

**EXHIBIT**

**A**

***GOLF COURSE LEASE AGREEMENT***

***BETWEEN***

***THE CITY OF PLANO, TEXAS***

***AND***

***GOLFMARK INVESTORS, L.P.***

**GOLF COURSE LEASE AGREEMENT**

**CITY OF PLANO - GOLFMARK INVESTORS, L.P.**

**TABLE OF CONTENTS**

<b>RECITALS</b>		<b><u>Page</u></b>
<b>ARTICLE 1.</b>	<b>DEMISED PREMISES.....</b>	<b>1</b>
1.1	Property Identified.....	1
1.2	Mineral Rights.....	2
1.3	Existing Conditions.....	2
1.4	Lessee Acceptance.....	2
1.5	Title.....	2
1.6	Quiet Possession.....	2
1.7	Representations.....	3
1.8	Right to Enter.....	4
<b>ARTICLE 2.</b>	<b>USES.....</b>	<b>4</b>
2.1	Premises.....	4
2.2	Uses.....	5
<b>ARTICLE 3.</b>	<b>LEASE TERM.....</b>	<b>6</b>
3.1	Lease Term.....	6
3.2	Construction Period.....	7
3.3	Lease Year.....	8
3.4	Holding Over.....	8
3.5	Quitclaim and Surrender of Lessee's Interest.....	8
3.6	Surrender of Premises.....	9
<b>ARTICLE 4.</b>	<b>LESSEE'S CONSTRUCTION OBLIGATIONS.....</b>	<b>9</b>
4.1	Golf Course Construction.....	9
4.2	Construction Plans and Approval.....	9
4.3	Construction.....	10
4.4	Lessee's Assurance of Completion.....	10

**Table of Contents (continued)**

		<u>Page</u>
<b>ARTICLE 5.</b>	<b>RENT.....</b>	<b>11</b>
5.1	Rent.....	11
5.2	Payment Procedure.....	11
5.3	Late Charges.....	12
5.4	Annual Statements.....	12
5.5	Records.....	12
5.6	Audit.....	14
5.7	Failure to Furnish Accounting Statements.....	14
5.8	Gross Revenues.....	15
5.9	Unauthorized Use Charge.....	16
5.10	Increases in Fees.....	16
<b>ARTICLE 6.</b>	<b>CAPITAL RESERVE PROGRAM.....</b>	<b>17</b>
6.1	Capital Improvement Reserve Fund.....	17
6.2	Capital Improvement Reserve Program.....	17
6.3	Deposits to Capital Improvement Reserve Fund.....	18
<b>ARTICLE 7.</b>	<b>ALTERATIONS AND IMPROVEMENTS.....</b>	<b>18</b>
7.1	Approval Required.....	18
7.2	Contracting Procedures.....	18
7.3	Copy of Contract.....	18
7.4	Contractor Approval.....	19
7.5	Performance and Payment Bonds.....	19
7.6	Compliance with Laws.....	19
7.7	Builder's Risk and Other Insurance.....	20
7.8	Completion of Work.....	20
7.9	Discharge of Liens.....	20
7.10	Notification of Commencement of Work.....	21
7.11	Ownership of Improvements.....	21
7.12	Financing Improvements; Prohibition on Encumbrances.....	22

**Table of Contents (continued)**

		<u>Page</u>
<b>ARTICLE 8.</b>	<b>ENCUMBRANCE OF LEASEHOLD ESTATE.....</b>	<b>22</b>
8.1	Lessee's Right to Encumber.....	22
8.2	Leasehold Financing.....	22
8.3	New Lease.....	25
8.4	Bankruptcy.....	26
8.5	Fee Mortgage.....	27
<b>ARTICLE 9.</b>	<b>LESSEE'S OPERATING RESPONSIBILITIES.....</b>	<b>28</b>
9.1	Competent Management, Management Qualifications.....	28
9.2	Public Use.....	28
9.3	Compliance with Laws.....	28
9.4	Compliance with Rules and Regulations.....	28
9.5	Disorderly Persons.....	29
9.6	Illegal Activities.....	29
9.7	Signs.....	29
9.8	Lessee's Staff.....	29
9.9	Utilities.....	29
9.10	Sanitation.....	29
9.11	Safety.....	29
9.12	Habitation.....	29
9.13	Golf Clubs/Organizations.....	30
9.14	Golf Instruction and Junior Golf Program.....	30
9.15	Professional Shop Inventory, Merchandise and Equipment.....	30
9.16	Ranging.....	30
9.17	Golf Carts.....	30
9.18	Dress and Conduct Standards.....	30
9.19	Tournaments.....	31
9.20	Charity Tournament.....	31

**Table of Contents (continued)**

	<u>Page</u>
<b>ARTICLE 10. REPAIRS AND MAINTENANCE.....</b>	<b>31</b>
10.1 City's Nonresponsibility.....	31
10.2 Maintenance Specifications.....	31
10.3 Additional Maintenance.....	32
10.4 Inspections.....	32
10.5 Failure to Maintain.....	33
10.6 Repair.....	33
10.7 Destruction.....	34
<b>ARTICLE 11. HOLD HARMLESS AND INDEMNIFICATION.....</b>	<b>34</b>
<b>ARTICLE 12. INSURANCE.....</b>	<b>35</b>
12.1 General Liability.....	35
12.2 Worker's Compensation.....	36
12.3 Property Coverage.....	36
12.4 Other Insurance.....	36
12.5 Deductibles.....	36
12.6 Failure to Insure.....	36
12.7 Cancellation Response.....	37
12.8 Suspension of Operations.....	37
12.9 Acceptability of Insurers.....	37
12.10 Verification of Coverage.....	37
<b>ARTICLE 13. TAXES AND IMPOSITIONS.....</b>	<b>37</b>
13.1 Payment of Impositions.....	37
13.2 Payment Before Delinquency.....	38
13.3 Contest of Imposition.....	38
13.4 Tax Returns and Statements.....	38
13.5 Indemnification.....	39
13.6 Payment by the City.....	39
<b>ARTICLE 14. NONDISCRIMINATION.....</b>	<b>39</b>

Table of Contents (continued)

		<u>Page</u>
<b>ARTICLE 15.</b>	<b>ASSIGNMENT OR TRANSFER OR TERMINATION OF LEASE.....</b>	<b>40</b>
15.1	Restriction on Assignment or Transfer.....	40
15.2	Investigation of Proposed Transferee; Costs.....	40
15.3	Right to Terminate Lease.....	41
15.4	Financing Contingency.....	41
<b>ARTICLE 16.</b>	<b>CITY RIGHT TO PURCHASE/ADDITIONAL CONSIDERATION.....</b>	<b>41</b>
16.1	City First Right to Purchase.....	41
16.2	Additional Consideration to City.....	42
<b>ARTICLE 17.</b>	<b>INDEPENDENT CONTRACTOR.....</b>	<b>42</b>
<b>ARTICLE 18.</b>	<b>EMINENT DOMAIN.....</b>	<b>42</b>
18.1	Total Taking.....	42
18.2	Partial Taking.....	42
18.3	Eminent Domain Award.....	43
<b>ARTICLE 19.</b>	<b>DEFAULT.....</b>	<b>44</b>
19.1	Events of Default.....	44
19.2	Notice of Default; Lessee's Right to Cure....	45
19.3	City's Right to Cure Lessee's Defaults.....	46
19.4	Notice of the City's Default; Lessee Waiver..	46
19.5	City's Remedies.....	47
19.6	No Waiver.....	49
19.7	Delays in Performance; Force Majeur.....	50
<b>ARTICLE 20.</b>	<b>EASEMENTS.....</b>	<b>50</b>

**Table of Contents (continued)**

	<u>Page</u>
<b>ARTICLE 21. MISCELLANEOUS.....</b>	<b>50</b>
21.1 Lessee's Representations and Warranties.....	50
21.2 Estoppel Certificate.....	51
21.3 Notices.....	51
21.4 Attorneys' Fees.....	52
21.5 Headings.....	52
21.6 Rights of Successors.....	52
21.7 Amendments in Writing.....	52
21.8 Time of Essence.....	53
21.9 Interpretation.....	53
21.10 Applicable Law; Severability.....	53
21.11 Exhibits.....	53
21.12 Waiver of Subrogation.....	53
21.13 Subordination of Leasehold; Attornment by Lessee; Nondisturbance.....	53
21.14 Covenants and Conditions.....	54
21.15 Approvals by City Manager.....	54
21.16 Mutual Assistance; Good Faith.....	54
21.17 Cooperation in Securing Permits.....	54
<b>ARTICLE 22. ENTIRE AGREEMENT.....</b>	<b>54</b>

**GOLF COURSE LEASE AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of February, 1995, by and between:

**CITY OF PLANO**, a home rule  
municipal corporation of the  
State of Texas  
1520 Avenue K  
Plano, Texas 75074  
("CITY")

and:

**GOLFMARK INVESTORS, L.P.**  
1700 Country Club Drive  
Plano, Texas 75074  
("LESSEE")

**WHEREAS:**

- A. The CITY desires to enter into a Lease Agreement with a qualified entity which provides for the construction, operation, and management of a municipal golf course; and
- B. LESSEE has provided CITY the former's qualifications and has reviewed the CITY's requirements and plans; and
- C. The CITY has determined that LESSEE is qualified and capable of performing the construction, operation, and management of a municipal golf course, and the CITY and LESSEE desire to enter into a Lease Agreement in accordance with the following terms and conditions;

**NOW, THEREFORE**, in consideration of the premises, CITY and LESSEE agree as follows:

**ARTICLE 1. DEMISED PREMISES**

1.1 Property Identified. The parcel(s) of real property as described by metes and bounds and further depicted on the drawing in Exhibit "A" attached hereto are referred to herein as the "Demised Premises", "Leased Premises" or "Premises." The parties recognize that during the final design and construction of the Golf Course and adjoining residential developments it may become necessary to make minor adjustments to the boundaries of the Premises. Such boundary adjustments will only be made after receiving



LESSEE's input and consent, which consent will not be unreasonably withheld.

1.2 Mineral Rights. Excepted and reserved from the Demised Premises are all minerals and mineral rights of every kind or nature lying below the surfaces of the Demised Premises.

1.3 Existing Conditions. The Demised Premises are subject to the agreements, leases, subleases, permits, conditions, restrictions and rights of way set forth on Exhibit "B" attached hereto and made a part hereof for all purposes (called "Encumbrances") and shall be subject to such rights of way and easements for sewers, pipelines, conduits and utilities as the CITY shall, from time to time, establish in accordance with the provisions of this Lease Agreement. The CITY and LESSEE acknowledge that there exists a gravel road traversing the northwest portion of the Premises and depicted on the drawing of the Premises on Exhibit "A". It shall be the CITY's responsibility to reroute the road at no cost to LESSEE so that it no longer effects the Premises. Such rerouting shall be accomplished prior to November 1, 1995.

1.4 LESSEE Acceptance. By execution of this Lease Agreement, LESSEE acknowledges personal inspection of the Demised Premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the Golf Course construction and operation. LESSEE further accepts the Demised Premises in their present physical "as is" condition, and agrees to make no demands upon the CITY for any improvements or alterations, except as expressly provided in this Lease Agreement.

1.5 Title. LESSEE hereby acknowledges the title of the CITY and any other public agencies having jurisdiction in and to the Demised Premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

1.6 Quiet Possession. The CITY covenants that, subject to the limitations expressly set forth in this Lease Agreement, LESSEE, so long as no Event of Default, as hereinafter defined, has occurred and remains uncured, may quietly have, hold, and enjoy the Premises during the period commencing on the date hereof and ending upon the expiration of the Term (as hereinafter defined) of this Lease Agreement, without hindrance or interruption by the CITY, subject to the CITY's right to enter upon the Premises as provided herein.

1.7 Representations. The CITY has made no representations or warranties, express or implied, with respect to the Premises and LESSEE shall acquire no rights, easements or licenses in or to the Premises by implication or otherwise except as expressly set forth in this Lease Agreement. The CITY represents that it has full authority and ability to enter into this Lease Agreement. The CITY shall complete certain roadway improvements that are necessary to the operation of the Golf Course. On or before August 1, 1996, the CITY shall cause the completion of the following streets in accordance with the CITY's Standard Specifications of Public Works Construction:

(a) Two (2) lanes of Independence Parkway from McDermott Road to Ridgeview Drive as shown on the CITY's Major Thoroughfare Plan; and

(b) Two (2) lanes of Ridgeview Drive from Independence Parkway to the existing pavement west of Custer Road as shown on the CITY's Major Thoroughfare Plan.

CITY further represents that infrastructure shall be provided to the LESSEE for utilities to the Premises to assure adequate sewer services on or before August 1, 1996, and adequate water available to the Premises property line no later than September 1, 1995. For each day that the infrastructure for the above mentioned roadways and utilities are not completed after September 15, 1996, and the Golf Course is otherwise ready for public play, the CITY shall be liable to Lessee in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** per day as liquidated damages. The CITY shall not be responsible for any latent defect or change of condition in the Premises and, LESSEE's obligations under this Lease Agreement shall in no case be withheld or diminished on account of any defect in the Premises or for any change of condition, or for any damages occurring on the Premises except as expressly provided in this Lease Agreement.

