

**MANAGEMENT AGREEMENT  
MONARCH BAY GOLF CLUB**

**CITY OF SAN LEANDRO**

**“OWNER”**

*and*

**AMERICAN GOLF CORPORATION**

**“MANAGER”**

**June 1, 2020**

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## MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT (“Agreement”) is made and entered into effective as of \_\_\_\_\_, 2020 (the “Commencement Date”) by and between the City of San Leandro, California (“Owner”), and AGC Management, LLC, a Delaware limited liability company (“Manager”).

### RECITALS

A. Manager, together with its affiliates, is engaged in the ownership, management, and operation of golf courses and country clubs throughout the United States.

B. Owner is the owner of that certain real property located at San Leandro, California, known as “Monarch Bay Golf Club,” which includes a 9-hole Executive Par 30 golf course; an 18-hole Regulation Par 71 golf course; double-deck driving range; practice short game area; practice putting green; clubhouse with restaurant, bar, banquet room, and pro shop; cart storage building; maintenance building with storage yard; and other related amenities, buildings, structures, and improvements related thereto (the “Facility”).

C. Manager currently leases the Facility from Owner under a Lease Agreement dated November 15, 1997 (the “Lease”).

D. The parties will terminate the Lease effective as of the Commencement Date.

E. Owner desires to utilize the services and expertise of Manager in the management, and operation of the Facility, and Manager desires to render such services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Owner and Manager hereby agree as follows:

### ARTICLE 1 - DEFINITIONS

As used in this Agreement, terms not otherwise defined in the body of this Agreement shall have the respective meanings set forth in Exhibit A to this Agreement.

### ARTICLE 2 - TERM OF AGREEMENT

**2.1 Term.** The term of this Agreement shall commence on the Commencement Date and shall continue through November 15, 2024 (the “Initial Term”). Upon expiration of the Initial Term, the parties may mutually agree to renew this Agreement for up to two (2) successive five (5) year terms (Renewal Terms) by setting forth their intention to do so in writing. The Initial Term and Renewal Terms (if applicable) are collectively referred to herein as the Term.

**2.2 Termination of Existing Lease Agreement.** Owner and Manager shall enter into a Lease Termination Agreement for the termination of the Existing Lease Agreement effective as of the Commencement Date, in the form of Exhibit C attached hereto and made a part hereof.

### **ARTICLE 3 - OPERATING RESPONSIBILITIES**

**3.1 Grant to Manager.** Except as otherwise expressly provided in this Agreement, Owner grants to Manager the right to manage and operate the Facility pursuant to the terms of this Agreement, and Manager agrees that it will manage and operate the Facility in accordance with this Agreement, the approved Annual Plan, except as otherwise set forth in this Agreement. Manager shall perform its services in a timely and diligent manner. Manager, with the approval of Owner and in accordance with the terms of this Agreement, shall have the authority and responsibility to: (a) implement each approved Annual Plan; (b) determine, establish, and implement the policies, standards, and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (c) hire, train, and supervise the general manager, course superintendent, and all Facility employees; (d) supervise and direct all phases of advertising, sales, marketing, and business promotion for the Facility; and (e) establish payroll procedures and functions for the Facility. To the extent the foregoing duties are discussed, detailed, or included in the Annual Plan, Manager will carry out such duties consistent with the Annual Plan. Owner agrees it will reasonably cooperate with Manager to permit and assist Manager to carry out its duties under this Agreement provided Manager provides reasonable advance notice for such cooperation and assistance.

#### **3.2 Annual Plans.**

3.2.1 Preparation. Manager will submit to Owner no later than January 31<sup>st</sup> of each year thereafter an "Annual Plan" for the following fiscal year (commencing July 1<sup>st</sup>) consisting of (a) a budget that shall include for the ensuing year estimates for the projected detailed revenues of the Facility (detailed on a line item basis) and the projected detailed expenditures for (i) property operation and maintenance, (ii) capital improvements which constitute normal repairs, replacements, and alterations for the following operating year which the Annual Plan otherwise covers, (iii) furnishings, equipment and operating inventory, (iv) advertising, sales, and business promotion, (v) employee compensation and (vi) an operating/business plan for the Facility setting forth a marketing and promotions plan, a schedule of proposed golf fees, an operating schedule (which shall include hours of operation and staffing levels), a maintenance plan, and to the extent applicable, membership sales plans, membership dues, and initiation fee schedules. Owner acknowledges that the Annual Plans, budgets, and operating/business plans contained therein are estimates and will not and do not constitute a guarantee of the actual revenues or expenses of operating the Facility. The parties understand that, as provided in Section 10, budgets for Major Capital Improvements will be treated separately and will not form part of the Annual Plans. The Annual Plan for the initial Operating Year (which in this case, shall commence on \_\_\_\_\_ and conclude on June 30, 2021) is attached as Exhibit B to this Agreement.

3.2.2 Approvals. Each Annual Plan shall be subject to the prior written approval of Owner, and the new Annual Plan for a given Operating Year cannot go into effect without such

approval from Owner, such approval not to be unreasonably withheld. Manager acknowledges that Owner approval may require review and action by Owner's governing body, the City of San Leandro City Council, prior to Owner's written approval of the new Annual Plan. In the event of a dispute with regard to an Annual Plan, the parties shall use good faith efforts to resolve such dispute. Pending the resolution of such dispute, Manager shall continue to manage and operate the Facility in accordance with the standards set forth in this Agreement and the most recent approved Annual Plan, as it may have been mutually amended by the parties during the preceding year in accordance with the Agreement, at a level of expenditures comparable to those of the preceding year subject to reasonable increases in Operating Expenses requested by Manager due to (a) increases in the number of members or guests using the Facility, (b) increases in Gross Revenues, or (c) other matters beyond the reasonable control of Manager (e.g., without limitation, increases in utility rates, etc.). Once approved, Manager may propose amendments or revisions to the Annual Plan to take into consideration variables or events that did not exist, or could not be anticipated by Manager, at the time the Annual Plan was prepared. Any such proposed amendments or revisions shall be submitted in writing and shall be subject to Owner's approval.

3.2.3 Compliance. Manager shall comply with the applicable Annual Plan. If Manager anticipates that Operating Expenses will exceed amounts budgeted in the Annual Plan for a given Operating Year, it shall promptly notify Owner of the same with detailed explanation and amended projections for the operating year, which shall be submitted in writing and subject to Owner's approval.

3.2.4 Emergency Expenditures. Notwithstanding anything in this Agreement to the contrary, in the event an emergency arises by act of God or any event or act beyond the control of Manager, or a dangerous condition exists that requires immediate repair, or a governmental directive or order is issued to Owner, Manager is authorized to take such actions as may in its reasonable discretion be required (including expending any funds reasonably necessary to respond to such condition or event); provided, however, that Manager shall immediately notify Owner of the emergency situation (or governmental directive or order) and the action Manager proposes to take, or has taken (including the amount of any expenditures).

3.3 Technical Assistance Services. During the Term, Manager will provide, as needed, certain supervisory and consulting services to the Facility from Manager's regional and corporate technical assistance services program, including business planning and budgeting, training, security, marketing and sales, central purchasing, merchandising, food and beverage, maintenance, human resources, and legal compliance. Except as provided in Section 3.4 below, these services will be provided by Manager without any additional charge to Owner.

3.4 Special Consulting Services. In addition to the services described in Section 3.3 above, upon Owner's prior written request and approval, Manager may provide to the Facility additional consulting services not contemplated by this Agreement which would not otherwise be performed in the ordinary course of day-to-day operations of the Facility, including but not

limited to special legal consultation, construction and design consultation, and construction supervision related to Major Capital Improvements (“Special Services”). Upon Owner’s written request for the performance of a Special Services project, Manager shall prepare a scope of work and budget and submit to Owner for review and approval. Manager acknowledges that the Owner’s Purchasing Guidelines must be adhered to, which may include a requirement for a Request for Proposal and/or multiple bids be procured for the proposed service. Manager shall not commence any Special Services project without Owner’s prior approval.

**3.5 Responsibilities of Manager.** Without in any way limiting Manager’s right and obligation to manage and operate the Facility in accordance with and subject to the Annual Plan, Manager shall, in its own name or in the name of Owner, perform the following services, or cause the same to be performed for the Facility:

(a) Manage all activities of the Facility that are included in the Annual Plan as approved by Owner. Manager will operate the Facility to high quality standards that meet or exceed industry practices for similar facilities in the San Francisco-Oakland-San Jose Bay Area in accordance with Exhibit “E”, as provided for in the approved Annual Plan, and subject to and consistent with other provisions of this Agreement as contained herein. All references to “Operator” in Exhibit “E” shall be deemed to be references to “Manager.” In the event of any conflict between the terms and provisions of Exhibit “E” and this Agreement, the terms of this Agreement shall control. For clarity and the avoidance of doubt, the parties hereby acknowledge and agree that while the Manager is responsible for supplying the labor and expertise for the performance of Manager’s obligations under Exhibit “E,” all such obligations including the provision of necessary labor are an Expense of the Facility, and Manager’s ability to perform these obligations is subject to and dependent upon necessary funding from Owner, in accordance with the approved Annual Plan.

(b) enter into contracts for the furnishing of utilities, maintenance, and other services to the Facility, in Owner’s name;

(c) use commercially reasonable efforts to comply and perform the scope of services set forth in the “Requirements of Service, Operational and Maintenance Guidelines” for the Facility attached hereto and incorporated herein by reference as Exhibit “E”. These include the specific tasks and service obligations that the Owner deems appropriate and necessary for the efficient maintenance and operation of the Facility as set forth in the approved Annual Plan;

(d) incur such expenses on behalf of Owner as shall be necessary for the operation and maintenance of the Facility to the standards set by this Agreement and the Annual Plans, including without limitation incurring lease expenses for Furnishings and Equipment, costs for Operating Inventory, and prorated expenses for insurance premiums in accordance with insurance coverage required hereunder;



(e) maintain a level of Operating Inventory necessary to satisfy the quality standards set by this Agreement and the Annual Plans and to supply the needs of the Facility and its customers;

(f) apply for, obtain and maintain, in addition to the liquor license described in section 3.8 below, all licenses and permits required by Owner (or by applicable Legal Requirements) in connection with the operation and management of the Facility, in Owner's name or in Manager's name as may be applicable; and Owner agrees to execute any and all applications and such other documents as shall be required and to otherwise cooperate, with Manager in the application for, and obtaining and maintenance of, such licenses and permits;

(g) use its efforts to do, or cause to be done, all such acts and things in and about the Facility as shall be necessary to comply with all Legal Requirements, and to discharge any lien, encumbrance, or other charge on the Facility, including hiring legal representation after Owner's approval and paying attorney's fees, as necessary to comply with Legal Requirements and defend the Facility against legal claims.

(g) maintain a method of accounting in accordance with Generally Accepted Accounting Principles consistently applied ("GAAP") that accurately reflect the Gross Revenues, Operating Expenses, and disbursements of Manager in connection with the Facility's operations.

### **3.6 Personnel.**

#### **Owners Representatives; Course Manager; Experience of Personnel.**

##### Owner's Representatives.

*Public Works Director* means the person designated by Owner to administer and monitor this Agreement on behalf of Owner, which person shall be appointed by Owner, in its sole discretion.

*Director's Appointee* means the Owner's day to day representative responsible for the weekly monitoring of Manager's performance under this Agreement who shall be Manager's principal contact person from Owner.

##### Manager Representatives.

The "Course Manager" provided by Manager shall be responsible for Manager's performance of the services described in this Agreement. Manager agrees that at all times its Course Manager shall have at least three (3) years' experience in similar operations. The name and telephone number, both personal and business, of the Course Manager shall be provided in writing to the Director's Appointee.

The Course Manager shall be reasonably available during normal working hours to meet with the Director's Appointee. After normal working hours, the Course Manager

shall be reasonably available to appear at the Facility if deemed necessary by the Director's Appointee. The Course Manager shall have full authority to act for Manager on all matters relating to the performance of services under this Agreement and shall be the principal contact person for the Director's Appointee.

3.6.1 Owner acknowledges and agrees that the Course Manager and Superintendent currently in place as of the Commencement Date are acceptable to Owner. Neither the Course Manager nor the Golf Course Superintendent shall be replaced unless Owner has approved their replacements. Owner agrees not to unreasonably withhold approval of any such replacement. Manager agrees that at all times the Golf Course Superintendent shall have at least three (3) years' experience in the provision of golf landscape and grounds maintenance services. Manager shall employ all of the employees of the Facility, and all such employees shall be deemed employees of Manager and not employees of Owner or joint employees of Owner and Manager. Manager shall recruit, hire, train, discharge, promote and supervise the management staff of the Facility (i.e., the general manager or course manager, the assistant managers, the course superintendent, department heads and other key personnel), and Manager shall supervise through the management staff the recruiting, hiring, training, discharge, promotion, and work of all other employees of the Facility. For a period of one year after the date of termination of this Agreement pursuant to Section 7.1, Owner shall not solicit or hire as an independent contractor, consultant or employee any general manager or superintendent hired or employed by Manager after the Effective Date for the Facility, without the written consent of Manager; provided however, Owner may solicit or hire or engage any general manager or superintendent employed at the Facility prior to the Effective Date without the consent of Manager. In the event that Owner is dissatisfied with the performance of any Manager personnel, the following procedure shall be followed: (i) Owner shall communicate any complaints regarding personnel below the rank of general manager to the general manager and shall communicate complaints regarding the general manager to Manager's regional manager for the region in which the Facility is located, and (ii) Manager shall reasonably and promptly investigate and take appropriate action, as determined by Manager, with respect to Owner's complaints. All employees of the Facility shall be properly qualified for their positions. The Compensation of the management staff and all other Facility employees shall be an expense of the Facility payable by Owner in accordance with this Agreement. Further, Manager acknowledges and agrees that all Facility employees are subject to the City of San Leandro Living Wage Ordinance.

