City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: **10/25/2011** **Report Type:** Staff/Discussion

Title: Agreement: Lease and Operation of Haggin Oaks, Bing Maloney and Bartley Cavanaugh Golf Facilities

Report ID: 2011-00777

Location: Districts 2, 5, 7

Recommendation: Adopt a Resolution 1) (a) declaring it is in the best interest of the City to enter into an agreement with Morton Golf, LLC without bidding for the lease and operation of the Haggin Oaks, Bing Maloney, and Bartley Cavanaugh golf courses; and (b) authorizing the City Manager to execute the agreement; 2) repealing resolutions 99-320 and 2001-054 relating to the irrigation surcharge at the three golf facilities and the bundled fees structure at the Alister MacKenzie Golf Course at Haggin Oaks as of January 1, 2012; 3) following completion or cancellation of the water connection projects at Haggin Oaks and Bartley Cavanaugh golf courses, deposit the remaining balance of funds from M17400000 (Golf Course Maintenance), less $60,000, into Special Fund 2 (Building Repairs and Minor Upgrades) and Special Fund 3 (Capital Improvement Fund for Buildings and Support Facilities) in accordance with the agreement; 4) approving the withdrawal of $134,847 from M17400200 (Golf Irrigation System Replacement) and deposit into Special Fund 5 (Irrigation Fund) in accordance with the agreement; 5) transferring title from the City to Morton Golf of that equipment specified in Exhibit C of the Agreement; 6) suspending interest on the Golf Fund (Fund 2603) operating loan from the Risk Management Fund, effective July 1, 2011, with repayment of the loan to begin in 2021; and 7) commit $150,000 of the cash balance available in the Golf Fund (Fund 2603), to be used in the event Morton's Percentage Payments, as defined in the Agreement, are less than minimum annual rent in any of the first three years of the contract, not to exceed $50,000 per year.

Contact: Barbara Bonebrake, Director, (916) 808-7733; Mike Kerton, Administrative Officer, (916) 808-6316, Convention, Culture and Leisure Department

Presenter: Barbara Bonebrake, Director, (916) 808-7733, Convention, Culture and Leisure Department

Department: Convention Culture & Leisure
Division: Golf Administration
Dept ID: 17001211

Attachments:

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City Attorney Review
Approved as to Form
Kourtney Burdick
10/19/2011 4:22:42 PM

City Treasurer Review
Reviewed for Impact on Cash and Debt
Russell Fehr
10/13/2011 5:02:53 PM

Approvals/Acknowledgements

Department Director or Designee: Barbara E. Bonebrake - 10/18/2011 9:02:15 AM

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Description/Analysis

Issue: Due to the necessity to subsidize golf operations with over $500,000 annually, the City Council, at its June 7, 2011 meeting, directed staff to negotiate an agreement with Morton Golf LLC within the following parameters:

- The projected General Fund subsidy for the maintenance and operation of the City's golf courses will be eliminated;
- Operations, maintenance, capital and debt costs will be borne by Morton Golf;
- Existing City employees will be given hiring priority by Morton Golf;
- The length of the contract will be commensurate with investment made by lessee;
- Consideration of a local hiring and a living wage component;
- Transition will be effective between October 2011 and January 2012.

This report provides the proposed agreement with Morton Golf. The agreement will supersede Agreement 2001-134 with Morton Golf and all prior amendments. Significant terms and conditions of the agreement include:

- Transfer responsibility to Morton Golf to operate and provide all maintenance services, invest capital, and pay rent that will allow the City to cover debt payments for the City's golf courses;
- Ten year contract with three (3) five year extensions as long as lessee is not in material default;
- Existing City employees to be given priority by being interviewed to fill the positions;
- Full time maintenance employees will be paid a minimum of $11.00 per hour without benefits and $12.50 per hour with benefits (see Attachment 3). The current living wage is $10.87 and $12.50 respectively;
- All existing golf equipment to be transferred to Morton for use in running the courses. At the end of the lease, all equipment to be transferred back to the City;
- All debt payments, including the Risk Management operating loan, will be covered through the minimum rent payments;
- Transfer the majority of existing capital budgets to separate accounts maintained by Morton, designated in the agreement as "Special Funds," for course investment by Morton;
- Morton will deposit a percentage of gross revenues into Special Funds for Technology, Building Repairs and Minor Upgrades, Capital Improvement Fund for Buildings and Support Facilities and Special Projects and a share of green fees will be deposited in a Special Fund for Irrigation, all of which will assure continued investment in the City's golf assets; and
- A contingency fund of $150,000 has been reserved for the next three years to assure the minimum rent is met.

It is also requested that the $4.7 million Risk Management operating loan stop accruing interest and payments are scheduled to begin in 2021.

Policy Considerations: The recommendations in this report allow the City Council to enter into a contract, consistent with the City Code, without competitive bidding if it is determined that it is in the best interest of the City that the bid process not be used and the City Council finds that special circumstances make the standard bid procedure inappropriate.

Staff is recommending that Council adopt the Resolution authorizing the City Manager, or his designee, to execute an Agreement with Morton Golf for the following reasons:

- The City is currently in an agreement with Morton Golf that runs through September 30, 2016, for operation of the golf courses, excluding maintenance and golf marshal service. By partnering with Morton to handle all golf course operations, Morton Golf will be able to achieve operational efficiencies;
- Morton Golf has proven to be a valuable partner by providing a high level of customer service and programs that benefit the community;
- Working with one vendor instead of two (one to handle maintenance services and one to handle all other aspects of managing the courses) will ease the City's contract administration; and
- A single vendor will be responsible for ensuring a positive overall golf experience for the public.

Environmental Considerations: California Environmental Quality Act (CEQA): This amendment does not constitute a "project" according to CEQA guidelines, California Code of Regulations, title 14, section 15378(b)(2), and therefore is not subject to review under the California Environmental Quality Act.

Sustainability: Approval of this Agreement is not applicable to the goals, policies and targets of the Sustainability Master Plan.

Commission/Committee Action: None.

Rationale for Recommendation: The proposed agreement with Morton Golf for golf maintenance services eliminates the annual General Fund subsidy and significantly reduces the future risk to the General Fund. In addition, it includes funding to reinvest in the golf courses and buildings, and to replace outdated equipment. The recommended action is consistent with the contract parameters approved by City Council in the FY2011/12 Approved Budget.

Financial Considerations: Approval of the proposed agreement for the maintenance and operation of the City's golf courses eliminates the projected annual subsidy of over $500,000 from the General Fund. Fiscal components of the agreement provide:

- Morton Golf to pay all operating costs including utility costs on the property.

- Morton Golf to pay the City a percentage of gross revenues ("Percentage Payments"), ranging from 2.5% to 10% depending on the revenue stream (e.g. green fees, food and beverage, etc.) (discussed below) and an annual minimum rent, which will allow the City to cover debt payments, contract administration, and insurance. The City will begin to repay the operating loan from the Risk Management Fund in 2021 when the debt service for Bartley Cavanaugh Golf Course is paid off.

- Morton's minimum rent is as follows:

    - Years 1-3 (Calendar Years 2012-2014) – $1,325,000
    - Years 4-6 – $1,330,000
    - Years 7-9 – $1,335,000
    - Years 10-19 – $1,000,000
    - Years 20-21 – $755,000
    - Years 22-25 – $575,000

- Morton's Percentage Payments are as follows:

    - Green Fees and Play Card Revenues (Less Payments to Special Funds described in Section 6) – 10%
    - Food, beverage, snack bar, roving cart, on-facility and off-facility catering, and revenues from special events, including facility rental fees – 10%
    - Rentals (power carts and range ball rentals) – 10%
    - Retail sales; golf club repairs; golf lessons, including club-fittings; pull carts; club rentals; and booth rentals from special events – 5%
    - Online retail sales – 2.5%
    - Wholesale sales – 0%
    - Revenues from signage and advertising on Property – 5%
    - Commissions earned by Morton Golf from online travel business – 5%

- Morton Golf will be required under the contract to set aside specific amounts into five separate bank accounts, designated in the agreement as "Special Funds," (described below) based on a percentage of gross revenues, which will be used for reinvestment into the golf courses and facilities.

- Special Fund 1 (Technology Fund) will be used to pay for technology repairs, replacements, upgrades of hardware, new technology, and/or software that may be needed to support Golf Courses operations. Morton is to pay the following amounts into Special Fund 1 on a monthly basis:

    - Year 1: .125% of Gross Revenues; and

    - Years 2 and Beyond: .25% of Gross Revenues.

- Special Fund 2 (Building Repairs and Minor Upgrades Fund) will be used to pay for short-term general facility repairs and maintenance, minor upgrades and renovations, and other normal general repairs and maintenance as they arise that are required to

keep the buildings and structures in good working condition. Morton is to contribute .5% of Gross Revenues into Special Fund 2 on a monthly basis.

- Special Fund 3 (Capital Improvement Fund for Buildings and Support Facilities) will be used to pay for Capital Improvements, defined as additions, structures, replacements, or upgrades to the Property that enhance its value and have a useful life of at least five years and cost in excess of $20,000, excluding the addition or replacement of irrigation systems. Morton is to pay the following amounts into Special Fund 3:

    - If Morton's Percentage Payments for any Lease Year exceed minimum rent for that year, Morton shall deposit an amount calculated as follows: (A) the amount of Morton's Percentage Payments for that Lease Year, less (B) the minimum rent for that lease year. This amount shall be deposited no later than January 30 of the following Lease Year; and

    - Years 1-2: $0.00; and

    - Years 3-25 – .25% of Gross Revenues (to be deposited on a monthly basis).

- Special Fund 4 (Special Projects Fund) will be used for improvements that will enhance Golf Course operations and/or increase Gross Revenues. Morton is to pay the following amounts into Special Fund 4 on a monthly basis:

    - Years 1-2: – $0.00; and

    - Years 3 and Beyond: .25% of Gross Revenues.

- Special Fund 5 (Irrigation Fund) will be used to replace the irrigations systems at the Bing Maloney and Haggin Oaks driving ranges, as well as the Bing Maloney 18 and Arcade Creek Golf Courses. Morton is to pay the following amounts into Special Fund 5 on a monthly basis:

    - Years 1-2: $0.00; and

    - Years 3-4: $.25 from each Green Fee; and

    - Years 5-25: $.50 from each Green Fee.

- The agreement is structured so that as the City's debt payments are reduced, Morton's minimum rent payments to the City are reduced. Morton's payments to the Special Funds will continue as described above and the contribution to Special Fund 3 is expected to increase as the difference between Percentage Payments and minimum rent increases.

In order for golf operations to be successful, there must be flexibility in the Special Funds, including irrigation; flexibility in fee setting, including unbundling green fees and cart fees at the Alister MacKenzie Golf Course at Haggin Oaks; and the transfer of current golf CIP balances to new maintenance accounts is required. Therefore, staff recommends the following:

- Repeal Resolutions 99-320 and 2001-054 relating to the irrigation surcharge at the three golf facilities and bundled fees structure at the Alister MacKenzie Golf Course at Haggin Oaks. The proposed contract establishes a special fund to be used to replace the irrigation systems at the Bing Maloney and Arcade Creek golf courses. Repeal of the bundled fees at Alister MacKenzie will give Morton flexibility when pricing golf rounds and cart fees, which is a necessity in this price driven market.

- Capital Improvement Project Funds in M17400000 (Golf Course Maintenance), will be used to connect Haggin Oaks and Bartley Cavanaugh to domestic water lines. Following completion or cancellation of these projects, staff recommends transferring the balance of the funds, less the $60,000 FY2011/12 budget allocation, from M17400000 (Golf Course Maintenance) to Morton Golf for deposit in Special Fund 2 (Building Repairs and Minor Upgrades) and Special Fund 3 (Capital Improvement Fund for Buildings and Support Facilities).

- Withdraw $134,847 from M17400200 (Golf Irrigation System Replacement) and transfer it to Morton Golf, LLC for deposit into Special Fund 5 (Irrigation Fund) in accordance with the Agreement.

Although the proposed agreement significantly reduces future risk to the General Fund, the City still has several financial considerations:

- One-time leave payoff costs of approximately $229,000 resulting from the reduction of 58.36 FTE, 50.00 of which are filled by 2.00 management, 24.00 career, 6.00 limited term, and 18.00 temporary/non-career employees.

- The proposed contract vests Morton Golf with the responsibility to maintain, repair, and permit all potable and non-potable irrigation water wells on the Property, up to $60,000 annually. The City is responsible for all costs in excess of that amount. Staff is currently working with the Department of Utilities to connect Haggin Oaks and Bartley Cavanaugh to domestic water lines to eliminate the need for potable water wells.

- An inspection of the Bartley Cavanaugh Clubhouse has revealed settling of the foundation. A structural analysis of the building will be conducted and if found to be structurally unsound, the City will be responsible for the repair or replacement of the clubhouse.

- An inspection has revealed the siding on the Bartley Cavanaugh Clubhouse and maintenance building has failed in many places and needs to be replaced. The City

will need to spend up to $200,000 in the next three years for siding repairs at the City's discretion, to be funded from the Deferred Maintenance CIP (C13000500).

It is further recommended that up to $150,000 of the cash balance available in the Golf Fund (Fund 2603) be committed by the City in a reserve for economic uncertainties. In the event percentage rent is less than minimum annual rent in any of the first three years of the contract, the reserve will be used to make up the shortfall, up to $50,000 per year.

Finally, the Golf Fund has an operating loan from the Risk Management Fund, first established in FY2001/02, which has an outstanding principal and interest balance of $4,743,487 as of June 30, 2011. The Golf Fund has not made any debt service payments towards this loan. It is recommended that no additional interest accrue on the loan. Repayment of the loan is scheduled to begin in 2021 from the minimum rent payments when the debt service for Bartley Cavanaugh Golf Course is paid off.

Emerging Small Business Development (ESBD): Not applicable.

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Attachment 1

Background

The following actions have taken place in the past ten years regarding the City's Golf Program:

- In 2001, the City Council approved a lease agreement with Morton Golf to consolidate the management of golf shop and food and beverage services at Haggin Oaks, Bing Maloney and Bartley Cavanaugh golf courses under one operator.
- In 2002, the City Council approved an initial operating loan from the Risk Fund to offset a $599,000 deficit in FY2001. By 2004, the City Council had authorized a total loan of up to $4 million dollars to offset prior and projected shortfalls in the Golf Fund.
- In 2005, actual borrowing from the Risk Fund reached $3.762 million and City Council directed staff to include the Golf Fund in the FY2005/06 budget as a Special Revenue Fund instead of an Enterprise Fund. This change was made to provide some financial relief for Golf to keep properties and grounds in good operating shape until playing and price competition improved, and the program became more financially stable. Prior to 2005, the Golf Fund contributed $456,000 to the General Fund annually.
- In 2011, the first option to renew the lease agreement with Morton Golf was exercised, which extended the lease through September 30, 2016.

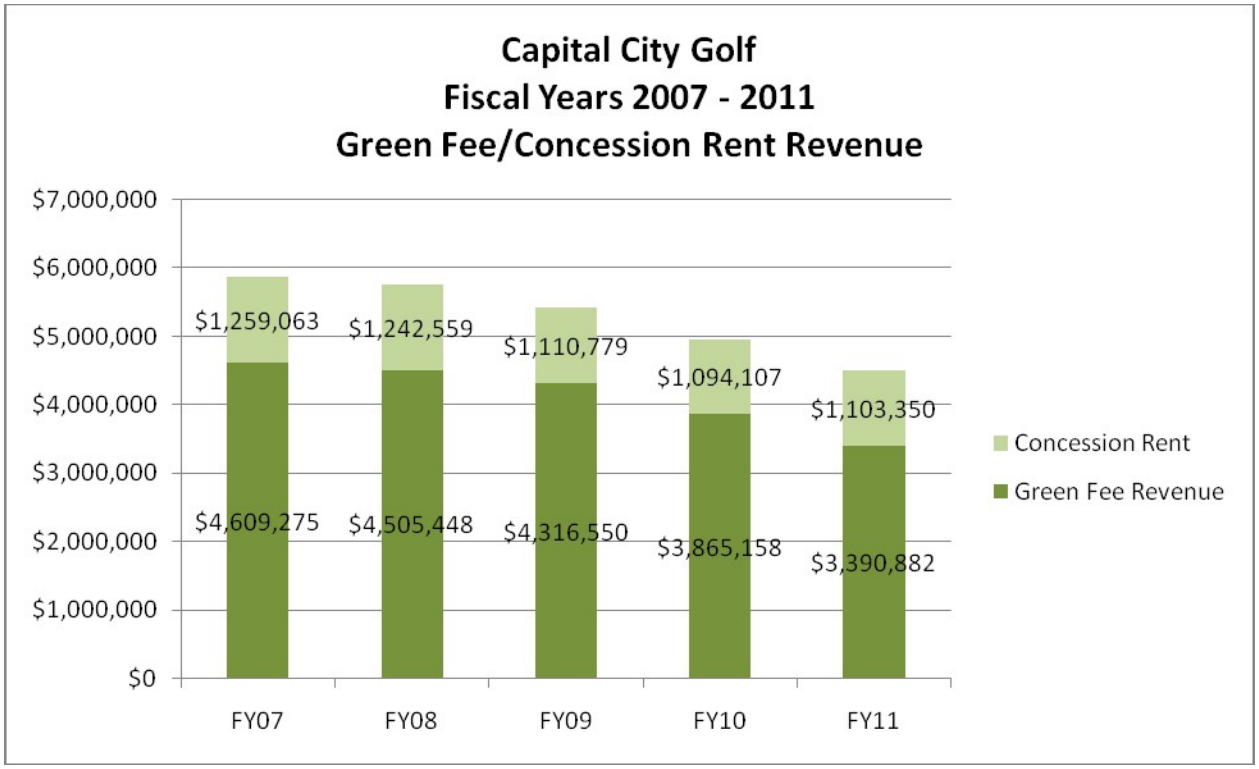
In the past five years, City golf operations have experienced a decline in revenues. The resulting revenue shortfall was offset through reductions in operational expenses and deferring facility improvements and equipment purchases. There are no other significant expense reductions to be taken that will allow the City's golf courses to operate in the black. It is anticipated it will be many years before the golf business is profitable again. If City golf courses continue to be maintained in the same manner, the imbalance between revenues and expenditures is projected to exceed $500,000 in FY2011/12 and each year thereafter, thus requiring an ongoing subsidy from the General Fund. At the FY2011/2012 Proposed Budget hearings, staff recommended, and City Council approved, contracting out golf course maintenance to eliminate the annual General Fund subsidy and reduce future risk to the General Fund.

Among other things, the FY2011/12 Approved Budget directed the Internal Auditor to assess the accuracy of the FY2010/11 loss and the reasonableness of the FY2011/12 projected revenue and expenditure data. On September 20, 2011, the Internal Auditor presented its report to City Council which confirmed 1) golf operation revenues were not sufficient to cover its expenditures in FY2010/11; 2) it is reasonable to predict either no increase or further decreases in FY2011/12 golf revenue; and 3) the City's General Fund will continue to carry the risk of having to subsidize golf operations if there is not a significant increase in revenues or reduction in expenditures.

The Audit also noted the two Golf Fund loans from the City's Risk Management Fund. The capital improvement loan was established in FY1999/00 in the amount of $3.4 million. The Golf Fund is making annual payments of approximately $247,000. The second operating loan of $4 million was authorized by City Council between 2002 and 2004 to offset operating shortfalls in the Golf Fund. The audit identified the failure of the City to make payments or set up a payment plan to repay the operating loan including interest from the Risk Management Fund currently at $4.7 million.

Strategy To Respond To Declining Revenues

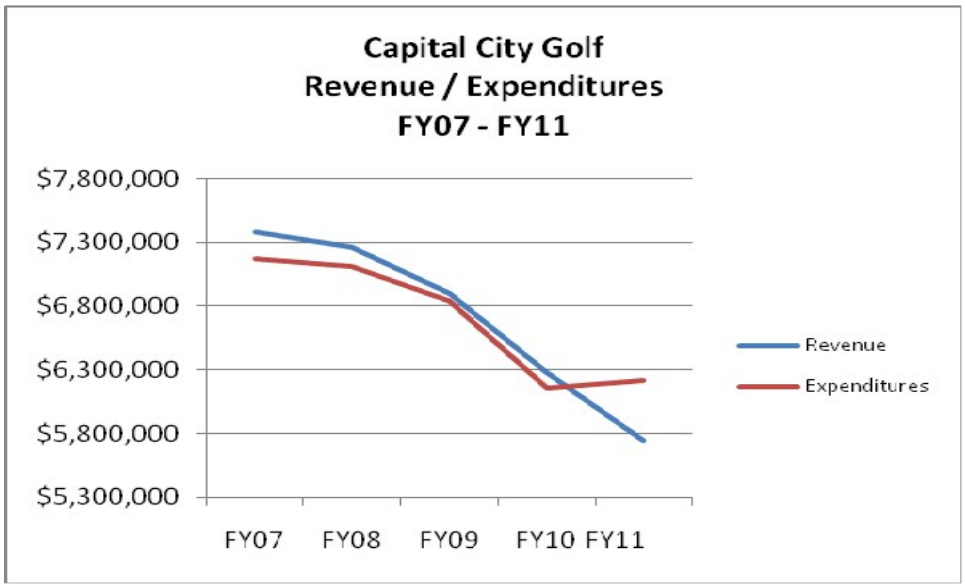
Revenues generated by the City's golf courses have not kept pace with the rising cost of maintenance operations. From FY2006/07 through FY2010/11, golf rounds have decreased by 23.5%, causing green fee revenues to decrease by 26.4% and concession rent to decrease by 12.4%, as shown in this graph:



Several factors have contributed to this imbalance.

- The prolonged and severe economic recession
- The continued decline in core golfers
- Increased competition for a share of the remaining market
- Escalating labor costs
- Poor golfing weather this past Winter and Spring

From FY2006/07 through FY2009/10, the Golf Division made operating cuts sufficient to barely cover these shortfalls in revenue. Strategies employed to close the gap included modifying fee structures to maximize revenue; operational modifications to reduce overtime and services and supplies expenditures; minimizing investment in equipment and capital improvements; holding vacancies open when possible; reducing the administrative budget from three to two positions and reducing management operating staff from three to two.



Current Situation

In FY2010/11 revenues continued to decline, yet there was no place left to reduce costs. Additional expense reductions, under the current operational structure, would make it increasingly difficult for the City's golf courses to remain competitive. The resulting imbalance between revenues and expenditures was nearly $530,000. This operating deficit does not include the necessary repairs, equipment, or capital costs that have been deferred or the repayment of the Risk Management Fund operating loan. Based on FY2010/11 results, and the trends in the market, the ongoing shortfall is projected to exceed $500,000 in FY2011/12 and each year thereafter requiring an ongoing subsidy from the General Fund.

The state of the economy and increased competition for a share of a declining number of core golfers is putting greater pressure on golf courses to reduce the cost of golf course maintenance operations. Municipal golf courses in California are outsourcing golf course maintenance operations in an effort to reduce costs and remain competitive. In Northern California, 70% of municipal golf courses contract out golf course maintenance. In the Sacramento region, Roseville, Stockton, Modesto and two of three Sacramento County golf courses are maintained by management companies.

Contracting out the City's golf maintenance operation will eliminate the annual General Fund subsidy and secure a commitment for reinvestment into the aging golf facilities,

which are becoming an increasing financial liability. In contracting out, the City would save $500,000 annually of unbudgeted General Fund dollars and eliminate the risk (revenue uncertainty) to the General Fund in future fiscal years.

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Attachment 2

Agreement Proposal

In 2001, the City entered into a long term contract with Morton Golf for golf professional, retail and restaurant services at Haggin Oaks, Bing Maloney and Bartley Cavanaugh golf courses. Morton Golf has received numerous awards from the golfing industry, including Retailer of the Year and Golf Professional of the Year, and has continued to provide valuable community programs that private courses typically do not offer.

The intent of the current contract was for the lessee, Morton Golf, to provide golf course maintenance services at all three facilities if the City chose to outsource maintenance. The proposed agreement with Morton Golf is based on this premise.

The FY2011/12 Approved Budget directed staff to negotiate with Morton Golf regarding contracting out golf maintenance services, consistent with the following parameters:

- The projected General Fund subsidy for the maintenance and operation of the City's golf courses will be eliminated;
- Operations, maintenance, capital and debt costs will be borne by Morton Golf;
- Existing City employees will be given hiring priority by Morton Golf;
- The length of the contract will be commensurate with investment made by lessee;
- Consideration of a local hiring and a living wage component ;
- Transition will be effective between October 2011 and January 2012.

Consistent with this direction, the proposed agreement with Morton Golf for the maintenance and operation of the City's golf courses:

- Eliminates the projected annual shortfall of $500,000 in the Golf Fund and ongoing risk to the General Fund of having to subsidize golf operations.
- The initial term of the contract amendment will begin on January 1, 2012 and end on December 31, 2021. The term may be extended for three additional periods of five years each as long as the lessee is not in default.
- Requires Morton to pay a percentage of gross revenues, ranging from 2.5% to 10% by category to the City as well as annual minimum rent to the City, which will allow the City to cover debt payments, contract administration and insurance.
- Establishes special funds for the golf facilities for Morton to deposit a percentage of gross revenues to be used for reinvestment in technology, facility maintenance and long term capital projects for buildings and golf course improvements, including replacement of irrigation systems. In the out years, Morton's minimum rent will drop and in exchange, Morton will deposit a larger percent of its gross revenues into the Special Funds for reinvestment in the courses in accordance with the agreement.

- Percentage rent exceeding annual Minimum Rent will be deposited into a Special Fund to be used for capital improvements and major maintenance for buildings and support facilities.
- Balances in existing Golf Fund Capital Improvement Program accounts as of June 30, 2011 will be transferred to the Special Funds for future golf course facility maintenance improvements.
- Morton Golf to pay all operating costs including utility costs on the property.
- Morton Golf to pay maintenance, repair and permit costs for all potable and irrigation well maintenance up to $60,000 per year.
- Wages to be paid by Morton Golf for maintenance staff meet or exceed the wage rate of $11.00 per hour with health benefits and $12.50 per hour without benefits except for the seasonal employees. The current living wage is $10.87 and $12.50 respectively.
- City golf maintenance employees will receive priority by being interviewed to fill the positions.
- Existing City golf course maintenance equipment will be transferred to Morton Golf for the duration of the agreement.
- Ownership of all equipment, including replacements, will revert back to the City at the end of the agreement.
- The City will retain the right to redesign Arcade Creek Golf Course (part of the Haggin Oaks Golf Complex) with no loss of revenue to Morton Golf should the City pursue a higher and better land use along the I-80 corridor.