If the above-mentioned roadways and utility infrastructure are not completed by August 1, 1996 (September 1, 1995 in respect to availability of water), then the Construction Period, as hereinafter defined, shall be extended by the greater of (a) an additional day for each day the CITY's completion is delayed past August 1, 1996, (September 1, 1995 in respect to availability of water), or (b) a reasonable amount of time to permit the growing and maturation process to be completed to the extent the CITY's inability to complete the roadways and utility infrastructure have caused a delay in such process.

1.8 Right to Enter.

(a) Upon reasonable prior notice (no less than twenty-four (24) hours except in the case of an emergency), CITY shall have the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights. LESSEE shall permit the CITY to visit and inspect the Property to inspect the Improvements and Equipment therein, to examine the portions of books of account of author relating to receipts for which Percentage Fees are to be paid hereunder and to discuss LESSEE's affairs, finances, and accounts with respect to the property with LESSEE and its certified public accountants, all during regular business hours and as often as the CITY may reasonably request. Any inspection or examination pursuant to this Section shall be for the sole purpose of protecting the property of the CITY and shall not be construed as a representation by the CITY that the Property is being properly operated and managed, or a waiver of any right the CITY may have against LESSEE for noncompliance with the terms, provisions, and conditions of this Lease Agreement.

(b) In connection with the CITY's desire to develop municipal resources and services within the Demised Premises, the CITY shall refrain from taking any action under this Section 1.8 which will (i) permanently alter surface, sheet flow or other overload flow drainage, (ii) change the overall configuration of the Demised Premises, and (iii) materially interrupt or interfere with LESSEE's use and operation of the Demised Premises, including the interruption of continuous play. The CITY will reimburse LESSEE for costs incurred by LESSEE in respect to any damage to the Demised Premises, including any improvements located thereon. Reimbursement to LESSEE may include a current reduction in rent in amounts equal to the costs incurred by LESSEE in respect to such damage. To the extent existing turf or other surface soil is damaged as a result of any change, tee areas shall be repaired with sodding and fairway and other areas shall be repaired with seeding or sprigging. No areas within an agreed upon radius of any green may be affected without LESSEE's consent, which consent may be withheld with LESSEE's sole discretion.

**ARTICLE 2. USES**

2.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY the Demised Premises situated in the City of Plano, County of Collin, State of Texas, subject

to the terms, covenants, and conditions set forth in this Lease Agreement.

2.2 Uses. It is expressly agreed that the Premises are Leased to LESSEE solely and exclusively for the purposes of the operation and maintenance of an 18-hole public golf course, driving range, pro shop, clubhouse, golf carts, restaurant, and a private club for the serving of alcoholic beverages, and for such other purposes as may be incidental thereto. LESSEE shall not use the Leased Premises for any other purpose without first having obtained the written approval of the CITY. LESSEE shall be permitted to construct a water well or wells on the Premises for irrigation purposes.

2.2.1 It is expressly agreed that the restaurant shall be open for business during the days and hours that the Golf Course is open for business, and that a menu and prices comparable to other golf courses in the Plano area shall be provided.

2.2.2 LESSEE covenants and agrees to use the Premises throughout the term of this Lease Agreement for all of the above-specified purposes and to diligently conduct the business for the benefit of the CITY and LESSEE as a first class public golf facility in a manner similar to the owners and operators of the Comparable Facilities, as hereinafter defined. Failure to continuously comply with such covenants, or the use of the Premises for a purpose not expressly authorized by this Lease Agreement, shall constitute an Event of Default under Section 19.1 hereof.

2.2.3 The name of the Golf Course shall be "Ridgeview Ranch Golf Club, a Plano Municipal Golf Course", and such name shall not be altered, modified or changed without the prior written consent of the CITY. LESSEE is aware that property abutting the Leased Premises is being developed by HRC Ranch, Ltd. ("HRC") as a residential development to be called Ridgeview Ranch. In constructing and maintaining the Golf Course LESSEE shall cooperate with HRC and the CITY to coordinate architectural styles, signage, graphics and amenities between the Golf Course and those portions of said residential development abutting the Leased Premises in order to create a harmonious development of both properties, utilizing a theme of such development that is consistent with the character of the name of the Golf Course set forth herein, unless such name is changed with the approval of the CITY. The CITY shall insure that HRC, in connection with the development of the property abutting the Premises, will develop such property in a manner that will not cause drainage problems for the

Premises or that will provide a drainage plan consistent with the plans and requirements for the Premises.

### ARTICLE 3. LEASE TERM

3.1 Lease Term. The term of this Lease Agreement shall be for thirty (30) years, beginning on the first day of the calendar month following the Commencement Date, as hereinafter defined, of this Lease Agreement (the "Lease Term"). The LESSEE shall have the option for two (2) 10-year extended terms, subject to the same terms and conditions and for the rental provided for in Article 5 of this Lease Agreement. The Term of this Lease Agreement, as used herein, shall mean the Lease Term as extended.

3.1.1 LESSEE shall provide CITY written notice of its option to extend the Lease no later than three hundred sixty-five (365) days prior to the end of the Lease Term with regard to the first extension and no later than three hundred sixty-five (365) days prior to the end of the first extension of the Lease Term with regard to the second extension. Failure to provide such notice shall waive LESSEE's right to exercise its option to extend.

3.1.2 Notwithstanding the above, the CITY may buyout LESSEE's option to extend this Lease at any time after Lease Year twenty-nine (29) by compensating in cash LESSEE in the amount of seven (7) times LESSEE's average annual net operating income in the Golf Course for the five (5) lease years prior to the exercise of the CITY's buyout option (called "Buyout Price"). This Lease Agreement and all extended terms shall terminate and be of no further force and effect after Lease Year thirty (30) upon the CITY's payment in cash to LESSEE of the Buyout Price. It is understood that the CITY's buyout option may also be exercised at any time during the first or second extended ten (10) year terms.

The term "Net Operating Income" as used herein shall mean "Gross Revenues" less "Operating Expenses".

The term "Gross Revenues" as used in this Lease Agreement shall mean all gross income, rentals, revenues and consideration, of whatever form or nature, received by or paid to LESSEE, its agents or employees (other than customary and reasonable fees, salaries, bonuses and tips earned by golf instructors, employees and agents as payment of or services rendered for the operation and management of the Golf Course Facility, from any and all sources and other than capital contributions of the partners

of LESSEE resulting from or attributable to the operation, leasing, licensing and occupancy of the Premises, determined on a cash basis, including, but not limited to, any and all of the following: (i) all green fees, golf cart rentals, membership fees, charges for group outings, lessons fees, driving range fees, and other compensation or payment charged for or attributable to the use of the Premises; (ii) all receipts and proceeds from retail and wholesale sales conducted on the Premises (including, without limitation, receipts and proceeds from the pro shop now or hereafter located on the Premises) and restaurants and bars now or hereafter situated on the Premises; (iii) all rents and receipts from licenses, concessions, vending machines and similar items; (iv) parking fees and rentals; (v) other fees, charges or payments not denominated as rental but payable for or in connection with the rental of office, retail, storage, parking or other space in the Premises; and (vi) proceeds of business interruption or similar insurance payable in connection with any loss of revenues. Gross Revenues shall exclude the items set forth in Section 5.8.1 hereof.

The term "Operating Expenses" as used herein shall mean those expenses which are incurred by LESSEE, in the normal and customary operation of the Premises, including any management fees (not to exceed five percent (5%) of Gross Revenues) paid by LESSEE, and which are reasonable and customary for properties comparable to the Premises. Operating Expenses shall specifically exclude (i) expenses not directly related to the operation of the Premises; (ii) the costs of any capital improvements, repairs or replacements, except for replacements of golf carts or turf equipment; (iii) debt service (i.e. principal or interest expense); (iv) non-cash expenses such as amortization and depreciation; and (v) federal, state and similar income taxes payable by LESSEE in connection with the operation of the Golf Facility.

3.2 Construction Period. The Construction Period shall be that period of time beginning with the execution of this Lease Agreement and continuing until such time as the parties recognize and agree in writing that the Golf Course is ready for public play. The standards for agreement that the Golf Course is ready for public play shall be: (a) completion of improvements pursuant to approved plans in accordance with Article 4 of this Lease Agreement; (b) issuance of a certificate of occupancy for the clubhouse and other structural improvements constructed upon the Leased Premises; (c) installation of the irrigation system upon the Golf Course; and (d) successful maturation of the turf grasses and other landscaping required for practical

use and play upon the Golf Course. Notwithstanding the foregoing, at such time as LESSEE begins accepting paying customers for a continuing and regular program of golf course play upon the Leased Premises, the Construction Period shall be deemed completed regardless of whether the standards set forth in this paragraph above have otherwise been satisfied in all respects. The term "Commencement Date" shall mean the date upon which the Construction Period has been or is deemed to have been completed.

3.3 Lease Year. A "Lease Year" is that period of twelve (12) consecutive calendar months beginning with the Term of the Lease Agreement. The Lease Year may be changed by written agreement of the parties. If this Lease Agreement is terminated prior to the end of a Lease Year, rent will be subject to proration.

3.4 Holding Over. Subject to Section 3.1, in the event LESSEE holds over beyond the term of this Lease Agreement or any extended term with the consent, express or implied, of the CITY, such holding over shall be from month to month only, subject to the terms and conditions of this Lease Agreement and shall not be deemed a renewal or extension of this Lease Agreement. In all circumstances rent shall be paid as otherwise provided in this Lease Agreement, except that the rental then in effect during the immediately preceding Lease Year ("Previous Rent") shall be increased by ten percent (10%).

3.5 Quitclaim and Surrender of Lessee's Interest. On the Commencement Date, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises, subject to the further requirement that the quitclaim deed shall not be effective until the expiration of the Term or earlier termination of this Lease Agreement. CITY may record such deed only on the expiration of the Term or earlier termination of this Lease Agreement. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration of the Term or earlier termination of this Lease Agreement, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, ordinary wear and tear excepted. In the case of termination of this Lease Agreement by CITY prior to the end of the Term, any liens and encumbrances shall be removed by LESSEE within thirty (30) days of notice of termination, unless otherwise provided in writing by the CITY.

3.6 Surrender of Premises. At the termination of this Lease Agreement for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, ordinary wear and tear excepted.

#### ARTICLE 4. LESSEE'S CONSTRUCTION OBLIGATIONS

4.1 Golf Course Construction. The CITY shall have no duty to make any improvement or repair to the Demised Premises. LESSEE, at its sole responsibility and cost, shall supervise construction and the installation of a comprehensive golfing facility in accordance with the Master Plan for Golf Course Development attached as a part of Exhibit "C" (the "Master Plan Improvements") and the Design and Construction Standards (the "Construction Standards") also attached as a part of Exhibit "C", which exhibit is incorporated herein by reference, by commencing construction of those improvements as therein described no later than November 1, 1996, and diligently prosecuting each improvement to completion as expeditiously as possible and no later than March 1, 1997, subject to force majeure. For each day that the Golf Course is not open for play after March 1, 1997, subject to force majeure, the LESSEE shall be liable to the CITY in the amount of FIVE HUNDRED DOLLARS (\$500.00) per day as liquidated damages.

4.2 Construction Plans and Approval. LESSEE will submit schematic plans for construction of the Golf Course to CITY not later than ninety (90) days following execution of this Lease Agreement for CITY's approval, which is not to be unreasonably withheld. CITY's response to the schematic plans, including any recommendations for change, is to be submitted to LESSEE not later than thirty (30) days following CITY's receipt of the schematic plans.

Within ninety (90) days following approval of LESSEE's schematic plans, LESSEE shall submit to CITY a development plan and final construction plan for CITY's approval, which is not to be unreasonably withheld. CITY's response to the development plan and final construction plan, including any recommendations for change, is to be submitted to LESSEE not later than sixty (60) days following CITY's receipt of the development plan and final construction plan.



Within ninety (90) days following the Commencement Date, LESSEE shall furnish CITY a complete set of reproducible and two sets of prints of "as built" plans.

4.3 Construction. Following CITY's approval of the final development plan and construction plans, LESSEE shall commence the Required Construction upon a date mutually agreed upon by CITY and LESSEE. LESSEE shall comply with all approved plans in all material respects unless a change order or alteration is otherwise agreed to by CITY. LESSEE shall obtain all approvals and permits required by the CITY which is incidental to improvement or development of real property. CITY shall have the right to inspect all construction for the purpose of confirming that LESSEE is adhering to the approved plans and specifications. LESSEE, at its sole expense, shall comply with all development regulations of the CITY including, without limitation, platting, site plan and building regulations. The CITY shall waive all permit fees, except for water and sewer impact fees which LESSEE agrees to pay.

4.4 LESSEE's Assurance of Completion. Prior to commencement of construction, LESSEE shall furnish CITY suitable evidence of money available, in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) in order to complete the Required Construction. LESSEE presently intends to expend such funds in the approximate amounts and for the categories as shown on the preliminary budget, a copy of which is attached hereto as Exhibit "D" and made a part hereof for all purposes. The CITY acknowledges that the amounts set forth in this preliminary budget are estimates only, however, it is not anticipated that the amounts allocated to the specific category of grounds, buildings and amounts budgeted for equipment will be reduced by more than five percent (5%). Such evidence may take the form of one of the following:

(i) A performance bond containing the provisions of a labor and material bond supplied by LESSEE's contractor or contractors, provided said bonds are issued jointly to LESSEE and CITY as obligees; and

(ii) A Commitment Set Aside Letter, in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00); or

(iii) Such other form acceptable to the City Attorney; or

(iv) Any combination of the above. All bonds must be issued by a company qualified to do business in the State of Texas.