3.6.2 *Benefit Plans.* As described in any and all Owner approved Annual Plans, Manager shall provide eligible employees of the Facility employee retirement benefits and disability, health and welfare benefits and other benefit plan or plans now or hereafter available to employees of Other Manager Facilities and to charge the Facility with its allocable share of such Manager plan or plans. Manager shall have the right to provide eligible employees of the Facility with a profit-sharing plan.

3.6.3 Temporary Assignment of Other Manager Personnel. If Manager shall reasonably deem it advisable, and after Owner's prior approval, Manager may temporarily assign to the Facility the general manager, the head golf professional, and other members of the management staff from the employees of Manager or Affiliates of Manager or from the staff of Other Manager Facilities. During such time as these employees are temporarily assigned to the Facility, all such employees will be paid their regular Compensation, and the pro-rata share of such employees' Compensation equal to the actual time such employees worked at the Facility shall be an expense of the Facility.

### **3.7 Restrictions on Use of Facility.**

(a) The Facility shall be used solely for the operation of a golf course, and to the extent applicable, a retail golf shop, bar and restaurant, banquet facility, driving range, and such other uses and amenities as may be approved by Owner and are compatible with the operation of a golf course including, by way of illustration and not limitation, a golf school.

(b) Manager agrees not to carry on any dangerous activity at the Facility, or to use the Facility for any purpose which would increase existing rates of insurance or cause tort claims, litigation, or cancellation of any insurance policy carried by Owner or Manager. Manager shall cause the Facility to comply with all legal and insurance requirements relating to the condition, use, and occupancy of the Facility.

- 3.7.1 Material Change to Golf Operations. Manager acknowledges that Owner is in negotiations with a developer for redevelopment of portions of the Shoreline area. As part of that proposed project, Owner intends to sell a portion of the existing Executive golf course and to redevelop the remaining land to a new 9 hole, par 3 course (with a foot/disc golf component). During the timeframe that the Executive course is closed, Manager shall offer reduced fees for the public who wish to play 9 holes only on the par 71 golf course, as set forth in the approved Annual Plan. Manager shall continue to receive full Management Fee, as outlined in Section 5.1 during the time that the Executive course is closed.

**3.8 Liquor License.** Manager shall, as an expense of the Facility, maintain the current liquor license issued by the State of California in Manager's name, permitting the sale of alcoholic beverages (including beer, wine, and liquor) at the Facility. Manager shall be solely responsible for liquor sales at the Facility and agrees to comply with all requirements of the rules and regulations of the State of California governing the sale of alcoholic beverages. As an expense of the Facility, Manager shall maintain the liquor license(s) in good standing, pay all required fees in connection therewith, and otherwise ensure the proper right and permission to sell alcoholic beverages at the Facility.

## ARTICLE 4 - INSURANCE

### 4.1 Coverage.

(i) Manager agrees to procure and maintain, as an expense of the Owner in accordance with the approved Annual Plan, at all times during the Term, a minimum of the following insurance: Commercial general liability insurance (CGL) for the Facility, at least as broad as Insurance Services Office (ISO) CG 00 01, including without limitation bodily injury, personal injury, property damage, products liability, contractual liability covering the provisions of this Agreement, and liquor liability, in an amount not less than Ten Million Dollars (\$10,000,000) single limit per occurrence to be paid as an Expense of the Owner in accordance with the approved Annual Plan. Manager shall be named as the insured under such policy, and Owner shall be named as additional insured for both ongoing and completed operations liability at least as broad as ISO CG 20 10 and ISO CG 20 37, and on a primary and non-contributory basis at least as broad as ISO CG 20 01 04 13. Such limits may be achieved through the use of an umbrella or following form Excess Liability insurance sufficient to meet the requirements of this Section. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including the additional insured and primary insurance requirements stated herein.

The CGL and automobile liability Insurance in this section and section (ii) following shall be guaranteed cost policies not subject to any deductible or SIR. Notwithstanding the foregoing, in the event that the parties should agree in the future that the CGL or automobile liability insurance provided for the course shall have deductibles and/or SIRs, any and all deductibles and SIRs shall be the sole responsibility of Owner, unless Manager owes indemnity to Owner in accordance with section 11.3.1 below. Any and all SIRs must be susceptible of being satisfied under the CGL and Excess policies through payments made by the Owner, additional insured, co-insurers, and/or insureds other than the First Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible.

Owner reserves the right to require a full certified copy of all insurance required in this Article 4 – Insurance. Manager shall provide a certificate of Insurance with copies of all required provisions with respect to all policies and a copy of the Declarations and Endorsements pages for the Commercial General Liability Insurance.

(ii) automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) single limit per occurrence, as an Expense of Owner in accordance with the approved Annual Plan. Manager shall be named as the insured under such policy, and Owner shall be named as additional insured.

(iii) Manager agrees to procure and maintain, at Owner's expense in accordance with the Annual Plan, at all times during the Term, workers' compensation insurance with limits of not less than \$1,000,000 per accident covering all Facility employees who are Manager's employees, as required by law. Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Manager, its employees, agents and subcontractors. This insurance shall provide an endorsement containing express waiver of any right of recovery or subrogation by the insurance company against Owner, its agents and employees.

(iv) Employment Practices Liability Insurance in an amount not less than the comprehensive general liability insurance in item 4.1 (a) (i) above, as an expense of the Owner in accordance with the approved Annual Plan.

(v) Comprehensive crime insurance, in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence, as an Expense of Owner in accordance with the approved Annual Plan. Manager shall be the named insured, and Owner shall be named as an additional insured. Owner acknowledges that Manager's crime insurance contains a self-insured retention of \$25,000 ("SIR") and that any and all costs, damages, payments or losses related to any claim, which are less than the SIR, are an expense of the Owner unless Manager owes indemnity to Owner under Section 11.3.1 below.

The foregoing are minimum required insurance coverages and do not in any way represent, warrant, or imply that such coverage is sufficient to adequately cover any liability under this agreement. The full coverage and limits of insurance carried by Manager shall be available to Owner and these insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required.

The insurance required under this agreement shall be the greater of the full amount of the insurance coverage and limits carried by or available to Manager, or the minimum insurance requirements set forth above, whichever is greater. Any insurance proceeds in excess of the specified minimum limits and coverage required, which are applicable to a given loss, shall be available to Owner. Manager shall furnish Owner with certificates of insurance, including all required amendatory and additional insured endorsements including Workers' Compensation waiver of subrogation endorsement (or copies of the applicable policy language effecting coverage required by this clause), and a copy of the declarations and endorsement pages of the CGL policy listing all policy endorsements to Owner. Owner reserves the right to require full certified copies of all insurance coverage and endorsements.

Owner reserves the right to require and verify that all of Manager's contractors, subcontractors, and third-party service providers maintain the same types of liability insurance coverage with limits of insurance appropriate to their risk meeting all the indemnity and liability requirements stated herein required of Manager under this agreement and provide proof of such upon request to the Owner. Manager shall also require in connection with the service providers, contractors, and subcontractors commercial general liability insurance policies to provide endorsements (i)

naming Owner as an additional insured, (ii) agreeing that the coverage shall be primary and shall not require contribution from Owner's insurance or self-insurance program, and (iii) a waiver of subrogation rights in favor of Owner. Provided however, the parties acknowledge and agree that Manager is not involved in engaging any contractors, subcontractors or third-party service providers involved in any work being done as referenced in Section 3.7.1 herein, and shall have no responsibility for any insurance requirements related to such contractors, subcontractors or service providers.

(b) Owner shall have the right to raise the minimum amount of any insurance to be maintained with respect to the Facility to make such coverage comparable to the amount of insurance carried with respect to other comparable facilities, taking into account the size, character, and location of the Facility. In each Annual Plan, Manager shall submit to Owner a schedule setting forth any recommended changes to the insurance to be maintained by the Manager during the ensuing Annual Plan year in connection with the Facility, including any increase or other change in the expense of such insurance to Owner.

## **4.2 Policies and Endorsements.**

4.2.1 Policies. All insurance coverage provided for under Section 4.1 above shall be secured through policies issued by insurance companies of good reputation and of sound and adequate financial responsibility maintaining an A.M. Best rating of A:VIII or better. Manager shall deliver to Owner certificates of insurance with respect to all of the policies of insurance so procured, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to renewal policies not less than ten (10) days prior to the respective dates of expiration.

4.2.2 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

(a) The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(b) Waiver of Subrogation. Neither Owner nor Manager shall assert against the other, and Owner and Manager hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation, and maintenance of the Facility, , except to the extent that such losses, damages, liability or expenses are due to the sole negligence or willful misconduct of either Party. Owner and Manager hereby grant to each other, on behalf of any insurance company providing insurance under this Agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy. Owner and Manager shall give notice to the insurance companies providing insurance under this Agreement of the mutual waiver of subrogation contained in this Section, and Owner and

Manager shall cause each such insurance company to provide a written subrogation waiver indicating that such insurance company waives all rights of recovery by way of subrogation which such insurance company may acquire against Owner or Manager (as the case may be) and their insurance companies.

**4.2.3 Submittal Requirements.** For all policies of insurance provided, Manager shall maintain and submit the following:

(c) Certificate of Workers' Compensation insurance in the amounts specified in herein together with a Waiver of Subrogation endorsement;

(d) Certificate of Liability Insurance for both Commercial General Liability and Auto Liability in the amounts specified in subsection 4.1;

(e) Additional Insured Endorsement as required by this section;

(f) Waiver of Subrogation Endorsement as required by this section;

(g) Primary Insurance Endorsement as required by this section;

(h) Policy declaration pages and schedule of forms related to both Commercial General Liability and Auto Liability; and

(i) that such policies shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner and Manager.

**4.3 Subcontractors.**

Manager shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4 Manager's Limits of Liability.** It is understood that many of the obligations of Manager under this Agreement will be performed by the management staff or other employees at the Facility. Provided that Manager has used reasonable diligence and has not been negligent in the hiring, discharge, and supervision of the employees, it is agreed that Manager shall not be liable to Owner for the failure to perform any duty under this Agreement to the extent that such failure is due to the act or omission of any employee at the Facility, excluding the acts or omissions of the Course Manager, Superintendent, Club Accountant, Head Golf Professional, Membership Director, Private Events Director, and Food and Beverage Director, for which Manager shall be responsible. This Section 4.4 shall not be deemed to relieve Manager from its obligations to manage the Facility, remit funds to Owner, or to carry out any corporate level obligations of Manager.

**4.5 Blanket Policies.** Any insurance policies provided by Manager under this Article may be effected under policies of blanket insurance which cover other properties in addition to the Facility, and in such case an allocable portion of the premiums for such blanket policies of insurance, as established in the approved Annual Plan, shall be charged to the Facility, as an Operating Expense.

#### **ARTICLE 4 - MANAGEMENT FEE**

**5.1 Base Management Fee.** In consideration of Manager's services during the Term, Owner shall pay to Manager a "Base Management Fee" equal to One Hundred Fifty Thousand Dollars (\$150,000) per year, payable in twelve (12) monthly installments of \$12,500. With the first year of this Agreement beginning prior to July 1, the additional months shall be pro-rated at \$12,500 per month and paid to Manager in monthly installments. The Base Management Fee shall be paid to Manager in accordance with Section 5.3 of this Agreement.

**5.2 Incentive Management Fee.** In addition to the Base Management Fee, Owner shall further pay to Manager an "Incentive Management Fee" equal to twenty percent (20%) of the amount by which Net Operating Income for a given Operating Year exceeds \$750,000. For purposes of this provision, Net Operating Income shall mean Gross Revenues minus Operating Expenses.

**5.3 Payment Schedule.** Owner shall pay Manager the Base Management Fee in advance, no later than ten (10) days following the first day of each month during the Term. Owner shall pay the Incentive Management Fee, if any, to Manager within forty-five (45) days following the final calculation of financial results for the Facility for the preceding Operating Year (based on Owner's July 1 – June 30 fiscal year). The Base Management Fee and Incentive Management Fee are sometimes referred to herein as "Fees".

#### **ARTICLE 6 - BANK ACCOUNTS; WORKING FUNDS; RECORDS AND REPORTS; REMOVAL OF PROPERTY**

**6.1 Bank Account.** In connection with operation and management of the Facility, the following shall be established, and shall be subject to Owner's audit and inspection:

**6.1.1 Owner Account and Operating Account.** Owner shall establish a bank account for the Facility at a banking institution or institutions reasonably selected by Owner, such account to be in Owner's name (the "Owner Account"). Manager shall also establish a bank account for the Facility at a banking institution or institutions reasonably approved by Owner,



such account to be in Manager's name (the "Operating Account"). Manager will collect, receive, and deposit into the Owner Account all monies received by Manager from the operation of the Facility. Owner shall deposit all funds required to be furnished by Owner as working funds under Section 6.2 of this Agreement into the Operating Account, and Manager will disburse those monies from the Operating Account only for the purposes set forth in this Agreement. Notwithstanding the provisions of the foregoing, Manager shall be entitled to maintain funds in reasonable amounts in "cash register banks" or in petty cash funds at the Facility. The records and bank statements shall be subject to inspection by Owner pursuant to the terms recited herein. All gross revenues of the Facility shall be collected, received, and deposited by Manager exclusively through the Owner Account. Upon termination of this Agreement for any reason, any funds remaining in the Operating Account after payment of all final expenses, costs, and obligations of the Facility incurred during the Term shall be paid to Owner.

**6.2 Expenditures.** Manager is authorized to pay, from the Operating Account such amounts at such times as are required in connection with the ownership, operation, maintenance, repair, and improvement of the Facility and related facilities in accordance with the approved Annual Plan, subject to the provisions of this Agreement, including but not limited to all amounts specifically payable to or reimbursable to Manager hereunder, except for the Base Management and Incentive Management Fees.