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Maintenance Wage Plan for City of Sacramento Golf Facilities

MORTON GOLF LLC

Position	Proposed Hourly Pay Rate Ranges by Position	Proposed Annual Wage Rages based on 2080 Hrs.
Superintendent		$65,000.00 - $75,000.00
Assistant Superintendent/Foreman		$36,000.00 - $45,000.00
Equipment Manager	$13.50 - $19.25	$28,080.00 - $40,000.00
Irrigation Technician	$13.00 - $19.25	$27,040.00 - $40,000.00
Assistant Equipment Manager	$12.50 - $16.00	$26,000.00 - $33,280.00
Chemical Technician	$13.00 - $15.00	$27,040.00 - $31,200.00
Landscape Horticulturist	$13.00 - $17.50	$27,040.00 - $36,400.00
Full Time Greenskeepers	$11.00 - $15.00	$22,880.00 - $31,200.00
Part Time Greenskeepers	$9.00 - $12.00	N/A
Assistant Landscape Attendant	$9.00 - $12.00	N/A

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Attachment 4

Current Lease and Operating Agreement with Morton Golf LLC

CITY CLERK'S COPY

LEASE AND OPERATING AGREEMENT

CITY OF SACRAMENTO

AND

KATHKEN CORPORATION

CITY
AGREEMENT NO. 2001-134

July 31, 2001

CITY CLERK'S COPY

CITY
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23011276

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Lease") is entered into as of July 31, 2001, by and between the City of Sacramento, a municipal corporation ("Landlord") and Kathken Corporation, a California corporation ("Tenant").

RECITALS

A. Landlord is the owner of that certain land, buildings, and improvements commonly known as the Haggin Oaks Golf Complex ("Haggin Oaks"), Bing Maloney Golf Complex ("Bing Maloney"), and Bartley Cavanaugh Golf Complex ("Bartley Cavanaugh"), located in the City of Sacramento, County of Sacramento, California, and more particularly described on attached Exhibits "A", "A-1," "A-2", and "A-3" ("referred to individually and collectively as the "Property").

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of each Property as indicated and outlined on attached Exhibits "B", "B-1", "B-2" and "B-3" (referred to individually and collectively as the "Premises"), on the terms and conditions as set forth in this Lease.

For good and valuable consideration, the parties agree as follows:

OPERATIVE PROVISIONS

1. Lease.

(a) Lease of Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions in this Lease. Landlord hereby agrees to provide full access to Tenant at all times on all Landlord's property adjacent to the Premises, including but not limited to the public golf courses, parking lots, and walkways located on the Property, to give full force and effect to the rights and obligations of the parties pursuant to this Lease.

(b) Lease of Equipment. In addition to the Premises, Landlord hereby leases to Tenant that certain equipment.("Equipment") set forth in attached Exhibit "C." Tenant has inspected this Equipment and accepts it in its existing condition, without any express or implied warranties of any kind from Landlord. Tenant may use such Equipment during the term of this Lease as it sees fit. Upon termination of the Lease or upon the end of the useful life of the Equipment or a portion thereof, whichever shall occur first, Tenant shall either return the Equipment to Landlord or, at Landlord's option and cost, dispose of the Equipment. If Tenant purchases any equipment to replace Landlord's Equipment ("Replacement Equipment"), such equipment shall remain the property of Tenant. Tenant shall properly maintain and, as necessary, repair the Equipment and

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Replacement Equipment, at its cost, until Tenant chooses to return the Equipment to Landlord. Landlord reserves a right of first refusal to purchase any Replacement Equipment from Tenant upon the termination of this Lease. Such purchase shall be made by Landlord, at the equipment's fair market value, which shall be equal to its purchase price, less depreciation.

(c) Fixtures. Except as provided in Section 11(d), Tenant shall properly maintain and, as necessary, repair all fixtures at Tenant's expense, including but not limited to unplugging drains, cleaning grease traps, and fixing leaky faucets. Upon the end of the useful life of any fixture (as reasonably determined by Landlord), that fixture shall be replaced by Landlord at Landlord's expense. Upon prior approval of Landlord, however, Tenant may replace said fixture at Tenant's expense. All reasonable expenses incurred by Tenant for the replacement of any fixture may be applied to Tenant's Capital Improvement obligation under Section 12. All fixtures, whether currently present on the Property or later purchased and installed by either party, are and shall remain the property of Landlord.

2. Term of Lease.

(a) Initial Term. The initial term of this Lease ("Initial Term") shall be for ten (10) years and one month commencing on September 1, 2001 ("Commencement Date"), and ending on September 30, 2011, unless sooner terminated pursuant to the terms of this Lease ("Termination Date"). The period from September 1, 2001 through September 30, 2001 shall be accounted for separately; the normal lease year ("Lease Year") shall run from October 1 through September 30, which is consistent with Tenant's fiscal year.

(b) Options to Extend. Provided that Tenant is not in material default under the Lease beyond any applicable notice and cure period, Tenant and Landlord may mutually elect to extend the term of this Lease for the Premises for three (3) additional periods of five (5) years each. All extensions shall be upon the same terms and conditions as this Lease. Landlord and Tenant shall exercise the option to extend by delivering written notice of each party's election to the other not later than one (1) year before the expiration of the Initial Term or any extension period, as applicable. If Tenant is in material default beyond any applicable notice and cure period on the date the extended term is to commence, the extended term shall not commence and this Lease shall terminate. The Initial Term and any extensions thereof shall be deemed the "Term" of this Lease. In the future Landlord may wish to negotiate with Tenant regarding the responsibilities set forth in Section 8 below. In such event the parties agree to negotiate in good faith.

3. Delay in Possession. If for any reason Landlord fails to deliver physical possession of the Premises or any part thereof to Tenant on or before the Commencement Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from the failure to deliver possession, so long as Landlord has exercised, and continues to exercise, reasonable diligence to deliver possession; provided, however, that rent shall be abated in proportion to the Premises leased compared to that not delivered until Landlord delivers physical possession

of all of the Premises to Tenant. The Term shall not be extended by Landlord's failure to deliver possession of the Premises to Tenant on the Commencement Date.

4. Minimum Monthly Rent. For the Term of this Lease, Tenant shall pay to Landlord an annual rent of One Million Dollars ($1,000,000)("Minimum Rent"). This rent shall be paid in the following monthly amounts (the "Minimum Monthly Rent"): One Hundred Thousand Dollars ($100,000) in each of the months of September, October, November, April, May, June, July and August in each Lease year; and Fifty Thousand Dollars ($50,000) in each of the months of December, January, February, and March. The Minimum Monthly Rent for each month shall be payable in arrears on the first day of the succeeding month at the following address: Capital City Golf at 8325 River Road, Sacramento, CA 95832, or at another address that Landlord may from time to time designate by written notice to Tenant.

5. Percentage Rent.

(a) Percentage Rent. In addition to the Minimum Monthly Rent agreed to be paid by Tenant pursuant to Section 4, Tenant shall pay to Landlord an additional annual rent based on the percentage of Gross Receipts (as defined in (b) below) earned by Tenant from the Premises during each Lease Year. This additional rent shall be equal to the positive difference, if any, between the Minimum Rent and the percentage of Gross Receipts for the products and services outlined below ("Percentage Rent"). For example, if in July the Minimum Monthly Rent were $100,000 and the Gross Receipts percentages as calculated below equaled $125,000, the Percentage Rent paid to Landlord in addition to the Minimum Monthly Rent would be $25,000. If in January the Minimum Monthly Rent were $50,000 and the Gross Receipts equaled $45,000, Tenant would owe only the Minimum Monthly Rent and would not pay a Percentage Rent for that month. An adjustment will be made within thirty (30) days of the end of each Lease Year to cause the aggregate monthly Percentage Rent payments for the Lease Year to equal the Percentage Rent due for the Lease Year based on Tenant's annual Gross Receipts percentages for that Lease Year. If Tenant's aggregate monthly Percentage Rent payments for any Lease Year are less than the Percentage Rent due for that Lease Year, Tenant shall immediately pay the difference to Landlord. If Tenant's aggregate monthly Percentage Rent payments for any Lease Year exceed the Percentage Rent due for that Lease Year, Landlord shall either (i) grant Tenant a credit toward the next month's Percentage Rent, or (ii) if the Lease has expired, refund the amount of overpayment to Tenant. In no event shall Tenant's annual rent be less than the annual Minimum Rent set forth above.

	Product or Service	Percentage Rent
(i)	Power carts, except Alister MacKenzie Golf Course	18%
(ii)	Driving Range (Golf Ball Rentals)	25%
(iii)	Retail Merchandise Sales	4%
(iv)	Lessons	4%

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(v)	Club repair	4%
(vi)	Pull carts	4%
(vii)	Single-rider carts	4%
(viii)	Food & Beverage	
	Bing Maloney Café	12%
	Bartley Cavanaugh Café	12%
	Haggin Oaks Café	25% up to $600,000 15% over $600,000
(x)	Alcohol Sales	12%
(xi)	Per Plate Catering	
	Bing Maloney	12%
	Bartley Cavanaugh	12%
	Haggin Oaks	15%
(xii)	Snack Bars/Range & Roving Cart Food & Beverage	12%

Any Percentage Rent from revenues generated at the Driving Range or other portions of the Property from activities other than golf ball rentals shall be negotiated between the parties.

(b) Gross Receipts. The term "Gross Receipts" as used in this Lease shall mean, subject to the exceptions and authorized deductions as set forth in this Lease, all money, cash, receipts, receivables, assets, property, or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned, and all gross sums received and earned, by Tenant, whether collected or accrued, in the categories of products and services listed in Section 5(a) above, in the Premises. There shall be deducted from said gross receipts only the following:

(i) Sales and excise taxes applicable thereto required to be collected by Tenant;

(ii) federal, state, municipal, or other taxes, including the irrigation and technology surcharges, required by law to be collected from the consumers, but the amount of such taxes shall be shown on the books and records required to be kept by this Lease;

(iii) receipts from the sale or trade-in value of any equipment, including Replacement Equipment owned by Tenant and used on the Premises;

(iv) receipts in the form of refunds from, or the value of, merchandise, supplies, or equipment returned to the shippers, suppliers, or manufacturers.

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(v) sums refunded or a sale previously included in Gross Receipts;

(vi) wholesale sales or Capital City Golf Card sales, except that if the parties to this Lease change the current use and benefits associated with the Card, the parties will renegotiate, in good faith, the Percentage Rent for Cards; and

(vii) any income or receipts from the management or sponsorship of professional golf players on tour.

The parties specifically acknowledge that neither the green fees nor the irrigation surcharge nor the technology surcharge collected and retained by Tenant as provided for in Section 5(c) below nor the revenues received by Tenant for golf carts at Alister Mackenzie Golf Course shall be included in Gross Receipts or subject to Percentage Rent.

(c) Collection of Green Fees and Surcharges. On behalf of Landlord, Tenant shall collect the green fees from the public golf courses located on each Property, including the 18-hole and 9-hole irrigation surcharge fees. Tenant shall also collect, on behalf of Landlord, a per round of golf "technology surcharge" for the purpose of meeting the ongoing technology needs of the Landlord and Tenant as the parties shall agree with regard to the Premises and operation of the golf courses on the Property, as set forth in Section 6(g)(iv) below. As consideration for Tenant's management of the Premises, Tenant shall retain ten percent (10%) of the green fees generated on the Property, after deduction for the irrigation and technology surcharges, and shall remit to the Landlord the remaining ninety percent (90%) of green fees, along with one hundred percent (100%) of the irrigation and technology surcharge fees. On behalf of Landlord Tenant shall deposit one hundred percent (100%) of the technology surcharge fees in a separate account for use by Landlord and Tenant as set forth in this Section and Section 6(g)(iv). Tenant shall also retain Five Dollars ($5.00) for every round of golf played at the Alister MacKenzie Golf Course at Haggin Oaks, with the exception of junior rounds of golf, for golf carts. After deduction of the Five Dollars ($5.00) and the irrigation and technology surcharges, Tenant shall retain ten percent (10%) of the green fees at Alister MacKenzie Golf Course at Haggin Oaks. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the green fees or the surcharges, except the ten percent (10%) retained by Tenant; therefore, the 90% of the green fees shall be deemed a "pass through" to Landlord. On behalf of Landlord, Tenant shall collect the Capital Club Membership fees. As consideration for Tenant's services in this regard, Tenant shall retain seven percent (7%) of the Capital Club Membership fees collected by Tenant. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the Capital Club Membership fees, except for the seven percent (7%) retained by Tenant; therefore, the ninety-three percent (93%) of Capital Club Membership fees shall be deemed a "pass through" to Landlord.

(d) Cost of Collection. Tenant shall pay all costs associated with the safe collection, deposit and accounting of the green fees and irrigation and technology surcharge fees, including but not limited to credit card charges, bank fees, and armored car services. Landlord may conduct unannounced cash and starter sheet audits during Tenant's normal business hours.

(e) Payment of Percentage Rent. Percentage Rent for each month shall be paid in arrears on the twentieth (20th) day of the month for the prior month's lease of the Premises. Tenant shall also remit to Landlord at such time Landlord's ninety percent (90%) of the green fees and one hundred percent (100%) of the irrigation surcharge for the prior month and deposit the technology surcharge monies in the separate account. Tenant shall pay the Percentage Rents, green fees, and surcharge by one check, accompanied by a statement breaking down revenue categories set forth in Section 5(a) above and the irrigation and technology surcharges.

(f) Books and Records.

(i) Tenant shall keep and maintain on the Premises full, complete, and appropriate books and records of sales from the Premises in accordance with standard accounting practice. In addition, Tenant shall separately account for its operation revenues of each golf course located on the Property. These books and records shall at all reasonable times and upon one (1) week's prior notice be open for inspection and copying by Landlord, Landlord's auditors, or any other authorized representatives of Landlord. If the books or records are kept at a location other than the Premises or Tenant's address set forth in Section 34, Tenant shall give prompt notice of that location to Landlord. If at any time during the Term of this Lease the books and records prove inadequate to record Gross Receipts in the detail requested in this Lease, Tenant shall, upon the request of Landlord, procure and maintain those books, records, and accounts in an adequate form and character to carry out the requirements of this Lease. Tenant shall provide all customers with a receipt for their purchase of goods or services. Copies of all sales and other excise tax reports that Tenant may be required to furnish to any government or governmental agency shall at all reasonable times be open for inspection at the place mentioned above. Landlord shall have the right to audit and examine the records of Tenant when necessary for a proper determination of the amount of Gross Receipts from the Premises, and all necessary records shall be held available for that purpose. If the statements of Gross Receipts previously made by Tenant to Landlord are found to be more than five percent (5%) less than the amount of Gross Receipts made by Tenant shown by the audit, Tenant shall immediately pay the cost of the audit, as well as the additional percentage rent ("Additional Percentage Rent") shown to be payable by Tenant to Landlord; otherwise the cost of the audit shall be paid by Landlord.

(ii) Tenant further agrees to furnish to Landlord on or before the fifteenth (15th) of February an annual financial statement for the previous Lease Year. This statement must consist of a balance sheet and income statement covering the Lease Year. The statement must be prepared by an independent certified public accountant on his or her stationery for the Tenant and shall only include financial data related to the Premises.

(iii) Tenant shall provide Landlord with a copy of all of Tenant's quarterly State Board of Equalization reports relating to the Premises filed during the term of the Lease within ten (10) days of the filing of each such report.

(g) Acceptance of Payments. Acceptance of monthly percentage payments shall not be an admission of the accuracy of those payments, but Landlord shall be entitled at any time within four (4) years after the receipt of any monthly percentage payments to question the sufficiency of the amount or the accuracy of the statements furnished by Tenant to justify the payments. To enable Landlord to check the accuracy of any statements and the sufficiency of any monthly percentage payments, Tenant shall retain all records for a period of at least five (5) years after the termination of each Lease Year, and after that in the event of arbitration, until that arbitration terminates in final judgment. Tenant shall, upon request, make these available to Landlord, Landlord's auditor, or Landlord's representative or agent for examination at any time.

(h) Accounting Statements. Tenant shall prepare and deliver to Landlord within twenty (20) days after the end of each month separate statements of revenues, by golf course, showing the rounds of golf played by type and price, and itemized gross receipts for all revenue categories resulting from the products and services set forth in Section 5(a) above for the preceding month. Such statements shall be in a format as may be reasonably requested by Landlord from time to time. If Tenant fails to provide such accounting statement and such failure continues after thirty (30) days' notice by Landlord to Tenant, Landlord may cause an audit to be made of Tenant's operations on the Premises for such delinquent accounting period and may prepare the statement failed to be provided by Tenant. Tenant shall pay on demand all expenses of such audit and preparation of such statements.

(i) Future Golf Revenues. Landlord intends to investigate ways to generate new revenues from the construction of the three (3) academy holes at Haggin Oaks Golf Complex. Any future uses of the academy holes by Landlord or Tenant, and any revenue generated therefrom, will be subject to further negotiation between Landlord and Tenant.

6. Use.

(a) Use. The Premises shall, during the Term of this Lease, be used for the purpose of providing and conducting thereon the following uses and for no other purpose without Landlord's written consent, which shall not be unreasonably withheld:

(i) the sale, rental, storage, and repair of all items relating to the game of golf;

(ii) the teaching and instruction of golf;

(iii) the provision of starter services, including the collection of greens fees;

(iv) the rental of power driven and manually operated golf carts;

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(v) the operation of the driving range, pro shop, locker rooms, restrooms, storage, patio, and workshop areas;

(vi) the operation of a food and beverage service; and

(vii) related office and administrative uses subject to all terms, conditions, and limitations specified in this Lease.

It is the understanding of the parties that the responsibilities of the Tenant are clearly delineated in and limited to those expressly set forth in this Lease and that all other aspects of operating and managing the Property, including, without limitation the golf courses located on the Property as provided in Section 8 below, are and shall remain the responsibility of the Landlord.

(b) Compliance with Insurance. Tenant shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Tenant shall, at Tenant's own cost and expense, comply with all requirements of Landlord's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Property and the improvements on the Property.

(c) Waste. Tenant shall not commit any waste or any public or private nuisance upon the Premises or use the Premises for any immoral or unlawful purpose.

(d) Compliance with Laws. During the Term, Tenant, at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Premises pertaining to (a) the physical condition of any improvements constructed by Tenant in the Premises; and (b) Tenant's specific business operations in the Premises. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Premises, or comply with any future requirements Landlord may impose on its city contractors or vendors (except those imposed by governmental authorities other than Landlord), in order to comply with the requirements of this Section. Landlord shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, and/or the Property. With regard to the construction of the Capital Improvements the parties shall comply with all applicable city and state regulations pertaining to the bidding for and construction of public projects and the payment of prevailing wages.

(e) Operation. Tenant shall operate Tenant's business on the Premises with due diligence and efficiency so as to maximize the Gross Receipts that may be produced profitably. To this end Tenant shall maintain the business hours and levels of stock, inventory, personnel, and advertising that in Tenant's reasonable judgment is necessary to maximize Gross Receipts profitably consistent with the operation of the businesses on the Premises.

(f) Non-competition. Tenant shall not, within a five (5) mile radius of each of the three golf complexes located on the Property, provide any services similar to those outlined in this Lease so as to conflict or compete with Landlord's public golf course business operations, unless otherwise approved by Landlord. Such approval shall not be unreasonably withheld.

(g) Guidelines for Operation of Property. Landlord shall establish from time to time guidelines for the reasonable operation and maintenance of the Property, excluding the Premises, as established by Landlord's Golf Manager. Such guidelines shall be in writing in the Golf Operations Manual and may be subject to change and modification as the parties deem necessary during the Term of this Lease. Tenant agrees to comply with the Golf Operations Manual and shall not change the policies and procedures set forth in the Manual without first obtaining the written consent of Landlord's Golf Manager, which consent shall not be unreasonably withheld. In addition, Tenant agrees to comply with the following specific procedures during the Term of this Lease:

(i) Memberships. Tenant shall at its cost maintain facility memberships in the United States Golf Association (USGA) and the National Golf Foundation (NGF), and shall provide the Golf Manager with proof of such memberships if requested.

(ii) Golf Handicapping Equipment. Tenant shall, at its cost, provide golf handicapping equipment/computers at the Premises.

(iii) Ratings. Tenant shall be responsible for all costs associated with securing and maintaining the Northern California Golf Association (NCGA) and Pacific Women's Golf Association (PWGA) ratings for the Golf Courses.

(iv) Reservation/Information System Technology. Subject to the agreement of the parties, Tenant shall, with the use of the technology surcharge referenced in Section 5(c), provide automated/computerized telephone and internet accessible golf tee time reservation system technology, which shall be integrated with Tenant's point-of-sale systems. Tenant shall at its cost provide the initial hardware and software for its point of sale system. The technology surcharge shall be used to purchase, install, maintain, repair and replace all communication lines, hardware, software, software upgrades, and equipment associated with the ongoing reservation/information system at the Premises. Tenant shall be able to use all existing Landlord-owned golf course computer hardware and software currently in use for providing automated tee time reservations and card-production. Tenant shall provide a computer terminal at the Capital City Golf Administration Offices that is linked "real-time" to the Tenant's reservation/information system and that may be used to create and print reports of information as reasonably requested by Landlord. Landlord shall pay existing contract obligations to Fairway Systems. Tenant shall assume contract obligations for the existing Data Card System and all costs associated with the production of the Capital City Golf cards, effective September 1, 2001. The technology surcharges shall be used to provide technical support and oversee the care, maintenance, upgrade and repair of the computer systems used on the Premises. Any and all hardware, software, licenses and equipment purchased with the technology surcharge funds are and shall remain the property of Landlord.

(v) Hours of Operation. Tenant shall comply with the Hours of Operation schedules outlined in Exhibit "D" of this Lease. Tenant may close operations or change the hours of operation due to inclement weather or other conditions with prior approval by the Golf Manager, which approval shall not be unreasonably withheld. Tenant shall, at its sole cost and expense, post hours of operation in prominent locations.

(vi) Food and Beverage. Tenant shall, at its sole cost and expense, provide all labor, materials and supplies necessary to provide food and beverage services at the Premises, including but not limited to, the preparation, set-up and clean up of special events and golf tournaments relating to food and beverage service. If Tenant wishes to provide food and beverage services to the Property excluding the Premises, Tenant shall first obtain approval of the location from the Golf Manager, and shall be responsible for preparation, set-up and clean up of the site. Tenant shall, at its sole cost and expense, remove the "Outpost" snack bar trailer located on the Arcade Creek Golf Course at Haggin Oaks and replace this service with a new roving food and beverage cart services by March 1, 2003. Tenant shall, at its sole cost and expense, be responsible for providing phone-in food and beverage services from the #9 tee at Bartley Cavanaugh Golf Course, including but not limited to the phone, wiring, menu and safe keeping of the phone and stand. Tenant may request that it receive a credit towards its capital improvement obligations set forth in Section 12. If Landlord in its reasonable discretion approves such a credit, any equipment designated a "capital improvement" shall belong to Landlord upon the termination of this Lease. If Tenant does not receive a capital improvement credit for such equipment, then such equipment shall belong to Tenant upon termination of this Lease.

(vii) Cooperation. Tenant shall reasonably cooperate with Landlord's other tenants, contractors, and Landlord's employees.

(viii) Golf Carts. Tenant shall at its cost provide and maintain at least one single-rider golf cart for golfers with disabilities at Haggin Oaks, Bing Maloney and Bartley Cavanaugh, or more as may be required by law. Landlord shall in its fiscal year 2001-2002 purchase two single-rider carts which shall be provided to Tenant for its use out of Landlord's CIP Account #CC-00. Tenant shall at its cost move the carts as needed between golf courses. Tenant shall, at its cost, provide flags for golf carts that permit golfers with disabilities to drive their carts closer to tees and greens. Tenant, at its sole cost and expense, shall provide additional carts for tournaments and special events as necessary. Tenant shall, at its sole cost and expense, provide gasoline powered carts at Bing Maloney Golf Course until an electric golf cart charging and storage building is constructed by Landlord at Landlord's cost. Landlord shall complete construction of the storage building as soon as reasonably possible. Tenant shall provide its own gas and fuel, oil, gasoline, diesel fuel for its vehicles and equipment and comply with all laws and regulations in their use. Tenant shall, at its sole cost and expense, provide high-pressure washers at Bing Maloney, Bartley Cavanaugh and Haggin Oaks maintenance yards to be used by Tenant and Landlord. Tenant shall keep the maintenance yards clean from any refuse removed from the golf carts. Tenant shall, at its cost, fill and maintain the golf cart soil bottles and other equipment on each golf cart. Landlord shall provide soil, at its expense, for the golf cart soil bottles. Tenant shall not place into, or maintain in

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service, golf carts that are greater than five (5) years old, except as the parties may otherwise reasonably agree.

(ix) Recycling Program. Tenant agrees to implement a recycling program at the Premises.

(x) Customer Services. Tenant shall at its cost provide customer comment forms that shall be prominently displayed in the Premises. In addition, Tenant shall accept all major credit cards and electronic payments from its customers. Tenant shall, at its sole cost and expense, provide name tags for its employees. Landlord and Tenant shall from time to time undertake to determine customer satisfaction in a method satisfactory to both parties. Tenant's monthly inventory should not be less than fifteen percent (15%) of projected annual retail sales. Tenant agrees to adequately train and equip its employees to as to provide customers with efficient and high quality service and to provide brand name golf equipment and supplies for sale. Tenant agrees to provide "Basic Staffing Levels" as set forth in Exhibit "G" attached during the Term of this Lease.