**ARTICLE 5. RENT**

5.1 Rent. Of even date herewith, the rent for the Construction Period shall be due and payable in the amount of **ONE AND 00/100 DOLLAR (\$1.00)**. Rent for Lease Year 1 in the amount of **ONE AND 00/100 DOLLAR (\$1.00)** shall be due and payable on the Commencement Date. Rent for Lease Years 2 through 15 shall be in the amount of **ONE AND 00/100 DOLLAR (\$1.00)** for each Lease Year and shall be due on the first day and same month of each such Lease Year. Rent for Lease Years 16 through 25, shall be in the amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)** for each Lease Year and shall be due on the first day and same month of each such Lease Year. Rent for each Lease Year 26 through 30 shall be in the amount of **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** plus twenty percent (20%) of Gross Revenues received from all operations on the Golf Course over **THREE MILLION DOLLARS (\$3,000,000.00)** and shall be due on the first day of the same month of each such Lease Year. In the event the Lease Term is extended, rent for each Lease Year 31 through 50 shall be in an amount equal to the greater of (a) **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**; or (b) twenty-four percent (24%) of Gross Revenues from all operations of the Golf Course over **THREE MILLION DOLLARS (\$3,000,000.00)** for each Lease Year, and shall be due on the first day of the same month of each such Lease Year.

5.2 Payment Procedure. For Lease Years 26 through 30 and Lease Years 31 through 50 (in event of extended terms) on or before the first day of the first calendar month of each Lease Year, LESSEE shall provide CITY with a correct statement of Gross Revenues for the previous Lease Year together with a payment of percentage rent for such Lease Year, as contemplated by Section 5.1 above.

5.2.1 The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will include:

(i) Total Gross Revenues for the Lease Year then ending itemized as to business categories.

(ii) The percentage rental due CITY, computed and totaled, as specified in Section 5.1 above.

(iii) For Lease Years 26 through 30, payment of **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** plus the percentage rental for the previous Lease Year, as specified in Section 5.1 above.

(iv) For Lease Years 31 through 50, payment of the percentage rental or **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**, which ever is greater.

5.2.3 LESSEE shall not, in any manner, divert or attempt to divert from the Premises, any concessions or receipts which ordinarily would be transacted on the Premises.

5.2.4 Payment of applicable fees under this Section shall not be subject to setoff, counterclaim, abatement, suspension, deduction, diminution or defense, all of which are hereby waived by LESSEE.

5.3 Late Charges. In the event payment of rent is more than ten (10) days overdue, a late charge of ten percent (10%) of the amount due shall be added to the unpaid amount, as liquidated damages, it being agreed that such amount is a reasonable estimate of the costs and expenses the CITY will incur as a result of such late payment. Acceptance of the late charge will not constitute a waiver by the CITY of LESSEE's default with respect to such nonpayment by LESSEE, nor prevent the CITY from exercising all other rights and remedies available under this Lease Agreement or at law or in equity.

5.4 Annual Statements. Within one hundred and twenty (120) days after the end of each Lease Year 26 through 50, LESSEE shall prepare and deliver or cause to be prepared and delivered to the CITY an annual financial statement for the Golf Course Facility certified to be correct by LESSEE and prepared by a certified public accountant in accordance with consistent practices governing cash receipts, which shall at a minimum contain:

- (i) A statement of the Gross Revenues, and
- (ii) A computation of percentage rent for the applicable period.

At all reasonable times the CITY shall be given access to LESSEE's business records to allow the CITY to audit the annual statement.

5.5 Records. LESSEE shall make available, at the Golf Course Facility or such other convenient place as may

be agreed upon by the parties, full, complete and true records, books, accounts, sales tax reports, and such other data, reflecting the results of all business transactions conducted in, on or from the Golf Course. Such books and records shall include a daily record of Gross Revenues. Such records shall categorize revenues by type of function from which derived.

5.5.1 For Lease Years 2 through 50, LESSEE shall maintain a method of accounting practices, of all the disbursements in connection with the subject business which shall correctly and accurately reflect the Gross Revenues and disbursements received or made by LESSEE from business under this Lease Agreement. The method of accounting including bank accounts established from LESSEE's business shall be separate from the accounting system used for any other business operated by LESSEE or for recording the financial affairs or activities of any other entity including, without limitation, any parent company, wholly-owned subsidiary or affiliate of LESSEE. Such methods shall include the keeping of the following documents:

(i) Regular books of accounting such as general ledgers;

(ii) Cash receipts, sales and purchase journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;

(iii) State and Federal income tax returns and sales tax returns and checks and other documents proving payment of such shown which shall be kept in confidence by the CITY;

(iv) Any other accounting records that the CITY, at its sole discretion, deems reasonably necessary for proper reporting of receipts;

(v) Such other books or method of recordkeeping that shall accurately record the information covered by Clauses (i), (ii), (iii) and (iv); and

(vi) LESSEE shall record all transactions on a cash register, computer or other similar equipment utilized in respect to the recordation of financial information. Cash registers or computers or such other equipment shall be nonresettable and sufficient to supply an accurate recording of all sales on tape. LESSEE shall not replace an existing cash register or purchase or install an additional cash register before obtaining the CITY's approval of the specific register to be purchased. LESSEE

shall record or cause to be recorded on the cash registers every cash sale or other transaction occurring at the Golf Course. Receipts shall be issued to every customer for every sale or rental.

5.6. Audit. At LESSEE's expense, at the end of Lease Year 28, the CITY shall audit all documents, books and accounting records of the LESSEE, which shall be open for audit, reaudit, inspection and reinspection (collectively "Audit") by the CITY's duly authorized representative(s) at any reasonable time during normal business hours; provided, however, that any such Audit of LESSEE's books and accounting records shall be limited to the then current Lease Year and the four (4) previous Lease Years. In addition, the CITY may conduct an Audit as described in this Section at its own expense as may be deemed necessary and appropriate by the CITY at any time during the Term of this Lease Agreement.

5.6.1 All information obtained in connection with the CITY's Audit shall be received and maintained in confidence and shall not be disclosed to anyone not directly connected with the official business of the CITY unless a written open records request has been made and the Texas Attorney General's office determines that it must be disclosed under the Texas Open Records Act.

5.6.2 LESSEE shall cooperate fully with the CITY's representative(s) in the making of any Audit.

5.6.3 If there is a deficiency in the payment of actual rent due the CITY, the deficiency shall become immediately due and payable together with interest thereon at the lesser of the maximum legal rate or ten percent (10%) per annum from the date of the CITY's demand for payment of the deficiency. If the amount of any deficiency for any Lease Year or partial Lease Year (in the event the Lease is terminated prior to expiration), exceeds five percent (5%) of the rent paid, LESSEE shall pay the cost of the Audit; otherwise, the cost thereof shall be paid by the CITY.

5.7 Failure to Furnish Accounting Statements. If Lessee shall fail to prepare and deliver or cause to be prepared and delivered any statements required by the CITY and such failure shall continue after thirty (30) days written notice by the CITY to LESSEE, the CITY may cause an audit to be made of all books, records and accounts of business operations conducted in, on or from the Premises and for such delinquent accounting period and may prepare the statement or statements which LESSEE shall have failed to prepare and deliver. Said Audit or Audits shall be in

addition to the Audit provided for in Section 5.6 and LESSEE shall pay on demand all expenses of any Audit contemplated by this Section 5.7 and the preparation of any such statements and all sums as may be shown by such Audit to be due as rent together with interest thereon as the lesser of the maximum legal rate or ten percent (10%) per annum from the date of the CITY's demand until paid.

5.8 Gross Revenues. "Gross Revenues" as used in this Lease Agreement, are defined in Section 3.1.2 of this Lease Agreement.

5.8.1 Gross Revenues shall not include:

(i) Federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law;

(ii) Refunds for goods returned for resale on the Premises or refunds of deposits;

(iii) Proceeds from the sale of such assets which have been identified as clearly being owned by the LESSEE;

(iv) Proceeds from insurance or insurable losses related to the Premises, provided that all such proceeds shall be used to repair or restore corresponding losses or destruction of the Premises, including improvements, unless the CITY consents in writing to other use of the proceeds;

(v) Additional sums or funds provided by LESSEE on an equity or loan basis.

5.8.2 The amount of such taxes and refunds and other items excluded from Gross Revenues as set forth in Section 5.8.1 above shall be clearly shown on the books and records of LESSEE.

5.8.3 The percentage rent shall be calculated and paid by LESSEE on the basis of Gross Revenues whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of the Premises or the operation thereof shall be regarded as Gross Revenues of LESSEE for the purpose of calculating the percentage rent hereunder

required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this Lease Agreement.

5.9 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the Gross Revenues for any service or use that is not permitted by this Lease Agreement. This payment is subject to the due date provided in this Lease Agreement for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Leased Premises.

5.10 Increases in Fees. All fees which LESSEE charges to the public shall be initially established, in concert with the CITY, based upon the fee structure in place at five (5) golf courses which have been selected by LESSEE and the CITY as being comparable to the contemplated facility and the services to be offered by LESSEE; to wit Chase Oaks Golf Club, Plantation Golf Club, Fire Wheel Golf Course, Indian Creek Golf Course, and Sherill Park Golf Course (the "Comparable Facilities"). Thereafter, LESSEE may increase any fee which it charges the public as provided in this Lease Agreement at such times in its business judgment such increases are necessary, provided, however, any increase shall not exceed by more than ten percent (10%) of the average regular rates being charged at the Comparable Facilities, or, with the consent of the Director of Parks and Recreation, which shall not be unreasonably withheld. Any increase over the amount permitted in this Section shall not be made without the prior written approval of the Parks and Recreation Director. Prior to the beginning of each Lease Year, LESSEE shall establish rates for the subsequent Lease Year based upon the foregoing structure, subject to the prior approval of the Director of Parks and Recreation which approval will not be unreasonably withheld so long as the rate structure complies with the foregoing.

5.10.1 Further, when fees are established, they may be rounded to the nearest one-half dollar even if this results in a mathematical percentage increase which is slightly higher than ten percent (10%) above the average regular rates charged at Comparable Facilities.

5.10.2 LESSEE or CITY shall have the right every five (5) Lease Years to propose additions or deletions to the Comparable Facilities to the extent one or more additional facilities are hereafter constructed that reflect

similar golf course characteristics, services and amenities provided by the Golf Course Facility or to the extent that one of the then current Comparable Facilities fails to satisfy the foregoing criteria. Any additions or deletions shall be subject to the CITY's and LESSEE's prior approval, which approval will not be unreasonably withheld. Fees compared pursuant to this Section shall be the "base 18-hole regular weekday and weekend rates, cart rental fees, and range fees." There shall be discounted fees for seniors and juniors, which shall be discounted a minimum of ten percent (10%) of the established regular rates. Any other discounts or promotions offered by LESSEE shall be in its discretion.

#### ARTICLE 6. CAPITAL RESERVE PROGRAM

6.1 Capital Improvement Reserve Fund. Commencing with the Second Lease Year and continuing each Lease Year thereafter, LESSEE, at its sole cost shall and in addition to the Master Plan Improvements, make additional improvements (the "Additional Work") to the Premises or Capital Improvements to the Premises. For the purpose of this Section, "Capital Improvement" shall mean an improvement which has a minimum useful life or useful life expectancy of five (5) years and is not typically a maintenance activity. LESSEE shall on a monthly basis beginning in Lease Year 2, accumulate for LESSEE's Additional Work an amount equal to three percent (3%) of the gross green fees, cart rental fees and driving range fees for the Golf Course received by LESSEE during the preceding month (the "Capital Improvement Reserve Fund").

6.2 Capital Improvement Reserve Program. All accumulated amounts in the Capital Improvement Fund shall be spent toward LESSEE's Additional Work. If the Fund is not used in any particular Lease Year of the Term, it shall be accumulated toward the succeeding Lease Year or period. On or before the first day of the eleventh (11th) month of the 2nd Lease Year and each Lease Year thereafter, LESSEE shall submit to the CITY for approval an improvement program describing in reasonable detail the elements and costs of LESSEE's Additional Work to be performed during the subsequent Lease Year. The CITY shall approve or disapprove the improvement program by January 1 of each Lease Year. Upon approval by the CITY of LESSEE's Additional Work, LESSEE shall commence construction thereof and diligently prosecute LESSEE's Additional Work to completion during said Lease Year. To the extent LESSEE and the CITY fail to reach agreement with respect to such improvement programs, it is agreed that in resolving any dispute improvements to the



grounds shall take precedence over improvements to physical structures.

6.3 Deposits to Capital Improvement Reserve Fund. All funds accumulated under this Article shall be deposited in an interest-earning escrow account.