**6.3 Account Funding.** Owner shall deposit into the Operating Account all funds required for Manager to operate and maintain the Facility in accordance with this Agreement and the Annual Plans, including, without limitation, funds for Manager to timely fund Operating Deficits, if any. Upon execution of this Agreement, Owner shall cause an appropriate level of working capital for the Facility sufficient to pay all payables of the Facility for the first thirty (30) days of the Term ("Initial Working Capital"). Manager shall not, under any circumstance, be required to, or be deemed to have any duty to, advance any of its own funds for the operation of the Facility. Manager shall pay, on behalf of Owner, all such bills in accordance with the Annual Plan as and when the same shall become due and payable. Manager shall exercise commercially reasonable efforts to pay all bills within the time required to obtain any discounts which may be available.

**6.4 Insufficient Funds.** Manager shall monitor the Facility's cash flow and shall provide to Owner a report detailing projected cash flow in the event that Manager projects an Operating Deficit to occur within thirty (30) days of providing such report. If at any time funds in the Operating Account shall be projected to be or are insufficient to pay the Facility's Expenses for the following month ("**Operating Deficits**"), Manager shall notify Owner and request a sufficient amount to satisfy same so that Manager will have sufficient funds in the Operating Account to prevent any delinquency in payment for such expenses, and Owner agrees to deposit such funds within five (5) days after Manager notifies Owner. Manager shall not be obligated to advance any of its own funds to or for the account of the Facility or Owner, nor to incur any liability unless Owner has furnished Manager with funds necessary for the discharge thereof. In the event Owner fails to timely provide Manager sufficient funds to pay expenses, Manager shall

be under no obligation to pay any bill if there are insufficient funds in the Operating Account. Notwithstanding the foregoing, if Manager advances any funds in payment of an expense authorized by Owner, Manager may reimburse itself from the Operating Account or Owner shall reimburse Manager within fifteen (15) days after Owner's receipt of itemized invoices or bills thereof.

**6.5 No Default Due to Lack of Funds.** If Manager is unable to perform any of its agreements or covenants under this Agreement because of the failure on the part of Owner to provide the funds pursuant to Section 6.4, such failure of performance on the part of Manager shall not be deemed a default on the part of Manager and shall not give rise to any right of termination, damages, or any other remedy against Manager, unless the failure to provide the funds is due to the occurrence of a breach of this Agreement by Manager or fraud by Manager.

**6.6 Books and Records.** Manager shall keep full and accurate books of account and such other records as are necessary to reflect the results of the operation of the Facility. For this purpose, Owner agrees it will make available to Manager, or Manager's representatives, all books and records in Owner's possession relating to the Facility, including contract documents, invoices, and construction records. All books and records for the Facility shall be located at the Facility.

**6.7 Reports to Owner.** Manager will deliver, or will cause to be delivered, to Owner the following forecasts and statements:

(a) within twenty (20) days after the end of each calendar month, a profit and loss statement (on an accrual basis) showing the results of operation of the Facility for such month and for the year to date (it being understood that such monthly statements will not reflect any Incentive Management Fees paid to Manager); and

(b) within sixty (60) days after the end of each Operating Year (June 30<sup>th</sup>), a profit and loss statement showing the results of operation of the Facility for such year (it being understood and agreed that such annual statement will reflect the annual Base Management Fee paid to Manager), calculated as provided in Article 5.

**6.8 Accounting Firm and Annual Financial Audit.** Manager shall, if requested by Owner and at Owner's expense, hire an independent certified public accounting firm selected by Owner to audit the financial statements required under this Agreement. All fees and charges of the accounting firm shall be an expense of the Facility, provided, however, if any such audit discloses that the financial statements provided by Manager overstated Net Operating Income by more than five percent (5%) for the Operating Period, the expense of such audit shall be borne by Manager.

**6.9 Manager Accounting Software; Other Personal Property Owned by Manager.** The parties acknowledge and understand that the accounting software used at the Facility is owned by Manager, and Owner shall have no rights or interests in such software. Upon the

expiration or earlier termination of this Agreement, the accounting software and other personal property at the Facility owned by Manager shall be removed from the Facility by Manager; provided, however, the financial data of and related exclusively to the Facility shall remain the property of Owner.

## **ARTICLE 7 - TERMINATION RIGHTS**

**7.1 Termination by Owner.** Owner shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

A. Manager fails to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Manager including, without limitation, Manager's failure to maintain, market, and promote the Facility in the manner required by this Agreement, and such default continues for a period of thirty (30) days after written notice of such default by Owner to Manager; or

B. (i) Manager applies for or consents to the appointment of a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets; (ii) Manager files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) Manager files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against Manager; (iv) Manager admits in writing its inability to pay its debts as they come due; (v) Manager makes a general assignment for the benefit of creditors; or (vi) an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization of Manager or appointing a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

**7.2 Termination by Manager.** Manager shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(a) Owner fails to keep, observe, or perform any other material covenant, agreement, term, or provision of this Agreement to be kept, observed or performed by Owner, and such default continues for a period of thirty (30) days after notice of such default by Manager to Owner; or

(b) (i) Owner applies for or consents to the appointment of a receiver, trustee or liquidator of Owner or of all or a substantial part of its assets; (ii) Owner files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) Owner files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against Owner; (iv) Owner admits in writing its inability to pay its debts as they come due; (v) Owner makes a

general assignment for the benefit of creditors; or (vi) an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Owner a bankrupt or insolvent or approving a petition seeking reorganization of Owner or appointing a receiver, trustee, or liquidator of Owner or of all or a substantial part of the assets of Owner, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days;

Manager's right to terminate pursuant to this Section 7.2 shall be exercised upon thirty (30) days additional written notice to Owner given at any time after the applicable cure period has expired. Manager's termination notice shall specify the effective date of such termination.

**7.3 Curing Defaults.** Any default by Manager or Owner under the provisions of Section 7.1 or 7.2, as the case may be, which is susceptible of being cured shall not constitute a basis for termination of this Agreement if the nature of such default shall not permit it to be cured within the cure period allotted; provided that within such cure period the alleged party in default shall have given notice of its intent to cure, has commenced to cure such default, and is proceeding to complete the cure in good faith and with reasonable diligence.

**7.4 Effect of Termination.** The termination of this Agreement under the provisions of this Article 7 shall not affect the rights of the terminating party with respect to any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to any liability or claims accrued, or arising out of events occurring, prior to the date of termination.

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

**7.6 Indemnification re Post-Termination Events.** Manager shall indemnify and hold harmless Owner and its officers, officials, employees, or volunteers from all costs, expenses, claims, damages, and liabilities arising or resulting from the failure of Manager following the expiration or earlier termination (for whatever cause) of this Agreement to provide any tournaments, banquets, meetings, and other group functions to be held at the Facility (collectively, "Events") contracted for by Manager prior to such expiration or termination of the Agreement pursuant to its rights and obligations under this Agreement (or contracted for prior to the Commencement Date), which Events are to be provided after the expiration or termination of this Agreement, provided that on or before termination of the Agreement Manager has paid to Owner an amount equal to all deposits received from clients for reservation of such Events.

## **ARTICLE 8 - ASSIGNMENT**

### **8.1 Assignment.**

8.1.1 *Prohibited Assignments.* Except as provided in Sections 8.1.2 and 8.1.3, neither party shall assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, delayed or conditioned. It is understood and agreed that any consent granted by a party to any such assignment shall not be deemed a waiver of any consent required under this Section 8.1.1 as to any future assignment.

8.1.2 *Permitted Assignment by Manager.* Manager shall have the right, without the consent of Owner, to assign this Agreement to any Affiliate of Manager or in connection with the sale of all or a substantial portion of Manager's assets by providing 60 days prior written notice to Owner, provided that the Affiliate expressly assumes all of Manager's obligations hereunder.

8.1.3 *Permitted Assignment by Owner.* Owner shall have the right, without the consent of Manager, to assign this Agreement to any Affiliate or to any third party upon notice to Manager, provided that the Affiliate, assignee or transferee (as applicable) expressly assumes all of Owner's obligations hereunder. In the event that Owner assigns this Agreement to an unaffiliated third party without the consent of Manager, Manager shall have the right but not the obligation to terminate this Agreement upon sixty (60) days advance written notice to both Owner and its assignee, such notice to be provided no later than thirty (30) days following written notification by Owner to Manager of the assignment and identity of the assignee.

8.1.4 *Remedies.* Any assignment by either party of this Agreement in violation of the provisions of this Section 8.1 shall be null and void and shall result in a termination of this Agreement. In addition to any other remedies available to the parties, the provisions of this Section 6.1 shall be enforceable by injunctive proceeding or by a suit for specific performance.

**8.2 Successors and Assigns.** Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors, and assigns.

## **ARTICLE 9 - DAMAGE OR DESTRUCTION**

Should the Facility be destroyed or substantially damaged by fire or other casualty, Owner, by written notice to Manager given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section 9.1, the Facility shall be deemed to have been substantially damaged if, in the opinion of Owner, full and productive economic use of the Facility cannot be made and the estimated length of time required to restore the Facility substantially to

its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months. If this Agreement is not terminated in the event of damage to the Facility because the damage does not amount to substantial damage as described above, then Owner shall proceed with all due diligence to commence and complete restoration of the Facility to its condition and character just prior to the occurrence of such casualty.

#### **ARTICLE 10 - MAJOR CAPITAL IMPROVEMENTS**

Any Capital Improvement involving an addition to the Facility or renovation, replacement, or refurbishing designed to upgrade or change the nature or image of the Facility shall be deemed to be a "Major Capital Improvement." Any Major Capital Improvement project is in Owner's sole control and discretion, and all costs and expenses of any Major Capital Improvement shall be paid solely by Owner. The parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of Manager with respect to any aspect of a Major Capital Improvement project, including design, construction, or supervision. In the event the Owner desires the Manager to be involved in any capacity in a Major Capital Improvement project, the parties will enter into a separate agreement setting forth the terms and conditions of such involvement.

#### **ARTICLE 11 - GENERAL PROVISIONS**

**11.1 Purchases by Manager.** Manager shall use reasonable efforts to obtain the optimum combination of quality, price, and terms for all purchases for the Facility utilizing its extensive contacts and experience in purchasing golf course-related items. Manager shall not be entitled to any additional compensation for this undertaking other than as set forth herein. In connection with any purchases made by Manager or an Affiliate of Manager for the account of Owner, it is understood that Manager or such Affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings shall be passed on to Owner, including representatives' fees. In addition, all trade discounts, rebates, and refunds pertaining directly to purchases for the Facility (but excluding refunds and rebates received by Manager in connection with purchasing or leasing related to all Other Manager Facilities) shall accrue to the benefit of Owner.

**11.2 Purchases from Manager Affiliates.** If any purchases of goods or services for the Facility are made from or through an Affiliate of Manager, the charges to the Facility for such goods or services shall be on the same terms as those made to Other Manager Facilities, and such charges shall not exceed the market prices for such goods and services. Manager shall disclose to Owner the prices paid by its Affiliates for any such goods and services. Further, in case of any actual or potential conflicts of interest as to any purchases, Manager shall (i) disclose to Owner in writing such conflict with sufficient details and specificity; and (ii) obtain a prior written approval from Owner for each instance.

### **11.3 Indemnities.**

11.3.1 Manager's Indemnity. To the fullest extent allowed by law Manager agrees to indemnify, protect, defend, and hold harmless Owner and Owner's officers, elected and appointed officials, employees, and volunteers from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(i) Arising out of or which result from the negligence, fraud, or willful misconduct of or by Manager or any Affiliate, officer, director, agent, independent contractor, or employee of Manager in connection with Manager's performance under this Agreement; or

(ii) which result from any action taken by Manager or its Affiliates, employees or agents relating to the Facility (a) that is expressly prohibited by this Agreement, or (b) that is not within Manager's delegated authority under this Agreement.

11.3.2 Owner's Indemnity. Owner agrees to indemnify, protect, defend, and hold harmless Manager and its owners, officers, directors, and employees from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs and expenses relating to the Facility or Premises:

(i) which relate to or arise from the presence in, on, under or about the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products (as defined or regulated under any and all applicable federal, state and local environmental, health or safety laws, ordinances and regulations) from or through the Premises, including without limitation any and all costs of any required or necessary repair, cleanup, remediation or decontamination of the Premises, and the preparation and implementation of any closure, remedial or other required plans; provided that if such condition was caused by or on the part of Manager or any of its Affiliates, employees or agents, Manager shall not be indemnified under this Section 11.3.2; or

(ii) which result from any act or omission by Manager in connection with the management and operation of the Facility unless such act or omission constitutes negligence, willful misconduct or fraud on the part of Manager, or any employee of Manager (and was neither at the express direction of Owner nor with the express approval of Owner) in which event Manager shall not be indemnified under this Section 11.3.2.

**11.4 Facility Names.** The Facility shall be known by such trade name and/or trademark or logo as may from time to time be determined by Owner. All names, logos, and designs used at the Facility shall be the exclusive property of Owner. However, during the term of this Agreement, Manager shall have a non-exclusive license to use such names, logos, and designs in connection with the operation of the Facility. Manager may identify the Facility as a golf course managed and operated by Manager and may use the name "American Golf Corporation" or the initials "Manager" or the American Golf Corporation logo alone or in conjunction with other words or names or designs owned by Manager or any of its Affiliates. It is recognized that the name "American Golf Corporation" and the initials "Manager," together with any other names, logos, or designs owned by Manager or any of its Affiliates and used in the management and operation of the Facility (including without limitation any such names, logos, or designs used in connection with the restaurant, banquet rooms, and meeting rooms in and about the Facility), together with appurtenant goodwill, are the exclusive property of Manager or its Affiliates (collectively, the "Manager-Owned Names"). Accordingly, Owner agrees that no right or remedy of Owner for any default on the part of Manager under this Agreement shall, nor shall any provision of this Agreement, confer upon Owner or its successors or assigns the right to use Manager - Owned Names in the operation of the Facility or otherwise. In the event of any breach of this covenant by Owner, Manager, in addition to any remedies available to it under this Agreement or at law or in equity, shall have the right to injunctive relief. Anything contained in this Section 11.4 to the contrary notwithstanding, upon the expiration or earlier termination of this Agreement, Owner shall have the right to continue to use any and all items of Operating Inventory then on hand bearing any Manager-Owned Names, but shall not have the right to reorder any such items. In lieu of permitting Owner to continue to use such items of Operating Inventory bearing any Manager-Owned Names, Manager shall have the option to purchase any or all of such items at a price equal to Owner's cost of such items.