(xi) Community Involvement. Tenant, at its cost, shall designate a management level employee to be responsible for the ongoing coordination and implementation of Landlord's Gifts-to-Share Program, Hole-in-One Program, Greens Aerification "Bounce Back" Program, and FREE Golf Etiquette Classes for Adults and Juniors. Landlord's Golf Marshals shall assist Tenant's staff in coordinating and implementing the FREE Golf Etiquette Classes . Tenant shall cooperate with Landlord to facilitate Landlord's efforts with regard to Home Golf Clubs, Capital City Golf Historians, and the Sacramento Golf Council. Tenant shall provide a management level employee to attend SGC regular meetings. Tenant shall at its cost purchase trophies for the SGC junior golf events held on the Property, not to exceed $500 per year.

(xii) Tournament and Tournament Directors. Tenant shall, at its cost, provide full- time golf tournament directors in charge of operations at the Bing Maloney and Haggin Oaks Golf Complexes throughout the Term of the Lease. Tenant shall provide a part-time golf tournament director in charge of operations at Bartley Cavanaugh Golf Complex beginning September 1, 2002 and throughout the Term of this Lease. . Tenant acknowledges that Landlord has entered into contracts for tournaments to take place after the Commencement Date. Tenant agrees to assume, observe and be bound by the provisions of those tournament contracts.

(xiii) Employee Training and Development. Tenant, at its sole cost and expense, agrees to train certain of its employees in adult CPR/First Aid. It is the intent of the Tenant and Landlord to implement the use of Automatic External Defibrillators (AEDs). Tenant shall assist Landlord in seeking funding for implementing the AED program. Tenant shall train sufficient numbers of its employees to ensure that at least one CPR/First Aid trained employee is on duty during normal business hours. In addition, Tenant shall provide Landlord with an opportunity to meet with Tenant's employees during a regularly scheduled employee meeting to discuss operational issues, at least twice a year. Tenant shall, at its cost, prepare and print an employee newsletter for distribution to Tenant and Capital City Golf division's staff, on a quarterly basis. Golf Manager shall

be responsible for contributing information for articles in the employee newsletter. Tenant shall be responsible for replacement, at its sole cost, of radios used by Tenant for communication between Tenant and Landlord's staff, in the event such radios are lost, damaged or destroyed by Tenant.

(xiv) Golf Course Supplies. Tenant shall pay for all costs associated with the annual printing of golf scorecards and shall provide golf pencils. Landlord and Tenant shall agree upon the style, design and quality of the scorecards. Tenant shall, at its cost, provide ice to Landlord for Landlord's operations consistent with this Lease. Tenant, at its sole cost and expense, shall provide portable restrooms as necessary to service the Premises or for Tenant's special events on the Property.

(xv) Capital Spirit. Tenant hereby acknowledges that it has received a copy of the agreement between the Landlord and Pepsi-Co under the Capital Spirit Program, and Tenant agrees to comply with the terms of this agreement.

(xvi) Setting of Fees. Landlord shall, in consultation with Tenant, set the green fees, cart fees and range fees on the Property from time to time.

(xvii) Security. Tenant shall be solely responsible, at its sole cost and expense, for securing the Premises and for providing, maintaining and operating all private security services and systems as it deems appropriate for the Premises.

7. Utilities. During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises. Landlord, at its cost, shall provide gas, water and sewer services to Tenant.

8. Landlord's Obligation.

(a) Maintenance of Golf Courses. Landlord shall, in addition to its other obligations set forth in this Lease, operate and maintain the public golf courses at Haggin Oaks, Bing Maloney and Bartley Cavanaugh adjacent to the Premises, and any other property it owns adjacent to the Premises, including, but not limited to the Property, in a manner and condition appropriate to a first class public golf course in the Sacramento Metropolitan Area. Landlord shall provide an adequate maintenance and grounds crew to ensure proper maintenance of the property at all times. If any condition arises on the property that limits the public's use of the golf courses, Landlord shall immediately and diligently repair such condition. Landlord shall establish written maintenance standards to meet the obligations set forth in this Section.

(b) Golf Marshal Program. Landlord shall provide an adequately trained and equipped staff of marshals to operate the golf courses at Haggin Oaks, Bing Maloney and Bartley Cavanaugh. Such marshals shall be the employees or volunteers of Landlord, and Tenant shall not be responsible for such employees or volunteers.

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9. Taxes.

(a) Subject to the terms of Section 9(d), Tenant shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, as additional rent, all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the Premises or arise because of the occupancy, use, or possession of the Premises (including but not limited to taxes on, or which shall be measured by, any rents or rental income, and taxes on Tenant's personal property, subsequent to the commencement of the Term, and all installments of assessments that are due during the Term.

(b) Landlord agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges payable by Tenant to make sure that statements and billings will be mailed directly by public authorities to Tenant at the address set forth in Section 34. Tenant shall deliver to Landlord, on demand, original receipts or photocopies evidencing payment of all taxes, assessments, and public charges payable by Tenant. If Tenant fails to pay taxes, assessments, and charges on or before the last day on which payment may be made without penalty or interest, other than as provided for in this Section 9, Landlord may, but shall not be obligated to, pay those taxes, assessments, or charges, together with interest and penalties. Any amounts that Landlord may pay pursuant to this provision, together with interest at the rate of ten percent (10%) per annum, shall be repaid to Landlord by Tenant on demand as additional rent.

(c) This Lease may create a possessory interest subject to property taxation. Tenant shall be liable for the payment of any possessory interest tax, and Tenant shall be responsible for the payment of any tax associated with Tenant's business on the Premises, including but not limited to possessory interest and sales tax.

(d) Tenant shall not be required to pay, discharge, or remove any tax (including penalties and interest), assessment, tax lien, forfeiture, or other imposition or charge against the Premises or any part of the Premises or any improvements, so long as Tenant diligently and in good faith contests the validity or the legality of the assessment, levy, or charge by appropriate legal proceedings, which should prevent the collection of the tax, assessment, imposition, or charge contested; provided however, that Tenant, prior to the date that the tax, assessment, imposition, or charge is due and payable, shall either have paid it under protest or shall have given to Landlord a letter executed by an officer of Tenant assuring Landlord that the tax, assessment, imposition, or charge will be paid when and to the extent that the legal proceedings conclude in a final determination that the tax, assessment, imposition, or charge is valid, legal and owing. Upon such final determination, Tenant agrees to immediately pay the contested tax, assessment, imposition, or charge, together with all interest and penalties, if any, and remove and discharge any lien or forfeiture arising from the prior nonpayment.

(e) If any assessments for local improvements become a lien after the Commencement Date, Tenant shall pay only the installments of the assessments that become due and

payable during the Term. On the request of Tenant, Landlord agrees to cooperate or join with Tenant in any application that may be necessary to permit the payment of the assessments in installments.

(f) Tenant shall obtain, at its own expense, any required City business operations tax certificate and shall pay any business operations tax attributable thereto.

10. Condition of Premises. Tenant acknowledges that as of the date of this Lease, Tenant has inspected the Premises and all improvements on the Premises and that the Premises and improvements are in good order, repair, and condition, except for those improvements which are scheduled for capital improvements as outlined in Section 12 below, and except for those noted in Landlord and Tenant's Joint Inspection Report. Landlord warrants that the Property is suitable for use as a public golf course.

11. Repairs and Maintenance.

(a) Tenant agrees, at Tenant's own expense, to maintain the interiors of the Premises in good condition and repair, and to deliver to Landlord physical possession of the Premises at the end of the Term in good condition and repair, reasonable wear and tear and use, and loss by fire or other casualty or by earthquake or other act of God, excepted. Such interior maintenance shall include by way of example loudspeakers, interior walls, lockers and storage spaces, furniture and furnishings, floor coverings, windows, doors, security systems, signs, bulletin boards, locks, door closing devices, and light fixtures. Tenant shall at its cost provide cleaning services and janitorial supplies for the Premises. Tenant shall also at its cost clean and sweep the parking lots an average of twice a month, and shall be responsible for daily collection and removal of trash or debris generated from the Premises. Tenant at its cost shall maintain the landscape areas within the Premises (including irrigation systems in the flowerbeds) and drinking fountains located on the Premises. Tenant shall, at its sole cost and expense, maintain, repair and replace all tournament scoreboards at each of the three golf facilities. Tenant specifically agrees that it shall maintain the electrical panel and electrical charging units associated with the charging of golf carts. In the event that emergency repairs are required, Landlord, if it has resources available, shall respond to Tenant's request for services, for which Tenant shall pay Landlord's customary charges.

(b) Tenant shall keep all records and documentation of maintenance activities required by law to be kept, and shall make same available to Landlord upon Landlord's reasonable request. In order to permit Landlord to assure accurate responses to inquiries by regulatory agencies on health and safety, and to permit Landlord to compile data upon which to base decisions on whether to repair or replace a given item, Tenant's maintenance records shall include the following information:

(i) a description of the work, defining the specific nature of the request for services;

(ii) the location of the service to be provided;

(iii) the name of the person (initiator) with a telephone number for future contact;

(iv) the date of the request and the time of completion of the maintenance; and

(v) any health or safety violations to be corrected should be identified, and corrections noted.

(c) If at any time during the Term Tenant fails to maintain the Premises or make any repairs or replacements as required by this Section, Landlord may, but shall not be required to, enter the Premises and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord. All work performed by Tenant on the Premises shall be done so as to avoid to the extent reasonably possible any disruption of Landlord's or the public's use of the Property.

(d) Landlord shall be responsible for maintaining the remainder of the Premises in good condition and repair, including but not limited to the roofs, public restrooms including fixtures (except as provided in Section 11(a)), exteriors of the buildings, foundations, HVAC systems, electrical systems, plumbing systems, water distribution systems, sewer systems, irrigation systems (except for the irrigation systems in the flowerbeds) and drainage systems. Landlord shall also bear sole responsibility for maintaining the Property and all public lands appurtenant to the Premises in good condition, suitable for its intended use.

(e) Should Landlord, after notice from the Tenant, fail to make with reasonable promptness any repairs to the Premises or the Property which are the obligation of the Landlord pursuant to this Lease, Tenant may (but shall not be required to do so) make the repairs necessary to restore the Premises or the Property to good order, condition and repair, and the reasonable cost of said repairs shall become due and payable by Landlord as an offset against future rents.

(f) All work to be performed on the Property pursuant to this Section shall be done so as to avoid to the extent reasonably possible any disruption of Tenant's business in or around the Premises. If such work requires Tenant's business to cease operation, there shall be a pro rata abatement of all Rent and taxes otherwise payable by Tenant hereunder to Landlord for each day Tenant's business operations are ceased.

(g) Landlord and Tenant shall conduct a joint inspection of the Premises on an annual basis on a date mutually agreed upon. The parties shall provide to each other a letter specifying any maintenance deficiencies revealed by the joint inspection. The party responsible for the maintenance shall correct the specified deficiencies within thirty (30) days of receipt of the letter from the other party, or as otherwise agreed by the parties. Landlord reserves the right to conduct more frequent inspections as it deems appropriate.

12. Capital Improvements.

(a) Within twelve (12) months of the Commencement Date, Tenant shall begin construction of the capital improvements described in Exhibit "E", attached ("Capital Improvements"). Such Capital Improvements shall be undertaken at Tenant's cost. Tenant agrees that it shall make expenditures of at least Seven Hundred Fifty Thousand Dollars ($750,000) for Capital Improvements and other alterations and improvements during the Initial Term, and shall make expenditures of at least Four Hundred Thousand Dollars ($400,000) for other alterations and improvements to the Premises in each of the extended terms if this Lease is extended pursuant to Section 2(b). Landlord shall have the right to approve the Capital Improvements, alterations, and improvements, and such approval shall not be unreasonably withheld. Tenant shall provide Landlord with a set of plans and specifications for such improvements no later than forty-five (45) days prior to the scheduled construction of the improvements; Landlord shall either approve or refuse for reasonable reasons to approve within thirty (30) days after Tenant's request for approval. All Capital Improvements, alterations, additions, and major repairs shall be made in accordance with applicable laws and at Tenant's own expense. Tenant shall supply Landlord with a written summary of all expenditures for the Capital Improvements, including upon reasonable request, receipts for the work performed. Landlord agrees, when requested by Tenant, to execute and deliver any applications, consents, or other instruments required to permit Tenant to do this work and obtain permits for the work. Tenant shall properly complete and tender to Landlord the form attached as Exhibit "F" in developing the Capital Improvements or other alterations to the Premises.

(b) If Tenant obtains private financing to build the Capital Improvements and the alterations and improvements required under this Lease, then, upon prior approval of the terms of the loan agreement by Landlord, Tenant shall not be required to make loan payments beyond the Initial Term of the Lease, or any extension thereof.

(c) If the Tenant obtains financing either through the Landlord or based in part on Landlord's credit or collateral, then Landlord shall first approve such financing.

(d) All Capital Improvements, alterations and improvements made to the Premises shall become the property of Landlord and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease, including any renewals or extensions. All work shall be performed in a good workmanlike manner, shall substantially comply with the plans and specifications provided by Tenant and approved by Landlord, and shall comply with all applicable governmental permits, laws, codes, ordinances and regulations, including but not limited to the ADAAG, Title 24 of the California Code of Regulations, and the California Environmental Quality Act (CEQA).

(e) At least thirty (30) days before any construction commences or materials are delivered for any alterations that Tenant is making to the Premises, Tenant shall give written notice to Landlord as to when the construction is to commence or the materials are to be delivered. Landlord shall then have the right to post and maintain on the Premises any notices that are required

to protect Landlord and Landlord's interest in the Premises from any liens for work and labor performed or materials furnished in making the alterations; provided, however, that it shall be Tenant's duty to keep the Premises free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the request of Tenant.

Tenant shall pay as soon as due all mechanics' laborers', materialmans', contractors', subcontractors', or other similar charges or liens on the Premises. Nothing contained in this Section shall in any respect make Tenant the agent of Landlord or authorize Tenant to do any act or to make any contract encumbering or in any manner affecting the title or rights of Landlord in or to the Premises. If any such mechanics' or other such similar liens shall at any time be filed against Landlord's interest in the Premises, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien, or Tenant shall within that same thirty (30) day time period furnish Landlord with a bond in the amount issued by a surety company satisfactory to Landlord, securing Landlord against any payment of such lien and against all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien. Tenant may in good faith contest any of such liens without payment of a bond provided it does so with due diligence and further provided that the Tenant shall fully pay and immediately discharge the amount of any final judgment granted against Landlord or Tenant in any litigation involving the enforcement of such liens or the validity thereof. In the event Tenant fails or refuses to discharge of record any such uncontested lien within said thirty (30) day period, or fails to pay and satisfy any such judgment as provided above, Landlord, following twenty (20) days' written notice to Tenant of Landlord's intent, may, but shall not be obligated to, pay the amount thereof inclusive of any interest thereon or any court costs assessed against Tenant in litigation. Any amounts so expended paid by Landlord and all reasonable attorneys' fees and other expenses of Landlord, together with interest thereon at the rate of ten percent (10%) per annum from the date of payment, shall be deemed additional rent and shall be paid by Tenant to Landlord on demand.

(f) Tenant shall not be considered in breach or default of any obligation with respect to the construction of the Capital Improvements or any improvements required pursuant to this Section 12 if the delay in construction is due to causes beyond Tenant's control. In the event of such delay, the time for construction shall be extended by the period of the delay, as reasonably determined by the Landlord, provided that Tenant has within ten (10) days after the beginning of such delay notified the Landlord in writing of the delay and the need for the extension.

13. <u>Marketing and Promotion</u>. Landlord and Tenant agree that they shall each market and promote the public's use of the golf courses on the Property and the Premises. The parties shall jointly develop a marketing plan for the Property and budget annually and shall coordinate their efforts. Tenant shall provide Landlord with reasonable technical support and personnel to accomplish its marketing efforts under the plan. Landlord shall, at its sole cost and expense, maintain membership in the Golf Sacramento regional marketing effort. Tenant shall, at its sole cost and expense, within three months of the Commencement Date of this Lease, hire a Director of Special Events. Tenant shall pay for annual advertising of the properties in the Sacramento yellow

pages. Tenant shall spend at least two and a half percent (2.5%) of its ten percent (10%) of the green fees revenue (as provided in Section 5(c)) on marketing efforts for the Property annually. Landlord shall spend at least Fifty Thousand Dollars ($50,000) on marketing efforts for the Property annually. The expense incurred by Landlord in maintaining membership in the Golf Sacramento Regional Marketing effort shall be an offset against Landlord's $50,000 obligation. Tenant's expenditures for advertising related to its retail golf equipment business do not count against Tenant's obligations set forth in this Section.

14. **Entry**. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease.

15. **Surrender of Premises; Holding Over**.

(a) Surrender. On the Termination Date or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the Premises to Landlord in the same condition as received on the Commencement Date subject to the requirements for Tenant's Capital Improvements under this Lease, reasonable wear and tear excepted.

(b) Hold Over. At the end of the Term, should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. Tenant shall be paid at the rates then prevailing under the terms of this Lease and the month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

16. **Liability and Indemnity**.

(a) Exemption of Landlord from Liability. Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises during the term of this Lease, from any cause whatsoever, to the extent caused by the use, occupancy and enjoyment of the Premises by the Tenant, provided, however, that the provisions of this Section 16 shall not exempt Landlord from liability for the negligence or intentional conduct of Landlord or its agents, employees, or contractors.

(b) Tenant's Indemnity of Landlord. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord and Landlord's agents, officers, directors, employees, volunteers and contractors harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities of every type and description to which any or all of them may

be subjected by reason of, or resulting from, directly or indirectly, the performance of this Lease or the use of the Property by Tenant, provided, however, that Landlord shall not be relieved from liability, and the Tenant shall not indemnify Landlord, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Landlord or its agents, employees, or contractors. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.

(c) Landlord's Indemnity of Tenant. Landlord shall indemnify, defend (with counsel reasonably satisfactory to Tenant) and hold Tenant harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities arising out of, involving, or in connection with, (i) the use and/or occupancy of the Property by Landlord, (ii) any intentional act or negligence of Landlord or Landlord's agents, employees or contractors, or (iii) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease, provided, however that Tenant shall not be relieved from liability, and the Landlord shall not indemnify Tenant, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Tenant or its agents, employees, or contractors. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.

17. Insurance.

(a) Liability Insurance.

(i) Carried by Tenant. Tenant shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is typically called commercial general liability insurance, contract liability, legal liability, liquor liability, personal injury liability, and products and completed operation liability covering Tenant's use and occupancy of the Premises and Tenant's Super Shop. The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the Premises and the Super Shop. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than $3,000,000 per occurrence and shall name Landlord as an additional insured. Tenant may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Tenant. The policy shall stipulate that this insurance will operate as a Primary Insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder. In addition, Tenant shall provide automobile liability insurance covering liability arising out of any automobile incident, including owned, hired and/or non-owned automobiles. The amount of the policy shall be no less than $1,000,000 single limit per occurrence and shall name Landlord as an additional insured. The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder.

(ii) Carried by Landlord. Landlord shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is

typically called "commercial general liability insurance" covering Landlord's use and occupancy of the Property. The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than $3,000,000 per occurrence and shall name Tenant as an additional insured. Landlord may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Landlord. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if any. Landlord shall provide an affidavit of self-insurance, if any.

(iii) Workers' Compensation Insurance. Tenant at its sole cost will provide full workers' compensation insurance, or provide evidence of its ability to undertake self-insurance. Tenant's workers' compensation insurance shall be in compliance with applicable California and shall provide for coverage in the amount of at least One Million Dollars ($1,000,000) per occurrence. In the event Tenant is self-insured, Tenant shall furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, and evidence of at least One Million Dollars ($1,000,000) per occurrence excess workers' compensation limit combined with the self-insurance retention.

(b) Property Insurance.

(i) Carried by Tenant. Tenant, at its cost, shall maintain on the Premises a policy of standard fire and extended coverage insurance, boiler and machinery, with vandalism and malicious mischief endorsements, to the extent of at least ninety percent (90%) of the full replacement value of Tenant's improvements on the Premises. The policy shall name Landlord as an additional insured. The policy shall provide that any proceeds shall be payable to the Landlord, excluding therefrom any proceeds payable to Tenant as insurance on its property located on the Premises. The policy shall stipulate that this insurance will operate as a primary insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder.

(ii) Carried by Landlord. Landlord shall obtain and keep in force and pay for a policy of fire and extended coverage, vandalism, malicious mischief, and special extended perils (all risk) insurance in the name of Landlord, with loss payable to Landlord, insuring loss or damage to the Property and the structures on the Premises (excluding Tenant's improvements), including all fixtures and equipment therein installed by Landlord, for the full replacement value thereof, as the same may exist from time to time, without deduction for depreciation, but exclusive of excavations, foundations and footings, and a loss rental endorsement (the available proceeds of which shall go to Landlord for any right of abatement hereunder of Tenant). Landlord shall also obtain and maintain insurance coverage on all of Landlord's personal property and trade fixtures. Such insurance shall be used by Landlord for the replacement of its personal property and trade fixtures. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if any. Landlord shall provide an affidavit or self-insurance, if any.

(c) Insurance Policies. Insurance shall be by companies duly licensed or admitted to transact business in California and maintaining during the policy term a "General Policyholders Rating" of at least A:VII as set forth in the most current issue of the "Best's Insurance Guide", or the State Compensation Insurance Fund. Neither party shall do nor permit to be done anything which invalidates the required insurance policies. Each party shall, prior to the Commencement Date, deliver to the other party certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to the other party. Each party shall, at least thirty (30) days prior to the expiration of such policies, furnish the other party with evidence of renewals or "insurance binders" evidencing renewal thereof, or the other party may order such insurance and charge the cost thereof to the other party, which amount shall be payable by said non-performing party to the other party upon demand.

(d) Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other for loss of or damage to their respective properties arising out of or incident to the perils required to be insured against. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

18. Trade Fixtures. Tenant shall have the right, at any time and from time to time during the Term and any renewals or extensions, at Tenant's sole cost and expense, to install and affix on the interior of the Premises items for use in Tenant's trade or business, which Tenant, in Tenant's sole discretion, deems advisable (collectively "Trade Fixtures"). Except for the Capital Improvements, Trade Fixtures installed in the Premises by Tenant shall always remain the property of Tenant. Trade Fixtures may be removed at the expiration of the Term or any extension, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove at Tenant's expense any Trade Fixtures that Tenant might otherwise elect to abandon. In addition, any equipment owned or purchased by Tenant during the Term of this Lease shall remain the exclusive Property of Tenant. If Tenant retains any such Trade Fixtures or equipment, Tenant acknowledges that it shall not receive a credit towards its Capital Improvement obligations set forth in Section 12.

19. Signs. Tenant, at its cost, shall have the right to install or place signs, awnings, or other advertising materials in, on or about the Premises or the Property to the maximum extent permitted by law and subject to Landlord's reasonable sign criteria and approval, provided that Tenant obtains Landlord's consent (a) as to the method of attaching signs that will be permanently attached to the exterior of the Premises; (b) for any awnings; and (c) for the location and design of any pylon signs. Landlord shall not unreasonably withhold, condition or delay its consent. Tenant shall submit plans and specifications for its exterior signs and awnings to Landlord for approval prior to submitting the plans and specifications to the local authorities for permitting. Landlord shall be deemed to have consented to such proposed signs and awnings unless Landlord notifies Tenant in writing of its specific objections within thirty (30) days of receiving such proposal. All signs and

awnings shall be in compliance with all applicable laws, regulations and rules. If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall at its expense maintain it in good appearance and repair at all times during this Lease.

20. Damage and Destruction.

(a) Damage or Destruction to the Premises.

(i) Insured Loss. If the Premises shall during the Term be damaged or destroyed by fire or other insured casualty, either in whole or in part, such that Tenant's gross revenues decrease by twenty-five percent (25%) or more, then Tenant shall have the option to terminate this Lease. If Tenant chooses to rebuild, Tenant shall remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, in accordance with the plans and specifications pursuant to which such property was constructed. Tenant and Landlord agree that any applicable insurance proceeds shall be made available to Tenant for the restoration and repair of the Premises. Until such time as the Premises are repaired, rebuilt and put in good and tenantable order, all rent and other charges, or a fair and just proportion thereof shall be abated according to the nature and extent of the damage sustained and the degree of impact such damage and repairs have on Tenant's operations within the Premises as measured by the proportionate reduction in Tenant's gross sales, as more particularly described in Section (b) below. If Tenant, however, after diligently pursuing applications for building permits with appropriate governmental authorities and contracts for such work with qualified contractors is unable to commence to repair, rebuild and put the Premises in good and tenantable order following damage or destruction within ninety (90) days after the date when such damage or destruction occurred, or if it is reasonably estimated that such repair or rebuilding cannot be completed in less than one hundred and eighty (180) days after the date such damage or destruction occurred, both for reasons beyond the reasonable control of Tenant, then Tenant, in addition to such other rights and remedies as may be accorded Tenant by law, shall have the right and option to terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repairs or rebuilding, and upon such notice being given this Lease shall automatically terminate and Landlord shall be entitled to all insurance proceeds for such damages. The parties agree that (i) if the Premises should be damaged or destroyed by fire or other cause to such an extent that the cost of restoration would exceed fifty percent (50%) of the amount it would have cost to replace the Premises in its entirety at the time such damage or destruction took place, and (ii) if at the time of such damage or destruction the Term of this Lease is scheduled to expire within a period of one (1) year, Landlord or Tenant shall have the right and option to terminate the Term of this Lease by giving the other party to this Lease notice of such election within thirty (30) days after such damage or destruction shall have taken place, and if such notice is given, the Term of this Lease shall terminate as of the date Tenant vacates the Premises, which date shall be no later than thirty (30) days after the giving of such notice and Landlord shall be entitled to receive all insurance proceeds for such damages.

(ii) Uninsured Loss. If, at any time prior to the expiration or termination of this Lease, the Premises are totally or partially damaged or destroyed from a casualty not covered by insurance maintained (or required to be maintained) by Tenant hereunder, which damage renders the Premises totally or partially inaccessible or unusable to Tenant in the ordinary course of its business, Tenant may, at its option, upon written notice to Landlord within sixty (60) days after the occurrence of such damage or destruction, elect to repair or restore such damage or destruction. If Tenant elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect but the rent and all charges payable to Landlord shall be proportionately reduced as provided in Section (i) above. If Tenant does not elect by written notice to Landlord to repair such damage, or if the damage cannot, in Tenant's judgment, be completed within six (6) months following the date of such damage or destruction, this Lease shall terminate.