#### ARTICLE 7. ALTERATIONS AND IMPROVEMENTS

7.1 Approval Required. LESSEE shall not demolish, remove, alter, modify, replace or add to the improvements on the Premises during the Term of this Lease Agreement other than in the normal course of business or in connection with the removal of obsolete equipment or improvements unless LESSEE secures the prior written approval of the CITY, which approval may be granted or withheld in the CITY's sole reasonable discretion. To obtain approval of any alteration, LESSEE shall submit detailed plans and specifications of the proposed alteration to the City Manager or his designee together with a statement of LESSEE's reasons for the alteration. Any such approved demolition, removal, alteration, modification, replacement or addition shall be commenced and completed in accordance with all of the Sections of this Article, to the extent they apply.

7.2 Contracting Procedures. All work required or performed in connection with the Master Plan Improvements, LESSEE's Additional Work, or the construction of any other improvements on or alterations to the Premises, including any site preparation, landscaping or utility installation, shall be performed only by LESSEE or by competent and financially responsible independent general contractors, and shall be performed pursuant to written contracts with such contractors. Each such contract shall provide that the final payment due to the contractor under said contract shall be in an amount equal to at least ten percent (10%) of the full amount payable under the Contract and said final payment shall not be paid to the Contractor until the occurrence of both of the following events:

(i) The expiration of thirty (30) days from the Completion of said improvements; and

(ii) The settlement and discharge of all liens and charges claimed by persons who supplied either labor or materials for the construction of said improvements.

7.3 Copy of Contract. For all such improvement work to be performed on the Premises by an independent

general contractor, LESSEE shall furnish the CITY with a true copy of LESSEE's contract with the general contractor and with evidence of the general contractor's financial condition for the CITY's approval, which approval shall not be unreasonably withheld or delayed. The contract shall give the CITY the right but not the obligation to assume LESSEE's obligations and rights under that contract if LESSEE should default. LESSEE shall have the right to secure preapproval from the CITY of the form of contract and the Contractor's financial condition prior to the execution of the final contract.

7.4 Contractor Approval. LESSEE shall submit the names of at least three (3) general contractors qualified to perform the contemplated work and the CITY shall approve one or more of such contractors. The CITY may disapprove one or more of the proposed general contractors or the proposed form of contract by notice given within fifteen (15) days following delivery of the list of contractors or the form of contract. The notice shall specify the grounds for disapproval. The CITY shall not unreasonably disapprove and shall be considered to have approved in the absence of notice of disapproval given within thirty (30) days after LESSEE furnishes the contract and evidence specified above.

7.5 Performance and Payment Bonds. In connection with any such improvements, and before such improvement work commences, LESSEE shall furnish the CITY with a performance bond in an amount not less than one hundred percent (100%) of the anticipated cost of such improvements, and a payment bond guaranteeing the completion of the improvements free from liens of materialmen, contractors, subcontractors, mechanics, laborers, and other similar liens. Said bonds shall be bonds of a responsible surety company, licensed to do business in Texas with a financial strength and credit rating acceptable to the CITY, and shall remain in effect until the entire cost of the work has been paid in full and the new improvements have been insured as provided in this Lease Agreement. Any such bonds shall be in a form satisfactory to the CITY. The CITY may accept such alternative or other security for the completion of such construction as it may, in its sole discretion, elect to accept.

7.6 Compliance With Laws. The Master Plan Improvements and LESSEE's Additional Work, alterations and other improvements shall conform with all applicable governmental rules, regulations and orders in all material respects. Prior to commencement of construction, LESSEE shall procure at its expense, all necessary building, fire safety and other permits. The CITY will cooperate with

LESSEE in obtaining such permits; provided, however, that this covenant to cooperate shall not be deemed or construed as a waiver of any right or obligation of the CITY acting in its governmental capacity. All work performed on the Premises pursuant to this Lease Agreement, or authorized by this Lease Agreement, shall be done in a good professional manner and only with materials of good quality and high standard.

7.7 Builder's Risk and Other Insurance. LESSEE shall obtain insurance coverage for "builder's risk," and worker's compensation insurance in connection with any work performed on the Premises in accordance with the conditions set forth in Article 12.

7.8 Completion of Work. The Master Plan Improvements, LESSEE's Additional Work, alteration or other improvements shall be deemed to have been completed upon (i) execution and delivery to the CITY of a written notice certifying completion thereof and further certifying that all costs and expenses thereof have been paid and that there are no unpaid costs or expenses of any nature related thereto, and (ii) independent verification by an independent party such as an architect, in respect to structural improvements or a USGA official in respect to improvements to the grounds or such other party as may be mutually acceptable to LESSEE and the CITY.

7.9 Discharge of Liens. LESSEE shall keep the Premises, including all buildings and improvements now or hereafter located on the Premises, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises.

7.9.1 If a lien or other encumbrance attaches to the Premises, LESSEE shall:

(i) promptly pay and discharge, or cause the Premises to be released from any such lien or claim or lien, or, if LESSEE decides to contest said lien;

(ii) furnish the CITY a bond issued by a surety company, satisfactory to the CITY, in an amount equal to one hundred twenty-five percent (125%) of the amount of the lien, securing the CITY against payment of such lien and against any and all loss or damage whatsoever in any way arising from LESSEE's failure to pay or discharge such lien.

7.9.2 In the event LESSEE provides a bond in lieu of paying or discharging a lien as set forth herein, LESSEE

shall at LESSEE's sole cost and expense, within thirty (30) days of the CITY's written request therefor, provide the CITY with an endorsement to any existing title policy in favor of the CITY's interest in the Premises free and clear of any such liens that have not been paid or discharged.

7.9.3 Should LESSEE fail to pay and discharge, or cause the Premises to be released from any such lien or claim of lien or to provide a bond as permitted hereunder within ten (10) days after service on LESSEE by the CITY of a written request to do so, the CITY may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and in such manner as the CITY may deem appropriate. In such event, LESSEE shall, on or before the first day of the next calendar month following any such payment by the CITY, reimburse the CITY for the full amount so paid by the CITY, including any actual attorneys' fees or other costs expended by the CITY, together with interest thereon at the lesser of the maximum legal rate or ten percent (10%) per annum, from the date of payment by the CITY to the date of LESSEE's reimbursement of the CITY.

7.10 Notification of Commencement of Work. LESSEE shall notify the CITY in writing at least ten (10) days prior to the commencement of any Master Plan Improvement or LESSEE's Additional Work, or of any alterations, work or improvement to facilities, structures, or other improvements to the Premises.

7.11 Ownership of Improvements. Ownership of all structures, buildings, trade fixtures or improvements constructed by LESSEE upon the Demised Premises and all alterations, additions or betterments thereto, shall vest in accordance with Section 3.5 of this Lease Agreement in the CITY without compensation being paid therefore. LESSEE shall not remove any of the improvements from the Premises, except in the ordinary course of business or in the case of removal of obsolete equipment or improvements, nor waste, destroy or modify any improvements on the Premises. Upon termination hereof, whether by expiration of the terms, cancellation, forfeiture or otherwise, such structures, buildings, trade fixtures and/or improvements shall be surrendered with the Demised Premises.

All Improvements on the Premises after expiration of the Term hereof or sooner termination of this Lease Agreement shall become the CITY's property free and clear of all claims to or against them by LESSEE or any third person or entity, and LESSEE shall defend and indemnify the CITY, and its officers, council members, or other appointed officials, employees, agents, independent contractors,

attorneys, accountants, representatives, predecessors, successors and assigns (collectively "Representatives") against all liability and claims, loss, damage or expense, of whatsoever character, nature and kind, whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent, including actual attorneys' fees and costs (collectively, "Liabilities"), arising from such claims or from the CITY's exercise of the rights conferred by this Section.

7.12 Financing Improvements; Prohibition on Encumbrances. LESSEE shall have no right to mortgage, pledge or otherwise encumber the Demised Premises for purposes of financing improvements or otherwise without the CITY's prior written consent, which may be withheld at the CITY's sole discretion, provided, however, that LESSEE may mortgage, pledge or otherwise encumber its leasehold interest in the Premises.

#### ARTICLE 8. ENCUMBRANCE OF LEASEHOLD ESTATE

8.1 LESSEE's Right to Encumber. LESSEE may, at any time and from time to time, encumber LESSEE'S Leasehold Interest (as defined below), by deed of trust, mortgage or other security instrument without obtaining the consent of CITY, but no such encumbrance shall constitute a lien on the fee title of CITY and improvements of the Premises, and except as otherwise provided in Section 8.5 below, the indebtedness secured by the encumbrance shall at all times be and remain inferior and subordinate to all the conditions, covenants and obligations of this Lease Agreement and to all the rights of the CITY under this Lease Agreement.

#### 8.2 Leasehold Financing.

8.2.1 As used herein, (i) the term "Leasehold Mortgage" shall be deemed to mean each and every recorded mortgage, deed of trust, deed to secure debt, collateral assignment of lease, or other similar instrument creating a lien or other encumbrances (regardless of the priority thereof) on LESSEE's interest in the Lease Agreement (the "Leasehold Interest"), and any modification of any of the terms thereof, including, without limitation, any extension, renewal or refinancing of any indebtedness secured thereby or any additional advance secured by any Leasehold Mortgage or any additional Leasehold Mortgage given to secure the same; and (ii) the term "Leasehold Mortgage" shall be deemed to mean any insurance company, bank or trust company, education or charitable institution, union, pension, profit or retirement fund or trust, real estate investment trust or

other financial or lending institution, and its respective successors, assigns or designees.

8.2.2 If, pursuant to the terms of the Lease Agreement, LESSEE mortgages its Leasehold Interest, and if any Leasehold Mortgagee shall send to CITY notice of its making a Leasehold Mortgage, then until such Leasehold Mortgage shall be satisfied (i) no modification or amendment of the Lease Agreement shall be effective without the prior written consent of Leasehold Mortgagee; (ii) CITY shall give to Leasehold Mortgagee a copy of each notice or demand ("Notice") which it gives to LESSEE, including all Notices of default by LESSEE (which shall specify the default), each Notice to be sent to the addressees and at the addresses provided to CITY by such Leasehold Mortgagee from time to time by registered or certified mail, return receipt requested, and the same shall not be effective for any purpose until such notice is given and as provided herein; (iii) Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under the Lease Agreement to be performed by LESSEE (including, without limitation, the exercise of any right of first refusal or renewal or other options), and CITY shall accept such performance by any Leasehold Mortgagee as if performed by LESSEE and all payments so made and all things so done and performed by Leasehold Mortgagee shall be effective to prevent a termination of the Lease Agreement; (iv) each Leasehold Mortgagee shall have the right (but not the obligation) to cure Lessee's defaults within a sixty (60) day period (the "Mortgagee's Grace Period") following the expiration of LESSEE's grace period applicable to such default subject to extension of such 60-day period as provided in 8.2.3 below; and (v) LESSEE may assign its Leasehold Interest to any Leasehold Mortgagee, and such Leasehold Mortgagee shall have the right to subsequently assign such Leasehold Interest, without LESSOR's consent.

8.2.3 If CITY shall intend, by reason of any default by LESSEE, to terminate the Lease Agreement prior to the stated expiration thereof, CITY shall notify Leasehold Mortgagee of such intention, and the reasons therefor at least thirty (30) days in advance of the proposed effective date for such termination. Leasehold Mortgagee, in addition to any and all rights hereunder that it may have, shall have the right to postpone the date on which this Lease Agreement would so terminate for a period of not more than thirty (30) days, unless a longer period of time shall be needed to obtain possession from LESSEE and cure such default, in which event the date of termination shall be postponed for such reasonable longer period, not to exceed ninety (90) days, provided such Leasehold Mortgagee, prior to the

expiration of such thirty (30) days following receipt of CITY's notice of intention to terminate shall have (i) given to CITY a written notice of its intention to cure all defaults, if any, then existing which may be cured by the payment of a sum of money (excepting obligations of LESSEE to discharge liens, charges or encumbrances against Lessee's Leasehold Interest); and (iii) initiated, and be diligently pursuing, steps to acquire the Leasehold Interest by foreclosure of its Leasehold Mortgage or otherwise. If (x) Leasehold Mortgagee or any other person shall obtain possession of the Leased Premises or shall have acquired LESSEE's Leasehold Interest by foreclosure, power of sale or other enforcement proceeding under the Leasehold Interest in lieu of foreclosure, or through settlement of, or arising out of, any pending or threatened foreclosure proceeding (any of the foregoing being referred to as an "Enforcement Proceeding"), (y) a lease assumption agreement shall be delivered to CITY by such Leasehold Mortgagee with respect to covenants and conditions contained in this Lease Agreement on LESSEE's part to be performed (other than any covenant not susceptible of performance other than by LESSEE (a "Personal Covenant")). and (z) such Leasehold Mortgagee shall have complied with all obligations on LESSEE's part to be performed under this Lease Agreement (other than any Personal Covenant), including the curing of all defaults susceptible of being cured by such Leasehold Mortgagee. No Leasehold Mortgagee shall be required to continue to proceed to obtain possession, continue in possession of the Leased Premises as Leasehold Mortgagee, or to continue to prosecute any Enforcement Proceeding or any other remedy, if and when such default(s) which were the basis for the Lease termination shall be cured. If more than one Leasehold Mortgagee shall seek to exercise the rights provided for in this subparagraph 8.2.3, the Leasehold Mortgagee with the most senior lien priority shall be entitled, as against the others, to priority in the exercise of such rights.

