall be used to determine the soil moisture content and requirements in various areas, so that adjustments to the water schedules can be made on a site specific basis.

- Observations of deficiencies of the original design of the irrigation systems shall be noted. These findings shall be reviewed with the City of Costa Mesa so that necessary improvements can be considered.

Tree Maintenance

All trees at the Costa Mesa Country Club will be maintained in a safe, healthy, structurally sound and aesthetically pleasing condition at all times. An on going maintenance program shall be implemented to trim, shape, prune, thin-out (lace), fertilize and treat for pests. Generally, acceptable arboriculture practices shall be employed in accordance with standard practices. The program includes, but is not limited to, the following:

- Trees will be regularly pruned to maintain a clearance of seven (7) feet in all areas of pedestrian traffic and a clearance of fourteen (14) feet in all areas of vehicular traffic, such as parking lots, driveways and tree branch overhangs through fence lines and into roadways and adjacent streets. Such pruning shall provide safe vehicular and pedestrian visisbility and clearance in order to prevent or eliminate any hazardous situations. Trees will be trimmed and shaped to provide an acceptable appearance typical of the species.

- Any downed or dead trees shall be removed and disposed off-site, whether caused by natural reasons or otherwise. Stumps shall be removed to twelve (12) inches below grade and wood chips removed and the resultant hole backfilled to grade with top soil.

- Surrounding turfgrass shall be kept mowed and trimmed to the trunks of trees on the premises. Precautions will be taken to avoid damage to the trunks from mowing and trimming operations. Another option, which may be suitable in some areas is to spray tree wells with a non-selective herbicide, such as Roundup by Monsanto.

Lake Maintenance

Lakes are to be maintained to reflect a pleasingly aesthetic condition and to promote good water quality for wildlife and for irrigation purposes where applicable. The following is a list of minimum maintenance standards:

- Turfgrass along edges of lakes is to be kept mowed and trimmed.
- Weed and algae growth in lakes is to be controlled through mechanical or chemical procedures. Caution is to be taken when using chemicals to avoid any toxicity to humans, wildlife or turfgrass species.
- Any problems observed with the design or construction of the lakes or lake systems shall be noted and reported to the City of Costa Mesa so that any corrective measures can be studied and addressed.

Bunker Maintenance

Bunkers are to be maintained to current industry standards with the following minimum conditions and procedures:

- Bunkers are to be regularly edged of invading turfgrass species and are to be kept weed free.
- Sand is to be kept at a consistent minimum depth of 4-6 inches, and is to be of a grade meeting U.S.G.A. bunker sand specifications.
- Bunkers are to be kept regularly raked as needed to condition and smooth the sand surface to provide consistent playing conditions.
- Any problems with bunker construction, drainage, etc. shall be noted and reported to the City of Costa Mesa so that corrective measures can be studied and addressed.

Landscape Maintenance

All landscaping shall be maintained in a healthy and pleasingly maintained condition. All shrubs, flowers and plant material shall be treated for pests if and when necessary. All plants shall be pruned and trimmed, when necessary and when appropriate for the particular species, to maintain a proper and pleasing shape for each species. All plant and shrub beds shall be kept weed and debris free.

EXHIBIT D

MINIMUM MONTHLY RENTS

LESSEE shall pay a minimum monthly rental of $90,000 during the months of October through March, inclusive, and $120,000 during the months of April through September, inclusive, commencing on September 1, 1992, and continuing to August 31, 1997, for an annual minimum rental of $1,260,000. LESSEE shall pay a minimum monthly rental of $120,000 commencing on September 1, 1997, and continuing through August 31, 2009, for an annual minimum rental of $1,440,000. Said minimum monthly rental shall be subject to adjustment as provided in Section 4.03 of the Agreement.

As a result of adjustments allowed in Section 4.03 LESSEE is paying a minimum monthly rental of $147,000 as of September 1, 2008, for an annual minimum rental of $1,764,000. Said minimum monthly rental shall be subject to adjustment as provided in Section 4.03 of the Agreement.