(b) Damage or Destruction of Property Excluding Premises. If any portion of the Property excluding the Premises shall be damaged or destroyed by fire or any other casualty, then Landlord shall forthwith remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, in accordance with the plans and specifications pursuant to which such property was constructed. During such period following damage and repair of the Property excluding the Premises, all rent and other charges hereunder shall abate, proportionately, to the extent of the impairment caused to Tenant's and Tenant's customers' use of the Premises as a result of the damage or destruction of the Property. Such abatement shall be calculated by multiplying each item of rent and other charges by a fraction, the denominator of which shall be Tenant's monthly gross sales for the last twelve (12) calendar months preceding the month in which the damage or destruction occurred and the numerator of which shall be Tenant's gross sales for the month the item of rent or other charge in question arise; however, in no event shall the fraction be greater than one (1) for the purposes of this calculation. Any annual fees shall be divided by twelve and shall be abated on as monthly basis in the same manner. For example, if the taxes applicable to the Premises for the year is $96,000, the monthly average would be $8,000. If the Property is in disrepair during four calendar months of such year and the fractions determined as described above for these four (4) months were ½, 3/4, 3/4 and 7/8, the payments of taxes for such four months respectively would be $4,000, $6,000, $6,000 and $7,000; which equals $23,000 which amount would be added to the payments for the eight unaffected months which equal $64,000 (8 x $8,000) making the total Taxes Applicable to the Premises payable for the year equal to $87,000. The abatement calculation described above shall be applicable for each calendar month beginning in the month the fire or other casualty to the Property occurs until the month a certificate of completion is issued by the architect supervising such work evidencing the repairs to the Property are completed.

In the event the Property excluding the Premises is damaged or destroyed so that the same cannot be adequately repaired with due diligence within one hundred eighty (180) days after such destruction or damage, then this Lease shall, at the option of Tenant, terminate as of the date Tenant ceases doing business from the Premises. Said option must be exercised within thirty (30) days from the date of damage or destruction. If there shall be a termination, as provided for above, Tenant shall immediately surrender and yield up said Premises and all interest therein to Landlord within ninety

(90) days after the date of Tenant's notice to Landlord, in which event Tenant shall not be liable for any further payments of rental or any other monetary obligations on account of this Lease after the date of such surrender. Landlord may, in that event, re-enter and repossess said Premises and be discharged from this Lease and may remove all persons therefrom.

21. Condemnation.

(a) Taking of Whole Premises or Property. If during the Term the whole of the Premises or Property shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Premises or Property is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease, except that Landlord shall refund to Tenant any prepaid rent or similar sums as may be equitable and properly applied to the portion taken, and Tenant shall pay to Landlord all sums that it may be obligated to pay to Landlord to and including the effective date of termination.

(b) Taking of Partial Premises or Property. If, during the Term only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not in Tenant's sole judgment suitable or adequate for the purposes for which Tenant was using the Premises prior to the taking or if by reason of any state, federal or county law or ordinance the use of the Premises for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Tenant shall have the option to terminate, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving ten (10) days' written notice to Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises.

(c) Restoration. If only a part of the Premises or Property is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Premises to a self-contained architectural unit of like quality, character and condition which existed immediately prior to the taking. During the period between the effective date of taking and the completion of restoration, rebuilding and refixturizing of the Premises and the Property, all rent and other charges payable by Tenant to Landlord hereunder shall be equitably abated to the extent that the Premises are not then reasonably suitable for the conduct of Tenant's business (based on the reduction in gross sales formula used in Section 20(b), above).

(d) Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award; provided that nothing contained in this section shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for (i) the taking of Tenant's personal property or trade fixtures, (ii) Tenant's unamortized cost of the Capital Improvements or Tenant Improvements to the extent paid for by Tenant or (iii) interruption of or damage to Tenant's business. Furthermore, Tenant is granted the right to recover from the

condemning authority one hundred percent (100%) of the "bonus value" of the leasehold estate which shall be equal to the difference between the rental rate payable under this Lease and the rate established by the condemning authority as an award for compensation purposes, together with any amount Tenant is able to obtain from the condemning authority attributable to Tenant's relocation expenses; provided that no such claim shall diminish or otherwise affect Landlord's award.

22. Environmental Liability.

(a) Environmental Law. The term "Environmental Law" means any federal, state, local law, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

(b) Hazardous Substances. The term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by-products; asbestos; and polychlorinated biphenyl.

(c) Landlord's Covenants. Landlord warrants, represents, covenants and agrees as follows:

(i) To the best of Landlord's knowledge, no Hazardous Substance has been released, discharged or disposed of, on, under or about the Premises or the Property (or off-site of the Premises which might affect the Premises or the Property) by any entity, firm or person, or from any source whatsoever.

(ii) Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply with all applicable Environmental Laws.

(iii) To the best of Landlord's knowledge, (1) there are no underground storage tanks on the Premises or the Property; (2) no underground storage tanks have been removed from the Premises or the Property; and (3) no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than five hundred (500) gallons of any Hazardous Substance per year, have been located on the Premises or the Property.

(iv) Landlord shall give prompt notice to Tenant of: (1) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Premises or the Property (or off-site of the Premises that might affect the Premises or the Property) or related to any loss or injury that might result from any Hazardous Substance; (2) all claims made or threatened by any third party against Landlord or the Premises or the Property relating to any loss or injury resulting from any Hazardous Substance; and (3) Landlord's discovery of any occurrence or condition on the Premises or the Property (or off-site of the Premises that might

affect the Premises) that could cause the Premises or any part thereof, to be subject to any restriction on occupancy or use of the Premises under any Environmental Law.

(v) If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the Premises or the Property, Landlord, at Landlord's expense, shall (subject to Tenant's obligations set forth in Section (d) below), in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant during all activities related to remediation. If any asbestos is discovered in the Premises during Tenant's inspection of the Premises or construction of its tenant improvements, then Landlord shall promptly remove the asbestos as required or cause it to be removed at Landlord's sole cost and expense. Upon prior approval of Landlord, however, Tenant may remove such asbestos by employing, at Tenant's expense, a licensed contractor approved by Landlord. All reasonable expenses incurred by Tenant for the asbestos removal may be applied to Tenant's Capital Improvement obligation under Section 12.

(d) Tenant's Use of Any Hazardous Substance. The only Hazardous Substances Tenant may use in its operations are cleaning solutions, office supplies and other substances as are customarily used in Tenant's business or otherwise as reasonably approved by Landlord. Tenant will manage such use in accordance with the Environmental Laws. Other than using the foregoing, Tenant does not have direct or indirect responsibility for or authority to manage or control use, transportation, generation or disposal of any Hazardous Substance on the Premises or the Property.

(e) Indemnities.

(i) Tenant shall protect, defend, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ("Claims") directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises or the Property. This indemnity shall survive the termination of this Lease.

(ii) Landlord shall protect, defend, indemnify and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any Claims directly or indirectly related to: (1) a violation of or responsibility under Environmental Laws except that if such Claims are directly related to Tenant's, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance on the Premises or the Property, or (2) a breach of any representation, warranty, covenant or agreement contained in this Section 22. This indemnity shall survive the

termination of this Lease. In the event of any governmental or court order concerning Hazardous Substances on the Premises or the Property (not caused by Tenant) that precludes Tenant from reasonable operation of its business on the Premises, Tenant may cease operating and its rents and all other charges shall be abated. If such governmental or court order is not resolved within six (6) months, Tenant may terminate this Lease.

23. Assignment and Subletting.

(a) Except as provided in Section (b) below, Tenant shall not assign or sublet this Lease without the prior written consent of Landlord, which shall not be unreasonably withheld, provided that subsequent to any assignment or sublease (except as provided below) Tenant shall remain primarily liable for the rental to be paid under this Lease and the performance of all terms and conditions of this Lease. When requesting Landlord's consent to an assignment or sublease of the Lease, Tenant shall provide to Landlord, in writing, the following information:

(i) information regarding the proposed assignee or sublessee ("Assignee") including the name, address, and ownership of the Assignee; the nature of the Assignee's business; and the Assignee's current financial statements (certified by an officer, a partner, or an owner of Assignee);

(ii) the portion of the Premises that is the subject of the proposed assignment or sublease; a general description of any planned alterations or improvements to the Premises, if any; and the proposed use of the Premises by Assignee; and

(iii) all other and additional information or documentation reasonably requested by Landlord.

(b) Tenant may, however, assign this Lease without Landlord's written consent upon sixty (60) days' written notice to Landlord if the assignment is made to an entity in which Ken Morton, Sr., Tenant, Kathy Morton, Terry Daubert, Ken Morton, Jr., Tom Morton, and Mike Woods, or any or all of them, either collectively or individually, hold a majority interest.

Upon delivery to Landlord, by a successor entity to which this Lease is assigned or transferred, of the agreement of the entity to be bound by the terms, covenants, and conditions of this Lease to be performed by Tenant after the date of the assignment or transfer, Tenant shall be released and discharged from all obligations later arising under this Lease, except where the transfer is to a wholly-owned subsidiary of Tenant.

24. Default. Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by Tenant to pay any amount in full when it is due under the Lease where such failure shall continue for a period of ten (10) business days after Landlord notifies Tenant in writing of such failure;

(b) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of thirty (30) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within thirty (30) days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the thirty (30) day period and thereafter diligently completing the cure.

(c) Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Premises (other than by Landlord) by process of law or otherwise;

(d) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, or any general partner of Tenant if Tenant is a partnership, of

(i) a petition to have Tenant, or any partner of Tenant if Tenant is a partnership, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(e) The abandonment of the Premises by Tenant;

25. <u>Remedies</u>.

(a) <u>Landlord's Remedies on Tenant's Default</u>. On the occurrence of an Event of Default by Tenant, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord at law or in equity. These remedies are not exclusive but cumulative.

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(i) Termination of Lease. Landlord may terminate this Lease and recover possession of the Premises. Once Landlord has terminated this Lease, Tenant shall immediately surrender the Premises to Landlord. On termination of this Lease, Landlord may recover from Tenant all of the following:

(1) The worth at the time of the award of any unpaid rent and accumulated late charges that had been earned at the time of the termination, to be computed by allowing interest at the rate of ten percent (10%) but in no case greater than the maximum amount of interest permitted by law;

(2) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate of ten percent (10%) but in no case greater than the maximum amount of interest permitted by law;

(3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Lease Term after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and

(5) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

(ii) Continuation of Lease in Effect. Landlord shall have the remedy described in Civil Code section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(iii) Tenant's Subleases. If Landlord elects to terminate this Lease on account of any default by Tenant, Landlord may:

(1) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises, except as otherwise provided in subsection (b) below.

(2) Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

(iv) Efforts To Relet. For purposes of this Section 25, Tenant's right to possession shall not be considered to have been terminated by Landlord's efforts to relet the Premises, by Landlord's acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests under this Lease. This list is merely illustrative of acts that may be performed by Landlord without terminating Tenant's right to possession.

(v) Acceptance of Rent Without Waiving Rights. Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts payments after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

(b) Tenant's Remedies on Landlord's Default.

(i) Landlord's Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a default by Landlord under the Lease if the failure continues for thirty (30) days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within thirty (30) days, Landlord's failure to perform shall constitute a default under the Lease unless Landlord undertakes to cure the failure within thirty (30) days and diligently and continuously attempts to complete this cure as soon as reasonably possible.

(ii) Rent Abatement. If Tenant is prevented from using, and does not use, all or part of the Premises ("Affected Area") as a result of an Abatement Event, as defined in subsection (iv) below, and if this Abatement Event continues for either ten (10) consecutive business days after Landlord's receipt of notice from Tenant of the Abatement Event or twenty (20) business days in any twelve-month (12-month) period after Landlord's receipt of such notice ("Eligibility Period"), the rent payable under this Lease shall be abated or reduced after the expiration of the Eligibility Period for such time that Tenant continues beyond the Eligibility Period to be prevented from using, and does not use, the Affected Area in the proportion that the rentable area of the Affected Area bears to the total rentable area of the Premises. To establish an Eligibility Period of twenty (20) business days in a twelve-month (12-month) period, Tenant must give Landlord notice on each of the twenty (20) business days that an Abatement Event has occurred, continues, or has recurred.

(iii) Full Abatement. If as a result of an Abatement Event as defined in Section (iv) below Tenant is prevented from using, and does not use, a substantial portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to conduct its business in the Premises, all rent due under this Lease for the entire Premises shall be abated for the time after expiration of the Eligibility Period during which Tenant is precluded from using, and does not use, the entire Premises. If, however, Tenant reoccupies any portion of the Premises during this period, the rent allocable to this reoccupied portion (based on the proportion that the rentable area of the reoccupied portion of the Premises bears to the total rentable area of the Premises) shall be payable by Tenant from the date on which Tenant reoccupies this portion of the Premises.

(iv) Abatement Event. An "Abatement Event" is:

(1) Landlord's performance of or failure to perform any repair or alteration that substantially interferes with Tenant's use of the Premises;

(2) Any failure of or interruption in utilities or services required to be supplied by Landlord to the Premises or the Property;

(3) Any failure of Landlord to provide Tenant with access to the Premises or the Property.

(v) Termination. If any Abatement Event is not cured within sixty (60) days after expiration of the Eligibility Period, Tenant may terminate this Lease, by giving written notice to Landlord, as to one of the following:

(1) The Affected Area, in which event the rent payable by Tenant shall be adjusted accordingly and the parties shall amend this Lease to reflect the adjusted rent and configuration of the Premises; or

(2) The entire Premises, in which event the termination shall be effective on Tenant's vacation of the entire Premises but in no event more than one(1) year after Landlord's receipt of the termination notice.

26. Late Charge. Tenant acknowledges that Tenant's failure to pay any installment of the Minimum Monthly Rent, the Percentage Rent, or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of the Minimum Monthly Rent, the Percentage Rent, or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to six percent (6%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

27. Default Interest. If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at ten percent (10%) per annum, not to exceed the maximum rate then allowable by law, from the due date until paid.

28. Waiver of Breach. Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

29. Estoppel Certificates. At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying to Tenant's actual knowledge:

(a) the Commencement Date and the Term,

(b) the amount of the Minimum Monthly Rent and Percentage Rent,

(c) the dates to which rent and other charges have been paid,

(d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification,

(e) that no notice has been received by Tenant of any default by Tenant that has not been cured, except, if any exist, those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease,

(f) that no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate, and

(g) other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it.

30. Attorney Fees. If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees and costs, the amount of which shall be fixed by the court or arbitrator, and shall be made a part of any judgment rendered. Should Landlord elect to use the services of in-house attorneys, the reasonable hourly rate for services provided by said attorneys is

hereby determined to be the prevailing hourly rate charged by private attorneys with similar qualifications practicing in the greater Sacramento metropolitan area.

31. **Security Deposit**. Upon delivery of possession of the Premises to Tenant, Tenant shall deposit with a bank the sum of Fifty Thousand Dollars ($50,000) or a letter of credit as a security deposit securing the performance of Tenant's obligations under this Lease. This deposit shall not be construed as an advance payment of any rental due under this Lease. If Landlord uses any portion of the security deposit, Tenant shall, within ten (10) days after written request therefor, deposit monies with Landlord sufficient to restore the security deposit to the full amount required by this Lease. Within fourteen (14) days after the expiration of this Lease, if Landlord elects to apply the security deposit only to unpaid rent, and otherwise within thirty (30) days after the Premises have been vacated, Landlord shall return that portion of the security deposit not used or applied by Landlord. No part of the security deposit shall be considered to be held in trust, but the security deposit shall bear interest to Tenant which may be removed by Tenant from the account at the end of each Lease Year.

32. **Authority**. If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord.

33. **Arbitration**. The parties shall attempt to resolve any disputes they may have in good faith. Any disputes which cannot be resolved informally between the parties shall be submitted to final and binding arbitration in Sacramento, California. A party seeking to arbitrate a dispute arising out of this Lease must notify the other party in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Lease within six (6) months of discovery of the last event giving rise to the claim for breach or enforcement. Notification to the other party of a written request for arbitration shall comply with Section 34 governing Notices. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association and its Rules excepting such Rules as may be in conflict with federal or California law. Within ten (10) business days after notice of a dispute subject to arbitration is given, the parties shall select an arbitrator. If the parties fail to select an arbitrator within the designated period, then on the request of either party, the American Arbitration Association shall select the arbitrator. The parties shall each pay half of the arbitrator's fees and expenses. The decision of the arbitrator shall be final and conclusive, and the parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision or as otherwise may be required by law. The parties expressly intend to arbitrate disputes between them. Therefore, this arbitration clause shall be construed so as to be consistent with applicable federal and California law, and to be enforceable to the maximum extent allowable by law. If necessary, any portion of this clause that is unenforceable by law shall be stricken, and the arbitrator or the court, as the case may be, shall have the power to reform this clause

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to the extent necessary to comply with applicable law and to give effect to the parties' intent that they shall arbitrate their disputes.

34. **Notices**. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Tenant at:

Kathken Corporation
Attention: Ken Morton, Sr., Chairman of the Board
3645 Fulton Avenue
Sacramento, CA 95821

or to Landlord at:

Capital City Golf
Attention: Ann Weaver, Golf Manager
8325 River Road
Sacramento, CA 95832

For ease of administration of this Lease, Tenant provides the following information:

City of Sacramento Business Operations Tax Certificate #15161
Federal Tax ID #94-2662378
California State Board of Equalization #SRKH-28-902113
Sacramento Metropolitan Air Quality Management District # 37373
State of California Alcoholic Beverage License #41-351593-3405-23

Either party may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

35. **Nondiscrimination**. Tenant shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, disability, ancestry, gender, sexual orientation, national origin, age, or any other basis protected by law. Tenant will provide equal employment opportunities to ensure that applicants are employed, and that employees are treated during employment without regard to their protected basis. Such opportunities shall exist with regard to, but not be limited by, the following actions: employment, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tenant shall post in conspicuous places, available to employees and applicants, notices setting forth the provision of this paragraph.

36. **Heirs and Successors**. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

37. **Partial Invalidity**. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

38. **Entire Agreement**. This instrument constitutes the sole agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. This Lease supercedes all prior leases or agreements, whether written or oral. Any agreement or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are void.

39. **Time of Essence**. Time is of the essence in this Lease.

40. **Rent**. All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Minimum Monthly Rent and the Percentage Rent, shall be deemed rent.

41. **Amendments**. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

42. **Recordation**. This Lease shall not be recorded. Notwithstanding the foregoing, concurrently with the execution of this Lease, Landlord shall execute before a notary and deliver to Tenant for recording a standard form "Memorandum of Lease Agreement". Tenant shall execute and deliver to Landlord on the expiration or termination of this Lease, immediately upon Landlord's request, a quitclaim deed to the Premises or a memorandum of lease termination, in recordable form, designating Landlord as transferee.

43. **Reasonableness and Good Faith**. Except as expressly limited elsewhere in this Lease, whenever this Lease requires Landlord or Tenant to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

44. **Relationship of Parties**. Neither party shall be deemed in any way or for any purpose to have become, by the execution of this Lease or any action taken hereunder, a partner of the other party in its business or otherwise or a joint venturer or a member of any joint enterprise with such other party, it being expressly understood and agreed that neither the method of calculation of rent nor any other provisions contained in this Lease nor any act or acts of the parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

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45. **Counterparts**. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease shall not be effective until the execution by and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Lease.

46. **Merger**. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to a Landlord of any of the subtenancies.

47. **Exhibits**. The Exhibits attached to this Lease are a part of this Lease and are incorporated into this Lease by reference.

48. **Municipal Authority**. The execution and delivery of this Lease and the consummation of the transactions contemplated by this Lease have been duly authorized and approved by all requisite action of the City of Sacramento, and this Lease has been duly executed and delivered by Landlord and constitutes a valid and binding obligation of Landlord.

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49. **Governing Law**. This Lease shall be governed by and construed in accordance with California law.

"LANDLORD"

CITY OF SACRAMENTO,
a municipal corporation

By: _____
ROBERT P. THOMAS
City Manager

Approved as to Form:

By: _____
JOHN M. LUEBBERKE
Deputy City Attorney

ATTEST:

_____
CITY CLERK

"TENANT"

KATHKEN CORPORATION,
a California corporation

By: _____
KEN MORTON, SR.
President

By: _____
KATHY A. MORTON
Secretary

* Note:
For Int 10's,
see page 34.

#394626.9

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EXHIBIT "A"

DESCRIPTION OF PROPERTY

HAGGIN OAKS GOLF COMPLEX

[Exhibit A-1]

BING MALONEY GOLF COMPLEX

[Exhibit A-2]

BARTLEY CAVANAUGH GOLF COMPLEX

[Exhibit A-3]

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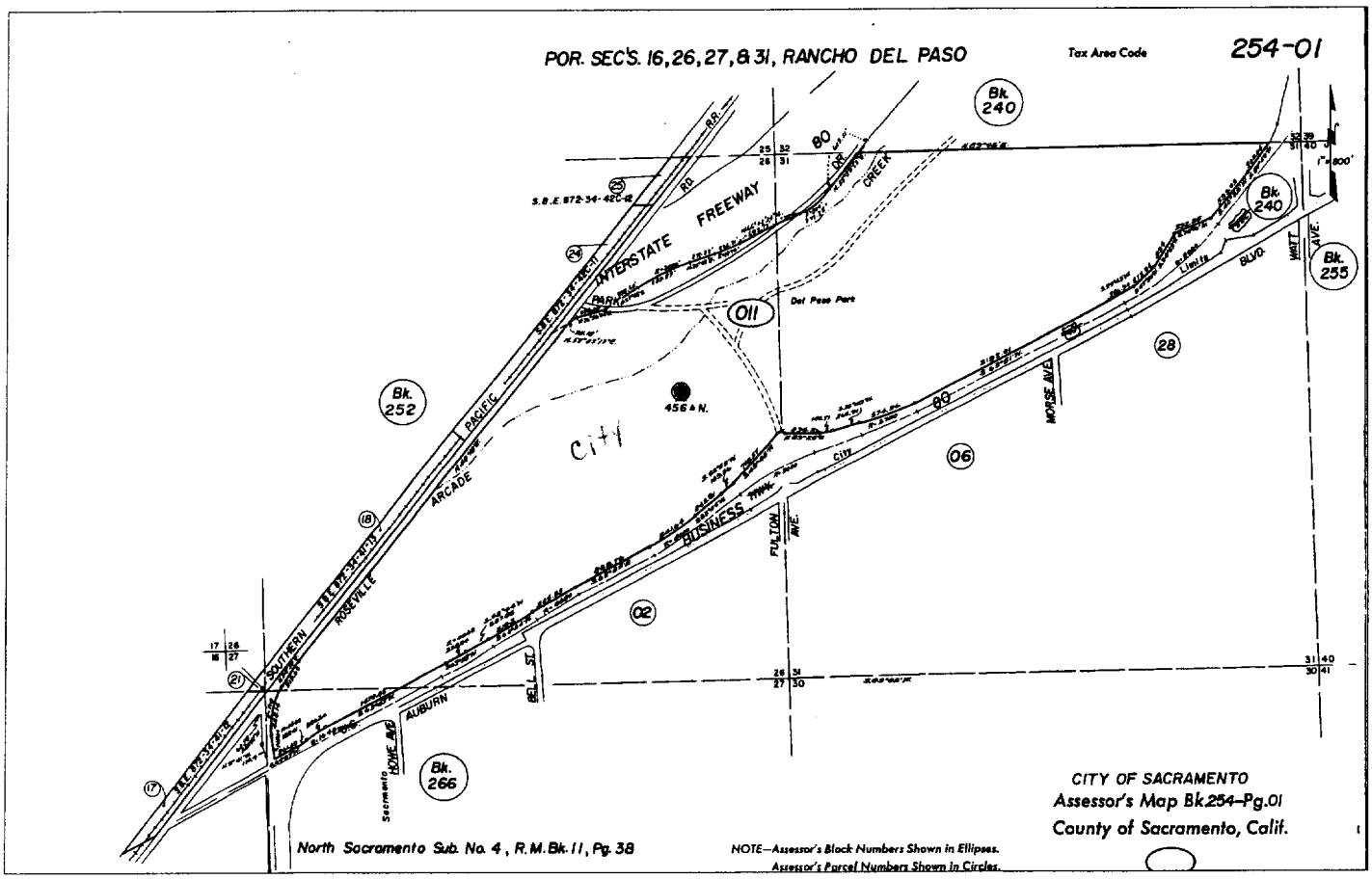
EXHIBIT A-1

MetroScan / Sacramento (CA)

Owner	: City Of Sacramento			*Parcel*	: 254 0011 027 0000
CoOwner	:			*Land*	:
Site	: Roseville Rd Sacramento 95821			*Struct*	:
Mail	: 915 I St #200 Sacramento Ca 95814			*Other*	:
Xfered	: 07/31/1968	*Doc #*	:	*Total*	:
Price	:	*Deed*	:	*Exempt*	:
LoanAmt	:	*Loan*	:	*Type*	:
VestTyp	:	*IntTy*	:	*% Imprv*	:
Lender	:			*% Owned*	:
LandUse	: WDAAFA Pub,City Use,Exempt			*TaxArea*	: 03179
Zoning	: R1 City R1... Single Family			00-01 *Tax*	:
Legal	: PTN OF DEL PASO PARK LOC IN SEC'S			*OwnerPh*	:
Census	: *Tract* :	*Block* :		*MapGrid*	:

Bedrms	:	*Garage Sp*	:	*Stories*	:	*Condition*	:
Bathrms	:	*Patio*	:	*Acres*	:	*Appliances*	:
Dining	:	*Pool*	:	*LotSqFt*	:	*Roof Type*	:
Family	:	*Spa/HtTub*	:	*Bldg SF*	:	*Foundation*	:
Utility	:	*Fireplace*	:	*GarSqFt*	:	*Solar Heat*	:
TotalRm	:	*CntlHt/AC*	:	*Bsmt SF*	:	*Year Built*	:
Units	:	*1stFlr SF*	:	*2ndFlrSF*	:		