8.2.4 No Leasehold Mortgagee or other person succeeding to the Leasehold Interest through or subsequent to an Enforcement Proceeding shall be liable for LESSEE's Leasehold Interest, unless and until such time as it becomes the owner of the Leasehold Interest. CITY hereby agrees to recognize Leasehold Mortgagee, or any other foreclosure sale purchaser, as LESSEE under the Lease Agreement.

8.2.5 If LESSEE shall fail, within the time period permitted in the Lease Agreement, to exercise any right of first refusal, renewal, or any other option contained in the Lease Agreement, then CITY shall give notice to Leasehold Mortgagee of such failure, and Leasehold Mortgagee shall

have ten (10) business days after receipt of such notice to exercise such option on LESSEE's behalf.

8.2.6 CITY hereby agrees that any interest that CITY may have in such personal property or subleases, as the case may be, whether granted pursuant to this Lease Agreement or by statute, shall be subordinate to the interest of any such Leasehold Mortgage.

8.3 New Lease. In the event of any termination of this Lease Agreement for any reason including, without limitation, cancellation, termination or surrender, or as a result of LESSEE's default, CITY shall, in addition to providing the notices of default required by Section 8.2 above, provide Leasehold Mortgagee with written notice that this Lease Agreement has been terminated (the "Notice of Termination"), together with a statement of all sums that would at the time be due under this Lease Agreement but for such termination, and of all other defaults, if any, then known to CITY. CITY agrees to enter into a new Lease (a "New Lease") of the Leased Premises, with such Leasehold Mortgagee, for the remainder of the term of this Lease, effective as of the date of termination, at the Rent, and upon the terms, covenants, and conditions (including any options, but excluding requirements that are not applicable or that have already been fulfilled) of this Lease Agreement, provided:

8.3.1 Such Leasehold Mortgagee shall make written request upon CITY for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives CITY's Notice of Termination of this Lease Agreement given pursuant to this Section 8.3.

8.3.2 Such Leasehold Mortgagee shall pay, or cause to be paid, to CITY at the time of the execution and delivery of such new Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to the terms of this Lease Agreement regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which CITY has incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by CITY from LESSEE. Upon the execution of such New Lease, CITY shall allow the tenant named therein to offset against the sums otherwise due under this Section 8.3 or under the New Lease, an amount equal to the net income derived by CITY from the Leased Premises, during the period from the date of termination of the Lease Agreement to the date of the New Lease. In the event of a controversy as to the amount to be paid to CITY pursuant to this Lease Agreement, the payment



obligation shall be satisfied if CITY shall be paid the amount not in controversy, and the Leasehold Mortgagee agrees to pay any additional sum ultimately determined to be due plus interest at a rate of ten percent (10%) per annum. The parties shall cooperate to determine any disputed amount promptly.

8.3.3 Such Leasehold Mortgagee shall remedy, within the time frames described in Section 8.2 above, any of LESSEE's defaults (other than a Personal Covenant) of which Leasehold Mortgagee was notified by CITY's Notice of Termination and that are susceptible of being so cured by Leasehold Mortgagee.

8.3.4 Any New Lease made pursuant to this Section 8.3 shall be prior to any mortgage or other lien, charge, or encumbrance on the Leased Premises and the Leasehold Interest, and the tenant under any such New Lease shall have the same right, title, and interest in the Lease Agreement as LESSEE.

8.3.5 The tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such tenant has been the owner of such Leasehold Interest.

8.4 Bankruptcy. The following provisions shall apply in the event of any proceeding by CITY or LESSEE under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect:

8.4.1 If this Lease Agreement is rejected in connection with a bankruptcy proceeding by LESSEE, or a trustee in bankruptcy for LESSEE, such rejection shall be deemed an assignment by LESSEE to Leasehold Mortgagee (or if there is more than one Leasehold Mortgagee, to the one highest in priority) of the Leasehold Interest and of all of LESSEE's interest under the Lease Agreement, in the nature of an assignment in lieu of foreclosure, and the Lease Agreement shall not terminate. Unless Leasehold Mortgagee shall reject such deemed assignment by notice in writing to CITY within thirty (30) days following rejection of the Lease Agreement by LESSEE, or LESSEE's trustee in bankruptcy, Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Lease Agreement as if such bankruptcy proceeding had not occurred. If any court of competent jurisdiction shall determine that this Lease Agreement shall have been terminated, notwithstanding the terms hereof, then the rights of Leasehold Mortgagee to a New Lease from CITY pursuant to Section 9.3 hereof shall not be affected.

8.4.2 If the Lease Agreement is rejected to CITY or by this trustee in bankruptcy:

(i) LESSEE shall not have the right to treat this Lease Agreement as terminated, except with the prior written consent of Leasehold Mortgagee, and the right to treat this Lease Agreement as terminated in such event shall be deemed assigned to Leasehold Mortgagee, so that the concurrence in writing of LESSEE and Leasehold Mortgagee shall be required as a condition to treating this Lease Agreement as terminated in connection with such proceeding.

(ii) If this Lease Agreement is not treated as terminated, then this Lease Agreement shall continue in effect upon all the terms and conditions set forth herein including Rent, and all other terms and provisions hereof, but excluding requirements that are not applicable or pertinent to the remainder of the term thereof. Thereafter, LESSEE shall be entitled to any offsets against Rent payable hereunder for any damages arising from such rejection and any such offset properly made shall not be deemed a default under this Lease Agreement. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of LESSEE following such rejection with the same priority with respect to each such Leasehold Mortgage as it would have enjoyed had such rejection not taken place.

8.5 Fee Mortgage. CITY shall not create or grant any mortgage or other lien or encumbrance affecting CITY's fee interest in the Leased Premises, or CITY's interest in the Lease Agreement, unless such mortgage or other encumbrance is by its terms subordinate to this Lease Agreement, to the Leasehold Mortgage and to all extensions, renewals and modifications of the Leasehold Mortgage. CITY represents and warrants to LESSEE for the benefit of any Leasehold Mortgagee that there are no liens or encumbrances encumbering CITY's fee interest in the Leased Premises or CITY's interest in the Lease Agreement. In the event CITY's fee interest or interest in the Lease Agreement becomes subject to a lien or encumbrance, CITY shall obtain a subordination agreement in form and content satisfactory to Leasehold Mortgagee subordinating the rights of such fee mortgage holder to those of Leasehold Mortgagee. CITY shall cause each holder of a fee mortgage to subordinate its interest to any Leasehold Mortgagee following the execution of any New Lease.

**ARTICLE 9. LESSEE'S OPERATING RESPONSIBILITIES**

9.1 Competent Management, Management Qualifications. Through the term of this Lease Agreement, LESSEE shall provide competent management of the Leased Premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a golf course and related activities in a manner consistent to those standards adhered to at the Comparable Facilities.

LESSEE, at its cost and in addition to other personnel required hereby, shall obtain the services of a full time, on-site, competent golf course manager, who shall be a PGA "Class A" golf professional, to manage the pro shop and a full time, on-site USGA certified golf course superintendent to supervise grounds maintenance activities.

9.2 Public Use. LESSEE shall maintain the Premises as a public golf course. The general public shall not be wholly or permanently excluded from any portion of the Premises, except during non-business hours. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow LESSEE to use the Premises for the purposes specified herein.

9.3 Compliance with Laws. LESSEE shall conform to and abide by all CITY and County ordinances, and all State and Federal laws and regulations, insofar as the same are applicable; and where permits and/or licenses are required for the Golf Course operation, the same must be first obtained from the regulatory agency having jurisdiction thereover. LESSEE agrees to keep the Premises and improvements constructed thereon equipped with all safety appliances reasonably required because of its use.

9.4 Compliance With Rules and Regulations. LESSEE shall conform to and abide by in all material respects all rules and regulations established by the CITY insofar as the same are applicable to the operation of the Golf Course including Golf Course Maintenance Specifications, attached to this Lease Agreement as Exhibit "E" and fully incorporated into this Lease Agreement by reference. LESSEE shall create a golf course operations manual applicable to the Golf Course Facility which shall be subject to the approval of the CITY, which approval will not be unreasonably withheld.

9.5 Disorderly Persons. LESSEE agrees to promptly remove from the Premises any unreasonably loud, boisterous or disorderly persons.

9.6 Illegal Activities. LESSEE shall not knowingly permit any illegal activities to be conducted upon the Demised Premises.

9.7 Signs. LESSEE shall not post signs or advertising matter upon the Premises or improvements thereon, unless prior written approval therefor is obtained from the CITY.

9.8 LESSEE's Staff. LESSEE shall maintain an adequate and proper staff and discharge any employee whose conduct or activity shall, in the reasonable exercise of discretion, be deemed to be detrimental to the interests of the public patronizing the Premises. LESSEE shall establish an identification system for personnel assigned to the starter service and golf shop which clearly indicates to golf course patrons that the name of the person(s) on duty are employed by LESSEE for various aspects of the Golf Course operations. The identification system shall be furnished at the LESSEE's expense and shall include appropriate attire, name badges and/or name plates.

9.9 Utilities. LESSEE shall provide and pay for all telephone service and utilities for the Premises.

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

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

9.12 Habitation. The Premises shall not be used for human habitation; provided, however, that person(s) providing night watch or patrol services shall be permitted on the Premises after closing.

9.13 Golf Clubs/Organizations. LESSEE acknowledges that there is a benefit to the operation of the Golf Course Facility to having responsible golfing organizations. Without granting any special privileges to any person or group, LESSEE may encourage, create and accommodate organizations, including without limitation, senior citizens and a general nondiscriminatory golf club organization.

9.14 Golf Instruction and Junior Golf Program. LESSEE shall promote golf instruction and a Junior Golf Program by providing at a reduced charge to the CITY or participants therein group lessons, range balls, general golf instruction, actual play and junior tournaments. Such programs shall be taught by LESSEE's golf professionals and publicity for same shall be coordinated through the CITY's Parks and Recreation Department. Golf shall be taught only by qualified instructors.

9.15 Professional Shop Inventory, Merchandise and Equipment. LESSEE shall display and maintain a professional shop inventory comparable to the Comparable Facilities. The inventory shall include golfing equipment, supplies and apparel which shall be offered for sale to the public and, in particular, to patrons of the Golf Course at prices reasonable and comparable to prices being paid for equipment, supplies, and apparel in the Comparable Facilities. The retail cost of the inventory at the Golf Course shall be not less than FIFTY THOUSAND DOLLARS (\$50,000.00) and shall increase annually based on the increased costs of comparable inventories during subsequent Lease Years.

9.16 Rangin. LESSEE, at its cost, shall furnish such personnel as may be required to marshal the play of golfers without substantial delay.

9.17 Golf Carts. LESSEE shall provide, through purchase or lease as an expense to the operation, at its sole cost and expense, a sufficient number of power driven golf carts and manually operated golf carts to meet the public demand therefor at the Demised Premises.

9.18 Dress and Conduct Standards. LESSEE shall set dress and conduct standards consistent with those imposed at the Comparable Facilities, and shall be permitted to deny entry or permission to play to anyone who fails to conform to those standards. LESSEE shall have the right to refuse admission and/or service to persons who are drunk, disorderly, under the influence of drugs, or who conduct

themselves in a manner that could result in injury or harm to persons or property on the Leased Premises.

9.19 Tournaments. CITY shall have the right two times during each Lease Year to schedule a tournament or tournaments for the full day. LESSEE and CITY will agree in advance, once a year, on the dates for such tournaments. Tournament participants will pay the then-prevailing rates for golf tournament fees and services. Such Tournaments shall be scheduled subject to providing LESSEE a one hundred eighty (180) day advance notice.

9.20 Charity Tournament. Subject to providing LESSEE one hundred eighty (180) days advance notice, CITY shall have the right to annually schedule and conduct a tournament at no charge for green fees or golf cart rentals which shall be for the purpose of raising money for charities of the City of Plano as selected by the CITY. Such tournament shall not be scheduled during weekend playing times.

#### ARTICLE 10. REPAIRS AND MAINTENANCE

10.1 CITY's Nonresponsibility. During the Term of this Lease Agreement, the CITY shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Premises or the improvements thereon. LESSEE hereby expressly waives the right to make repairs at the expense of the CITY as provided in any statute or law in effect at the time of execution of this Lease Agreement or in any other statute or law which may hereafter be enacted.

10.2 Maintenance Specifications. LESSEE accepts the Premises in their present condition and, at its sole cost and expense, agrees to keep the Premises free of all rubbish, debris and litter and keep all future improvements which will be constructed in a good repair and condition, ordinary wear and tear excepted, in accordance with all applicable laws, rules, ordinances, orders and regulations of (i) federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus and officials; (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, and (iii) all insurance companies insuring all or any part of the Premises or improvements thereon or both, and LESSEE shall make whatever repairs and replacements are reasonably required to comply with such enactments. LESSEE at its own cost and expense shall furnish all necessary equipment, supplies and materials of good quality and in the amount

reasonably necessary to fulfill its maintenance obligations hereunder. Said equipment, supplies and materials shall include but not be limited to:

(i) Gas, oil, and spare parts for all equipment;

(ii) Top dressing, seed, fertilizers, fungicides, insecticides, and herbicides;

(iii) Parts necessary for the repair and maintenance of all irrigation systems;

(iv) Tee towels, soap, ball washers, putting green cups and flags, benches, trap rakes, tee markers, tee mats, trash receptacles, cleat brushes, tee and directional signs and all other pertinent golf course equipment;

(v) Materials for the installation and maintenance of french drains; and

(vi) Washed plaster sand for traps on an as needed basis.