**11.5 Notices.** All notices, demands, requests, consents, approvals, replies, and other communications ("Notices") required or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (c) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("Fax") or e-mail; provided, however, that in order for a Fax Notice or e-mail Notice to be deemed effective, the party giving notice by Fax or e-mail shall provide a "hard copy" of the Fax Notice or e-mail Notice thereafter to the other party pursuant to one of the three methods of "hard copy" delivery specified in this Section.



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

City of San Leandro  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attention: City Manager

With a copy sent to:  
Public Works Director  
14200 Chapman Road  
San Leandro, CA 94578

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

AGC Management, LLC  
c/o American Golf Corporation  
909 Pacific Coast Highway, Suite 650  
El Segundo, California 90245  
Attention: Legal Department  
Facsimile: (310) 664-6165

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this Section 11.5.

**11.6** **Mortgages.** No mortgage shall in any way affect the rights, duties, or obligations of Owner or Manager, respectively, hereunder, and in the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any mortgage, the terms and conditions of this Agreement shall control. If the Owner records a mortgage and the mortgagee thereof requests that the terms of this Agreement be subordinate to such mortgage, Manager shall execute a subordination agreement substantially in the form requested by such mortgagee, so long as such subordination agreement is reasonable and contains attornment and non-disturbance provisions reasonably acceptable to Manager. No mortgagee shall have any rights against Manager and Manager shall have no obligations to any Mortgagee except as set forth in this Section 11.6.

**11.7** **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between Owner and its successors and assigns, on the one part, and Manager and its successors and assigns, on the other part. Manager shall perform all activities hereunder as an independent contractor, and no employer-employee relationship shall be established by this Agreement or the performance hereof.

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

**11.9 Understandings and Agreements.** This Agreement, all exhibits, and all Annual Plans constitute all of the understandings and agreements of whatever nature or kind existing between the parties with respect to Manager's management and operation of the Facility.

**11.10 Headings.** The Article, Section, and Subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

**11.11 Consents.** Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified. Except as otherwise provided herein or by applicable law, Owner's City Manager or his designee has final approval in all matters and amendments pertaining to this Agreement. Each party agrees that any provision of this Agreement which permits such party to make requests of the other party shall not be construed to permit the making of unreasonable requests.

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

**11.13 Third Parties.** None of the obligations under this Agreement of either party shall run to or be enforceable by any party other than the parties to this Agreement or by a party deriving rights under this Agreement as a result of an assignment, subordination, or similar agreement permitted pursuant to the terms hereof.

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

**11.15 Applicable Law.** This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of California.

**11.16 No Presumption Regarding Drafter.** Owner and Manager acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between Owner and Manager, and that this Agreement reflects their mutual agreement

regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either Owner or Manager to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

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

**11.18 United States Currency.** All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

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

**11.20 Attorneys' Fees.** In the event of a dispute involving the non-performance by a party hereto of its obligations under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all other expenses reasonably incurred in connection with such dispute, whether or not litigation is commenced, in addition to all other relief to which the party is entitled. If the successful party recovers judgment in any legal action or proceeding, the attorneys' fees and all other expenses of litigation shall be included in and made a part of any such judgment.

**11.21 Gender and Number.** Whenever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain gender shall be deemed to include either or both of the other genders.

**11.22 Further Assurance.** Owner and Manager agree that at any time or from time to time after the execution of this Agreement, each shall, upon the request of the other, execute and deliver such further documents and do such further acts and things as such party may reasonably request in order to fully effect the purpose of this Agreement.

**11.23 Waiver of Jury Trial.** The parties hereby waive trial by jury and any action, proceeding, or counterclaim brought by either of the parties hereto on any matter whatsoever arising out of or in any way connected with this Agreement.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed effective as of the day and year first written above.

**“OWNER”**

CITY OF SAN LEANDRO, CALIFORNIA

DocuSigned by:  
By: Jeff Kay  
C82A097A18A04E3...

Name: Jeff Kay

Title: City Manager

Approved as to form:

DocuSigned by:  
By: Richard Pio Roda  
7B41338F0D9F470...

Name: Richard D. Pio Roda

Title: City Attorney

**“MANAGER”**

AGC Management, LLC

DocuSigned by:  
By: Paul W. Ballam  
0F4276992B0040F...

Name: Paul W. Ballam

Title: Senior Vice President

## **EXHIBIT A – DEFINITIONS**

Affiliate means any and all corporations, partnerships, trusts, limited liability companies and other entities directly or indirectly controlled by, controlling, or subject to direct or indirect common control of an entity or person.

Base Management Fee means the annual fee paid by the Owner to Manager in twelve equal monthly installments for each year of the agreement term.

Capital Improvements means any alteration or addition to, or rebuilding or renovation of, the Facility, the cost of which is not charged to property operation and maintenance.

Compensation means the direct salaries and wages paid to or accruing for the benefit of any Manager or other employee, together with all fringe benefits payable to or accruing for the benefit of such Manager or other employee, including employer's contribution under the Federal Insurance Contributions Act ("FICA"); unemployment compensation, or other employment taxes; pension fund contributions, worker's compensation, group life and accident and health insurance premiums as well as any payments made by Manager which fall within the deductible amounts of any such policies; profit sharing; retirement; disability; and other similar benefits.

Furnishings and Equipment means all furniture, furnishings, trade fixtures, apparatus and equipment, including golf course maintenance vehicles and equipment, golf carts, driving range pickers and pullers, mats, buckets, cash registers, rental golf clubs, ball washers, benches, uniforms, and other personal property used in or held in storage for use in the operation of the Facility, other than Operating Inventory and fixtures attached to and forming part of the Improvements.

Gross Revenues means all amounts received as a result of the operation of the Facility and the sale of goods and services at the Facility, determined on an accrual basis and consistent with the income/operating statements generated by Manager in the ordinary course of business. Gross Revenues shall include, without limitation, the following generated at the Facility: all green fees; rental fees for golf carts, golf clubs, and other rental items; range balls; rental and concession payments; food and beverage sales; liquor sales; revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments, and other group gatherings; merchandise sales; instruction fees; vending sales (or, if applicable, receipts from vending companies); and proceeds from business interruption insurance. Gross Revenues shall not include the following:

- (i) Cash refunds or credits allowed on returns by customers;
- (ii) Sales taxes, excise taxes, gross receipts taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid to the appropriate taxing authority, whether added to or included in the selling price;

- (iii) Fees charged by a golf professional functioning as an independent contractor for the teaching of golf lessons and instruction to the extent the Facility operation does not receive revenue from such golf lessons
- (iv) Receipts in the form of refunds from, or the value of merchandise, supplies or equipment returned to, shippers, suppliers or manufacturers;
- (v) The amount of any gratuities paid or given by customers to Facility employees;
- (vi) Proceeds of insurance other than business interruption insurance or similar types of insurance;
- (vii) Any interest earned on any Owner provided bank account or funds;
- (viii) The actual uncollectible amount of any check or bank draft received as payments for goods or services and returned from a bank as being uncollectible; and
- (ix) The actual uncollectible amount of any sale of merchandise or services for which a credit card was accepted.

Incentive Management Fee means an amount paid by Owner to Manager equal to twenty percent (20%) of the amount by which Net Operating Income for a given Operating Year exceeds \$750,000.

Legal Requirements means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the Premises and the operation of the Premises.

Operating Expenses means utilities; costs of purchasing Operating Inventory; Compensation and expenses of the management staff and other employees directly employed at the Facility; advertising and promotion; repairs; the rent payments for any leased maintenance equipment and golf carts; insurance premiums; the Base Management Fee, and all other expenses relating to the operation of the Facility and/or payable under the Annual Plan that would be expensed in accordance with GAAP, except as provided in the next paragraph. Operating Expenses shall not include principal and interest payments on any promissory note or other debt instrument and payments under a deed of trust or mortgage (if any); depreciation; amortization; costs incurred as a result of any assignment of this Agreement or sale of the Facility; income taxes paid or payable by Owner on the income from the Facility.

Net Operating Income means Gross Revenues minus Operating Expenses.

Operating Inventory means consumable items used in or held in storage for use in the operation of the Facility, including scorecards and cart tickets, driving range balls, professional

shop merchandise, food and beverages, paper and plastic ware, fuel, cleaning materials, fertilizers, pesticides, linens, glassware, sanitation supplies and other similar items.

Operating Year means the Owner's fiscal year period, starting July 1 and ending the following June 30.

Other Manager Facilities means all other golf course facilities within the United States owned, leased, managed and/or operated, directly or indirectly, by Manager.

**EXHIBIT B - ANNUAL PLAN**  
**For the Period June 2, 2020 – June 30, 2021**

(Information shown on following pages)





Monarch Bay [282]

[Click for Specific Section](#)

Metrics Dashboard

Rounds

	Jun Proj. '20	Jul Proj. '20	Aug Proj. '20	Sep Proj. '20	Oct Proj. '20	Nov Proj. '20	Dec Proj. '20	Jan Proj. '21	Feb Proj. '21	Mar Proj. '21	Apr Proj. '21	May Proj. '21	Jun Proj. '21	June 1, 2020 - June 30, 2021
% of Orig. Plan Round	100%	100%	100%	100%	100%	100%	100%	80%	80%	145%	100%	100%	100%	
Daily Fee/Guest	10,199	10,227	10,634	8,488	8,302	7,176	6,484	5,762	6,872	6,413	8,604	8,387	10,199	
Tournament	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Rounds</b>	<b>10,199</b>	<b>10,227</b>	<b>10,634</b>	<b>8,488</b>	<b>8,302</b>	<b>7,176</b>	<b>6,484</b>	<b>5,762</b>	<b>6,872</b>	<b>6,413</b>	<b>8,604</b>	<b>8,387</b>	<b>10,199</b>	
Tournament Rnds Eliminated	400	600	600	600	500	150	150	33	56	17	225	500	400	

Revenue Per Round Proj.

	Jun Proj. '20	Jul Proj. '20	Aug Proj. '20	Sep Proj. '20	Oct Proj. '20	Nov Proj. '20	Dec Proj. '20	Jan Proj. '21	Feb Proj. '21	Mar Proj. '21	Apr Proj. '21	May Proj. '21	Jun Proj. '21	June 1, 2020 - June 30, 2021
Green Fees	\$ 15.16	\$ 16.44	\$ 14.38	\$ 15.24	\$ 14.95	\$ 17.53	\$ 17.71	\$ 13.81	\$ 16.19	\$ 16.40	\$ 16.98	\$ 17.08	\$ 15.62	
Cart Rental	\$ 4.30	\$ 4.66	\$ 4.07	\$ 4.32	\$ 4.30	\$ 4.97	\$ 5.02	\$ 5.01	\$ 4.81	\$ 4.80	\$ 4.80	\$ 4.84	\$ 4.43	
Driving Range	\$ 7.59	\$ 8.10	\$ 7.69	\$ 7.69	\$ 7.62	\$ 8.49	\$ 9.21	\$ 8.65	\$ 8.44	\$ 8.25	\$ 8.02	\$ 8.47	\$ 7.81	
Instruction	\$ 0.10	\$ 0.49	\$ 0.55	\$ 0.09	\$ 0.03	\$ 0.02	\$ 0.03	\$ 0.07	\$ 0.02	\$ -	\$ 0.03	\$ 0.03	\$ 0.11	
Merchandise	\$ 2.41	\$ 2.09	\$ 2.11	\$ 1.78	\$ 1.84	\$ 1.97	\$ 2.18	\$ 1.51	\$ 1.66	\$ 1.90	\$ 2.41	\$ 2.44	\$ 2.48	
Tennis & Fitness	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Food	\$ 2.99	\$ 3.02	\$ 3.27	\$ 2.84	\$ 2.61	\$ 2.73	\$ 1.90	\$ 1.96	\$ 2.00	\$ 2.50	\$ 3.37	\$ 2.60	\$ 3.08	
Beverage	\$ 1.64	\$ 1.59	\$ 1.62	\$ 1.73	\$ 1.59	\$ 1.34	\$ 1.32	\$ 1.52	\$ 1.61	\$ 1.50	\$ 1.58	\$ 1.40	\$ 1.69	
Other	\$ 0.30	\$ 0.30	\$ 0.27	\$ 0.27	\$ 0.28	\$ 0.15	\$ 0.17	\$ 0.21	\$ 0.08	\$ 0.10	\$ 0.20	\$ 0.31	\$ 0.31	

**EXHIBIT C – FORM OF LEASE TERMINATION AGREEMENT**

THIS LEASE TERMINATION AGREEMENT (“**Agreement**”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF SAN LEANDRO (“**Lessor**”), and AMERICAN GOLF CORPORATION, a California corporation (“**Lessee**”). Lessor and Lessee are sometimes referred to herein individually as a “**Party**” and together as “**Parties.**”

**RECITALS**

A. Lessor is the owner of certain real property and the owner of certain improvements, together commonly known as the Monarch Bay Golf Club, in the City of San Leandro, State of California (“**Golf Courses**”).

B. Lessor and Lessee are parties to that certain Agreement dated as of November 15, 1997, and as amended. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Lease.