CITY
AGREEMENT NO. 2001-134

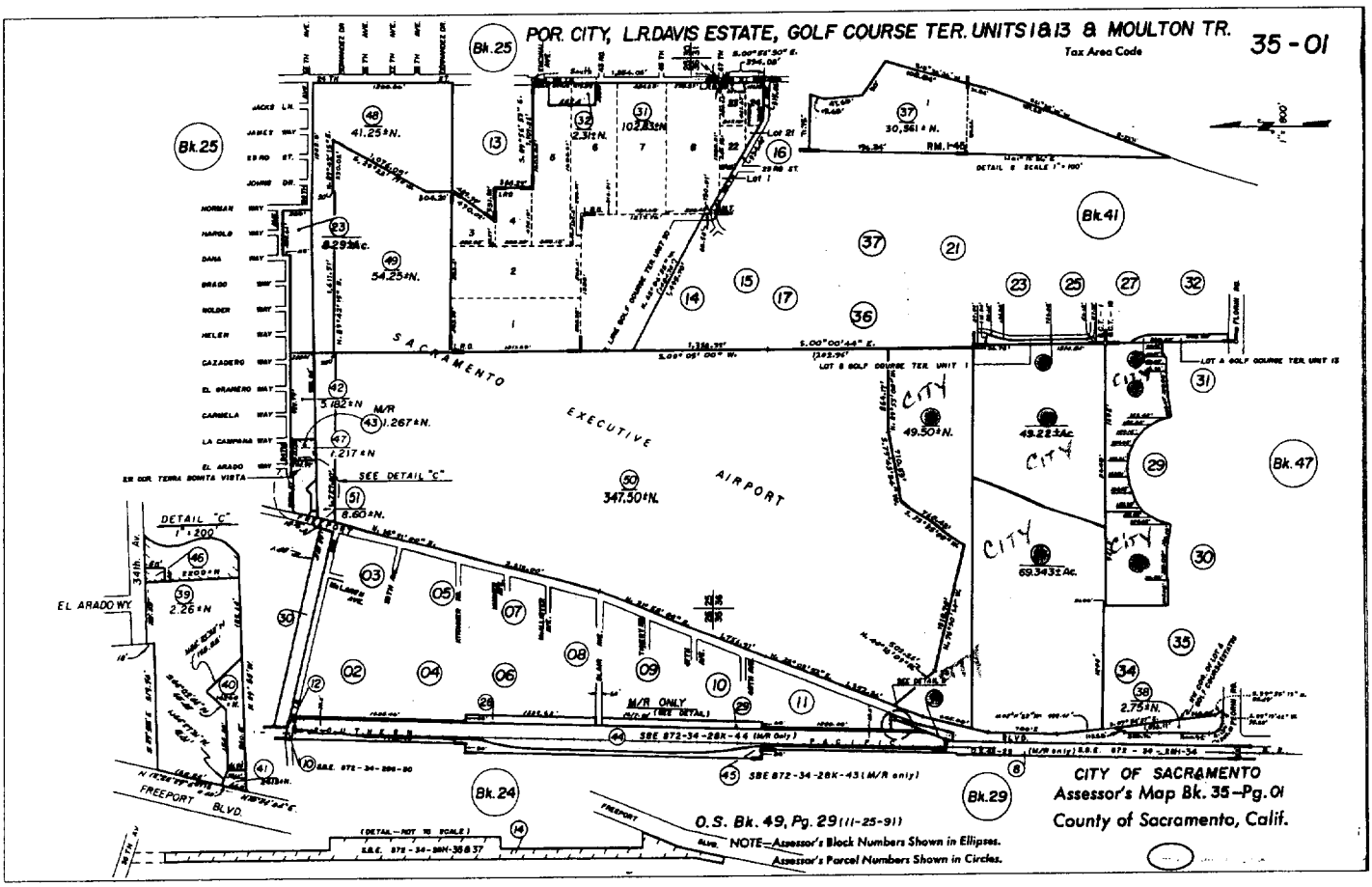
Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

EXHIBIT A-2

MetroScan / Sacramento (CA)

Owner	: City Of Sacramento			*Parcel*	: 035 0010 017 0000
CoOwner	:			*Land*	:
Site	: *No Site Address* Sacramento 95822			*Struct*	:
Mail	: 915 I St #200 Sacramento Ca 95814			*Other*	:
Xfered	: 00/00/1960	*Doc #*	: 676	*Total*	:
Price	:	*Deed*	:	*Exempt*	:
LoanAmt	:	*Loan*	:	*Type*	:
VestTyp	:	*IntTy*	:	*% Imprv*	:
Lender	:			*% Owned*	:
LandUse	: WDAC0X Pub,City Use,Exempt			*TaxArea*	: 03131
Zoning	: R1 City R1... Single Family			00-01 *Tax*	: $1,007.56
Legal	: EAST 51.49 AC OF S 1/2 OF SW 1/4			*OwnerPh*	:
Census	: *Tract* :	*Block* :		*MapGrid*	:

Bedrms	:	*Garage Sp*	:	*Stories*	:	*Condition*	:
Bathrms	:	*Patio*	:	*Acres*	:	*Appliances*	:
Dining	:	*Pool*	:	*LotSqFt*	:	*Roof Type*	:
Family	:	*Spa/HtTub*	:	*Bldg SF*	:	*Foundation*	:
Utility	:	*Fireplace*	:	*GarSqFt*	:	*Solar Heat*	:
TotalRm	:	*CntlHt/AC*	:	*Bsmt SF*	:	*Year Built*	:
Units	:	*1stFlr SF*	:	*2ndFlrSF*	:		



CITY
AGREEMENT NO. 2001-134

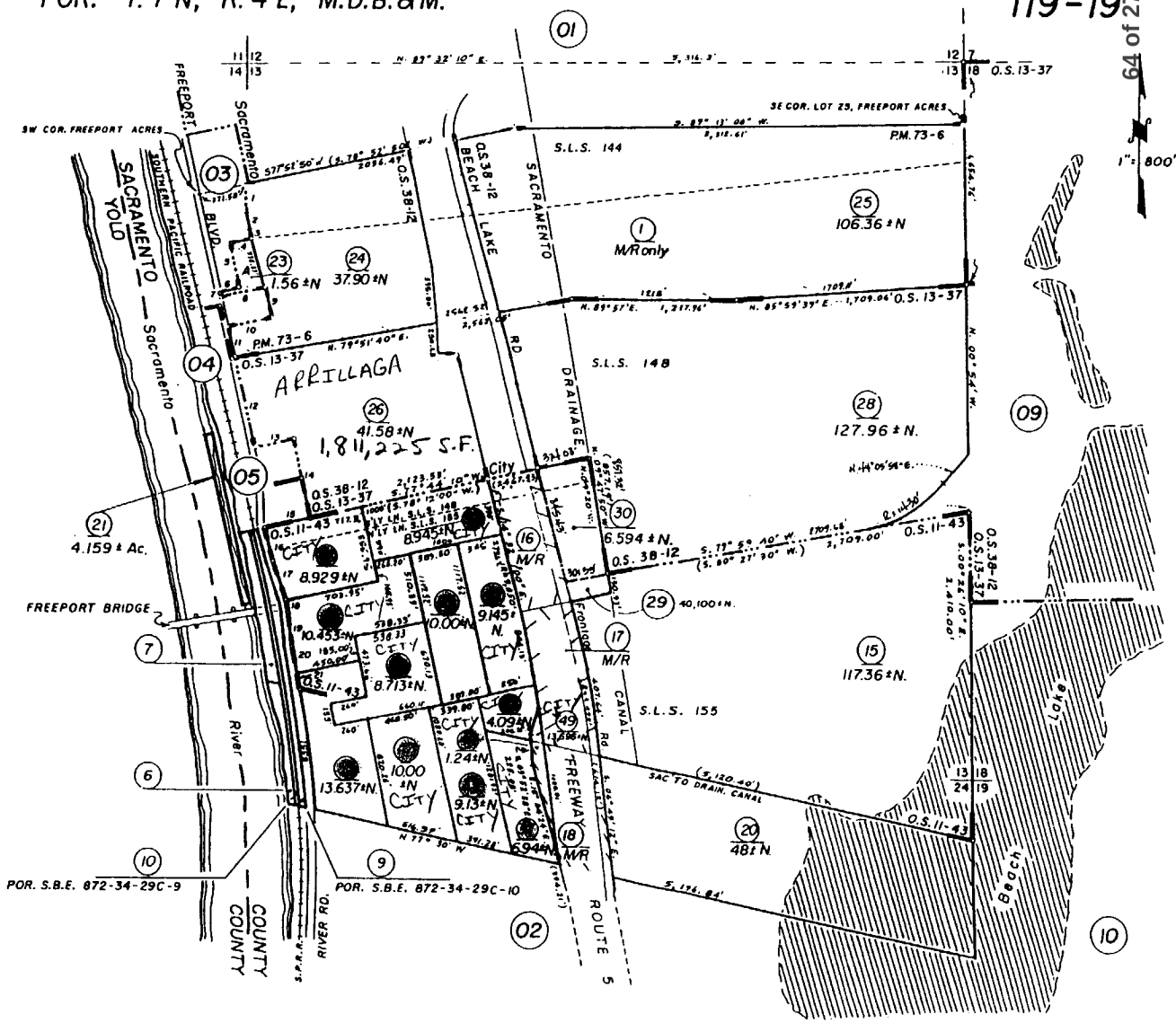
Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

EXHIBIT A-3

POR. T. 7 N, R. 4 E, M.D.B.&M.

119-19

METES AND BOUNDS DATA		
COURSE	BEARING	DISTANCE
1	S. 01° 17' 40" E.	211.16'
2	S. 12° 01' E.	130.18'
3	S. 11° 57' E.	75'
4	S. 78° 39' W.	(165) 164.98'
5	S. 11° 52' E.	(343.7) 343.84'
6	S. 78° 08' W.	165.00'
7	S. 12° 18' E.	34.53'
8	N. 78° 08' E.	330'
9	S. 12° 18' E.	825'
10	S. 78° 08' W.	330'
11	S. 12° 18' E.	214.38'
12	S. 12° 18' E.	676.22'
13	N. 77° 42' E.	320.00'
14	S. 12° 18' E.	889.40'
15	S. 78° 12' 00" W.	344'
16	S. 14° 05' 40" E.	246.61'
17	S. 17° 13' 30" E.	289.70'
18	S. 12° 04' 30" E.	80.00'
19	S. 06° 33' E.	257.32'
20	S. 10° 07' 10" E.	185.00'
21	S. 10° 07' 10" E.	143.66'



Official Survey Bk. 38, Pg. 12 (8-23-83)
Official Survey Bk. 11, Pg. 43 (10-10-55)
Por. Official Survey Bk. 13, Pg. 37 (8-7-58)

CITY & COUNTY OF SACRAMENTO
Assessor's Map Bk. 119, Pg. 19
County of Sacramento, Calif.

CITY
AGREEMENT NO. 2001-134

EXHIBIT "B"

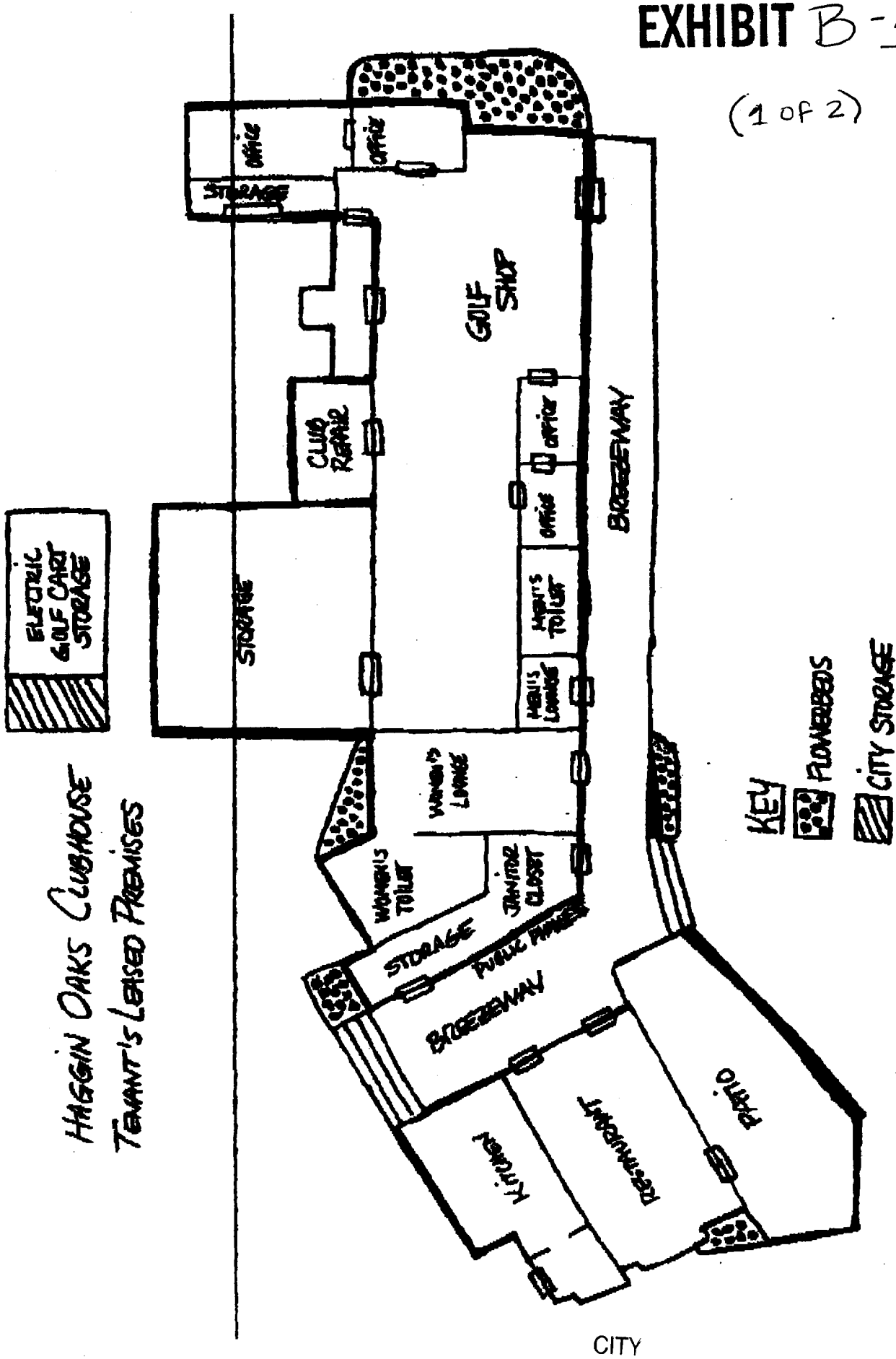
DESCRIPTION OF PREMISES

The Premises shall include the facilities outlined in this Exhibit B and B-1, B-2 and B-3, along with all improvements, fixtures and equipment located on or in the facilities, and the land underlying such facilities. The Premises shall specifically exclude all minerals and mineral rights of every kind or nature lying below the surface of the Premises. This Lease shall confer no rights to Tenant or its successors in interest to the subsurfaces of the Premises.

Landlord acknowledges that the mobile trailers and attached flower beds that comprise the Super Shop at the Haggin Oaks, along with the food and beverage trailer at the Haggin Oaks driving range and the trailer adjacent to the scoreboard at Haggin Oaks are and shall remain the exclusive property of the Tenant and are not considered part of the Premises or the Property.

EXHIBIT B-1

(1 of 2)

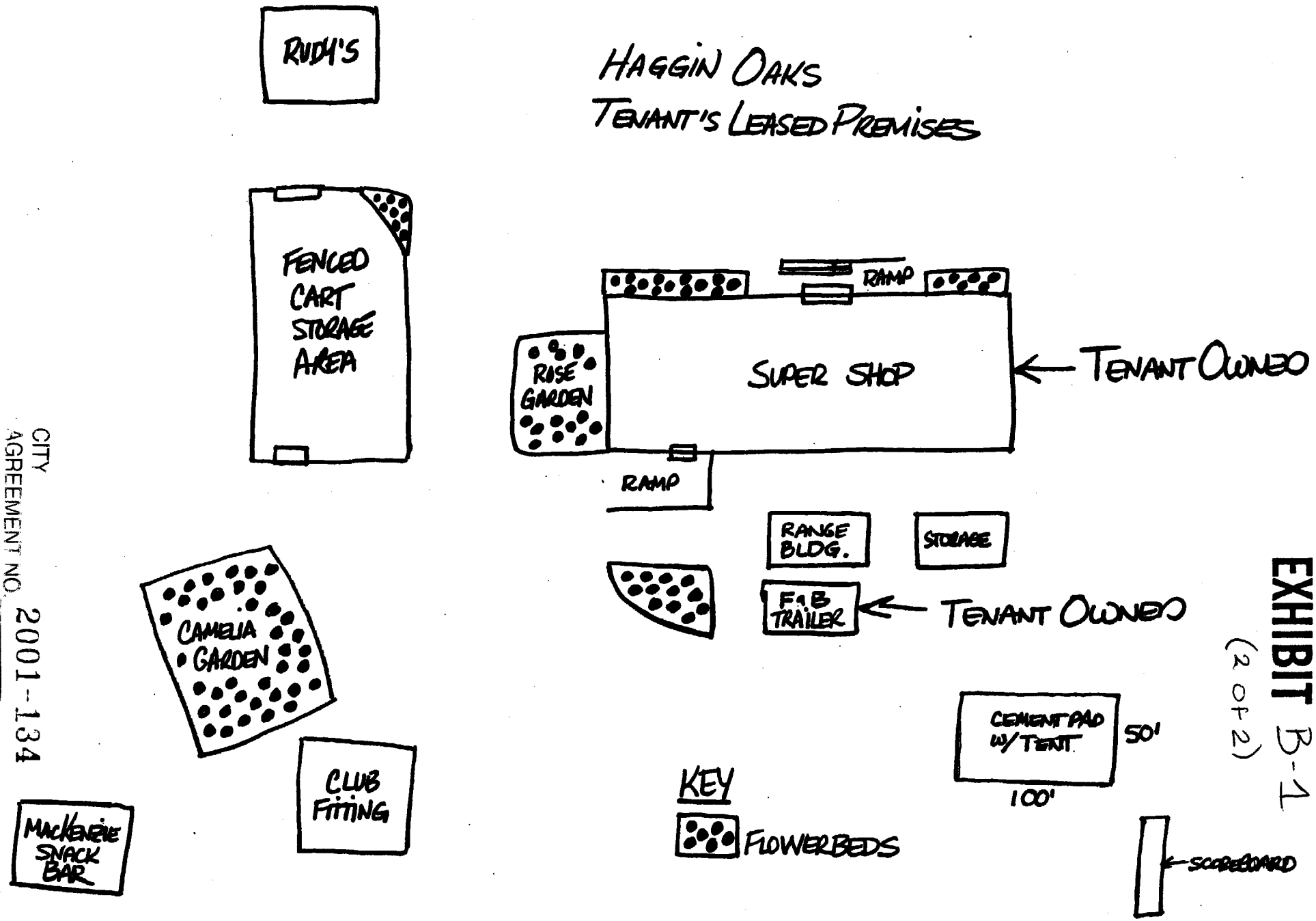


HAGGIN OAKS CLUBHOUSE
TENANT'S LEASED PREMISES

CITY
AGREEMENT NO. 2001-134

EXHIBIT B-1 (2 of 2)

HAGGIN OAKS
TENANT'S LEASED PREMISES



CITY
AGREEMENT NO. 2001-134

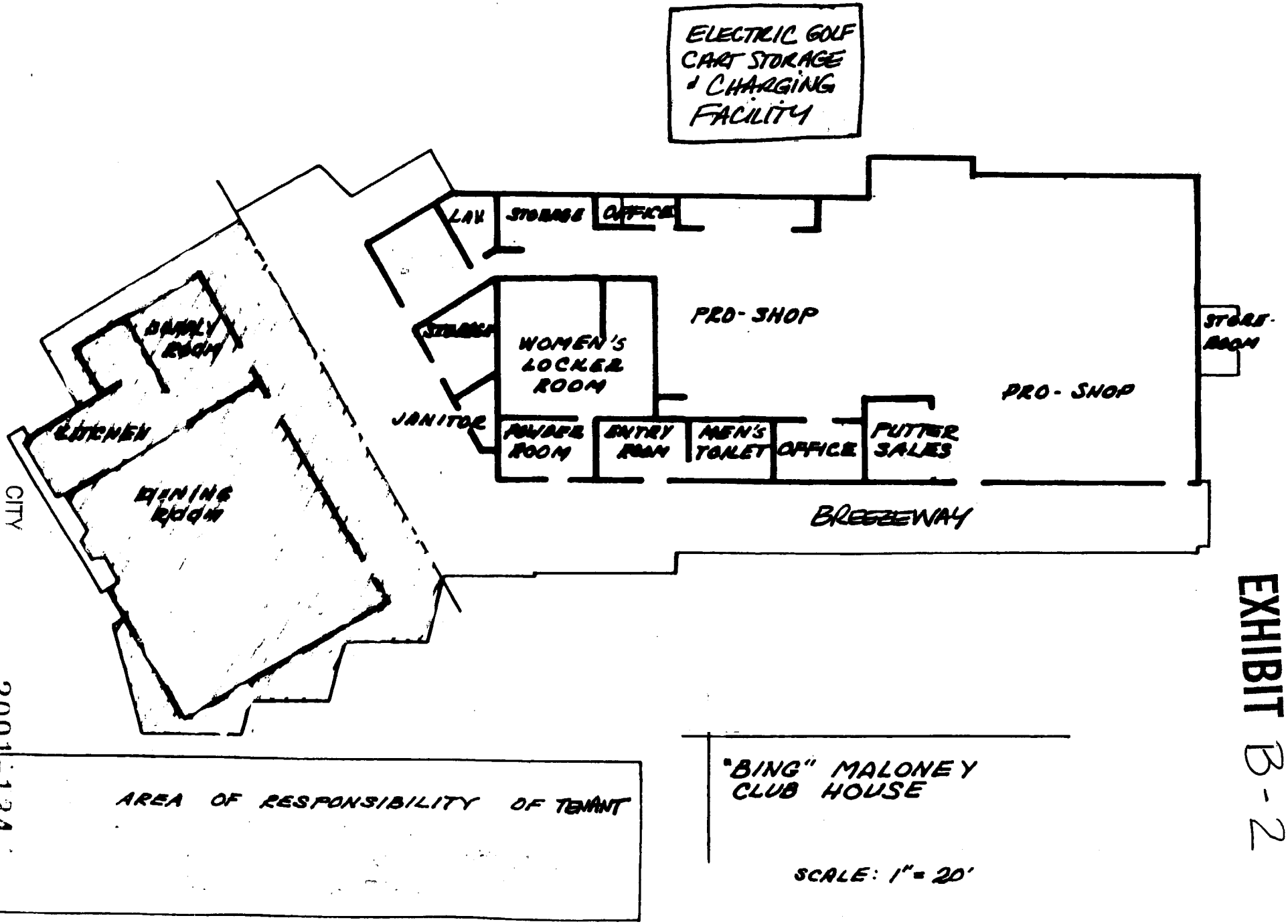
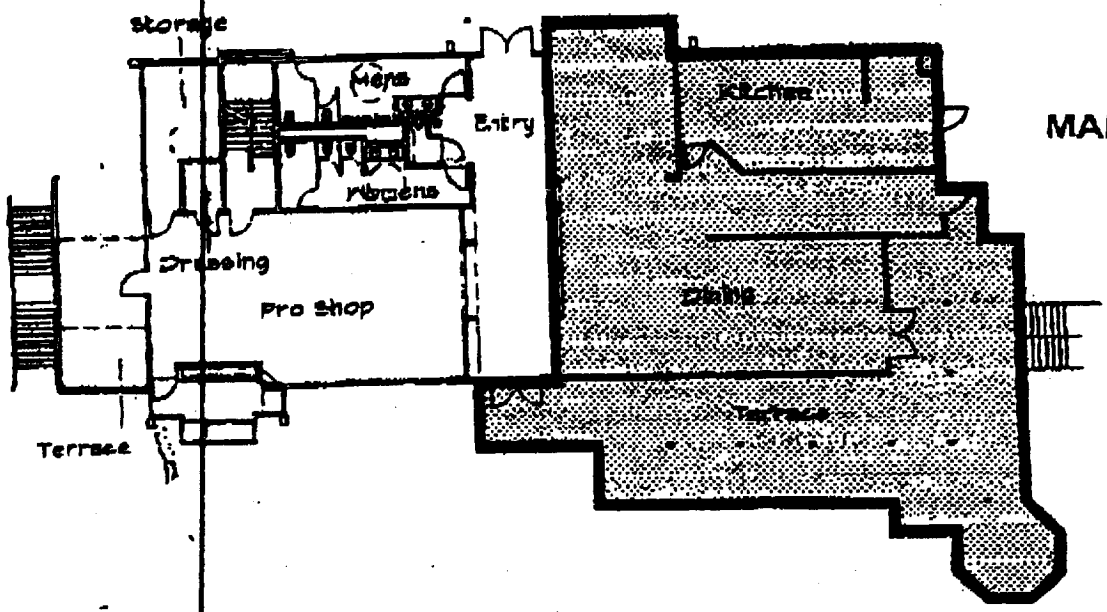