10.3 Additional Maintenance. LESSEE, at its cost and expense shall perform such additional maintenance and repair as may be required to maintain the Golf Course grounds in an attractive and playable condition in accordance with established maintenance standards attached to this Lease Agreement as Exhibit "E". Golf Course maintenance shall be governed by the standards set forth in Exhibit "E" and those standards recognized by the USGA ("Maintenance Standards"). LESSEE acknowledges that its obligation to maintain and repair the Premises shall include without limitation the landscape areas around the Club House and parking lot and those areas adjacent to the Golf Course which extend to the curbs of street, including without limitation, all landscaped areas outside of the fence line.

10.4 Inspections. At the end of each calendar quarter CITY staff and LESSEE's staff shall conduct an onsite inspection of the Premises. Within five (5) days after the inspection, the CITY shall notify LESSEE in writing of those matters not in compliance with the Maintenance Standards. In addition, at LESSEE's expense, at the end of each Lease Year it shall cause an inspection by the United States Golf Association ("USGA"), which will prepare a written report, at LESSEE's expense, to be filed with the CITY no later than sixty (60) days after the end of the Lease Year. The report shall set forth those matters of needed maintenance and repair that the USGA feels in its

opinion are needed. The maintenance and repair provided for in this Section 10.4 shall be completed by LESSEE in accordance with Section 10.5 below. The provisions of this Section 10.4 shall not be construed to limit the CITY from inspecting the Premises at other times.

10.5 Failure to Maintain. All required maintenance shall be commenced within a reasonable period of time, taking into consideration the time of the year in question and current growing conditions, from written notice of needed maintenance and repair from the CITY or the USGA and shall be completed within thirty (30) days of such notice unless it is not reasonable to complete within such time period, in which event the LESSEE may request an extension in writing from the CITY for an enlarged time period for completion. The CITY shall not unreasonably withhold extension to the specified time limit if LESSEE is proceeding with all due diligence in its efforts to correct the maintenance deficiency. If the LESSEE believes that the CITY is unreasonably withholding an extension of the time period for completion, within said thirty (30) day time period, it may make a written request of the USGA to make a determination of a reasonable time period for completion. In such instance, the USGA's written determination of a reasonable time period for completion shall be conclusive. Should LESSEE fail to perform its maintenance obligations required hereunder, the CITY in addition to all other available remedies may, but shall not be so obliged, enter upon the Premises and perform LESSEE's failed obligations, using any equipment or materials on the Premises suitable for such purposes. LESSEE shall forthwith on demand reimburse the CITY for its costs so incurred, including direct and indirect overhead.

10.6 Repair. LESSEE agrees to give written notice to CITY of any fire or other damage occurring on the Premises within ten (10) days of the incident or its discovery. LESSEE shall promptly and diligently repair, replace and restore all damage to or destruction of all or any part of the improvements on the Premises resulting from any cause. Said repair, replacement or restoration shall be commenced following the date of such damage or destruction, taking into consideration the time of the year in question and current growing conditions, and shall thereafter be pursued to completion with diligence. The completed work of repair, restoration, or replacement shall be equal in value, quality, and use to the condition of the improvements before the event giving rise to the work, except as may be expressly provided to the contrary in this Lease Agreement. The CITY shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind



in or on the Premises in connection with such work by LESSEE. The CITY may elect to perform any obligation of LESSEE under this provision upon LESSEE's failure or refusal to do so, but such election shall not constitute a waiver of any right or remedy for LESSEE's default, and LESSEE shall promptly reimburse, defend, and indemnify the CITY, and their representatives, against all liabilities resulting from the CITY's performance of LESSEE's covenants. All such work or repair, replacement or restoration performed by LESSEE shall comply with all of the requirements prescribed by Article 7 of this Lease Agreement, including all requirements for the CITY's approval set forth therein. During a reasonable period for repair and restoration, LESSEE shall be entitled to an abatement of rent on that portion of the Premises which are not capable of being used or, in the event it is not reasonably practical from the standpoint of good business judgment to continue any operations on the Premises during such reasonable period of restoration, LESSEE shall be entitled to a total abatement of rent during such period.

10.7 Destruction. Notwithstanding anything to the contrary herein, LESSEE shall not be required to repair or restore the Premises and this Lease Agreement may be terminated by LESSEE in the event that all or a significant portion of the Premises are destroyed or rendered unusable to operate a golf course by a casualty not covered by insurance, not required to be covered by insurance hereunder and requiring an expenditure in excess of \$500,000 to restore the Premises. In determining whether LESSEE has acted promptly as required under this Section, one of the criteria to be considered is the availability of any applicable insurance proceeds.

#### ARTICLE 11. HOLD HARMLESS AND INDEMNIFICATION

LESSEE hereby indemnifies, defends, and holds harmless the CITY and its agents, officers and employees from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of LESSEE, or an agent, invitee, guest, employee, or anyone in, on or about the Premises with the permission and consent of LESSEE, with respect to the Premises or the operations or services under this Lease Agreement, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm, including any

workers' compensation suits, liability, or expense, arising from or connected with services performed by or on behalf of LESSEE by any person pursuant to this Lease Agreement, nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Demised Premises; infringement of a patent or copyright or disclosure of a trade secret; and violation of state and federal antitrust laws. This indemnity shall not require payment of a claim by the CITY or any of its officers or employees as a condition precedent to the CITY's recovery hereunder.

#### ARTICLE 12. INSURANCE

Without limiting LESSEE's indemnification of the CITY as provided above, LESSEE shall provide and maintain at its own expense during the term of this Lease Agreement the below listed policies of insurance covering its operations hereunder. Such insurance shall be secured through a carrier satisfactory to the CITY and evidence of such insurance satisfactory to the CITY along with required endorsements will be delivered to the Risk Manager on or before the Commencement Date, and shall contain express conditions that the CITY and its Representatives, its agents, officers, employees, volunteers, Boards and Commissions are additional insured under the policy and that the CITY is to be given at least thirty (30) days written notice in advance of any modification, termination or reduction of the limits of coverage of any policy of insurance for any cause. Each such policy shall be primary and shall not be deemed to be contributing with any insurance or self insurance maintained by the CITY. Coverage limits shall be increased at CITY's request at reasonable intervals and to amounts that are reasonable and at that time generally prevailing. The CITY shall be named specifically and separately as additional insured under each of the policies provided in this Section in a form acceptable to the Risk Manager. The coverage shall contain no special limitations on the scope of protection afforded to the CITY or its Representatives. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the CITY or its Representatives. All policies of insurance shall contain a waiver of subrogation as against the CITY and its officers and employees.

12.1 General Liability. Such policy of insurance shall include, but not be limited to, comprehensive general liability with contractual liability coverage and comprehensive auto liability, each with a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence. The comprehensive general liability policy

shall be endorsed to include all available sections of personal injury liability coverage.

12.2 Worker's Compensation. LESSEE's employees and all persons providing services by or on behalf of LESSEE with respect to this Lease Agreement shall be covered by Worker's Compensation Insurance. The CITY will be provided with a waiver of subrogation.

12.3 Property Coverage.

12.3.1 Real Property - Insurance covering the full replacement value of the Demised Premises including all improvements thereon against the hazards of fire, extended coverage, vandalism and malicious mischief, flood and other property-related losses.

12.3.2 Personal property - Insurance covering ninety percent (90%) of the replacement value of all personal property and equipment on the Premises, including without limitation all golf carts and maintenance equipment, against the hazards of fire, burglary, vandalism and malicious mischief.

12.4 Other Insurance. LESSEE shall also procure and keep in place such other insurance as is required herein, including without limitation "builders risk" and worker's compensation insurance in connection with the improvement work on the Premises, and such other insurance as the CITY may reasonably require, which insurance shall be in such form and in such amounts as the CITY may reasonably prescribe.

12.5 Deductibles. For all required insurances, the City Manager shall require and the LESSEE shall provide adequate coverage including deductibles sufficiently low enough to ensure the effectiveness of the insurance. The CITY's Risk Manager shall approve all deductible plans.

12.6 Failure to Insure. Failure on the part of LESSEE to procure or maintain required insurance shall constitute a material breach of this Lease Agreement under which the CITY may immediately terminate this Lease Agreement or at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by LESSEE to the CITY upon demand including interest thereon at the lesser of the legal rate or ten percent (10%) per annum from the date paid by the CITY through the date reimbursement is received from LESSEE.

12.7 Cancellation Response. If any insurance coverage is cancelled or reduced, LESSEE shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the CITY a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies, and said policy shall be submitted for approval as herein provided. At least fifteen (15) days prior to the expiration of any such policy, a certificate, showing that the insurance coverage has been renewed or extended, shall be filed with the CITY.

12.8 Suspension of Operations. LESSEE shall suspend and cease all operations hereunder on the Premises during such periods of time as evidence of required insurance coverage has not been provided to the CITY, unless at its sole discretion the CITY waives such suspension.

12.9 Acceptability of Insurers. The CITY requires that insurance be placed with insurers with an A.M. Best's rating of no less than A-VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those vendors whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

12.10 Verification of Coverage. LESSEE shall furnish the CITY with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the CITY and are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time, at no expense to the CITY.

#### ARTICLE 13. TAXES AND IMPOSITIONS

13.1 Payment of Impositions. The parties recognize that the real property and improvements thereon and LESSEE's leasehold estate are tax exempt, as of the date hereof. To the extent the tax exempt status for the real property, improvements or leasehold are hereafter withdrawn or changed, the CITY and LESSEE shall be responsible for payment as follows:

(a) The CITY will be responsible for all taxes attributable to the Premises exclusive of the improvements; and

(b) The CITY and LESSEE will each be responsible for fifty percent (50%) of the taxes attributable to the improvements and LESSEE's leasehold estate.

13.2 Payment Before Delinquency. Any and all Impositions and installments of Impositions required to be paid by LESSEE under this Lease Agreement shall be paid by LESSEE at least ten (10) days before each such Imposition, or installment thereof, becomes delinquent, and the official and original receipt for the payment for such Imposition or installment thereof shall immediately be given to the CITY.

13.3 Contest of Imposition. LESSEE shall have the right to contest, oppose, or object to the amount or validity of any Imposition levied on or assessed against the Premises or any portion thereof and may in good faith diligently conduct any necessary proceeding to prevent or void or reduce the same; provided, however, that the contest, opposition, or objection must be filed before the Imposition at which it is directed becomes delinquent, and written notice of the contest, opposition, or objection must be given to the jurisdiction making such Imposition in a timely manner. No such contest, opposition, or objection shall be continued or maintained after the date on which the Imposition at which it is directed becomes delinquent unless LESSEE has met one of the following conditions:

(i) Paid such Imposition under protest prior to its becoming delinquent; or

(ii) Obtained and maintained a stay of all proceedings for enforcement and collection of the Imposition by posting such bond or other matter as may be required by law for such a stay.

The CITY further shall not be required to join in any proceeding or contest brought by LESSEE, unless the provisions of any law require that the proceeding or contest be brought by or in the name of the CITY or any owner of the Premises. In that case, the CITY shall join in the proceeding or contest or permit it to be brought in the CITY's name but such action shall be without cost to the CITY.

13.4 Tax Returns and Statements. LESSEE shall, as between the CITY and LESSEE, have the duty of attending to,

preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Premises, or any portion thereof, or any interest therein, or any improvements or other property on the Premises.

13.5 Indemnification. LESSEE shall indemnify and defend the CITY, and its representatives, and the Premises and any improvements now or hereafter located on the Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorneys' fees and costs, resulting from any Impositions required by this Article to be paid by LESSEE, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such Imposition.

13.6 Payment by the CITY. Should LESSEE fail to pay within the time specified in this Article any Impositions required by this Article to be paid by LESSEE, the CITY may, without notice to or demand on LESSEE, pay, discharge, or adjust such Imposition for the benefit of Lessee. In such event, LESSEE shall, on or before the first day of the next calendar month following any such payment by the CITY, reimburse the CITY for the full amount incurred by the CITY in so paying, discharging, or adjusting such Imposition together with interest thereon at the legal rate per annum, from the date of payment by the CITY until the date of repayment by LESSEE.

#### ARTICLE 14. NONDISCRIMINATION

LESSEE, for itself, its successors and assigns and all persons claiming under or through it, covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the operation, subleasing, transferring, occupancy, tenure or enjoyment of the Premises, nor shall LESSEE or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, licensees, employees or vendees in the Premises or the improvements thereon. LESSEE further covenants to comply with all State and Federal nondiscrimination laws now or hereafter in effect. The foregoing covenants shall run with the leasehold.

All records, including without limitation, employment records, shall be open for inspection and reinspection at any reasonable time during the term of this Lease Agreement for the purpose of verifying the practice of nondiscrimination by LESSEE in the areas heretofore described.

LESSEE, for itself, its successors and assigns and all persons claiming under or through it, covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the construction of any improvements on the Premises.