C. Pursuant to a Golf Course Management Agreement dated of even date herewith (the “**Management Agreement**”), the Parties agreed to terminate the Lease immediately prior to the commencement date of the Management Agreement in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Termination Date. Notwithstanding any provision of the Lease to the contrary, the Lease shall terminate and be of no further force or effect at 11:59 p.m. Pacific time on June 1, 2020 (“**Termination Date**”). From and after the Termination Date, the terms and conditions of this Agreement and the Management Agreement shall set forth the sole and exclusive duties and obligations as between the Parties with respect to the Golf Courses, other aspects of the Leased Premises, and the Facility (as defined in the Management Agreement); provided, however, the Parties acknowledge and agree that the indemnity obligations of both parties set forth in Section 17 of the Lease, shall survive the Termination Date and shall not be discharged pursuant to this Agreement.

Lessee’s Receivables. Lessor acknowledges and agrees that Lessee shall retain as its sole property all of Lessee’s Receivables (as defined below). As used herein, the term “**Lessee’s Receivables**” means: (i) delinquent or uncollected golf cart fees, handicap fees, driving range fees, and golf club storage fees with respect to the Golf Courses (subject to proration under paragraph 3 below, for any such amounts billed as of the Termination Date; (ii) unpaid amounts with respect to tournaments, banquets, and other functions held at the Golf Courses on or before the

Termination Date; and (iii) any other receivables of Lessee with respect to the Golf Courses which, as of the Termination Date, are payable or past due

Prorations. All ordinary and customary revenue and expense items relating to the operation and management of the Golf Courses shall be prorated as of the Termination Date. For purposes of calculating prorations, Lessee shall be entitled to the income from the Golf Courses and responsible for the expenses of the Golf Courses for the entire day of the Termination Date. For the avoidance of doubt, notwithstanding any provision of the Management Agreement to the contrary, Lessee shall be entitled to retain (i) all revenue from the sale of goods existing at the Golf Courses as of the Termination Date except prepaid goods, if any; and (ii) outstanding reimbursements due to AGC from the City's Golf Capital Improvement Fund. All prepaid utility charges, rent, and prepaid expenses, including, but not limited to, membership dues, prepaid greens fees, charges, fees, locker rentals, bag storage charges, and all other income and expense items which arose by virtue of the operation of the Golf Courses shall be prorated as of the Termination Date. All deposits for golf tournaments, private parties, banquets, and all current gift certificates or rain checks which are issued but not redeemed prior to the Termination Date, and deposits held by Lessee from other events that occur after the Termination Date shall be credited to Lessor. The Parties shall use reasonable efforts to agree upon a final proration statement and paying any amount by June 30, 2020. The obligations of Lessor and Lessee under this Section 3 shall survive the Termination Date for a period of one hundred twenty (120) days. Lessor and Lessee agree to cooperate and use their best efforts to make any required adjustment or reconciliation on the proration of income and expenses not later than one hundred twenty (120) days after the Termination Date (which cooperation may include permitting reasonable inspections of Lessor or Lessee's books and records).

Licenses and Permits. If required and allowed by law, Lessee shall transfer or assign to Lessor, on or before thirty (30) days after the Termination Date, any and all licenses or permits held by Lessee related to the Golf Courses, excluding any and all operating permits which are required to be retained by Lessee under the terms of the Management Agreement.

Transition. Notwithstanding anything to the contrary contained herein, Lessor and Lessee agree to use commercially reasonable efforts and take such actions as are reasonably necessary after the Termination Date to assist the other party in the transition of the Golf Courses from the Lease to a Management Agreement.

Liabilities. Except as otherwise stated in the Management Agreement, it is expressly agreed and recognized that (i) Lessor does not assume any responsibility or liability whatsoever for any commitments, obligations, or debts made or incurred by Lessee or its predecessors arising from the leasehold ownership and operation of the Golf Courses on or prior to the Termination Date, regardless of whether fixed, accrued, or contingent, and (ii) Lessee will continue to be liable for the performance of its obligations arising prior to the Termination Date with respect to its

liabilities and contractual obligations, including Lessee's accounts payable and taxes, and any amounts owed to Lessor pursuant to the terms of the Lease.

Miscellaneous.

A. Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California.

B. Execution in Counterparts. This Agreement, including emailed PDFs and facsimile copies of this Agreement, may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

C. Attorneys' Fees. In the event of a dispute in connection with this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and all other expenses reasonably incurred in connection with such dispute, whether or not litigation is commenced, in addition to all other relief to which the Party is entitled.

D. Termination of Memorandum of Lease. If a memorandum of the Lease has been recorded, each Party shall deliver to the other Party an original counterpart of a Termination of Memorandum of Lease executed by such Party (and duly notarized). Each Party is authorized to cause a fully executed original of the Termination of Memorandum of Lease to be recorded in the official records of Alameda County.

E. Other Documents. Lessor and Lessee agree that they will promptly, at any time and from time to time after the Termination Date, execute, acknowledge and deliver such further documents as may be reasonably requested by the other Party in order to fully effectuate the purposes and intents of this Agreement.

F. Interpretation. The Parties acknowledge and agree that they have had the opportunity to have this Agreement reviewed by their own independent counsel, and therefore agree that this Agreement shall be deemed to have been jointly drafted and shall not be construed in favor or against either Party.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first above written.

“LESSOR”

CITY OF SAN LEANDRO

DocuSigned by:  
By Jeff Kay  
C82AB97A18A54E3...  
Name: Jeff Kay  
Title: City Manager

Approved as to form:

DocuSigned by:  
By Richard Pio Roda  
7841338F6D3F470...

Name: Richard D. Pio Roda  
Title: City Attorney

“LESSEE”

AMERICAN GOLF CORPORATION,  
a California corporation

DocuSigned by:  
By Paul W. Ballam  
01A27A052BC0195...  
Name: Paul W. Ballam  
Title: Senior Vice President

3526849.2

**EXHIBIT D – SCHEDULE OF CURRENT GOLF FEES****Tony Lema Golf Course**

	<u>Weekday</u>		<u>Weekend/Holiday</u>	
	Resident	Non-Resident	Resident	Non-Resident
18 Holes	\$30	\$39	\$42	\$59
Senior	\$22	\$29	\$42	\$59
Junior	\$10	\$10	\$42	\$59
Twilight	\$20	\$29	\$25	\$39
Super Twilight	\$15	\$19	\$19	\$25
Back 9 Holes	\$15	\$20	\$25	\$30
Cart	\$16	\$16	\$16	\$16
Senior Cart	\$10	\$10	\$16	\$16
Twilight Cart	\$10	\$10	\$10	\$10

**Marina Golf Course**

	<u>Weekday</u>		<u>Weekend/Holiday</u>	
	Resident	Non-Resident	Resident	Non-Resident
9 Holes	\$11	\$15	\$14	\$18
Junior	\$ 5	\$ 5	\$14	\$18
Monthly Pass	\$50	\$65	N/A	N/A
Monthly Surcharge	\$ 4	\$ 4	N/A	N/A
Cart	\$11	\$11	\$11	\$11
Senior Cart	\$10	\$10	\$10	\$10

**EXHIBIT E – MAINTENANCE STANDARDS**

1.0 **GENERAL REQUIREMENTS:** These specifications establish the standard for the grounds maintenance for the City of San Leandro Golf Facility.

The operator shall furnish all labor, equipment, materials, services and special skills required to perform the landscape and other maintenance as set forth in these specifications, observing acceptable standards as established by the United States Golf Association (U.S.G.A.), and in keeping with the highest standards of quality and performance.

NOTE: Any and all references to the role or duties of the authorized City representative do not relieve the operator of any obligation to maintain the golf courses in conformance to the specifications outlined.

1.1 **SAFETY:** Operator agrees to perform all work outlined in this specification in such a manner as to meet all accepted standards for safe practices during the maintenance and operation and to safely maintain equipment, machines, and materials or other hazards consequential or related to the work; and agrees additionally to accept the sole responsibility for complying with all local, County, State or other legal requirements including but not limited to, full compliance with the terms of the applicable O.S.H.A., CAL. O.S.H.A., and C.D.F.A. (California Department of Food and Agriculture) Safety Orders at all times so as to protect all persons, including operators' employees,



vendors, members of the public or others from foreseeable injury, or damage to their property.

It shall be the Operator's responsibility to inspect, and identify, any condition(s) that render any portion of the area under maintenance unsafe as well as unsafe practices occurring thereon. The City of San Leandro shall be notified immediately of any unsafe condition that requires major correction. Operator shall be responsible for making corrections including but not limited to filling holes in turf areas and replacing valve box covers so as to protect members of the public or others from injury. Operator shall cooperate fully with the City in the investigation of any accidental injury or death occurring on the City golf property.

**1.2 PROTECTION OF PROPERTY DURING INCLEMENT**

**WEATHER:** All waterways and drainage facilities shall be kept free of debris and vegetation overgrowth at all times to ensure proper drainage. During inclement weather, regular inspections shall be performed of all waterways and drainage facilities with required erosion repairs made immediately. All flooded area of the courses shall be pumped out as needed to ensure that they remain safe and playable.

**1.3 PESTICIDES:** General: All materials used shall be in strict accordance with and applied within the standards set forth in the EPA regulations and the California Food and Agricultural Code and other applicable laws. Storage of all materials shall be in strict accordance with all applicable City, County, State and Federal guidelines with proper and

accurate inventories maintained at all times.

Note: Operator is responsible for obtaining all required permits and maintaining the required usage documentation.

**Application of Pesticides:**

1.3.1 **Timing:** Pesticides shall be applied at times which limit the possibility of contamination from climate and other factors. Early morning application shall be used when possible to avoid contamination from drift. The applicator shall monitor forecast weather conditions to avoid making application prior to inclement weather to eliminate potential runoff of treated areas. Irrigation water applied after treatment shall be reduced to eliminate runoff. When water is required to increase pesticide efficiency, it shall be applied only in quantities of which each area is capable of receiving without excessive runoff.

1.3.2 **Handling of Pesticides:** Care shall be taken in transferring and mixing pesticides to prevent contaminating areas outside the target area. Application methods shall be used which ensure that materials are confined to the target area. Spray tanks containing leftover materials shall not be drained on the site to prevent contamination. Disposal of pesticides and tank rinsing materials shall be within the guidelines established in the California Food and Agricultural Code, or EPA regulations or applicable law whichever is more stringent.

1.3.3 **Equipment and Methods:** Spray equipment shall be in good operating condition, quality, and design to efficiently apply material to the target area. Drift will be minimized by avoiding high pressure applications and using water soluble drift agents.

1.3.4 **Applications:** All pesticide applications shall be in accordance with written recommendations provided by a licensed pest control advisor (PCA) with application performed by a licensed qualified applicator (QAC). All chemical applications are to be pre-approved and reviewed with the Golf Course Operations Manager prior to application. Records of such recommendations and application records shall be available to the Golf Course Operations Manager for inspection at all times.

1.3.5 **Selection of Materials:** Pesticides shall be selected from those materials which characteristically have the lowest residual persistence. Use of emulsifiable concentrates shall be used when possible to limit windblown particles. The use of adjuvants will be utilized to increase pesticide efficiency thereby reducing the total amount of technical material required to gain control.

1.4 **SOUND CONTROL REQUIREMENTS:** The Operator shall comply with all local sound control and noise level rules, regulations, and ordinances which apply to any work performed pursuant to the agreement. Each internal combustion engine used for any purpose on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer of such equipment. No internal

combustion engine used shall be operated on the project without said muffler. The Operator shall be responsible for compliance to noise level rules by any subcontractor performing work. (See attached - "City Noise Regulations").

- 1.5 **CONSTRUCTION EQUIPMENT:** The Operator shall take all necessary precautions for safe operation of equipment and the protection of the public from injury and damage from such equipment. The Operator shall be responsible for complying will all City, County, State, and Federal guidelines concerning any construction related activity throughout the property covered within this agreement.
- 1.6 **INQUIRES AND COMPLAINTS:** The Operator shall have designated responsible management personnel, employed by the Operator, to take the necessary action regarding all inquires and complaints that may be received from or through the City and/or private citizens during normal work hours.

Whenever immediate action is required to prevent impending injury, death or property damage to the facilities being maintained, City may, after a reasonable attempt to notify the Operator, cause such action to be taken by the City work force and shall charge the full cost thereof to the Operator.

All complaints shall be abated to the satisfaction of the City.

If any complaint is not abated within 3 working days, the City shall be

notified immediately of the reason for not abating the complaint followed by a written report to the Golf Course Operations Manager within five (5) calendar days.

1.7 **MAINTENANCE EMPLOYEES:** All maintenance employees shall wear uniforms bearing both the Operator's and the employees name for easy identification while working on the property. In addition to the stated identification requirements, maintenance workers shall be required to wear hard hats, steel toe shoes, face masks and ear protection when appropriate.

2.0 **SPECIFIC REQUIREMENTS:**

2.1 **MAINTENANCE RECORDS:** Operator shall maintain and keep a report form that records all On-Going, Seasonal, and Additional Work, and maintenance functions performed on a daily basis by the Operator's personnel. Said report shall be in a form acceptable to the Golf Course Operations Manager and shall be submitted to the City on a monthly basis. The superintendent will provide an annual maintenance plan (including aerification, seeding, fertilization, top dressing and other project schedules) to the Golf Course Operations Manager and Pro Shop staff. This plan may be used as a communication tool to keep staff and guests informed of the scheduling of various maintenance practices.

2.2 **TREES:** All tree trimming shall be performed on a schedule approved by the Golf Course Operations Manager and in accordance with the pruning specifications.