EXHIBIT B-2

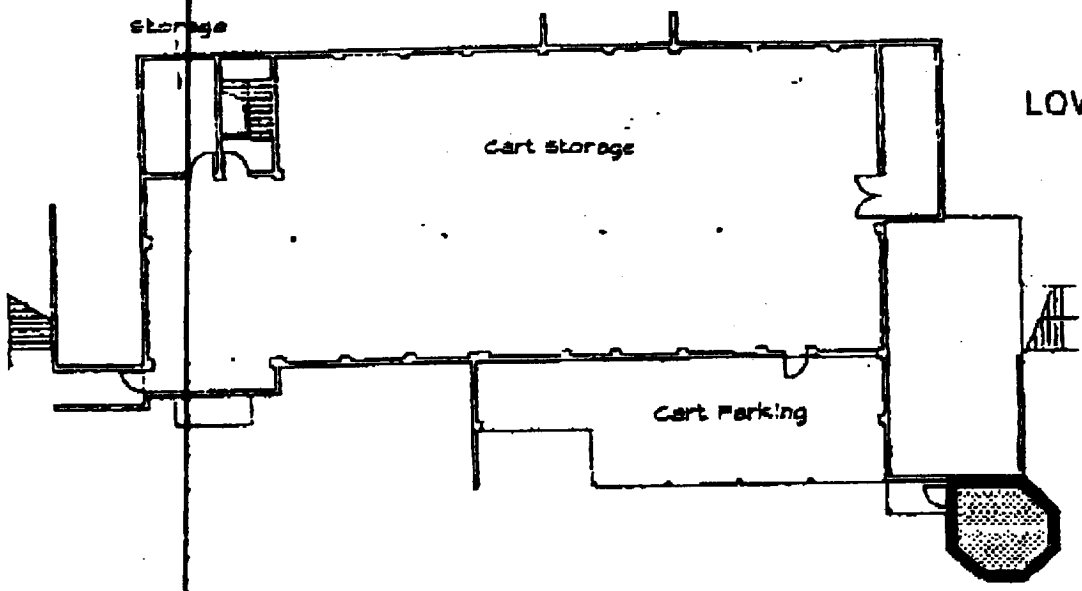
CITY AGREEMENT NO. 2001-134

EXHIBIT B-3

(1 of 3)



MAIN LEVEL



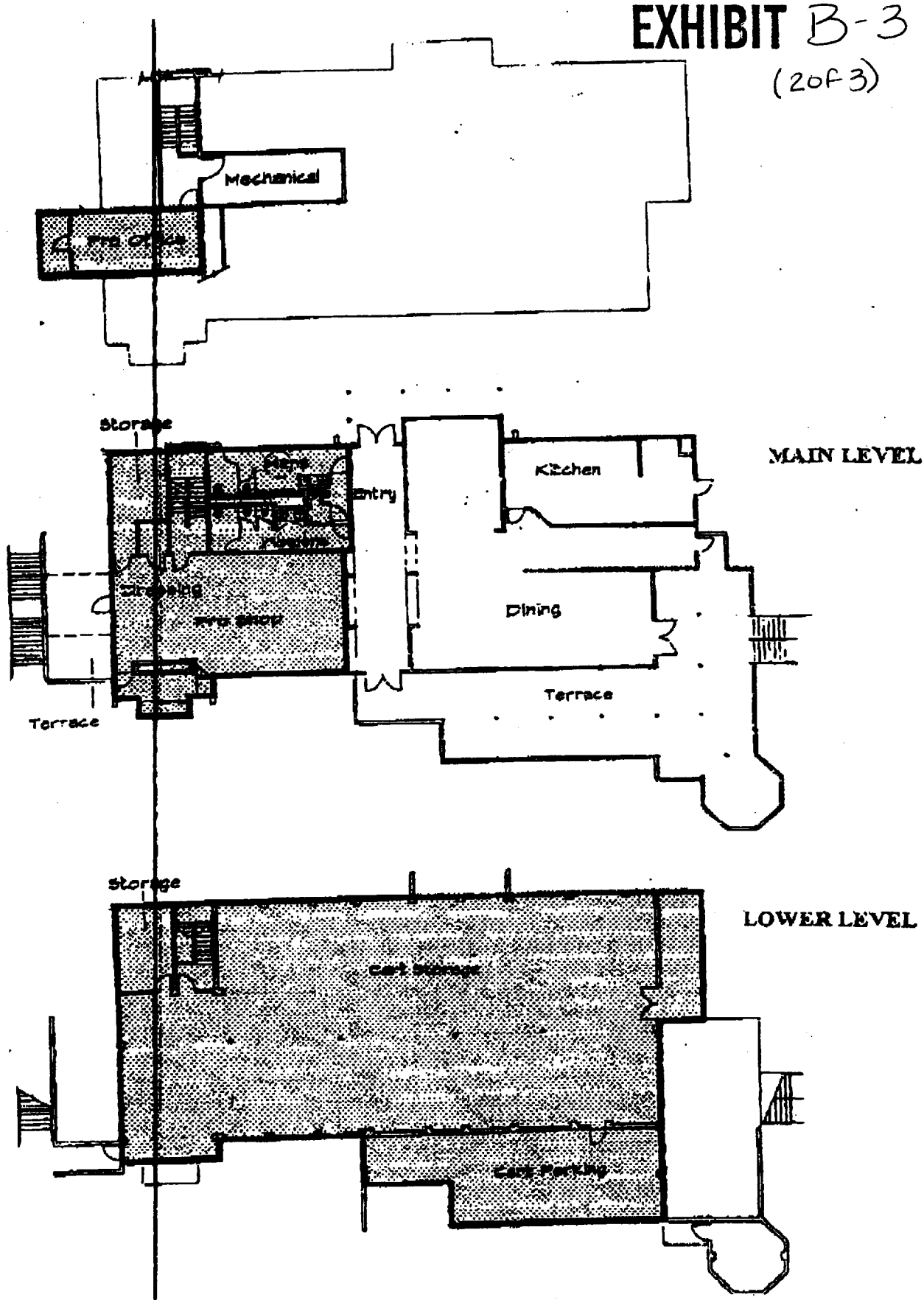
LOWER LEVEL

BARTLEY CAVANAUGH CLUBHOUSE

CITY
AGREEMENT NO. 2001-134

EXHIBIT B-3

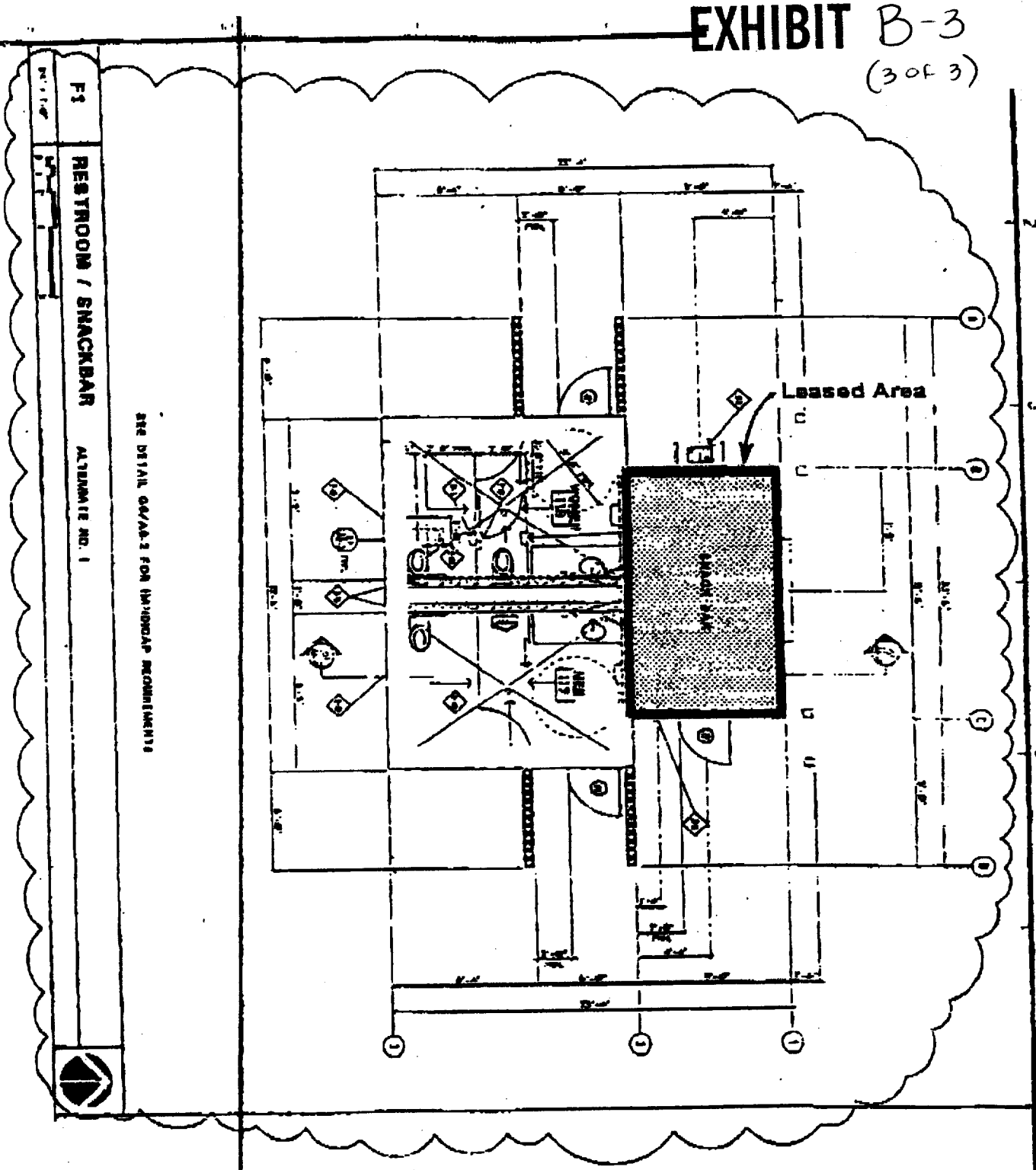
(2 of 3)



BARTLEY CAVANAUGH CLUBHOUSE

CITY
AGREEMENT NO. 2001-134

EXHIBIT B-3
(3 of 3)



SNACK BAR

CITY
AGREEMENT NO. 2001-134

EXHIBIT "C"

EQUIPMENT

CITY
AGREEMENT NO. 2001-134

EXHIBIT C
(1 OF 2)

LIST OF CITY-OWNED EQUIPMENT

Qty	Description	Asset Tag #
140	Folding Chairs	
8	Folding Tables (8')	
14	Folding Tables (6')	
2	Television (Bar at Bartley Cavanaugh Golf Course)	
1	Big Screen Television (Bartley Cavanaugh Golf Course)	
1	VCR Player (Bartley Cavanaugh Golf Course)	
1	DVD Player (Bartley Cavanaugh Golf Course)	
½	Big Screen Television (Haggin Oaks Golf Course)	
25	Cement Picnic Tables (Haggin Oaks at Scoreboard)	
2	Stainless Steel Shelving (Cavanaugh)	
1	Pizza Oven (In Storage at Haggin Oaks)	
1	Refrigeration Unit (In Storage at Haggin Oaks)	
8	Computer Stations with Touch Screen Monitors	
3	Computer Stations without Touch Screen Monitors	
4	Printers	
3	Data Card Systems with card printer and camera	
1	Tent (50' x 100' with side panels at Haggin Oaks)	
31	Range Stall Dividers (Bing Maloney)	
3	Sacramento Golf Council (SGC) Acrylic Display Racks	
3	Capital City Golf Historians Photo Plaques	
3	Sacramento Golf Council (SGC) Photo Plaques	
1	30" x 60" S.S. Equipment Stand w/ Galv. Base	43234
1	36" S.S. Slant Rack	43208
1	600 LB. Ice Machine Cuber w/ 660 LB. Bin/Filter/Top Kit	43211
1	Display Warmer (No Pan) 120V, 4.2 AMPS	43236
1	Floor Model Gas Fryer – 120,000 BTU	43213
16	Mahogany Barstools	
3	Portable Planter Dividers	
1	S.S. 72" Pot Rack	43214
1	Single Glass Door Refer w/ Black Finish	43236
1	TV Stand w/ Doors & Shelf (Under Big Screen TV)	43216

CITY
AGREEMENT NO. 2001-134

EXHIBIT C
(2 OF 2)

LIST OF CITY-OWNED EQUIPMENT

Qty	Description	Asset Tag #
1	36" Countertop Gas Griddle 90,000 BTU	43223
8	36" Round Tables w/ Base – White Plastic	
1	48" Round Table w/ Base – White Plastic	
1	4 Burner Countertop Range – 80,000 BTU	43226
1	60" Sandwich Unit – 8 Pans/12" Cutting Board	43227
1	Low-Temp Dishwasher – 115V w/ Waste Accumulator	43229
60	Mahogany Chair w/ Maroon Vinyl Seats	
35	Plastic Outdoor Low Back Armchair - White	
1	S.S. Clean Dish Table w/ Undershelf	43230
1	Single Convection Oven w/ Stand – Gas 115 BTU	43232
7	Storage Shelving w/ Zinc Finish	43201-43207
2	30" x 30" Tables	
6	36" x 36" Tables	
8	24" x 36" Tables	
4	30" x 48" Tables	
2	42" Round Tables	
1	400 LB Ice Machine w/ 260 LB Bin/Filter	43237

CITY
AGREEMENT NO. 2001-134

EXHIBIT "D"

HOURS OF OPERATION

CITY
AGREEMENT NO. 2001-134

EXHIBIT D (1 of 3)

HAGGIN OAKS HOURS OF OPERATION

Month	Alister MacKenzie	Arcade Creek	Super Shop**	Range	Café	Mackenzie Snack Bar	Arcade Snack Bar
January	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	8:00 A.M.-6:00 P.M.	7:00 A.M.-7:00 P.M.	6:30 A.M.-6:00 P.M.	9:30 A.M.-3:30P.M.	8:00 A.M.-4:00P.M.
February	6:00 A.M.-6:30 P.M.	6:00 A.M.-6:30 P.M.	8:00 A.M.-6:00 P.M.	7:00 A.M.-8:00 P.M.	6:00 A.M.-6:30 P.M.	9:00 A.M.-4:00 P.M.	7:30 A.M.-4:30 P.M.
March	5:30 A.M.-7:00 P.M.	5:30 A.M.-7:00 P.M.	8:00 A.M.-8:00 P.M.	6:30 A.M.-10:00 P.M.	5:30 A.M.-7:00 P.M.	8:30 A.M.-4:30 P.M.	7:30 A.M.-6:00 P.M.
April*	5:30 A.M.-7:30 P.M.*	5:30 A.M.-7:30 P.M.*	8:00 A.M.-8:00 P.M.	6:00 A.M.-Midnight.	5:30 A.M.-7:30 P.M.*	8:30 A.M.-6:00 P.M.*	7:30 A.M.-6:30 P.M.*
May	5:15 A.M.-8:00 P.M.	5:15 A.M.-8:00 P.M.	8:00 A.M.-8:00 P.M.	Open 24 Hours	5:15 A.M.-8:00 P.M.	8:15 A.M.-7:00 P.M.	7:30 A.M.-7:00 P.M.
June	5:15 A.M.-8:30 P.M.	5:15 A.M.-8:30 P.M.	8:00 A.M.-8:00 P.M.	Oper 24 Hours	5:15 A.M.-8:30 P.M.	8:15 A.M.7:00 P.M.	7:30 A.M.-7:00 P.M.
July	5:30 A.M.-8:30 P.M.	5:30 A.M.-8:30 P.M.	8:00 A.M.-8:00 P.M.	Open 24 Hours	5:30 A.M.-8:30 P.M.	8:30 A.M.-7:00 P.M.	7:30 A.M.-7:30 P.M.
August	5:45 A.M.-8:30 P.M.	5:45 A.M.-8:30 P.M.	8:00 A.M.-8:00 P.M.	Open 24 Hours	5:45 A.M.-8:30 P.M.	8:45 A.M.-7:00 P.M.	7:30 A.M.-7:00 P.M.
September	6:15 A.M.-8:00 P.M.	6:15 A.M.-8:00 P.M.	8:00 A.M.-8:00 P.M.	Open 24 Hours	6:15 A.M.-8:00 P.M.	9:15 A.M.-6:30 P.M.	7:30 A.M.-7:00 P.M.
October*	6:30 A.M.-7:30 P.M.*	6:30 A.M.-7:30 P.M.*	8:00 A.M.-8:00 P.M.	6:00 A.M.-Midnight.	6:30 A.M.-7:30 P.M.*	9:30 A.M.-6:00 P.M.*	8:00 A.M.-6:30 P.M.*
November	6:00 A.M.-6:00 P.M.	6:00 A.M.-6:00 P.M.	8:00 A.M.-6:00 P.M.	6:00 A.M.-10:00 P.M.	6:00 A.M.-6:00 P.M.	8:00 A.M.-4:00 P.M.	8:00 A.M.-4:00 P.M.
December	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	8:00 A.M.-8:00 P.M.	6:30 A.M.-8:00 P.M.	6:30 A.M.-6:00 P.M.	8:30 A.M.-3:30 P.M.	8:00 A.M.-400 P.M.

** Sundays 8:00am-7:00 pm

* Adjust For Daylight Savings

EXHIBIT D (1 of 3)

CITY AGREEMENT NO. 2001-134

EXHIBIT D (2 of 3)

BING MALONEY HOURS OF OPERATION

Month	Bing Maloney 18 Hole	Bing Maloney Executive 9	Range	Café
January	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	7:00 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.
February	6:00 A.M.-6:30 P.M.	6:00 A.M.-6:30 P.M.	7:00 A.M.-6:00 P.M.	6:00 A.M.-6:30 P.M.
March	5:30 A.M.-7:00 P.M.	5:30 A.M.-7:00 P.M.	6:30 A.M.-7:00 P.M.	5:30 A.M.-7:00 P.M.
April*	5:30 A.M.-7:30 P.M.*	5:30 A.M.-7:30 P.M.*	6:00 A.M.-10:00 P.M.*	5:30 A.M.-7:30 P.M.*
May	5:15 A.M.-8:00 P.M.	5:15 A.M.-8:00 P.M.	6:00 A.M.-10:00 P.M.	5:15 A.M.-8:00 P.M.
June	5:15 A.M.-8:30 P.M.	5:15 A.M.-8:30 P.M.	6:00 A.M.-10:00 P.M.	5:15 A.M.-8:30 P.M.
July	5:30 A.M.-8:30 P.M.	5:30 A.M.-8:30 P.M.	6:00 A.M.-10:00 P.M.	5:30 A.M.-8:30 P.M.
August	5:45 A.M.-8:30 P.M.	5:45 A.M.-8:30 P.M.	6:00 A.M.-10:00 P.M.	5:45 A.M.-8:30 P.M.
September	6:15 A.M.-8:00 P.M.	6:15 A.M.-8:00 P.M.	6:00 A.M.-9:00 P.M.	6:15 A.M.-8:00 P.M.
October*	6:30 A.M.-7:30 P.M.*	6:30 A.M.-7:30 P.M.*	6:30 A.M.-8:00 P.M.*	6:30 A.M.-7:30 P.M.*
November	6:00 A.M.-6:00 P.M.	6:00 A.M.-6:00 P.M.	6:00 A.M.-7:00 P.M.	6:00 A.M.-6:00 P.M.
December	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.

* Adjust For Daylight Savings

EXHIBIT D (2 of 3)

CITY AGREEMENT NO. 2001-1374 of 276

EXHIBIT D (3 of 3)

BARTLEY CAVANAUGH HOURS OF OPERATI				
	Bartley			
Month	Cavanaugh	Restrauant	Snack Bar	
January	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	9:00A.M.-4:00P.M.	
February	6:00 A.M.-6:30 P.M.	6:00 A.M.-6:30 P.M.	9:00A.M.-4:00P.M.	
March	5:30 A.M.-7:00 P.M.	5:30 A.M.-7:00 P.M.	9:00A.M.-5:00P.M.	
April*	5:30 A.M.-7:30 P.M.*	5:30 A.M.-7:30 P.M.*	9:00A.M.-6:00P.M.*	
May	5:15 A.M.-8:00 P.M.	5:15 A.M.-8:00 P.M.	9:00A.M.-6:00P.M.	
June	5:15 A.M.-8:30 P.M.	5:15 A.M.-8:30 P.M.	9:00A.M.-6:00P.M.	
July	5:30 A.M.-8:30 P.M.	5:30 A.M.-8:30 P.M.	9:00A.M.-6:00P.M.	
August	5:45 A.M.-8:30 P.M.	5:45 A.M.-8:30 P.M.	9:00A.M.-6:00P.M.	
September	6:15 A.M.-8:00 P.M.	6:15 A.M.-8:00 P.M.	9:00A.M.-5:00P.M.	
October*	6:30 A.M.-7:30 P.M.*	6:30 A.M.-7:30 P.M.*	9:00A.M.-5:00P.M.*	
November	6:00 A.M.-6:00 P.M.	6:00 A.M.-6:00 P.M.	9:00A.M.-5:00P.M.	
December	6:30 A.M.-6:00 P.M.	6:30 A.M.-6:00 P.M.	9:00A.M.-4:00P.M.	

* Adjust For Daylight Savings

EXHIBIT D (3 of 3)

CITY AGREEMENT NO. 2001-134

EXHIBIT "E"

CAPITAL IMPROVEMENTS

1. Renovation of Haggin Oaks Café.

2. Renovation of Bing Maloney Golf Shop.

3. Expansion of barbeque area at Bing Maloney.

4. Installation of 50' x 100' concrete tent pad at Haggin Oaks.

EXHIBIT "F"

CAPITAL IMPROVEMENT PROJECT PROPOSAL FORM

EXHIBIT F

Project Proposal

Project Title: _____
Project Location: _____
Project Originator/Owner: _____
Telephone Number: _____
Desired Completion Dates: _____
Project Budget Amount: _____

Project Description [attach sketch (es) and more description as appropriate]

Project Assistance [Describe any administrative, planning, design, construction, or maintenance assistance you believe you will need from the City] _____

Work Categories

Sitework	**Yes**	**No**
Grounds	____	____
Paving	____	____
Lawn Sprinklers	____	____
Outside Lights	____	____
Planters or Plants	____	____

Building - Structure	Yes	No
Roofs	____	____
Painting	____	____
Floors	____	____
Walls	____	____
Windows/Blinds	____	____
Doors	____	____
Ceilings	____	____

Furnishings	Yes	No
Carpet	____	____
Furniture	____	____
Other	____	____

Building - Mechanical	**Yes**	**No**
Refrigeration System	____	____
Heating System	____	____
Air-Handling System	____	____
Water Distribution	____	____
Sewage System	____	____
Fuel Storage/Distribution	____	____
Sheet Metal Work	____	____

Building - Electrical	Yes	No
Lighting	____	____
Power System	____	____
Telephone/Communications	____	____
Cabling/Ducting	____	____
Security System	____	____
Alarm System	____	____

Other (List)

_____
_____
_____

_____ Requester _____ Date

_____ Reviewed/Approved _____ Date

CITY AGREEMENT NO. 2001-134

EXHIBIT "G"

BASIC STAFFING LEVELS

CITY
AGREEMENT NO. 2001-134

EXHIBIT G

BASIC FULL TIME STAFFING LEVELS

CITY GOLF COURSE OPERATIONS

REPRESENTING ALL THREE GOLF COURSES

- President/General Manager (1)
- Director of Special Events (1)
- Controller/Accountant (1)
- Director of Retail and Marketing (1)
- Inventory Manager (1)
- Retail Buyers (2)
- Human Resources/Payroll (1)
- Accounting/Data Entry Assistants (2)
- Starter/Cashier Trainer/Manager (1)

TOTAL (11)

Full Time Positions (Basic Services)	Haggin	Bing	Bartley	Total
Head Golf Professional/Dir. of Golf	(1)	(1)	(1)	(3)
Food & Beverage Manager	(1)	(1)		(2)
Assistant Food & Beverage Manager	(1)	(1)	(1)	(3)
Cash Auditors	(2)	(½)	(½)	(3)
Admin. Assistants/Tourn. Coordinators	(1)	(1)	(1)	(3)
Driving Range Supervisor	(1)	(1)		(2)
Power Cart Supervisor	(1)	(1)	(1)	(3)
Desk-Top Publishing Admin. Assistant	(1)			(1)
Teaching Professionals	(8)	(2)		(10)
Retail Sales Staff	(8)	(2)		(10)
Gardner/Janitorial	(1)	(1)	(1)	(3)
Shipping & Receiving	(2)			(2)
SUB-TOTAL	(28)	(11 ½)	(5 ½)	(45)
ADD ALL THREE GOLF COURSE POSITIONS				(11)
TOTAL BASIC SERVICE FULL TIME POSITIONS				(56)

#397696.1

CITY AGREEMENT NO. 2001-134

CERTIFIED AS TRUE COPY
OF Resolution 2001-537
DATE CERTIFIED August 10, 2001
Valerie O. Burrowes
CITY CLERK, CITY OF SACRAMENTO

RESOLUTION NO. 2001-537

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF JUL 31

GOLF SERVICES AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND KATHKEN CORPORATION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. City Manager is authorized to enter into an agreement with Kathken Corporation for golf shop and food and beverage services at the Haggin Oaks, Bing Maloney and Bartley Cavanaugh golf facilities – a copy of the agreement is on file with the City Clerks Office.

2. City Manager is authorized to amend the FY 2001/02 Golf Operating Budget as shown in Exhibit A, including elimination of a vacant Accounting Technician position (1.00 FTE) in Org. 4281.

HEATHER FARGO
MAYOR

ATTEST:

VALERIE BURROWES
CITY CLERK

FOR CITY CLERK USE ONLY

CITY AGREEMENT NO. 2001-134 **RESOLUTION NO.:** 2001-537

DATE ADOPTED: JUL 31

CITY CLERK'S COPY

MORTON GOLF

AMENDMENT #1 TO AGREEMENT # 2001-134

HAGGIN OAKS 1932
GOLF COMPLEX
3645 Fulton Ave.
Sacramento, CA 95821
PH: (916) 481-GOLF
FX: (916) 575-2523

Bartley Cavanaugh GOLF COURSE
8301 Freeport Blvd.
Sacramento, CA 95832
PH: (916) 665-9168
FX: (916) 665-9173

Bing Maloney GOLF COURSE
6801 Freeport Blvd.
Sacramento, CA 95832
PH: (916) 433-6616
FX: (916) 433-6389

December 30, 2001

Capitol City Golf
Attention: Ann Weaver, Golf Manager
8325 River Road
Sacramento, California 95832

Dear Ms. Weaver:

This letter serves as notice that Kathken Corporation has assigned to Morton Golf, LLC, and that Morton Golf, LLC has assumed that certain Lease and Operating Agreement by and between the City of Sacramento and Kathken Corporation for the golf operation leases for Haggin Oaks Golf Complex, Bing Maloney Golf Course and Bartley Cavanaugh Golf Course dated July 31, 2002 ("the lease"). A copy of the Assignment of Lease is attached to this letter. Morton Golf, LLC, is owned by Kathken Corporation, as well as Terry Daubert, Kathy Morton, Ken Morton Sr., Ken Morton Jr., Tom Morton and Mike Woods. The assignment is permitted by Section 23(b) of the Lease which provides that Kathken Corporation may assign the Lease without the City of Sacramento's consent upon sixty (60) days written notice to the City of Sacramento if the assignment is made to an entity in which Ken Morton, Sr., Kathken Corporation, Kathy Morton, Terry Daubert, Ken Morton, Jr., Tom Morton and Mike Woods, or any or all of them, either collectively or individually, hold a majority interest.