#### ARTICLE 15. ASSIGNMENT OR TRANSFER OR TERMINATION OF LEASE

##### 15.1 Restriction on Assignment or Transfer.

(a) LESSEE may not sell or assign its leasehold estate in its entirety or any portion of it and may not sublet the Leased Premises or any portion of them or any portion of any building or other improvement erected on the Leased Premises, at any time and from time to time, without CITY's express written consent, except as expressly provided herein, which consent shall not be unreasonably withheld or delayed. In connection with the granting of such consent, CITY shall favorably consider, but shall not be obligated to accept, any assignee who has a net worth in excess of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), and whose principals have had five (5) years or more experience in operating golf courses and are considered by CITY to be competent operators. It is agreed that any such transfer, assignment, or sale shall be subject to the obligations to CITY as set forth in this Lease Agreement and, if approved by CITY, shall fully release LESSEE of all of LESSEE's obligations under this Lease Agreement effective the date of such assignment.

(b) Notwithstanding anything else contained herein to the contrary, LESSEE shall have the absolute right, from time to time, to transfer and assign this Lease and its interest herein to any entity, without the prior consent of the CITY, so long as (i) such entity is an affiliate of Jeffrey M. Silverstein, and (ii) the entity responsible for the day-to-day management and operation of the Leased Premises shall be controlled by Jeffrey M. Silverstein.

15.2 Investigation of Proposed Transferee; Costs.  
In the event that LESSEE requests the CITY's written consent to a proposed Transfer pursuant to Section 15.1 of this

Lease Agreement, LESSEE agrees to provide the CITY with such information, including financial statements and tax returns, as the CITY may reasonably require in order to evaluate the financial net worth and liquidity and the staff, relevant business acumen and experience of any proposed transferee.

If the CITY consents to any Transfer, such consent shall not be effective unless and until LESSEE gives notice of the Transfer and a copy of any documents affecting and/or evidencing such Transfer to the CITY and unless and until any such transferee assumes all of the obligations and liabilities of LESSEE under this Lease Agreement.

15.3 Right to Terminate Lease. LESSEE may, at any time after completion of the Master Plan Improvements, terminate this Lease Agreement by tendering at least ninety (90) days written notice to the CITY and surrendering the Premises to the CITY. Provided, however, the Premises and improvements thereon must be free and clear of any debt, lien, or other impairment or liability.

15.4 Financing Contingency. LESSEE shall have a period of sixty (60) days after the date hereof to obtain from a lending institution a commitment for a loan ("LESSEE's Loan") upon terms and conditions acceptable to LESSEE, in LESSEE's sole discretion. In the event LESSEE is unable to obtain a commitment for LESSEE's Loan upon terms and conditions acceptable to LESSEE, in its sole discretion, within such period, LESSEE may, at its sole option, terminate this Agreement, in which event the parties hereto shall be released from all obligations hereunder; provided, however, that upon any termination by LESSEE under this provision, CITY shall be entitled to all plans and specifications for the golf facilities contemplated hereby which LESSEE may have produced prior to such termination.

#### ARTICLE 16. CITY RIGHT TO PURCHASE/ADDITIONAL CONSIDERATION

16.1 CITY First Right to Purchase. In the event LESSEE desires to dispose of its interest in this Lease Agreement, together with any furnishings owned by LESSEE on the Leased Premises, CITY shall be given the first right to purchase said interest and improvements upon mutually agreeable terms and conditions, including price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest on terms and conditions materially more favorable to the purchaser without first reoffering to CITY the right to purchase at such terms and conditions.



16.2 Additional Consideration to CITY. LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a future refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, LESSEE shall pay to CITY two percent (2%) of the amount paid for the leasehold in connection with an approved assignment of the lease above the cost of the Master Improvements, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the leasehold over and above the amount of the encumbrance needed to finance the improvements.

#### ARTICLE 17. INDEPENDENT CONTRACTOR

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

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

#### ARTICLE 18. EMINENT DOMAIN

18.1 Total Taking. If, after the Commencement Date, the Golf Course shall be taken in its entirety by right of eminent domain for any public or quasi-public use, then, when possession shall be taken thereunder by the condemnor, or the LESSEE is deprived of its practical use of the Premises and other improvements, whichever date is earlier, this Lease Agreement and all rights of the CITY and LESSEE hereunder, shall terminate and any rent and all other payments required of LESSEE shall be immediately paid by LESSEE to the CITY through the date of taking.

18.2 Partial Taking. In the event of a partial taking of any part of the Premises as a result of which the remaining portion of the Premises cannot be restored to an economically operable facility of a comparable kind and quality to the facility existing prior to the taking, then this Lease Agreement, at LESSEE's option, shall terminate as of the time when possession of the Premises shall be taken by the condemnor or LESSEE is deprived of its practical use thereof, whichever date is earlier. If the Premises can be restored to an economically operable facility of comparable

kind and quality to the facility existing prior to the taking, then this Lease Agreement shall not be affected and LESSEE shall retain the remaining portion thereof; provided, however, that the rent shall be reduced on an equitable basis.

18.3 Eminent Domain Award. If there is a taking by right of eminent domain, the rights and obligations of the Parties with reference to the award and the distribution thereof shall be allocated between the CITY and LESSEE on the following basis:

(a) All proceeds, whether attributable to the Premises or LESSEE's Leasehold Estate (herein so called) shall be allocated first to the expenses incurred by the CITY or LESSEE in connection with defending the proceedings, then to costs of repair, alteration, renovation or improvement to the Premises, with the balance to be allocated pursuant to subparagraph (b) below.

(b) The balance of any award for partial taking and the award for a taking of the Premises in its entirety shall be allocated as follows:

(i) to the City to the extent of the award allocated to the Premises exclusive of the improvements located thereon and LESSEE's Leasehold Estate.

(ii) to LESSEE to the extent of the value of the improvements constituting a portion of the Premises (reduced by 1/50 after the passage of each Lease Year) and the value of LESSEE's Leasehold Estate. In the event of a total taking, the CITY and LESSEE agree that the value of LESSEE's Leasehold Estate shall be computed at a minimum on the same basis as the Buyout Price is computed in accordance with Section 3.1.2 hereof.

(iii) In the event of a total taking, LESSEE's share of the award shall not be less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) reduced by ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) after the passage of each Lease Year (called "LESSEE's Minimum"). In the event the sums allocated to LESSEE under subparagraph (b)(ii) above are less than LESSEE's Minimum and in the event the CITY receives an award under subparagraph (b)(i) above, the CITY shall fund to LESSEE the amount of such deficiency out of the CITY's award.

**ARTICLE 19.      DEFAULT**

19.1           Events of Default. The occurrence of any one or more of the following events shall constitute an event of default of this Lease Agreement by LESSEE ("Default(s)" or "Event(s) of Default"):

19.1.1        After written notice and right to cure, failure by LESSEE to observe and perform any provision of this Lease Agreement to be observed or performed by LESSEE, including, but not limited to, the maintenance and repair obligations set forth in Article 10 hereof. The specification below of certain acts which are a violation of this Lease Agreement and which constitute Events of Default, shall not be construed as to limit the generality and enforceability of this Section 19.1.1 with respect to the fact that a violation of any provision of this Lease Agreement shall constitute an Event of Default.

19.1.2        After written notice and right to cure, any failure by LESSEE to pay the rental or make any other payment required to be made by LESSEE hereunder, on the date the payment is due;

19.1.3        After written notice and right to cure, the abandonment or surrender of the Premises by LESSEE, or the vacation of the Premises by LESSEE (defined to be ten (10) or more days of continuous absence from the Premises by LESSEE coupled with LESSEE's failure to pay rent for that period);

19.1.4        An event of insolvency occurs, which event shall be any of the following: LESSEE shall make an assignment for the benefit of creditors; LESSEE shall file or acquiesce in a petition in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings; LESSEE shall make an application in any such proceedings for, or acquiesce in, the appointment of a trustee or receiver for it of all or any portion of its property; any petition shall be filed against LESSEE to which it does not acquiesce in any court (whether or not pursuant to any statute of the United States or any state) in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and the proceedings shall not be dismissed, discontinued or vacated within ninety (90) days; any proceedings pursuant to the application of any person other than LESSEE to which LESSEE does not acquiesce, in which a receiver or trustee shall be appointed for LESSEE or for all or any portion of the property of LESSEE, and the

receivership or trusteeship shall not be set aside within ninety (90) days after such appointment; or any judgment, writ, warrant, attachment or execution or similar process shall be issued or levied against a substantial part of the property of LESSEE and such judgment, writ or similar process shall not be released, vacated or fully bonded within ninety (90) days of its issue or levy; provided, that if it is determined that this Lease Agreement may be assumed by the LESSEE's trustee in bankruptcy notwithstanding the above provision and notwithstanding the CITY's reliance on LESSEE's particular skill, expertise and character in entering this Lease Agreement, said trustee in bankruptcy may not assign this Lease Agreement unless said proposed assignee (i) is as financially responsible as LESSEE; (ii) is of good standing and repute; (iii) is comparably staffed, as experienced as LESSEE in the management of first-class golf courses, and possessed with comparable business acumen to that of LESSEE; and (iv) all other provisions of 11 U.S.C. Section 365(f), as well as other applicable bankruptcy law provisions for the CITY's benefit and protection, are satisfied before any assignment of LESSEE's rights, or assumption of LESSEE's obligations under this Lease Agreement. This paragraph shall not be deemed to waive any of the CITY's rights under bankruptcy law or otherwise;

19.1.5 After written notice and right to cure, if LESSEE shall fail to perform its obligations under, or fail to observe the provisions of Section 15.1, other than as specifically approved in writing by the CITY;

19.1.6 After written notice and right to cure, if LESSEE shall fail to pay or discharge any liens or claims of liens or to provide a bond therefor or title insurance in accordance with Section 6.4 hereof;

19.1.7 After written notice and right to cure, if LESSEE shall practice discrimination in violation of this Lease Agreement or State or Federal laws;

19.1.8 If any representations or warranties of LESSEE as required by Section 21.1.1 are untrue or any of the Financial Statements, as defined in Section 21.1.4, delivered to the CITY contain any material inaccuracy;

19.1.9 After written notice and right to cure, if LESSEE does not reimburse the CITY pursuant to Section 18.3 of this Lease Agreement.

19.2 Notice of Default; LESSEE's Right to Cure.  
If LESSEE is in Default under this Lease Agreement, as

defined in Section 19.1, as a precondition to pursuing any remedy for an alleged Default of LESSEE, the CITY shall give written notice of Default to LESSEE. Each notice of Default shall specify the alleged Event of Default.

If the alleged Default is nonpayment of rent, taxes or other sums to be paid by LESSEE as provided in this Lease Agreement, LESSEE shall have ten (10) days after notice is given to cure the Default. For any other Default, LESSEE shall, after notice, promptly and diligently commence during the Default and shall have thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty day (30) period, LESSEE shall commence such cure within said period and shall thereafter diligently prosecute the same to completion. With respect to the LESSEE's maintenance obligations, the time periods set forth in Section 10.5 shall control.

19.3 CITY's Right to Cure LESSEE's Defaults. After expiration of the applicable time for curing a particular Default, or before the expiration of that time in the event of emergency, the CITY may, at the CITY's election, make any payment required of LESSEE under this Lease Agreement or under any note or other document pertaining to the financing of improvements or fixtures on the Premises, or perform or comply with any covenant or condition imposed on LESSEE under this Lease Agreement or any such note or document, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the legal rate from the date of payment, performance, or compliance until the date of repayment by LESSEE, shall be due and payable by LESSEE on the first day of the next calendar month following any such payment, performance or compliance by the CITY. No such act shall constitute a waiver of Default or of any remedy for Default or render the CITY liable for any loss or damage resulting from any such act.

19.4 Notice of the CITY's Default; LESSEE Waiver. The CITY shall not be considered to be in Default under this Lease Agreement unless (i) LESSEE has given written notice specifying the Default and (ii) the CITY has failed for thirty (30) days to cure the Default, if it is curable within that period, or to institute and diligently pursue reasonable corrective or ameliorative acts for Defaults not curable within that time or which are not curable.

19.5 CITY's Remedies

19.5.1 Right to Terminate. If any Default by LESSEE shall continue uncured following notice of Default as required by this Lease Agreement for the cure period applicable to the Default under the provisions of this Lease Agreement ("Uncured Default"), then in addition to any other remedies available to the CITY at law or in equity, the CITY shall have the immediate option to terminate this Lease Agreement and all rights of LESSEE hereunder by giving written note of such termination. In the event that the CITY shall so elect to terminate this Lease Agreement, then the CITY may recover from LESSEE:

(i) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that LESSEE proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate the CITY for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease Agreement or which in the ordinary course of things would be likely to result therefrom; and

(v) At the CITY's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Texas law.

The term "Rent" as used herein shall be deemed to include the rental and all other sums required to be paid by LESSEE pursuant to the terms of this Lease Agreement.

As used in subsections (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the legal rate per annum. As used in subparagraph (iii) above, the term "worth at the time of award" is computed by discounting such amount at the

discount rate of the Federal Reserve Bank of Dallas at the time of award plus one percent (1%).