- 2.2.1 Trees shall be pruned as required to remove broken or diseased branches. The Operator shall develop a pruning program which will promote proper tree scaffolding, strength and appearance consistent with its intended use. Any tree or group of trees deemed by the Golf Course Operations Manager to be in need of trimming due to either aesthetic and/or safety reasons shall be trimmed in a timely manner at the Operator's expense.
- 2.2.2 Trees located adjacent to vehicular and/or pedestrian traffic ways shall be maintained so as to not obstruct vehicle and/or pedestrian visibility and clearance.
- 2.2.3 Fertilization shall be scheduled as often as required to keep trees in a healthy and desirable condition as outlined in the pruning specifications. Avoid applying fertilizer to root ball or base of a main stem, rather, spread evenly in area of a drip zone. Use a well-balanced commercial fertilizer.
- 2.2.4 Tree stakes, ties, and guys shall be checked and corrected as needed. Ties will be adjusted to prevent girdling. Remove unneeded stakes, ties, and guys as required. Re-stake trees, as required, using lodge pole stakes.
- 2.2.5 Prune trees along sidewalks to allow eight (8) foot clearance for pedestrians and fifteen (16) feet above curb and gutters for vehicular traffic.

- 2.2.6 Ailing or stunted trees which fail to meet expected growth will receive additional nutrient treatments to correct any deficiencies or be removed and replaced in kind (subject to the Golf Course Operations Manager's approval).
- 2.2.7 Surface roots which become maintenance or appearance problems will be removed as required to prevent damage to adjacent areas.
- 2.2.8 Any tree requiring removal shall be replaced by the Operator. In the event the tree is removed to provide air circulation for the turfgrass or other valid purpose intended to improve playing conditions, then such removal shall not require a new tree being replaced, subject to the approval of the Golf Course Operations Manager.
- 2.2.9 The Operator shall develop and implement a reforestation plan for adding trees and/or replacing aging trees. This plan shall have the prior approval of the Golf Course Operations Manager.
- 2.2.10 All palm trees are to be trimmed a minimum of once annually to ensure that all dead fronds and/or seed pods are removed at the discretion of the Golf Course Operations Manager as certain palm trees throughout the property are to be maintained with skirts.
- 2.2.11 A tree spraying program is to be developed by the Operator and approved by the Golf Course Operations Manager. This must

include, but not be limited to, control of "spider mite" on Pine trees and control of olives on Olive tress. This program is to be performed in a timely manner to insure proper control of all pests on trees. This program is to be developed immediately and maintained throughout the contract period.

## 2.3 SHRUBS

- 2.3.1 Prune shrubs to retain as much of the natural informal appearance as possible on a timely basis or at the direction of the Golf Course Operations Manager.
- 2.3.2 Shrubs used as formal hedges or screens shall be pruned as required to present a neat, uniform appearance.
- 2.3.3 Remove any spent blossoms or dead flower stocks as required to present a neat, clean appearance.
- 2.3.4 Plants growing over curbing and/or sidewalks shall be trimmed on a natural taper rather than vertical so as not to appear to be hedged.
- 2.3.5 Schedule the application of a commercial fertilizer as often as required, but no less than twice per year, to promote optimum growth and healthy appearance to all shrubs.
- 2.3.6 Any plant requiring removal shall be replaced by the Operator at



their expense within 48 hours of request by the Golf Course Operations Manager.

## 2.4 VINES

- 2.4.1 Vines and espalier plants shall be checked and retied as required. Secure vines with appropriate ties to promote directional growth on supports.
- 2.4.2 Do not use nails to secure vines on masonry walls.
- 2.4.3 Deep water vines in pockets, not provided with sprinklers, as required to promote optimum growth.
- 2.4.4 Schedule fertilization of all vines with a commercial fertilizer as often as required, but no less than twice per year, to promote healthy appearance.
- 2.4.5 Pruning of vines will be in accordance with proper horticultural practices and in keeping with the purpose for which the particular vine was planted as determined by the Golf Course Operations Manager.
- 2.4.6 Any vine requiring removal shall be replaced by the Operator at their expense within 48 hours of request by the Golf Course Operations Manager.

## 2.5 GROUND COVER

- 2.5.1 Apply all chemical control (i.e. pesticides) as required to control or prevent pest infestations to protect ornamental plantings.
- 2.5.2 Trim ground cover adjacent to walks, walls and/or fences as required for general containment to present a neat, clean appearance.
- 2.5.3 Cultivate and/or spray herbicide to remove broad-leaved and grass weeds as required. Shrub beds shall be maintained in a weed free condition.
- 2.5.4 Keep ground cover trimmed back from all controller units, valve boxes, quick couplers, or other appurtenances or fixtures. Do not allow ground covers to grow up trees, into shrubs, or on structures or walls. Keep trimmed back approximately four (4) inches from structures or walls.
- 2.5.5 Schedule fertilization of all ground cover areas with a commercial fertilizer as often as required, but no less than twice per year, to promote healthy appearance.
- 2.5.6 Ground cover plants shall be added, as needed, to ensure a solid mass planting in conformance with the original intent. Added plants shall be installed at the expense of the Operator within 48 hours of request by the Golf Course Operations Manager.

## 2.6 PEST CONTROL ON PLANT MATERIALS

2.6.1 The Operator shall provide complete and continuous control and/or eradication of all plant pests or disease.

2.6.2 The Operator shall supply the proper chemical designated for the pest to be controlled with all applications made by licensed applicators.

2.6.3 Operator shall obtain all necessary regulatory permits and assume responsibility and liability for use of all chemical controls.

## 2.7 IRRIGATION SYSTEM

### 2.7.1 Efficient User of Water

2.7.1.1 The watering schedule will be established and programmed by the Operator. Application rates will be based on the amount of water the areas require to properly irrigate all plant material while eliminating excessive runoff.

Any repairs, modifications, system enhancements, maintenance agreements with sub-contractors or other adjustments to the irrigation system, or any of their respective field components, must be submitted in advance for approval by the Golf Course Operations

Manager.

- 2.7.1.2 Considerations must be given to soil texture, structure, porosity, water holding capacity, drainage, compaction, precipitation rate, run off, infiltration rate, percolation rate, evapotranspiration, seasonal temperatures, prevailing wind condition, time of day or night, type of grass plant and root structure. This may include syringing during the day and watering during periods of windy weather.
- 2.7.1.3 In areas where wind creates problems of spraying onto private property or road right of ways, the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night.
- 2.7.1.4 Operator shall be responsible for daily monitoring all systems within premises and correcting for: coverage, adjustment and clogging of lines and sprinkler heads. All sprinkler heads are to be monitored for proper rotation speed, leakage, excessive nozzle wear, proper spray pattern, and arc adjustment and all other operational functions. If defects are found, they are to be corrected immediately utilizing ONLY manufacturer's approved repair parts.

- 2.7.1.5 All controllers shall be inspected on a daily basis for proper operation and function. If operational defects are found within the controller, repairs are to be made immediately utilizing ONLY manufacturer approved repair parts.
- 2.7.1.6 A soil probe or tensiometer shall be used to determine the soil moisture content on greens, tees and fairways.
- 2.7.1.7 Operator shall observe and note deficiencies occurring from the original design of facilities and review these findings with the Golf Course Operations Manager so necessary improvements can be considered.
- 2.7.1.8 All leaking or defective valves and sprinkler heads shall be repaired within twenty-four (24) hours.
- 2.7.1.9 If, due to elements beyond the control of the Operator, conditions dictate priority uses of water, the following priorities are to be used: 1. Greens; 2. Tees; 3. Fairways; 4. Other Turf and Landscape areas.
- 2.7.1.10 Particular attention shall be paid to all slope areas which will, by physical nature, provide for greatest

potential runoff which can contribute to erosion and affect play.

- 2.7.1.1.1 Operator shall turn off all controllers when it is not necessary to irrigate due to adequate rainfall.

NOTE: At no time shall the Operator utilize a fire hydrant for irrigation purposes without written permission from the Golf Course Operations Manager.

## 2.7.2 System Maintenance

- 2.7.2.1 Any repairs made by the Operator shall be made in accordance with manufacturer's suggested repair procedures and parts under normal industry standards.
- 2.7.2.2 Operator shall be responsible for adjusting the height of sprinkler risers necessary to compensate for growth of plant material.
- 2.7.2.3 Automatic controllers and/or enclosures shall be locked while unattended.
- 2.7.2.4 All controller enclosures must be painted, as needed, to prevent rusting and maintain good appearance.

- 2.7.2.5 Sprinkler heads shall be kept clear of overgrowth, which may obstruct maximum operation. Chemical edging around sprinkler heads will not be permitted unless approved by the Golf Course Operations Manager.
- 2.7.2.6 Repairs made to the irrigation system must be made in accordance with the system's original design with products equal to or higher quality than currently furnished.
- 2.7.2.7 Irrigation systems for trees (deep bubblers) are to be inspected weekly and repairs made immediately with equal or higher grade products as needed. Bubbler system flush valves, where provided, are to be inspected and flushed on a similar weekly basis with a similar repair requirement.
- 2.7.2.8 All drip irrigation systems are to be inspected daily and repairs made immediately with equal or higher grade repair products as needed. Drip system flush valves, where provided, are to be inspected and flushed on a weekly basis with a similar repair requirement.

2.8 **RODENT CONTROL:** Operator shall continuously control all rodents within the boundaries of the golf courses. Damage to public or private

property due to erosion as a result of rodent activity shall be repaired at the Operator's expense.

- 2.9 **WEED CONTROL OF PAVED SURFACES:** Operator shall control all weeds growing in cracks, expansion joints and other hard surfaces by the use of mechanical control and with the approval of the Golf Course Operations Manager chemical control, in extreme situations.
- 2.10 **WEED CONTROL IN LANDSCAPE AREAS:** Weed control in landscape areas shall be accomplished by use of both pre-emergent and post-emergent herbicides. Mechanical weed eradication is unacceptable unless approved by the Golf Course Operations Manager.
- 2.11 **STRING TRIMMERS:** Care shall be exercised with regard to the use of string trimmers to prevent damage to building surfaces, walls, header board, light fixtures, signage, etc. No string trimmers shall be used around trees. A minimum of twelve (12) inch bare soil or mulched buffer zone shall be maintained around the circumference at the base of all trees.
- 2.12 **TURF MAINTENANCE:** Turf maintenance in all areas is to be performed on a timely professional basis and in a manner to insure green and healthy turf that is free from weeds, disease and other pests and promotes optimum growth at all times throughout the year. Acceptable standards are to be established for each area of play under direction of the Golf Course Operations Manager and in accordance with the suggestions of a representative of the U.S.G.A. as being reasonable and



appropriate for the local environment.

The successful contractor shall be required, twice annually, to have an inspection and audit of its turf management practices performed by a Regional U.S.G.A. representative and the City's Golf Course Operations Manager. The costs for this inspection shall be borne by the successful operator. A copy of the findings shall be supplied to the City's Golf Course Operations Manager for purposes of follow-up on any deficiencies noted in the report.

Turf is to be maintained utilizing sound agronomic and turf management standards such as fertilizing, irrigation, aerifying, topdressing, pest control, de-thatching, mowing, soil amending, shoot and root rejuvenation, and drainage control, in an effort to maintain the highest quality turf possible within reasonable limits, and not impact undue stress upon the plant materials.

Care must be exercised during all maintenance and mowing operations to prevent damage to all areas both within and adjacent to the property. This is to include, but not be limited to, sprinkler heads, controllers, electrical boxes, lighting fixtures, plant materials, buildings and structures, passing vehicles, and all private property. Alternate mowing patterns are to be established to insure the elimination or potential of wheel ruts by maintenance vehicles. All trash, litter, and any debris must be removed and disposed of prior to mowing in any given area.

**2.12.1 Greens, Nursery & All Putting Surface Maintenance:** Maintain all putting surfaces within locally acceptable industry standards at all times.

- 2.12.1.1 Putting surfaces to be mowed daily. The task will be completed as early as possible (within reason, considering worker and product safety), and will typically be completed no later than four hours after start of play. Typical daily cutting height to be between .125 and .250 inches and will usually be .140 to .190 inches.
- 2.12.1.2 Ball cups or pin locations are to be relocated daily under USGA standards to insure proper turf recovery and enable worn turf areas to rejuvenate. Ball marks and/or divots are to be repaired daily prior to mowing. Both above operations are to be performed daily utilizing industry standards, devices and methods.
- 2.12.1.3 Removal of sod from any nursery area should be immediately accompanied by reseeding and/or topdressing to facilitate the rapid recovery of nursery areas.
- 2.12.1.4 Verticutting of all putting surfaces throughout the growing season is to be done on an as needed basis with minimum of six (6) times annually. This is to be followed by a light topdressing to mitigate the build-up of thatch.
- 2.12.1.5 Light topdressing is to be done monthly on all putting surfaces. Material to be used shall be the same as the original material used in the construction of the putting surfaces. A soil analysis may be needed, at

Operator's expense, to determine comparable soil amendment prior to application.

- 2.12.1.6 Aerification will be performed at a frequency which reflects warranted conditions. It could be done twice per year. The newly constructed greens may not be aerified as frequently during the first year. Occasional "quarter tining" and/or slicing with no top dressing may be performed to relieve compaction, allow air and water movement and facilitate flushing of salts.
- 2.12.1.7 Operator shall have the soil analyzed to determine all properties inclusive of physical characteristics and recommended nutrient requirements by a pre-approved soil analysis laboratory within thirty (30) days of term of contract, and annually thereafter. Nutrient requirements are to be established, through assay and/or periodic tissue analysis, to insure uniform growth of high quality intensely maintained turf typical of high quality local area putting greens. A proper monthly fertilization program is to be established and maintained by the Operator throughout the term of the contract.
- 2.12.1.8 Putting surfaces are to be treated with chemicals only on an as needed basis to insure them to be free of damaging insects, noxious weeds, pathogens, and other pests typically associated with such intensely maintained turf grass. A proper preventative and/or

pre-emergent chemical management program may be instituted by the Operator, upon approval of the Golf Course Operations Manager. Any damage to such turf areas as a result of any chemical applications, whether approved or not, will be at the expense of the Operator to correct and repair immediately.