For purposes of notice under the Lease, the address shall remain the same. Specifically, notice may be delivered to Morton Golf, LLC as follows:

Morton Golf, LLC
Attention: Ken Morton Sr., Chief Executive Officer
3645 Fulton Avenue
Sacramento, California 95821

CITY AGREEMENT NO. 2001-134-1

CITY AGREEMENT NO. 2001-134-1

CITY CLERK'S COPY

AMENDMENT #1 TO AGREEMENT # 2001-134

Per the terms of the Lease, Kathken Corporation is required to provide the City of Sacramento with (60) days prior written notice in order to effectuate the assignment. However, insofar as Kathken Corporation is contributing all of its assets to Morton Golf, LLC effective January 1, 2002, and Morton Golf, LLC is assuming all of Kathken Corporation's liabilities on the same date, we ask that the City of Sacramento waive the sixty (60) day notice period under these circumstances. If the City of Sacramento concurs, please execute the following acknowledgment waiving the sixty (60) day notice period and return it to us.

Thank you for your cooperation. Please call me if you have any questions.

Very truly yours,

Ken Morton Sr.

Ken Morton, Sr.,

cc: Julia L. Jenness
Downey, Brand, Seymour & Rohwer

CITY AGREEMENT NO. 2001-134-1

ACKNOWLEDGEMENT

The undersigned has reviewed this notice, hereby waives the sixty (60) day notice period provided for in the Lease, and consents to the Assignment of the Lease to Morton Golf LLC.

CITY OF SACRAMENTO

By: Barbara E Bonebrake

Name: BARBARA E. Bonebrake

Title: Director of Convention, Culture + Leisure Dept

ATTEST:

CITY CLERK

CITY AGREEMENT NO. 2001-134-1

AMENDMENT #1 TO AGREEMENT # 2001-134

ASSIGNMENT OF LEASE

This Assignment of Lease ("**Assignment**") is entered into to be effective as of January 1, 2002 ("**Effective Date**") by and among Kathken Corporation, a California corporation, ("**Assignor**") and Morton Golf, LLC, a California limited liability company ("**Assignee**") (collectively referred to as the "**Parties**" and individually as a "**Party**").

WHEREAS in connection with the execution of that certain Operating Agreement by and among Assignor and members of Assignee dated effective January 1, 2002 (the "**Operating Agreement**"), and that certain Contribution Agreement by and among the Parties and members of Assignee dated effective January 1, 2002 (the "**Contribution Agreement**"), Assignor desires to assign, an Assignee desires to assume, that certain Lease and Operating Agreement by and among the City of Sacramento and Assignor, dated July 31, 2001 ("the **Lease**"), a copy of which is attached as Exhibit "A" and incorporated by this reference.

NOW THEREFORE, Assignor and Assignee agree as follows:

As partial consideration for its membership interest in Assignee, Assignor assigns and transfers to Assignee all of the Assignor's right, title and interest in and to the Lease, and Assignee agrees to and does accept the Assignment. Assignee expressly assumes and agrees to keep, perform and fulfill all the terms, covenants, conditions, and obligations, required to be kept, performed, and fulfilled by Assignor as tenant under the Lease, including the making of all payments due or payable under the Lease when due and payable.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

Assignor:

KATHKEN CORPORATION

By: Ken Morton
Name: Ken Morton
Title: President

Assignee:

MORTON GOLF, LLC

By: Terry Daubert
Name: TERRY DAUBERT
Title: PRESIDENT

CITY
AGREEMENT NO. 2001-134-1

Exhibit "A"

"Lease"

CITY
AGREEMENT NO. 2001-134-1

CITY CLERK'S COPY

ADDENDUM NUMBER TWO
LEASE AND OPERATING AGREEMENT
CITY OF SACRAMENTO AND
MORTON GOLF, LLC
[City Agreement Number 2001-134]

This Addendum Number Two ("Addendum") to the Lease and Operating Agreement, City Agreement Number 2001-134 as amended ("Lease"), is entered into as of September 3rd, 2002, by and between the **CITY OF SACRAMENTO**, a charter municipal corporation (hereafter "Landlord"), and **MORTON GOLF, LLC**, a California limited liability company (hereafter "Tenant"), with respect to the following facts:

RECITALS

1. When the parties hereto negotiated and entered into the Lease there were certain capital improvement projects being planned and/or constructed by Landlord. These projects are identified generally for purposes of this Addendum as the Bing Maloney, Bartley Cavanaugh and Haggin Oaks electric golf cart facilities ("Projects").

2. At the time the parties executed the Lease it was assumed by both parties that the Projects would be completed within a reasonable period of time after the effective date of the Lease, circumstances permitting. Based upon this mutual assumption, the parties made certain financial commitments reflected in the Lease.

3. As of the date of this Addendum, the Projects remain uncompleted and this circumstance has resulted in Tenant incurring at present, and likely in the near future, certain unanticipated expenses that alter Tenant's financial position in a way not contemplated in the Lease. As of the date of this Addendum, Tenant either has incurred, or will likely incur in the future, the following expenses ("Expenses"): Lease expenditures for electric golf carts for the Haggin Oaks golf course, lease expenditures for electric and gasoline golf carts at Bartley Cavanaugh golf course, repair costs for the gasoline golf carts at Haggin Oaks golf course and security-related expenses at Haggin Oaks and Bartley Cavanaugh golf courses.

4. The Lease does not contain a procedural mechanism for the parties to rectify the above-described circumstance, so the parties have decided to enter into this Addendum. It is the desire of Landlord to make Tenant whole for the Expenses and by so doing ensure Tenant's continued financial vitality and commitment to carrying out the terms of the Lease.

5. The Lease remains in full force and effect, neither party is in default and in all respects each party's obligations under the Lease, to the extent they have ripened, are current and have been satisfied.

CITY AGREEMENT NO. 2001-134-2

CITY AGREEMENT NO. 2001-134-2

CITY CLERK'S COPY

AGREEMENT

Now, therefore, in consideration of the foregoing and the mutual promises contained herein, Landlord and Tenant agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Landlord shall reimburse Tenant for the Expenses, within sixty (60) days of Tenant's presenting Landlord with adequate evidence thereof in the form of receipts, cancelled checks or other similar written documentation, but in no event shall Landlord's total reimbursement obligation exceed $150,000.00.

3. In the alternative to the reimbursement method provided in paragraph 2 (and subject to the total reimbursement obligation stated therein), Tenant may obtain reimbursement by deducting from rent owed under the Lease, Expenses Tenant incurs attributable solely to delays in Landlord's construction of the Haggin Oaks and Bartley Cavanaugh electric golf cart facilities. Tenant shall provide adequate evidence in the form of receipts, cancelled checks or other similar written documentation supporting each and every deduction taken pursuant to this paragraph. Landlord may refuse to allow any improper or undocumented deduction taken hereunder, at Landlord's sole discretion.

4. Landlord remains committed to the Projects and shall endeavor to complete them in as expeditious a manner as the circumstances allow. However, it is understood by the parties that the electric golf cart facility planned for Bing Maloney golf course is not currently scheduled or funded. The parties agree to meet and negotiate regarding the funding and construction of an electric golf cart facility for Bing Maloney within the twelve months following execution of this Addendum.

5. Tenant agrees to provide at all times an adequate number of golf carts at Bing Maloney, Bartley Cavanaugh and Haggin Oaks golf courses. What constitutes an "adequate number" of golf carts shall be determined by Tenant, but shall at minimum constitute a number of golf carts reasonably necessary to meet the needs of the users of each golf course. The gasoline powered golf carts currently in use may continue to be used by Tenant even though the age of those carts may be in excess of five years.

6. In consideration of the parties executing this Addendum, each party hereby agrees to pursue no other remedy or file any claim or action against the other with respect to any of the facts underlying, related to or arising out of this Addendum. It is understood and agreed between the parties that this is a full and final general release applying to all unknown and unanticipated claims of the parties, and including all claims arising out of or in any way related to or connected with the matters referenced in the above recitals, and as a further consideration and inducement for this Addendum, the parties hereby expressly waive all rights they may now have or in the future may have under the provisions of Section 1542 of the California Civil Code, which Section provides as follows:

CITY
AGREEMENT NO. 2001-134-2

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor."

7. This document contains the entire agreement between the parties relative to the matters discussed herein, and supersedes whatever oral or written understanding they may have had prior to the execution of this Addendum.

8. Except as altered by this Addendum, the Lease remains in full force and effect.

This Addendum is made and entered into as of the date first set forth above and was executed in Sacramento, California.

LANDLORD: CITY OF SACRAMENTO,
a charter municipal corporation

By: _____
Richard J. Ramirez, Deputy City Manager
For: Robert P. Thomas, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT: MORTON GOLF, LLC
a California limited liability company

By: _____
Ken Morton, Sr.
~~President~~
CEO/CHAIRMAN

By: _____

_____
~~Vice~~ President

Federal Tax ID #: 800026405

City of Sacramento
Business Operations Tax # SR KH 97-986679

CITY
AGREEMENT NO. 2001-134-2

CITY
AGREEMENT NO. 2001-134-2

RESOLUTION NO. 2002-583

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF SEP 3 2002

CERTIFIED AS TRUE COPY OF Resolution 2002-583
DATE CERTIFIED September 10, 2002
CITY CLERK, CITY OF SACRAMENTO

AUTHORIZING THE CITY MANAGER TO APPROVE ADDENDUM NUMBER ONE TO LEASE AGREEMENT NUMBER 2001-134 BETWEEN THE CITY OF SACRAMENTO AND MORTON GOLF LLC

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

A. The City Council hereby authorizes the City Manager to approve and sign Addendum Number One to Lease Agreement No. 2001-134 between the City of Sacramento and Morton Golf LLC.

HEATHER FARGO

MAYOR

ATTEST:

VALERIE BURROWES
CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO: 2002-583

DATE ADOPTED: SEP 3 2002

92-01276

City of Sacramento Contract Cover and Routing Form

Requires Council Approval: ☐ No ☒ YES **Meeting:** 7/29/08

General Information

Type: Select Contract Type Lease

☒ **CHANGE:** None **CH #:** 3

Original Contract Number: 2001-134

$ Not to Exceed:
(Current Transaction)

Original Contract Amount:

Contractor: Morton Golf LLC

Project Name: Lease and Operating Agreement

Project Number:

Bid Transaction #:

E/SBE-DBE-M/WBE: None %:

Department Information

Department: Choose Department CCL

Division: Golf

Project Mgr: Doug Parker

Supervisor:

Contract Services:

Routing Date:

Division Mgr: Doug Parker

Phone Number: 808-6315

Org Number: 4281 (17001211)

Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	[signature]	7/30/08
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:		

City Attorney	Signature or Initial	Date
Org #0500 City Attorney:		

☐ **Send Interoffice Mail** ☐ **Notify for Pick Up**

Authorization	Signature or Initial	Date
Choose Director		
Department Director:		
Org #0310 City Mgr: yes ☒ No ☐		

For City Clerk Processing

Finalized:
Initial: Date:

Imaged:
Initial: Date:

Resolution No: (If Applicable)

Contract No:

August 1, 2008

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2008 JUL 31 P 8:21

City Clerk's Copy

THIRD AMENDMENT TO LEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND MORTON GOLF LLC, CITY AGREEMENT NUMBER 2001-134

This Third Amendment ("Third Amendment") to City Agreement number 2001-134 dated July 31, 2001 ("the Agreement") is made as of July 29, 2008, by and between the City of Sacramento, a municipal corporation ("City") and Morton Golf, LLC, a California limited liability company ("Tenant").

CITY AND TENANT AGREE AS FOLLOWS:

1. Section 4 of the Agreement is amended to read in its entirety as follows:

"4. Lease Rent. For the Term of this Lease, Tenant shall pay to Landlord a rent of not less than One Million Dollars ($1,000,000) per Lease Year. This rent shall be paid monthly (as described in subsection 5(a) below) and is payable in arrears on the fifteenth (15th) day of the succeeding month at the following address: Capital City Golf at 8325 River Road, Sacramento, CA 95832, or at another address that Landlord may from time to time designate by written notice to Tenant."

2. Section 5 of the Agreement is amended to read in its entirety as follows:

"5. Rent, Fee, Costs, Records and Accounting.

(a) Payment of Lease Rent. Rent payments shall be made monthly in an amount equal to the below percentages of Gross Receipts (as defined in subsection (b)) earned by Tenant from the Premises each month during the Lease Year ("Monthly Rent Payments"). If Tenant's aggregate Monthly Rent Payments for any Lease Year are less than One Million Dollars ($1,000,000), Tenant shall immediately pay the difference to Landlord. In no event shall Tenant's rent payments be less than One Million Dollars ($1,000,000) per Lease Year.

	Product or Service	Percentage of Gross Receipts
(i)	Power carts, except Alister MacKenzie Golf Course	18%
(ii)	Driving Range (Golf Ball Rentals)	25%
(iii)	Retail Merchandise Sales	4%
(iv)	Lessons	4%
(v)	Club Repair	4%

CITY AGREEMENT NO. 2001-0134-3

(vi)	Pull Carts	4%
(vii)	Single-rider carts	4%
(viii)	Food & Beverage	
	Bing Maloney Café	12%
	Bartley Cavanaugh Café	12%
	Haggin Oaks Café (up to $600,000)	25%
	Haggin Oaks Café (over $600,000)	15%
(x)	Alcohol Sales	12%
(xi)	Per Plate Catering	
	Bing Maloney	12%
	Bartley Cavanaugh	12%
	Haggin Oaks	15%
(xii)	Snack Bars/Range & Roving Cart Food & Beverage	12%

Any rent payable from revenues generated at the Driving Range or other portions of the Property from activities other than golf ball rentals shall be negotiated between the parties.

(b) Gross Receipts. The term "Gross Receipts" as used in this Lease shall mean, subject to the exceptions and authorized deductions as set forth in this Lease, all money, cash, receipts, receivables, assets, property, or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned, and all gross sums received and earned, by Tenant, whether collected or accrued, in the categories of products and services listed in Section (5)(a) above, in the Premises. There shall be deducted from said gross receipts only the following:

i) Sales and excise taxes applicable thereto required to be collected by Tenant;

ii) federal, state, municipal, or other taxes, including the irrigation and technology surcharges, required by law to be collected from the consumers, but the amount of such taxes shall be shown on the books and records required to be kept by this Lease;

iii) receipts from the sale or trade-in value of any equipment, including Replacement Equipment owned by Tenant and used on the Premises;

iv) receipts in the form of refunds from, or the value of, merchandise, supplies, or equipment returned to the shippers, suppliers, or manufacturers.

v) sums refunded or a sale previously included in Gross Receipts:

vi) wholesale sales or Capital City Golf Card sales, except that if the parties to this Lease change the current use and benefits associated with the Card, the parties will renegotiate, in good faith, the percentage of Gross Receipts from Cards sales to be paid to Landlord; and

vii) any income or receipts from the management or sponsorship of professional golf players on tour.

The parties specifically acknowledge that neither the green fees nor the irrigation surcharge nor the technology surcharge collected and retained by Tenant as provided for in subsection (5)(c) nor the revenues received by Tenant for golf cars at Alister Mackenzie Golf Course shall be included in Gross Receipts.

(c) Collection of Green Fees and Surcharges: On behalf of Landlord, Tenant shall collect the green fees from the public golf courses located on each Property, including the 18-hole and 9-hole irrigation surcharge fees. Tenant shall also collect, on behalf of Landlord, a per round of golf "technology surcharge" for the purpose of meeting the ongoing technology needs of the Landlord and Tenant as the parties shall agree with regard to the Premises and operation of the golf courses on the Property, as set forth in Section 6(g)(iv) below. As consideration for Tenant's management of the Premises, Tenant shall retain ten percent (10%) of the green fees generated on the Property, after deduction for the irrigation and technology surcharges, and shall remit to the Landlord the remaining ninety percent (90%) of green fees, along with one hundred percent (100%) of the irrigation and technology surcharge fees. On behalf of Landlord Tenant shall deposit one hundred percent (100%) of the technology surcharge fees in a separate account for use by Landlord and Tenant as set forth in this Section and Section 6(g)(iv). Tenant shall also retain Five Dollars ($5.00) for every round of golf played at the Alister Mackenzie Golf Course at Haggin Oaks, with the exception of junior rounds of golf, for golf carts. After deduction of the Five Dollars ($5.00) and the irrigation and technology surcharges, Tenant shall retain ten percent (10%) of the green fees at Alister MacKenzie Golf Course at Haggin Oaks. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the green fees or the surcharges, except the ten percent (10%) retained by Tenant; therefore, the 90% of the green fees shall be deemed a "pass through" to Landlord. On behalf

of landlord, Tenant shall collect the Capital Club Membership fees. As consideration for Tenant's services in this regard, Tenant shall retain seven percent (7%) of the Capital Club Membership fees collected by Tenant. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the Capital Club Membership fees, except for the seven percent (7%) retained by Tenant: therefore, the ninety-three percent (93%) of Capital Club Membership fees shall be deemed a "pass through" to Landlord.

(d) Cost of Collection. Tenant shall pay all costs associated with the safe collection, deposit and accounting of the green fees and irrigation and technology surcharge fees, including but not limited to credit card charges, bank fees, and armored car services. Landlord may conduct unannounced cash and starter sheet audits during Tenant's normal business hours.

(e) Payment of Rent. Monthly Rent Payments shall be paid in arrears on the fifteenth (15th) day of the month for the prior month's lease of the Premises. Tenant shall also remit to Landlord at such time Landlord's ninety percent (90%) of the green fees and one hundred percent (100%) of the irrigation surcharge for the prior month and deposit the technology surcharge monies in the separate account. Tenant shall pay the Monthly Rent Payments, green fees, and surcharge by one check, accompanied by a statement breaking down revenue categories set forth in subsection 5(a) above and the irrigation and technology surcharges.

(f) Books and Records.

(i) Tenant shall keep and maintain on the Premises full, complete, and appropriate books and records of sales from the Premises in accordance with standard accounting practice. In addition, Tenant shall separately account for its operation revenues of each golf course located on the Property. These books and records shall at all reasonable times and upon one (1) week's prior notice be open for inspection and copying by Landlord, Landlord's auditors, or any other authorized representatives of Landlord. If the books or records are kept at a location other than the Premises or Tenant's address set forth in Section 34, Tenant shall give prompt notice of that location to Landlord. If at any time during the Term of this Lease, the books and records prove inadequate to record Gross Receipts in the detail requested in this Lease, Tenant, shall, upon the request of Landlord, procure and maintain those books, records, and accounts in an adequate form and character to carry out the requirements in this Lease. Tenant shall provide all customers with a receipt for their purchase of goods or services. Copies of all sales and other excise tax reports

that Tenant may be required to furnish to any government or governmental agency shall at all reasonable times be open for inspection at the place mentioned above. Landlord shall have the right to audit and examine the records of Tenant when necessary for a proper determination of the amount of Gross Receipts from the Premises, and all necessary records shall be held available for this purpose. If the statements of Gross Receipts previously made by Tenant to Landlord are found to be more than five percent (5%) less than the amount of Gross Receipts made by Tenant shown by the audit, Tenant shall immediately pay the cost of the audit, as well as the additional amounts shown to be payable by Tenant to Landlord; otherwise the cost of the audit shall be paid by Landlord.

(ii) Tenant further agrees to furnish to Landlord on or before the fifteenth (15th) of February an annual financial statement for the previous Lease Year. This statement must consist of a balance sheet and income statement covering the Lease Year. The statement must be prepared by an independent certified public accountant on his or her stationery for the Tenant and shall only include financial data related to the Premises.

(iii) Tenant shall provide Landlord with a copy of all Tenant's quarterly State Board of Equalization reports relating to the Premises filed during the term of the Lease within ten (10) days of the filing of each such report.

(g) Acceptance of Payments. Acceptance of Monthly Rent Payments shall not be an admission of the accuracy of the amounts of those payments, but Landlord shall be entitled at any time within four (4) years after the receipt of any Monthly Rent Payments to question the sufficiency of the amount or the accuracy of the statements furnished by Tenant to justify the payments. To enable the Landlord to check the accuracy of any statements and the sufficiency of any Monthly Rent Payments, Tenant shall retain all records for a period of at least five (5) years after the termination of each Lease Year, and after that in the event of arbitration, until that arbitration terminates in final judgment. Tenant shall, upon request, make these available to Landlord, Landlord's auditor, or Landlord's representative or agent for examination at any time.

(h) Accounting Statements. Tenant shall prepare and deliver to Landlord within fifteen (15) days after the end of each month separate statements of revenues, by golf course, showing the rounds of golf played by type and price, and itemized gross receipts for all revenue categories resulting

from the products and services set forth in Section 5(a) above for the preceding month. Such statements shall be in a format as may be reasonably requested by Landlord from time to time. If Tenant fails to provide such accounting statement and such failure continues after thirty (30) days' notice by Landlord to Tenant. Landlord may cause an audit to be made of Tenant's operations on the Premises for such delinquent account period and may prepare the statement failed to be provided by Tenant. Tenant shall pay on demand all expenses of such audit and preparation of such statements.

i) Future Golf Revenues. Landlord intends to investigate ways to generate new revenues from the construction of the three (3) academy holes at Haggin Oaks Golf Complex. Any future uses of the academy holes by Landlord or Tenant, and any revenue generated therefrom, will be subject to further negotiation between Landlord and Tenant."

3. Section 26 of the Agreement is amended to read in its entirety as follows:

"26. Late Charge. Tenant acknowledges that Tenant's failure to pay any installment of Monthly Rent Payments or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of Monthly Rent Payments, or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to six percent (6%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant."

4. Section 29 of the Agreement is amended to read in its entirety as follows:

"29. Estoppel Certificates: At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying Tenant's actual knowledge:

a) the Commencement Date and the Term,

b) the amount of the Monthly Rent Payment,

c) the dates to which rent and other charges have been paid,

d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is full force, as modified, and stating the date and nature of each modification.

e) That no notice has been received by Tenant of any default by Tenant that has not been cured, except, if any exist,

those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease,

f) that no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate, and

g) other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it."

5. Section 40 of the Agreement is amended to read in its entirety as follows:

"40. Rent. All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Monthly Rent Payments, shall be deemed rent."

6. All other terms and conditions of City Agreement number 2001-134 and subsequent amendments thereto shall remain the same.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____
Marty Hanneman, Assistant City Manager
For: Ray Kerridge, City Manager, July 31, 2008

MORTON GOLF, LLC
A California Limited Liability Corporation

_____
Terry Daubert, President

APPROVED AS TO FORM:

_____ 7/16/08
Deputy City Attorney

ATTEST:

_____
City Clerk
8-4-08

2001-0134-3

CITY
AGREEMENT NO._____

RESOLUTION NO. 2008-530

Adopted by the Sacramento City Council

July 29, 2008

AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 3 TO CITY AGREEMENT NO. 2001-134 WITH MORTON GOLF LLC

BACKGROUND

A. In July 2001, Council approved a ten year lease with Kathken Corporation for golf shop and food and beverage services at the Haggin Oaks, Bing Maloney and Bartley Cavanaugh golf facilities.

B. In January 2002, Amendment No. 1 was executed for assignment of the lease by Kathken Corporation to Morton Golf LLC.

C. In September 2002, Council approved Amendment No. 2 to the lease agreement with Morton Golf LLC to resolve financial impacts surrounding delays in the electric golf cart conversion projects at Haggin Oaks and Bartley Cavanaugh golf facilities.

D. Amendment No. 3 to the lease agreement with Morton Golf LLC amends the monthly rent obligations from minimum monthly rent payments to percentage monthly rent payments. The amendment will not impact the amount of rent the City receives each year from Morton Golf.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to approve and execute Amendment Number 3 to City Agreement No. 2001-134.

Adopted by the City of Sacramento City Council on July 29, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo

Mayor Heather Fargo

Attest:

Shirley Concolino

Shirley Concolino, City Clerk

City of Sacramento

Tax ID # if applicable:

Requires Council Approval: X No YES Meeting:

☐ Real Estate ☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: other PO Type:	Attachment: No.: 4
$ Not to Exceed: $ O	Original Doc Number: 2001-134
Other Party: Morton Golf LLC	Certified Copies of Document::
Project Name: Haggin Oaks Golf Complex, Bing Maloney, & Bartley Cavanaugh –	Deed: ☐None ☐ Included ☐Separate
Project Number: Bid Transaction #:	E/SBE-DBE-M/WBE:

Department Information

Department: CCL
Division: Golf
Project Mgr: Mike Kerton
Supervisor: Douglas C. Parker
Date: 05.01.09
Division Mgr:
Phone Number: 808-6316
Org Number: 17000
Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Mike Kerton	mk	05.04.09
Department Director:	BB	
Barbara Bonebrake:		05.04.09

City Attorney	Signature or Initial	Date
City Attorney:		

☐ Send Interoffice Mail ☐ Notify for Pick Up

Authorization	Signature or Initial	Date
Cassandra H.B. Jennings:	CJ	5/4/09
City Mgr: yes X No ☐		05.04.09

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:
Initial: DRB
Date: 5-14-09
Imaged:
Initial: V.E.
Date: 5/20/09

2001-134-4
With: Morton Golf LLC
Title: Haggin Oaks Golf Complex, Bing Maloney, & Bartley Cavanaugh

Received:
(City Clerk Stamp Here)

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
2009 MAY -4 P 4:10

2001-134-4
With: Morton Golf LLC
Title: Haggin Oaks Golf Complex, Bing Maloney, & Bartley Cavanaugh

Capital City Golf

"The Exceptional Public Golf Experience"

CITY OF SACRAMENTO
8325 RIVER ROAD
SACRAMENTO, CA 95832
TEL 916.433.6307
FAX 916.433.6317
www.capitalcitygolf.com

DOUG PARKER
GOLF MANAGER
dcparker@cityofsacramento.org

April 30, 2009

Mr. Ken Morton Sr., CEO
Morton Golf LLC
3645 Fulton Avenue
Sacramento, CA 95821

Dear Mr. Morton,

The City of Sacramento is pleased to accept Morton Golf LLC's request to exercise the first of three options to renew the lease and operating agreement for Haggin Oaks Golf Complex, Bing Maloney Golf Complex and Bartley Cavanaugh Golf Course (City Agreement 2001-134). The term for this renewal is October 1, 2011 through September 30, 2016. There are now two additional five-year options remaining.