19.5.2 Right to Reenter. In the event of any such Uncured Default by LESSEE, the CITY shall also have the right, with or without terminating this Lease Agreement, to reenter the Premises and remove all persons and property therefrom by summary proceedings or otherwise. Such property on the Premises may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of LESSEE. Notwithstanding any provisions of this Lease Agreement which may be or appears to be to the contrary, in the event of any such Uncured Default, the CITY may also elect to assume operation of the Golf Course and retain all of LESSEE's fixtures, furniture, equipment, and any other personal property ("fixtures, furniture, and equipment") on the Premises and, in that event, and continuing during the length of said Uncured Default, the CITY shall have the right to take the exclusive possession of same and to use same, rent or charge free and without liability for damage. The election of one remedy for any one item of property should not foreclose an election of any other remedy for another item or for the same item at a later time.

19.5.3 Security Agreement. LESSEE agrees that, pursuant to this Lease Agreement and without the necessity of executing a separate security agreement, the CITY shall have a security interest in the fixtures, furniture, and equipment of LESSEE as collateral to secure the performance of LESSEE's obligations under this Lease Agreement, subject to security interests in any such property from time to time held by parties financing the cost of the Master Plan Improvements. LESSEE agrees to execute at any time, such additional security agreements and Uniform Commercial Code forms as the CITY may require to perfect the CITY's security interest in such fixtures, furniture, and equipment.

19.5.4 Right to Relet on LESSEE's Account. In the event of the vacation or abandonment of the Premises by LESSEE, or in the event that the CITY shall elect to reenter as provided in Section 19.5.2 above without exercising its option to terminate the Lease Agreement, then the CITY may either recover all rental as it becomes due (a percentage rent shall be calculated for the month or months after the Premises are vacated or abandoned by LESSEE as the average percentage rent paid during the last Lease Year prior to the vacation or abandonment of the Premises by LESSEE) or relet for CITY's benefit the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as the CITY in its sole

discretion may deem advisable and, in connection therewith, the CITY shall have the right to make alterations and repairs to the Premises.

In the event that the CITY shall so elect to relet, then rentals received by the CITY from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder; second, to the payment of the cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises made by the CITY; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by the CITY and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month which is applied to the payment of rent hereunder be less than the rent payable during that month by LESSEE hereunder, then LESSEE shall pay such deficiency to the CITY. Such deficiency shall be calculated and paid monthly. LESSEE shall also pay to the CITY, as soon as ascertained, any costs and expenses incurred by the CITY in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

19.5.5 Effect of Reentry. No reentry or taking possession of the Premises by the CITY pursuant to this Section 19.5 shall be construed as an election to terminate this Lease Agreement unless a written notice of such intention be given to LESSEE by the CITY or unless the termination thereof be decreed by a court of competent jurisdiction. The CITY may at any time after such reletting elect to terminate this Lease Agreement for any Default by LESSEE, and may thereafter pursue any and all remedies available to the CITY upon such termination.

19.5.6 Remedies Cumulative. Each right and remedy of the CITY provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or the beginning of the exercise by the CITY of any one or more of the rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the CITY of any or all other rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

19.6 No Waiver. The CITY's failure to enforce any provision of this Lease Agreement with respect to LESSEE's



Default hereunder shall not constitute a waiver of the CITY's right to enforce such provision or any other provision with respect to any future Default by LESSEE. The acceptance of rent by the CITY, also shall not be deemed a waiver of the CITY's right to enforce such terms or conditions of this Lease Agreement. The waiver of any term or condition of this Lease Agreement shall not be deemed to be a waiver of any other term or condition or of any subsequent failure of any term or condition.

19.7. Delays in Performance; Force Majeur. The time within which the Parties hereto shall be required to perform any act under this Lease Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, fire, earthquake, flood, inclement weather, explosion, war, invasion, insurrection, riot, mob violence, or any other cause similar to the foregoing. Provided, however, that the payment of rent hereunder may be abated as provided in Sections 10.6 and 10.7 above in the event of the damage or destruction of the Premises.

#### ARTICLE 20. EASEMENTS

In accordance with the criteria set forth in Section 1.8, the CITY reserves the right to establish, grant or utilize easements or rights of way over, under, along and across the Premises provided the CITY shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder.

#### ARTICLE 21. MISCELLANEOUS

21.1 LESSEE's Representations and Warranties. LESSEE covenants, represents and warrants to the CITY, as of the date of execution of this Lease Agreement as follows:

21.1.1 Golfmark Investors, L.P., the LESSEE, is a duly organized Delaware limited partnership qualified and validly existing and in good standing under the laws of Texas, and duly qualified to do business and in good standing under the laws of each other jurisdiction where the operation of its business or its ownership of property makes such qualification necessary, and has all requisite power and authority to own and operate its properties and to carry on its business as now and whenever conducted and to enter into and perform its obligations under this Lease Agreement.

21.1.2 The execution, delivery and performance of this Lease Agreement is consistent with the LESSEE's

partnership agreement and has been duly authorized by all necessary action of the LESSEE's partners. All consents, approvals and authorizations of all applicable governmental authorities (including, without limitation, all consents or approvals, if any, required under applicable Securities Laws), and all consents or approvals of the LESSEE's partners required in connection with the execution, delivery and performance by the LESSEE of this Lease Agreement have been obtained and delivered to the CITY on or before the execution hereof.

21.1.3 All filings, reports and tax returns of LESSEE which are required to be made or filed with any governmental authority have been and will continue to be duly made and filed, and all taxes, assessments, fees and other governmental charges upon the LESSEE, or upon any of its properties, assets, income or franchises, which are due and payable, have been, and will continue to be, paid when due.

21.1.4 There are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of LESSEE, other than as previously disclosed to the CITY, nor is LESSEE in violation of any laws or ordinances.

21.1.5 There are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute an "Event of Default" hereunder.

21.2 Estoppel Certificate. Within ten (10) days after request by the CITY (which request may be from time to time as often as reasonably required by the CITY) LESSEE shall execute and deliver to the CITY, without charge, an estoppel certificate in such form as the CITY may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises. LESSEE's failure to deliver such statement within ten (10) days of the CITY's written request therefor shall be a binding agreement of LESSEE (i) that this Lease Agreement is in full force and effect without modification except as may be represented by the CITY, (ii) that there are no uncured defaults in the CITY's performance hereunder, and (iii) that there have not been any payments of advance rent other than as provided in the provisions of this Lease.

21.3 Notices. Any notice provided for herein shall be given by registered or certified first-class United States mail, postage prepaid, returned receipt requested, addressed:

If to the CITY:

City Manager  
Plano Municipal Center  
City of Plano  
1520 Avenue K  
Plano, Texas 75074

and, if to LESSEE:

Jeffrey M. Silverstein  
Golfmark Investors, L.P.  
1700 Country Club  
Plano, Texas 75074

Any such notices shall be deemed given when deposited in the mail as required hereinabove and shall be deemed received forty-eight (48) hours after being deposited as required herein. The person and the place to which notices are to be mailed may be changed by either Party by notice to the other.

21.4 Attorneys' Fees. In the event that either Party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease Agreement as a consequence of any breach by the other party of its obligations under this Lease Agreement, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. All such fees shall be deemed to have accrued upon the commencement of such action.

21.5 Headings. The headings used in this Lease Agreement are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

21.6 Rights of Successors. All of the rights and obligations of the Parties under this Lease Agreement shall bind and inure to the benefit of their respective heirs, successors and assigns; provided, however, that nothing in this Section 21.6 shall limit the provisions of Article 15 hereof.

21.7 Amendments in Writing. This Lease Agreement cannot be orally amended or modified. Any modification or

amendment hereof must be in writing and signed by the party to be charged.

21.8 Time of Essence. TIME IS OF THE ESSENCE of each provision in this Lease Agreement.

21.9 Interpretation. Whenever the context of this Lease Agreement so requires, the masculine gender includes the feminine or neuter, the singular number includes the plural, and vice versa.

21.10 Applicable Law; Severability. The interpretation and enforcement of this Lease Agreement shall be governed by the laws of the State of Texas. If any provision of this Lease Agreement is determined to be prohibited by law or otherwise held invalid, such determination shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Lease Agreement. Collin County, Texas shall be the exclusive venue for any action brought pursuant to this Lease Agreement.

21.11 Exhibits. All exhibits referred to in this Lease Agreement are attached hereto and incorporated herein by reference.

21.12 Waiver of Subrogation. The CITY and LESSEE hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to person or property, whether caused by fire or any other casualty, so long as said loss or damage is covered by insurance, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

21.13 Subordination of Leasehold; Attornment by Lessee; Nondisturbance. At any time before or during the term hereof, the CITY or its assignee may encumber all or any portion of its fee interest in the Premises, and LESSEE's interest hereunder shall be subordinate to any such existing or future encumbrances. In the event any proceedings are brought for foreclosure of any such mortgage or deed of trust encumbering the Premises, or any portion thereof, or in the event of the exercise of the power of sale under any such mortgage or deed of trust made by the CITY covering the Premises, or should the CITY assign its interest in the Premises or the Lease Agreement, LESSEE shall attorn to such foreclosing entity, purchaser, or assignee, and shall recognize same as lessor under this

Lease Agreement. The CITY agrees that any encumbrances placed upon the Premises by the CITY or its assignee after the date hereof shall provide that if LESSEE is not then or thereafter in Default under this Lease Agreement and if LESSEE is then and thereafter in possession of the Premises, then the right of LESSEE to possession of the Premises shall not be disturbed by the lender under any such encumbrance, or its successors and assignees. In the event that the CITY or its assignee decides at any time during the Term hereof to encumber all or any portion of its fee interest in the Premises, LESSEE agrees to execute and deliver to the CITY or its assignee a "Subordination, Nondisturbance, and Attornment Agreement" as the CITY or its assignee may reasonably require.

21.14 Covenants and Conditions. All provisions hereof expressed as either covenants or conditions on the part of LESSEE or the CITY to be performed or observed shall be deemed to be both covenants and conditions.

21.15 Approvals by City Manager. Unless otherwise provided, all approvals required to be made by the CITY shall be made by its City Manager, or his designee, whose decision shall be final. LESSEE shall be entitled to rely on any decisions so made by the City Manager as having been duly authorized by appropriate authoritative action, so long as such decision is in writing.

21.16 Mutual Assistance; Good Faith. During the term of this Lease Agreement, the parties agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Lease Agreement. In this connection, the parties shall, from time to time, meet upon the reasonable request of each other and shall confer in good faith, amicably in a businesslike manner, with respect to the current and future operation of the Integrated System and with a view toward resolving any problems which may arise. A party shall not unreasonably withhold its approval of any act or request of the other as to which its approval is necessary or desirable.

21.17 Cooperation in Securing Permits. CITY shall assist LESSEE in securing any permits, including permits from other agencies, which may be required for the construction and operation of a Golf Course Facility.


## ARTICLE 22. ENTIRE AGREEMENT

This Lease Agreement and its attachments and exhibits shall constitute the entire Lease Agreement and understanding between the parties, and there are no other

terms or conditions, written or oral, which are controlling unless such matters have become part of this Agreement as provided elsewhere in this Agreement.

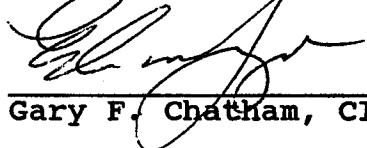
IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the day and year first above written.

CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation

BY:   
THOMAS H. MUEHLENBECK  
City Manager  
1520 Avenue K  
P.O. Box 860358  
Plano, Texas 75086-0358


Date: 6/13/95

APPROVED AS TO FORM:

 First 10857  
Gary F. Chatham, CITY ATTORNEY

GOLFMARK INVESTORS, L.P.,  
a Delaware Limited Partnership

BY: GolfMark Corporation,  
a Delaware Corporation,  
Its Managing General Partner

By:   
JEFFREY M. SILVERSTEIN  
President

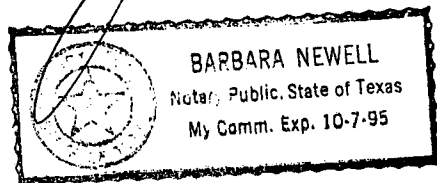
Date: 2/13/95

ACKNOWLEDGMENTS

STATE OF TEXAS )  
 )  
COUNTY OF COLLIN )

BEFORE ME, the undersigned authority on this day personally appeared THOMAS H. MUEHLENBECK, City Manager of the CITY OF PLANO, TEXAS, a home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the CITY OF PLANO, TEXAS, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 13 day of June, 1995.

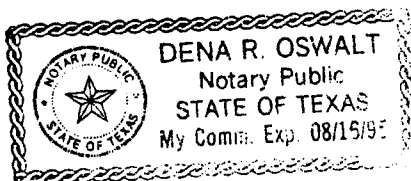


Barbara Newell  
Notary Public in and for the State of Texas

STATE OF TEXAS )  
 )  
COUNTY OF Collin )

BEFORE ME, the undersigned authority, on this day personally appeared JEFFREY M. SILVERSTEIN, President of GOLFMARK CORPORATION, a Delaware corporation, Managing General Partner of GOLFMARK INVESTORS, L.P., a Delaware Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of GOLFMARK INVESTORS, L.P., for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 13<sup>th</sup> day of February, 1995.



Dena R Oswalt  
Notary Public in and for the State of TEXAS