2.12.1.9 Greens, inclusive of the collar, are to be periodically edged and kept free of foreign grasses and/or weeds to insure a healthy monostand of turf on the putting surface. This process must be done throughout the growing season and intensified in the warmer summer months as needed.

2.12.1.10 In the event over seeding is required, seeding rates are to be adjusted to insure rapid establishment yet mitigate potential transitional difficulties in the warmer spring months. Putting surfaces are to be seeded at a minimum rate of 35 lbs. Pure Live Seed (PLS) per thousand square feet. ONLY Oregon grown "Blue Tag Certified" seed may be used on putting surfaces. Seed must be free of all noxious weeds and certified by the University of Oregon to be *Poa Annua* free. Only pre-approved seed varieties and/or blends may be used. All seed submitted for approval must be accompanied by the appropriate University of Oregon test data indicating compliance with the aforementioned requirements.

2.12.1.11 Ropes, signage, and traffic control devices will be

moved at a frequency which avoids excessive wear and promotes turf cover in irrigated areas.

2.12.2 Care and maintenance of all aprons, collars, and greens approaches must be identical to all of the specifications as set forth in Section 2.12.1 for putting greens. These areas of the course will be addressed as early as possible during the business day (within reason, considering worker and product safety). collars and greens approaches should be cut to a height between .375 and .500 inches and aprons between 1.000 and 1.500 inches.

2.12.2.1 Care and maintenance of all Aprons, Collars, and Greens Approaches must be identical to all of the standards and specifications as set forth in Section 2.12.1 for Putting Greens with the following exceptions: Cutting heights may be adjusted no more than one hundred (100%) percent higher than that of the putting surfaces at any time. Frequency of mowing will be every other day with a minimum frequency of three (3) times weekly.

2.12.2.2 Greens approaches are to be maintained utilizing all standards of maintenance as outlined in Section 2.12.3 for Tees with the following exceptions: Greens approaches are to be maintained at all times at the same cutting height and under the same mowing frequency as outlined for Aprons and Collars in Section 2.12.2.1. Greens approaches are to be

mowed during the same operation as that of Aprons and Collars with clippings removed in a similar manner as that outlined for Aprons and Collars in Section 2.12.2.1.

**2.12.3 Tee Maintenance:** Maintain all tees in accordance with accepted payability and industry standards as determined by the Golf Course Operations Manager at all times, observe the following minimum requirements:

2.12.3.1 Tees must be serviced daily and done as early as possible during the business day by the moving and placement of tee markers, benches, ball washers and filling of divots with sand and seed. Tee towels are to be changed at least twice a week. Ball washers are to be kept filled daily to the proper fill level with an appropriate and pleasant smelling agent.

2.12.3.2 Mow tees with a properly adjusted reel type mower 2 to 5 times per week at a cutting height of .375 to .625 inches. Clippings are to be removed and disposed of properly -- immediately following mowing.

2.12.3.3 Verticut tees at a frequency which corresponds to standards used at other comparable course, unless otherwise pre-approved by the Golf Course Operations Manager.

2.12.3.4 Aerify tees at a frequency which corresponds to standards used at other comparable courses, unless

otherwise pre-approved by the Golf Course Operations Manager.

- 2.12.3.5 Repair worn and damaged turf areas as they occur by overseeding or re-sodding to insure playability at all times. Divots are to be sanded daily during the initial tee maintenance operations. Tees are to be maintained in a smooth and playable condition at all times.
- 2.12.3.6 Treat tees for control of insects, disease, weeds and other pests as needed, in a timely manner, to maintain a consistent and healthy playing surface at all times.
- 2.12.3.7 Trash receptacles are to be kept clean and emptied a minimum of once daily.
- 2.12.3.8 A sand container with appropriate dispensing device must be available and filled for use as needed on all 3 par tees for the repair of divots by golfers. Maintenance to resand as required.
- 2.12.3.9 Traffic control devices within 100 feet of teeing surfaces will be moved at a frequency which avoids excessive wear and promotes turf cover in irrigated areas.
- 2.12.3.10 Tees are to be overseeded annually utilizing those standards outlined in Section 1.12.1.10 with the

following exceptions: a minimum of twenty-five (25) pounds per thousand square feet of "pure live seed" (PLS) will be used on all tees and drop areas designated on the golf course. This is to include the Driving Range tees.

2.12.4 **Fairway Maintenance:** Maintain all fairways in accordance with accepted playability and industry standards at all times, observing the following minimum requirements:

2.12.4.1 Mow fairways two (2) to three (3) times weekly at 5/8" height.

2.12.4.2 Verticut fairways as necessary for turf health and good playing condition.

2.12.4.3 Aerify all fairway at a frequency which corresponds to standards used at other comparable courses, unless otherwise pre-approved by the Golf Course Operations Manager. Plugs will be removed or pulverized.

2.12.4.4 Treat turf to control weeds, diseases, insects, and other pests as necessary to maintain a weed free and healthy turf.

2.12.5 **Rough Maintenance:** Maintain turf areas in accordance with applicable industry standards as determined by the Golf Course Operations Manager at all times, observing the following minimum requirements:



- 2.12.5.1 Mow a minimum of two (2) times per week at 1-1/4" to 1-1/2" in height throughout the growing season.
- 2.12.5.2 Verticut as necessary to promote healthy growth.
- 2.12.5.3 Aerify rough at a frequency which corresponds to standards used at other comparable courses, unless otherwise pre-approved by the Golf Course Operations Manager. Plugs will be removed or pulverized.
- 2.12.5.4 Overseed and top dress (or re-sod) worn or bare turf areas as necessary.
- 2.12.5.5 Treat turf to control weeds, diseases, insects and other pests, as necessary, to maintain a weed free and healthy turf.

## 2.13 SAND TRAPS

- 2.13.1 Sand traps shall be cleaned and raked daily with sand added as required to a uniform minimum sand depth of six (6) inches. Added sand must be pre-approved by the Golf Course Operations Manager to insure compatibility and consistency with existing material.
- 2.13.2 Turf shall be mechanically edged around sand traps at regular intervals to ensure a neat appearance and eliminate turf grass encroachment.

**NOTE: Chemical edging around sand traps will be not allowed.**

- 2.13.3 Excess sand in the turf surrounding the trap shall be removed on a regular basis.
- 2.13.4 A minimum of two (2) freshly painted rakes are to be available at all sand traps at all times. (Color subject to Golf Course Operations Manager approval.)

## **2.14 SHRUB BEDS / SEASONAL COLOR BEDS / PERIPHERY AREAS**

### **2.14.1 Shrub Beds**

- 2.14.1.1 Clean up shall occur on a regular basis, minimum monthly, to ensure that beds are kept free of fallen branches, excessive leaves and weeds. Trash such as papers, cans, bottles and other debris will be removed immediately on a daily basis.
- 2.14.1.2 Weed control shall be accomplished through both chemical and mechanical means. It is the intent of the City to avoid the use of chemicals whenever practical. When chemicals are used in planting beds for weed control, care must be exercised to not damage desirable plant materials. If chemical drift occurs, Contractor must immediately replace the damaged plant material with an appropriately sized substitute of the same genus and species of plant. All chemical use must be approved in advance by the

Golf Course Operations Manager.

2.14.1.3 Trimming - Refer to Section 2.03

2.14.2 Seasonal Color Beds

2.14.2.1 All color beds shall be regularly cleaned of paper, cans, bottles, fallen branches, excessive leaves and weeds.

2.14.2.2 Weed control shall be accomplished through both chemical and mechanical means. It is the intent of the City to avoid the use of chemicals whenever practical. All chemical use must be approved in advance by the Golf Course Operations Manager.

2.14.2.3 Beds shall be cultivated by mechanical means on a regular basis, minimum twice monthly and/or as directed by the Golf Course Operations Manager.

2.14.2.4 Color plants shall be replaced a minimum of twice annually.

2.14.3 Periphery Areas: These areas consist of all turf areas not previously mentioned. These areas are normally non-playable areas including, but not limited to, slopes, natural ditches, drainage channels, creek beds and lakes.

2.14.3.1 All periphery areas shall be maintained in a manner consistent to industry standards.

- 2.14.3.2 Areas shall be watered, mowed, weeded, cleaned of litter and other debris on a regular basis (a minimum of once a week).
- 2.14.3.3 Special attention shall be given to periphery areas adjacent to public roadways since these areas are highly visible to the general public and constitute a first impression of the overall quality and service level of the courses.
- 2.14.3.4 All areas are to be inspected for and repaired of any erosion problems on a regular basis and immediately corrected if needed.

## 2.15 PARKING LOTS

- 2.15.1 Parking lots are to be cleaned each day to ensure a clean appearance free from litter and debris including, but not limited to all landscaped planters on or adjacent to the lots.
- 2.15.2 Paint striping, seal coating and other maintenance shall be performed a minimum of every other year, to ensure that paint and surfaces are cleaned and smooth at all times. Potholes, when discovered, shall be repaired immediately.
- 2.15.3 Handicap Parking signage and paint shall be maintained in accordance with all State, County, City, and Federal regulations.

## 2.16 GRAFFITI

- 2.16.1 The Golf Facility shall be inspected daily for evidence of graffiti. Special attention shall be given to restrooms, signs, markers, block walls, curbing, paving, trees, utility poles/boxes and/or any other structures or fixtures.
- 2.16.2 All graffiti shall be eradicated within four (4) hours of detection.
- 2.16.3 Graffiti requiring paint-over, shall be painted over with a color consistent with that of the original surface and as approved by the Golf Course Operations Manager.
- 2.16.4 Graffiti on non-painted surfaces shall be removed by sand or water blasting.

**2.17 COURSE ACCESSORY EQUIPMENT:** All accessory equipment must be maintained in a clean, safe, functioning condition at all times and repainted as required to present an aesthetically pleasing appearance. Accessory equipment shall include, but not be limited to, the following:  
NOTE: Colors to be approved by the Golf Course Operations Manager.

- Drinking Fountains
- Signage
- Yardage Marker
- Ball Washers
- Flags and Poles
- Cups

Benches  
Mats  
Trash Receptacles  
Clean Brushes  
Sand Buckets  
Ropes and Stakes  
Rakes

**2.18 CART PATH / STEPS AND STAIRS / RAMPS / WALKWAYS / BRIDGES**

- 2.18.1 All shall be swept or blown clean of debris each Friday or more often, as needed.
- 2.18.2 To be edged and scraped clean once every three (3) weeks.
- 2.18.3 All potholes, cracks and/or other surface damage shall be repaired immediately upon detection to ensure a safe usable surface.

**2.19 RESTROOMS**

- 2.19.1 Restrooms shall be cleaned and sanitized twice daily using cleaning and sanitizing agents recognized for use in public restrooms. Maintenance shall include, but not be limited to:

- Sweeping and moping floor

- Cleaning and sanitizing basins, metal fixtures, urinals, toilets and trash receptacles.
- 2.19.2 Paper supplies shall be checked and restocked daily as needed.
- 2.19.3 Walls, ceilings, screens and windows shall be cleaned at least monthly.
- 2.19.4 Leaky or malfunctioning fixtures shall be repaired/replaced immediately upon detection.
- 2.19.5 Locking and unlocking of restrooms shall be part of normal opening and closing procedures.
- 2.19.6 Lighting fixtures are to be checked daily with re-lamping of faulty fixtures provided as needed at time of detection.

## 2.20 MAINTENANCE HEADQUARTERS

- 2.20.1 The maintenance headquarters shall be kept clean and neat at all times with all material inventories and supplies stored in a manner in keeping with CAL OSHA, San Leandro Fire Department, and all City, County, State, and Federal regulations.
- 2.20.2 The area shall be locked or otherwise secured when unattended to discourage unauthorized entry.

2.20.3 Office, lunchroom, and all maintenance areas to be cleaned in the same manner as the restrooms on the course.

2.21 **COURSE LIGHTING:** All lighting systems shall be inspected on a regular basis with faulty bulbs, fixtures or other malfunctions repaired immediately upon detection as needed.

2.22 **FENCE/GATES:** All fences and gates shall be inspected periodically with repairs made as needed to ensure a safe, secure and aesthetically pleasing condition at all times.

2.23 **LAKE MAINTENANCE**

2.23.1 Lakes shall be cleaned a minimum of twice annually. The filtration system shall be cleaned and maintained in accordance with manufacturer's recommended procedures and any repairs shall be performed by an authorized, trained manufacturer's representative during the warranty period. ONLY manufacturer's approved filters and parts may be used on the filtration systems.

2.23.2 Algae control program shall be maintained to the Golf Course Operations Manager's satisfaction.

2.23.3 Lakes shall be inspected daily with all visible litter/debris removed at time of detection.

2.24 **CONSTRUCTION AND/OR REMODELING:** Any and all changes



in the physical characteristics of any portion of the courses such as; addition or removal of sand traps, trees, water hazards, native vegetation or other features shall require prior approval of the Golf Course Operations Manager.

## 2.25 DRIVING RANGE MAINTENANCE

### 2.25.1 Driving range tees

2.25.1.1 Grass Tees (if installed) shall be mowed with a reel type mower on a daily basis to maintain a maximum height of 5/8".

2.25.1.2 Tee Mats will be kept in good condition. Any mat which is torn will be removed and replaced with a new mat within 24 hours of discovery of the tear.

2.25.2 Landing area turf shall be mowed a minimum of twice weekly to maintain a height of 5/8".

2.25.3 Practice Target / Putting Green Turf - same as specified in Section 2.12 A.

2.25.4 General turf maintenance shall conform to procedures outlined in Section 2.12.

2.25.5 Bag racks and signage shall be maintained in an aesthetically pleasing and functional condition at all times. Repainting shall occur as needed with colors approved by the Golf Course Operations Manager.

2.25.6 Lighting shall be inspected on a regular basis with faulty bulbs and/or fixtures repaired or replaced as needed.

**2.26 GOLF CART CLEANLINESS/MAINTENANCE:**

2.26.1 Golf carts shall be maintained in good operating condition while maintaining a clean appearance at all times.

2.26.2 Cart bodies shall be washed or otherwise cleaned inside and out after each use including tops, hand rails, steering wheels and floors.

2.26.3 Glove storage compartments shall be inspected after each use with removal of any litter or debris found therein. Any personal items which are found in the glove compartments must be inventoried, by date, cart number, and description of the item. All personal items must be held under lock and every effort shall be made to return the items found.

2.26.4 All golf cart personnel will be trained to perform daily inspections every time a cart is returned.

2.26.5 All carts shall be new at the beginning of the contract period and must be completely replaced a minimum of every three (3) years, or as directed by the Golf Course Operations Manager.

### 3.0 CLUBHOUSE, RESTROOM BUILDINGS AND OTHER

**STRUCTURES:** The Operator shall keep the premises, and every part thereof, in good working order, condition and repair whether structural or non-structural and whether or not the need for such repair occurs as a result of the Operator's use, any prior use, the elements or the age of the structures and are to include, but not be limited to the following:

Plumbing	Termite Eradication
Electrical	General Pest Control (i.e. roaches, bees, flies, ants)
Heating Systems	Ventilating Systems
Air Conditioning Systems	Lighting
Floors and floor coverings	All Fixtures
Windows	Walls (interior and exterior)
Doors	Foundations
Stairs	Plate Glass Skylights
Roofs	Signs
Locks and Lockers	Driveways, sidewalks
Handrails Guardrails	Ceilings
Paint/Stain	Draperies

4.0 **HOUSEKEEPING/CUSTODIAL REQUIREMENTS:** These specifications establish the standards for routine housekeeping/custodial services to the clubhouse and all other buildings open for public use at both golf courses. The intent is for the Operator to be responsible for regularly cleaning all floors, walls, ceilings, counters, draperies and upholstered furniture as outlined in the following sections.

- 4.1 All horizontal, vertical and under surfaces shall be free of dust, smudges or spots, and the corners, crevices, moldings and ledges shall be free of dust.
- 4.2 Basins and fixtures shall be clean, disinfected and bright. There shall be no dust, stains or encrustation.
- 4.3 Glass shall be cleaned regularly on both sides of all interior and exterior windows, skylights, high transoms, vestibule doors, counters, display cases and any other stationary glass in order to ensure a clean, smudge free appearance.
- 4.4 Carpeted surfaces shall be maintained free of spillage, dirt accumulation, crusted material, spots and stains. There shall be no evidence of fuzzing caused by harsh rubbing or brushing. Spot cleaned areas shall blend with the adjacent areas of the carpet.
- 4.5 Hard floor surfaces shall be maintained clean and free of debris or foreign matter. No dirt shall be left in corners or on baseboards, behind doors or under furniture. The finished area shall be safe from slipping and shall have a uniform luster without unsightly finish buildups.
- 4.6 All walls shall be maintained free of spots, smudges and other foreign markings.
- 4.7 Furniture, module systems and upholstered furniture shall be maintained free of dust, dirt and stains and shall present an overall clean appearance.

- 4.8 Doors and kick plates shall appear clean and free of scuff marks, stains, dust, dirt, streaks and splashing.
- 4.9 Designated smoking areas shall be serviced to present an overall clean appearance, free of discarded materials. Ash trays shall be free of discarded butts, ashes and other foreign materials.
- 4.10 Miscellaneous counter tops, tables, chairs, sinks and fixtures are to be clean, disinfected, bright and free of dirt, stains or foreign matter.
- 4.11 Public telephone surfaces shall be maintained clean and free of dust, dirt, smudges, streaks and other soil substances.
- 4.12 Drinking fountain fixture surfaces shall be clean and bright, free of dust, stains and streaks. Fountains shall be kept free of trash, cigarette butts, etc., and the nozzles kept free of encrustation. Metal surfaces shall have a polished lustrous appearance. All surfaces must be disinfected.
- 4.13 Waste receptacles shall be cleaned and emptied at least daily to ensure that they are in a clean, serviceable condition.

## PRUNING SPECIFICATIONS

### 1. INTRODUCTION

Trees and other woody plants respond in specific and predictable ways to pruning and other maintenance practices. Careful studies of these responses have led to pruning practices which best preserve and enhance the beauty, structural integrity and functional values of trees.

In an effort to promote practices which encourage the preservation of tree structure and health,

the following policies are being established. The specifications are presented as working guidelines, recognizing that trees are individually unique in form and structure, and that their pruning needs may not always fit strict rules. The person pruning a tree must take responsibility for any special pruning practices that may vary from these specifications. All specifications to be waived during redevelopment period for trees on the existing Tony Lema Course. Operator shall be allowed to perform any tree work required on the construction site without certifications, etc.

## 2. OVERVIEW OF SPECIFICATIONS

Any tree work performed on a golf facility tree must be done according to these specifications. There are different criteria for pruning depending on the purpose for the pruning.

- Complete Prune specifications are used when circumstances deem the entire tree needs to be fully pruned.
- Safety Prune Specifications require less pruning and are used when specific, possibly hazardous (dead / dying) limbs need removal to eliminate all safety concerns. Safety pruning may be recommended in some circumstances instead of a complete prune. Safety pruning specifications are used for "as needed" pruning as outlined above and address only safety concerns. Safety pruning includes only the basic requirements and does not include the fine pruning detail work outlined in a complete prune.

## 3. GENERAL REQUIREMENTS - The following requirements are for use during any permitted pruning of City trees:

- 3.1 Proper disposal of all tree debris generated.
- 3.2 Assuring adequate safety of employees and the public.

## 4. CERTIFIED ARBORIST Any contracted tree company shall employ a full-time, permanent certified arborist, as accredited by the International Society of Arboriculture. This person is responsible for ensuring that the contractor's crews are performing work according to these specifications. In the event the operator is engaged in pruning, then

the operator shall have a certified arborist responsible for assuring the operator's crew is performing work according to the specifications.

5. **CONTRACTOR QUALIFICATIONS** - All contractors are required to have a state contractor's license for tree work and provide workers' compensation benefits to their employees. They should also provide equal opportunity employment and have appropriate liability insurance. Contractors must provide all services in compliance with these specifications.

6. **SPECIFIC SPECIFICATIONS**

- 6.1 All persons performing tree work on golf facility trees must be trained according to tree care standards accepted by the International Society of Arboriculture.
- 6.2 All persons performing tree work on golf facility trees in or around primary electrical lines must be trained to do so according to the "Electrical Safety Orders" of the State of California, including all amendments and revisions.
- 6.3 When tree pruning cuts are made to a side limb, such remaining limbs must possess a basal thickness of at least one third (1/3) of the diameter of the wound so affected. Such cuts shall be considered proper only when such remaining limbs are vigorous enough to maintain adequate foliage to produce wood growth capable of callusing the pruning cut so affected within a reasonable amount of time.
- 6.4 All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts which produce large wounds or weaken the tree at the cut shall not be made. The branch collar shall not be removed.
- 6.5 Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
- 6.6 All tools used on a tree known to contain an infectious tree disease shall be

properly disinfected immediately before and after completing work on such trees. All major pest problems shall be properly reported to the Golf Course Operations Manager. Steps shall be taken immediately to control the pest problems which have caused the tree disease.

- 6.7 All cutting tools and saws used in tree pruning shall be kept sharpened to result in final cuts with a nonabrasive wood surface and secure bark remaining intact. All trees six (6) inches in diameter or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees six (6) inches in diameter or less. This is to prevent any unnecessary abrasions to cambial tissue that may predispose a tree to insect and/or disease problems.
- 6.8 Whenever pruning cuts are to be made, while removing limbs too large to hold securely in one hand during the cutting operation, the limbs shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent unnecessary tearing back of the bark and wood. Such cutting back shall not include the removal of any live healthy limbs in excess of six (6) inches in diameter without prior approval from the Golf Course Operations Manager.
- 6.9 No more than twenty-five (25) percent of the live wood may be removed from the crown of any tree, excepting live oaks which are limited to no more than ten (10) percent. As much of the crown should be kept in the tree as possible.
- 6.10 Any extraneous metal, wire, rubber or other material (i.e., stakes, ties) interfering with tree growth shall be removed when possible.
- 6.11 Any defective or weakened trees shall be reported to the Golf Course Operations Manager. If staking is needed, it must be done immediately.
- 6.12 The use of climbing spurs or spike shoes in the act of pruning trees is prohibited, excepting palms that are more than sixty-five (65) feet in height.
- 6.13 Beneficial animal or bird nests or nesting cavities shall be preserved and



protected whenever feasible, unless doing so would create a hazard.

7. **UNACCEPTABLE PRUNING** The following procedures, or others that will result in tree decline, are not allowed (storm damage and other extenuating circumstances exempted):

- 7.1 Severely cutting back of all growing tips, usually referred to as topping, pollarding or "hatracking."
- 7.2 Flush cutting where a cut is made even with the surface of the trunk or limb, removing the branch collar and branch bark ridge.
- 7.3 Stub cutting where branch removal results in the base of a branch removed protruding more than approximately one fourth (1/4) inch beyond the zone of branch collar and branch bark ridge.
- 7.4 Removal of a healthy main leader, for reasons other than power line clearance.
- 7.5 Excessive cutting or lifting that exceeds the International Society of Arboriculture or City standards.

8. **PUBLIC SAFETY AND COOPERATION** - All tree work shall be conducted in a manner as to cause the least possible interference with, or annoyance to others. Unless the work area is totally barricaded or otherwise kept safe, at least one worker shall serve to coordinate safe operations on the ground at all times when work operations are in progress:

- 8.1 Whenever larger tree sections are being cut in a tree top which may endanger persons or property, such sections shall be secured by ropes and lowered safely to the ground in a controlled manner.
- 8.2 All fire hydrants, meter vaults, water and gas shut off valves and similar facilities must remain accessible during the course of work.

9. **SITE CLEANUP** - Cleanup of branches, limbs, logs or any other debris resulting from any tree operations shall be promptly and properly accomplished. The work area shall be kept safe at all times until all operations are completed. Under no circumstances shall the accumulation of brush, limbs, logs or other debris be allowed in such a manner as to result in a hazard to the public. All debris from tree operations shall be cleaned up each day before the work crew leaves the site, unless permission is given by the Golf Course Operations Manager to do otherwise. All turf grass areas, parking lots, and cart paths shall be raked and/or blown clean, and all brush, branches, or other debris shall be removed from the site. Areas are to be left in a condition equal to or better than that which existed prior to the commencement of tree operations.
  
10. **COMPLETE TREE PRUNING SPECIFICATIONS** - Complete tree pruning shall consist of the total removal of those dead or living branches as may threaten the future health, strength and attractiveness of trees. Specifically, trees shall be pruned in such a manner as to:
  - 10.1 Prevent branch and foliage interference with requirements of safe passage of golf carts, utility vehicles and golfers.
  - 10.2 Remove all dead and dying branches and branch stubs that are one half (½) inch diameter or larger.
  - 10.3 Remove all broken or loose branches.
  - 10.4 Remove any live branches which interfere with the tree's structural strength and healthful development, which will include the following:
    - Branches which rub and abrade a more important branch.
    - Branches of weak structure which are not important to the framework of the tree.
    - Branches which, if allowed to grow, would wedge apart the junction of more important branches.
    - Branches forming multiple leaders in a single leader type tree.

- Branches near the end of a limb which will produce more weight or offer more resistance to wind than the limbs are likely to support.
  - Selective removal as approved by the Golf Course Operations Manager of undesirable sucker and sprout growth paying specific attention not to nick or damage the sprout burl.
  - Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
  - Selective removal of limbs obstructing buildings or other structures or traffic signs. Generally, limbs closer than five (5) feet to a building or other structure should be removed unless doing so would severely damage a tree.
  - Removal of branches which project too far outward beyond an otherwise symmetrical form.
- 10.5 Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
- 10.6 Clear trees of sprout or sucker growth to a minimum height of eight (8) feet above ground level. Exceptions are allowed for young trees which would be irreparably damaged by such pruning action.
- 10.7 Obtain a balanced appearance when viewed from the opposite side of the fairway immediately opposite the tree, unless authorized by the Golf Course Operations Manager to do otherwise.
- 10.8 Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to said trees.
- 10.9 Clear all branches and foliage within ten (10) feet of primary electrical lines and three (3) to five (5) feet of secondary electrical lines.
- 10.10 Clear all branches that interfere with telephone, cable and other utility lines within one (1) foot of lines, wherever feasible.

11. **SAFETY TREE PRUNING SPECIFICATIONS** - Safety tree pruning shall consist of the total removal of those dead or living branches as may menace the future health, strength and attractiveness of trees. Specifically, trees shall be pruned in such a manner to:
- 11.1 Prevent branch and foliage interference with requirements of safe passage of golf carts, golfers and utility vehicles. Over vehicle passage areas, clearing shall be kept to a minimum of sixteen (16) feet. Eight (8) feet of clearance is required above the surface of areas used by golfers and golf carts. Exceptions are allowed for young trees which would be irreparably damaged by such pruning action.
  - 11.2 Remove dead and dying branches and branch stubs that are two (2) inches in diameter or more.
  - 11.3 Remove all broken or loose branches.
  - 11.4 Remove any live branches which interfere with the tree's structural strength and healthful development, which will include the following:
    - Limbs of weak structure or otherwise hazardous.
    - Selective removal of limbs obstructing buildings or other structures or traffic signs. Generally, limbs closer than five (5) feet to a building or other structure should be removed unless doing so would severely damage a tree.
  - 11.5 Clear trees of sprout or sucker growth to a minimum height of eight (8) feet above ground level. Exceptions are allowed for young trees which would be irreparably damaged by such pruning action.