All other terms and conditions of this Agreement, and Amendments, shall remain in full force and effect.

Respectfully Submitted by: _____
Douglas C. Parker, Golf Manager

Recommend Approval: Barbara E. Bonebrake
Barbara E. Bonebrake, Director
Convention, Culture and Leisure Department

Approved:

Cassandra H.B. Jennings
Cassandra H.B Jennings, Assistant City Manager
For: Ray Kerridge, City Manager, May 4, 2009

Attest on: 5-15-09 (date)
Dawn Bullwinkel
Dawn Bullwinkel, Assistant City Clerk

c: Terry Daubert, President, Morton Golf LLC

MORTON GOLF

Core Purpose
"to enrich lives, one golfer at a time"

HAGGIN OAKS 1932
GOLF COMPLEX
3645 Fulton Ave.
Sacramento, CA 95821
PH: (916) 481-GOLF
FX: (916) 575-2523

Bartley Cavanaugh GOLF COURSE
8301 Freeport Blvd.
Sacramento, CA 95832
PH: (916) 665-2020
FX: (916) 665-9173

Bing Maloney GOLF COURSE
6801 Freeport Blvd.
Sacramento, CA 95822
PH: (916) 433-2283
FX: (916) 433-6389

April 26, 2009

Mr. Doug Parker, Golf Manager
Capital City Golf
1030 15th Street
Sacramento, California 95814-4009

Re: Renewal Lease between City of Sacramento and Morton Golf LLC– City Agreement #2001-0134-3

Dear Mr. Parker:

This letter shall constitute written notice to the City of Sacramento on behalf of Morton Golf LLC for the exercise of the option to extend the term of the City Agreement #2001-0134-3 commencing on September 1, 2001, between the City of Sacramento, a municipal corporation ("City"), and Morton Golf LLC, a California Corporation ("Lessee"), for the lease of the premises at the Haggin Oaks Golf Complex, Bing Maloney Golf Complex and Bartley Cavanaugh Golf Course for one additional five (5) year term from October 1, 2011 through September 30, 2016. The need for this extension, 2+ years in advance of the next extension period, comes from a requirement from EZ-Go Cart Company that Morton Golf's contract with the City of Sacramento is longer than their five year lease for 284 new golf carts at the value of $1.8 Million.

Under the terms of Section 2b of the City Agreement with Morton Golf LLC, the lessee, has the option to extend the term of the lease for up to three (3) additional five (5) year terms by serving written notice thereof to the City by delivering written notice of each parties election to the other not later than 1 year before the expiration of the initial term or any extension period, as applicable. Morton Golf LLC is proposing one additional five (5) year extension.

Please contact Morton Golf LLC, President and COO, Terry Daubert at 916-808-2517 if there are any questions.

Sincerely yours,

Ken Morton Sr.
CEO, Morton Golf LLC
LLC

Terry Daubert
President/COO Morton Golf

MORTON GOLF

Core Purpose
"to enrich lives, one golfer at a time"

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FX: (916) 665-9173

Bing Maloney GOLF COURSE
6801 Freeport Blvd.
Sacramento, CA 95822
PH: (916) 433-2283
FX: (916) 433-6389

DATE – April 27th, 2009

MEMO TO – Doug Parker

MEMO FROM – Ken Morton Sr., CEO of Morton Golf LLC
Terry Daubert, COO/President of Morton Golf LLC

As per the written notice to the City of Sacramento on behalf of Morton Golf LLC for the exercise of the option to extend the term of the City Agreement #2001-0134-3 for another five (5) year term, we are proposing the following Projects as per the required $400,000 to spend for Capital Improvements.

Using a philosophy of trying to spend the CIP dollars to upgrade the golf courses for the purpose of providing a more pleasing environment for the golfing public, increasing revenues and increasing use of the golfing facilities, Morton Golf LLC is recommending the following two (2) Projects:

1. **Haggin Oaks Range Building, Storage Room, Snack Bar, Patio, Portable Restrooms, and Club Repair Station – Estimated Cost $275,000**
2. **Bing Maloney Upgrade to Tee Area and Driving Range Dispenser Building - $125,000**

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ATTACHMENT 5

REDLINE COMPARISON OF CURRENT AGREEMENT

WITH CURRENT PROPOSED AGREEMENT

~~THIS~~

AGREEMENT FOR THE LEASE AND ~~OPERATING AGREEMENT ("Lease") is entered into as of July __, 2001,~~ OPERATION OF HAGGIN OAKS, BING MALONEY, AND BARTLEY CAVANAUGH GOLF COURSES

by and between ~~the~~

City of Sacramento, a California municipal corporation
("Landlord~~")~~ ")

and ~~Kathken Corporation~~

Morton Golf LLC, a California ~~Corporation~~ limited liability company
("Tenant~~").~~ ")

~~RECITALS~~

January 1, 2012

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Agreement for the Lease and Operation of Haggin Oaks, Bing Maloney, and Bartley Cavanaugh Golf Courses

This agreement ("**Lease**"), between the City of Sacramento, a California municipal corporation ("**Landlord**"), and Morton Golf LLC, a California limited liability company ("**Tenant**"), is effective January 1, 2012 ("**Effective Date**"). This agreement supersedes the prior agreement between the parties and all prior amendments.

Recitals

A. Landlord is the owner of that certain land, buildings, and improvements commonly known as the Haggin Oaks Golf Complex ("**Haggin Oaks**~~"),~~"), which consists of the Arcade Creek and Alister MacKenzie golf courses; Bing Maloney Golf Complex ("**Bing Maloney**~~"),~~"), which consists of the Bing Maloney 18 and Executive 9 golf courses; and Bartley Cavanaugh Golf Complex ("**Bartley Cavanaugh**~~"),~~"), all located in the ~~City of Sacramento,~~ County of Sacramento, California, and more particularly described on attached **Exhibits** ~~"A", "~~**A-1**~~," "~~, **A-2**~~", and "~~, **A-3**~~" ("~~, and **A-4** (referred to individually and collectively as the "**Property**~~").~~" or "**Golf Course**" or "**Golf Courses**").

B. Morton Golf is the owner of certain buildings on the Property, commonly known as the Haggin Oaks Golf Super Shop, Haggin Oaks Player Performance Studio, Haggin Oaks Tuff Shed next to the Player Performance Studio, F&B Trailer at the Haggin Oaks Driving Range, Storage Container behind the Super Shop at Haggin Oaks, Haggin Oaks Conference Room Trailer, and Tuff Shed Storage Building on Driving Range at Bing Maloney, as described on attached **Exhibits B-4** and **B-5** (referred to individually and collectively as "**Morton Golf Property**").

~~A.~~C. To meet the professional and financial needs of the Property and to permit Tenant to operate the Property for the benefit of the Sacramento region, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord ~~a portion~~all of ~~each~~the Property~~ as indicated and~~, which includes the buildings outlined ~~on attached~~in **Exhibits** ~~"B", "~~**B-1**~~", "~~, ***B-2***~~"~~, and ~~"~~**B-3**~~" (referred to individually and collectively as the "Premises"),~~, but excludes, for now, the area shown in **Exhibit B-6**, identified as the "**Levick Property**," on the terms and conditions as set forth in this ~~lease.~~ Lease.

For good and valuable consideration, the parties agree as follows:

~~**OPERATIVE PROVISIONS**~~

1. Lease.

~~(a)~~ Lease of ~~Premises~~Property. Landlord leases to Tenant and Tenant leases from Landlord the ~~Premises~~Property on the terms and conditions~~,~~ in this Lease. Landlord hereby agrees to provide full access to Tenant to the Property at all times ~~on all Landlord's property adjacent to the Premises, including but not limited to the public golf courses, parking lots, and walkways located on the~~ (a) ~~Property,~~ to give full force and effect to the rights and obligations of the parties pursuant to this Lease.

~~parties pursuant to this Lease.~~

(i) ~~Lease of~~ With respect to the Hack House, identified in **Exhibit B-6**, Tenant shall maintain the property in good repair, expending up to $2,000 per year on maintenance if necessary. Any maintenance in excess of $2,000 shall be done at Landlord's sole discretion and at Landlord's expense. Landlord, in its sole discretion, may terminate the lease of the Hack House to Tenant upon 365 days notice. All other terms and conditions of this Lease shall remain in full effect.

(ii) At the time of execution of the Lease, the Lease excludes the Levick Property, identified in **Exhibit B-6**, within parcels 1190190054000 and 1190190052000, occupied by Floyd and Ruth Levick (the "**Levicks**"). Upon the termination of the City's lease with the Levicks for the Levick Property (City Agreement 87-280-1), "Property" for purposes of this Lease between Landlord and Tenant shall also include the Levick Property. At such time, Tenant, subject to Landlord's agreement, may use the Levick Property, including the dwelling on the property, in a manner that enhances Golf Course operations, such as a golf learning center or green maintenance nursery. Tenant, at its expense, may choose to remove the dwelling to enhance Golf Course operations, subject to Landlord's agreement.

(iii) Landlord retains the right to redesign, reconfigure, and/or relocate (together referred to as "**Redesign**") the Arcade Creek golf course during the term of this Lease. Such Redesign shall be done at Landlord's expense and the redesigned course shall be comparable to other first class public golf courses in the Sacramento Metropolitan Area. During the Redesign, Tenant's Rent shall be abated by that amount of Tenant's lost Gross Revenues, if any, due to and during the Redesign. Landlord will not unreasonably interfere with ongoing business operations at Haggin Oaks during the Redesign Process. Landlord will consult on a regular basis with Tenant about the design, configuration, location and elements of the Redesign.

~~(b)~~ Equipment. ~~In addition to the Premises,~~ Landlord ~~hereby leases~~

agrees to transfer title to ~~Tenant~~ that certain equipment ~~("~~, currently being used in connection with golf course operations ("**Landlord Equipment**~~")~~ ") and set ~~for~~forth in attached

~~Exhibits "~~ **Exhibit C**~~".~~, to Tenant. Tenant has inspected ~~this~~the Landlord Equipment and accepts it in its

existing condition, without any express or implied warranties of any kind

(b) from Landlord. Tenant may use ~~such Equipment during the term of this~~the Landlord Equipment during the term of this Lease to run the Golf Courses and only to run the Golf Courses. Any equipment Tenant purchases or leases during the term of this Lease shall be referred to as "**Additional Equipment**". Prior to entering into any lease agreement for Additional Equipment that extends beyond the current term of the Lease, Tenant shall secure the written approval of City. Landlord shall be permitted to inventory and inspect Landlord Equipment and Additional Equipment on an annual basis.

~~**Lease as it sees fit. Upon termination of the lease or upon the end of the useful life of the Equipment or a portion thereof, whichever shall occur first, Tenant shall either return the Equipment for Landlord or, at Landlord's option and cost, dispose of the Equipment. If Tenant purchases any equipment to replace Landlord's Equipment ("Replacement Equipment"), such equipment shall remain the property of Tenant. Tenant shall properly maintain and, as necessarily, repair the Equipment and Replacement Equipment, at its cost, until Tenant chooses to return the Equipment to Landlord. Landlord reserves the right of first refusal to purchase any Replacement Equipment from Tenant upon the termination of this Lease. Such purchase shall be made by Landlord, at the equipment's fair market value,**~~ Upon termination or expiration of the Lease or upon the end of the useful life of Landlord Equipment or Additional Equipment, or a portion thereof, whichever shall occur first, Tenant, at Landlord's option, shall either transfer title of such equipment to Landlord at no cost or dispose of the equipment at no cost to Landlord. In addition, upon termination or expiration of the Lease, Tenant shall transfer title of six trucks to Landlord, at no cost to Landlord, of similar make, model and age of the six trucks identified in Exhibit C. The trucks identified in Exhibit C are as follows: two 2005 Ford Compact Trucks (Rangers), one 2001 Dodge Compact Truck (Dakota), one 2000 Dodge Full Size Truck (1500 EC 4x4), one 2007 Ford Compact Truck (Ranger), and 2008 Ford Compact Truck (Ranger Ex-Cab). Thus, for example, with respect to the two 2005 Ford Compact Trucks, Tenant, upon termination or expiration of the Lease, shall transfer to Landlord title of two seven-year old trucks of similar make and model. The condition of such trucks transferred to Landlord shall be of comparable or better condition to the condition of such trucks when transferred to Tenant.

So long as Tenant occupies the Property, Tenant shall maintain and repair Landlord Equipment and Additional Equipment in good repair, ordinary wear and tear excepted, and in accordance with the manufacturers' specifications. Additionally, Tenant shall maintain all licenses and permits as required by law for Landlord Equipment and Additional Equipment. Tenant must also adequately insure Landlord Equipment and

Additional Equipment. With respect to all trucks and vehicles, such insurance shall include auto liability with physical automobile damage coverage, including non-owned vehicles, and with respect to all other equipment, property insurance on a replacement-cost basis.

Tenant is the owner of the existing equipment identified as "Property of Morton" in **Exhibit D** ("**Tenant's Equipment**"), which shall **be equal to its purchase price, less depreciation.**

(b) Fixtures. Except as provided in Section 11 (d), Tenant shall properly maintain and, as necessary, repair all fixtures at Tenant's expense, including but not limited to unplugging drains, cleaning grease traps, and fixing leaky faucets. Upon the end of the useful life of any fixture (as reasonably determined by Landlord), that fixture shall be replaced by Landlord at Landlord's expense. All reasonable expenses incurred by Tenant for the replacement of any fixture may be applied to Tenant's Capital Improvement obligation under Section 12. All fixtures, whether currently present on the Property or later purchased and installed by either party, are and shall remain the property of **Landlord**Tenant to maintain, remove or dispose of as Tenant sees fit.

2. 2. Term of Lease.

(a) Initial Term. The initial term of this Lease ("**Initial Term**") shall be for ten (10) years **and one month** commencing on **September**January 1, **2001 ("Commencement**2012 ("**Effective Date**"), and ending on **September 30, 2011**December 31st, 2021, unless sooner terminated pursuant to the terms of this Lease ("**Termination Date"). The period from September 1, 2001 through September 30, 2001 shall be accounted for separately; the normal lease year ("**Expiration Date"). "**Lease Year") shall run from October**" is defined as the calendar year beginning January 1 **through September 30, which is consistent with Tenant's fiscal year.** and ending on December 31.

(b) Options to Extend. Provided that Tenant is not in material default under the Lease beyond any applicable notice and cure period, Tenant **and Landlord** may **mutually elect to** extend the term of this Lease for **Premises for** three **(3)** additional periods of five **(5)** years each**.**, subject to Landlord's written consent, which shall not be unreasonably withheld. All extensions shall be upon the same terms and conditions as this Lease. **Landlord and** Tenant shall exercise the option to extend by delivering written notice **of each party's election to the other not** to Landlord no later than one **(1)** year before the expiration of the Initial Term or any extension period, as applicable. If Tenant is in material default beyond

any applicable notice and cure period on the date the extended term is to commence, the extended term shall not commence and this Lease shall terminate. ~~The Landlord may wish to negotiate with Tenant regarding the responsibilities set forth in Section 8 below. In such event the parties agree to negotiate in good faith.~~

~~3.~~ **Delay in Possession.** If for any reason Landlord fails to deliver physical possession of the ~~Premises~~Property or any part thereof to Tenant on or before the ~~Commencement~~Effective Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from the failure to deliver possession, so long as Landlord has exercised, and continues to exercise, reasonable diligence to deliver possession; provided, however, that rent shall be abated in proportion to the ~~Premises leased~~Property lease compared to that not delivered until Landlord delivers physical possession of all the premises to Tenant. The Term shall not be extended by Landlord's failure to deliver
3. possession of the ~~Premises~~Property to Tenant on the ~~Commencement~~Effective Date.

~~As written in the Current Contract~~

~~4. Lease~~ **Rent.** For the ~~Term~~term of this Lease, Tenant shall pay to Landlord ~~an annual rent of not less than One Million Dollars ($1,000,000) per Lease year.~~
4. ~~This rent~~ Rent ("**Rent**") in the following amounts each Lease Year. Rent shall be paid monthly ~~(~~as described in ~~subsection 5(a) below) and is~~Section 5.

~~payable in arrears on the fifteenth (15th) day of the succeeding month at the following address: Capital City Golf at 8325 River Road, Sacramento, CA 95832, or at another address that Landlord may from time to time designate by written notice to Tenant.~~

~~5. Rent, Fee, Costs, Records and Accounting.~~

~~(a) Payment of Lease Rent. Rent payments shall be made monthly in an amount equal to the below percentages of Gross Receipts (as defined in subsection (b) earned by Tenant from the Premises each month during the Lease Year ("Monthly Rent Payments"). If Tenant's aggregate Monthly Rent Payments for any Lease Year are less than One Million Dollars ($1,000,000), Tenant's shall immediately pay the Difference to Landlord. In no event shall Tenant's rent payments be less than One Million Dollars (1,000,000) per Lease Year.~~

Product or Service	Percentage Rent
(i) Power Carts, except Alister MacKenzie Golf Course	18%
(ii) Driving Range (Golf Ball Rentals)	25%
(iii) Retail Merchandise	4%
(iv) Lessons	4%
(v) Club Repair	4%
(vi) Pull Carts	4%
(vii) Single Rider Carts	4%
(viii) Food & Beverage	
Bing Maloney Café	12%
Bartley Cavanaugh Café	12%
Haggin Oaks Café	25% up to $600,000 15% over $600,000
(x) Alcohol Sales	12%
(xi) Per Plate Catering	
Bing Maloney	12%
Bartley Cavanaugh	12%
Haggin Oaks	15%
(xii) Snack Bars/Range & Roving Cart Food & Beverage	12%

Any rent payable from revenues generated at the Driving Range or other portions of the Property from activities other than golf ball rentals shall be negotiated between the parties.

b. Rent:

Years 1-3 (Calendar Years 2012-2014) – $1,325,000
Years 4-6 – $1,330,000
Years 7-9 – $1,335,000
Years 10-19 – $1,000,000
Years 20-21 – $755,000
Years 22-25 – $575,000

5. Percentage Payments.

(a) Monthly Obligation. Rent shall be paid monthly in an amount equal to the percentages of Gross Revenues (as defined in subsection (b)) from the various Revenue Streams described in the following Table 5(a) ("**Revenue Streams**") earned by Tenant from the Property each month during the Lease Year ("**Percentage Payments**"). If Tenant's aggregate Percentage Payments to Landlord for any Lease Year is less than Rent for the Lease Year (a "**Payment Deficiency**"), Tenant shall pay the amount of the Payment Deficiency to Landlord by January 20 of the following year. If, however, during the first three Lease Years, the Percentage Payments to Landlord for a Lease Year are less than Rent for that Lease Year, Landlord shall release Tenant of its obligation to pay the Payment Deficiency, or a portion thereof, for such Lease Year; provided, however, in no event shall Landlord

waive any Payment Deficiency in excess of $50,000 per Lease Year. Following the first three Lease Years and thereafter for the duration of the Lease, Tenant shall pay to Landlord the full Payment Deficiency occurring in any Lease Year.

TABLE 5(a)

Revenue Streams	Percentage
Green Fees and Play Card Revenues (Less Payments to Special Funds described in Section 6); calculation further explained below.	10%
Food, beverage, snack bar, roving cart, on-facility and off-facility catering, and revenues from special events, including facility rental fees	10%
Rentals (power carts and range ball rentals)	10%
Retail sales; golf club repairs; golf lessons, including club-fittings; pull carts; club rentals; and booth rentals from special events	5%
Online retail sales	2.5%
Wholesale sales	0%
Revenues from signage and advertising on Property	5%
Commissions earned by Morton Golf from online travel business	5%

Percentage Payments for Green Fees and Play Card Revenues is calculated as the difference between Green Fees and Play Card Revenues and all amounts deposited by Tenant into the Special Funds (identified in Section 6), multiplied by 10%. For example, assuming the total Green Fees and Play Card Revenues is $100,000 and the total contributions to all of the Special Funds (Technology Fund, Building Repairs and Minor Upgrades Fund, etc.) is $12,500, the Green Fees and Play Card Revenues Percentage Payment is $8,750. Numerically, the calculation is as follows:

$ 100,000 (Green Fees and Play Card Revenues)
– $ 12,500 (Total Contributions to the Special Funds)
$ 87,500

$ 87,500
x .10 (Percentage)
$ 8,750 = Percentage Payment from Green Fees and Play Card Revenues

(b) Gross ~~Receipts~~Revenue. The term "**Gross ~~Receipts"~~Revenue**" as used in this Lease shall mean~~, subject to the exceptions and authorized deductions as set forth in this Lease,~~ all money, cash~~,~~ receipts, receivables, assets, property, or other things of value actually received by Tenant, including but not limited to gross charges, sales, ~~rental~~rentals, fees and commissions made or earned, and all gross sums received and earned, by Tenant, whether collected or accrued, in the ~~categories of products and services~~Revenue Streams listed in ~~Section~~ Table (5~~(~~)(a) above~~, in the Premises. There~~. Gross Revenues shall ~~be deducted from said gross receipts only the following~~not include:

(i) Sales and excise taxes ~~applicable thereto~~ required to be collected by Tenant;

(ii) ~~federal~~Federal, state, municipal, ~~or~~and other taxes paid by Tenant, including ~~the irrigation and technology surcharges,~~ those taxes required by law to be collected from ~~the~~ consumers, ~~but~~provided the amount of such taxes ~~shall be shown on~~is recorded in the books and records required to be kept ~~by~~under this Lease;

(iii) ~~receipts~~Receipts from the sale or trade-in value of any equipment or merchandise returns, including Replacement Equipment owned by Tenant and used on the Premises;

(iv) ~~receipts~~Receipts in the form of refunds from, or the value of, merchandise, supplies, services or equipment returned to the shippers, suppliers, or manufacturers~~.~~;

(v) ~~sums refunded or a sale~~ Sums from consumer refunds of revenue previously included in Gross ~~Receipts;~~ Revenues;

~~(vi) wholesale sales or Capital City Golf Card Sales; except that if the parties to this Lease change the current use and benefits associated with the Card, the parties will renegotiate, in good faith, the Percentage of Gross Receipts from Cards sales to be paid to Landlord; and~~

~~(vii)~~(vi) ~~any~~Any income or receipts from the management or sponsorship of professional golf players on tour~~.~~;

~~The parties specifically acknowledge that neither the green fees nor the irrigation surcharge nor the technology surcharge collected and retained by Tenant as provided for in Section 5(c) nor the~~ Any revenues received by ~~Tenant for golf carts at Alister MacKenzie Golf Course shall be included in Gross Receipts.~~

(vii) ~~(c) Collection~~The First Tee of ~~Green Fees and Surcharges. On behalf of Landlord,~~ Greater Sacramento or the Morton Golf Foundation.

~~Tenant shall collect the green fees from the public golf courses located on each Property, including the 18-hole and 9-hole irrigation surcharge fees. Tenant shall also collect, on behalf of Landlord, a per round of golf "technology surcharge" for the purpose of meeting the ongoing technology needs of the Landlord and Tenant as the parties shall agree with regard to the Premises and operation of the golf courses of the Property, as set forth in Section 6(g)(iv) below. As consideration for Tenant's management of the Premises, Tenant shall retain ten percent (10%) of the green fees generated on the Property, after deduction for the irrigation and technology surcharges, and shall remit to the Landlord the remaining (90%) of green fees, along with one hundred percent (100%) of the irrigation and technology surcharge fees. On behalf of Landlord, Tenant shall deposit one hundred percent (100%) of the technology surcharge fees in a separate account for use by Landlord and Tenant as set forth in this Section and Section 6(g)(iv). Tenant shall also retain Five Dollars ($5.00) for every round of golf Played at the Alister Mackenzie Golf Course at Haggin Oaks, with the exception of junior rounds of golf, for golf carts. After deduction of the Five Dollars ($5.00) and the irrigation and technology surcharges, Tenant shall retain ten percent (10%) of the green fees at Alister Mackenzie Golf Course at Haggin Oaks. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the green fees or the surcharges, except the ten percent (10%) retained by Tenant; therefore, the 90% of the green fees shall be deemed a "pass through" to Landlord. On behalf of landlord, Tenant shall collect the Capital Club Membership fees. As consideration for Tenant's services in this regard, Tenant shall retain seven percent (7%) of the Capital Club Membership fees collected by Tenant. Landlord and Tenant acknowledge that Tenant has no right, title or interest in the Capital Club Membership fees, except for the seven percent (7%) retained by Tenant; therefore the ninety-three percent (93%) of Capital Club Membership fees shall be deemed a "pass through" to Landlord.~~

~~(d) Cost of Collection. Tenant shall pay all costs associated with the safe collection, deposit and accounting of the green fees and irrigation and technology fees, surcharge fees, including but not limited to credit card charges, bank fees, and armored car services. Landlord may conduct unannounced cash and starter sheet audits during Tenant's normal business hours.~~

~~(e) Payment of Rent. Monthyl Rent Payment shall be paid in arrears on the fifteenth (15th) day of the month for the prior month's lease of the Premises. Tenant shall also remit to landlord at such time Landlord's ninety percent (90%) of the green fees and one hundred (100%) of the~~

~~**irrigation surcharge for the prior month and deposit the technology surcharge monies in the separate account. Tenant shall pay the Monthly Rent Payments, green fees, and surcharge by one check, accompanied by a statement breaking down revenue categories set forth in subsection 5(a) above and the irrigation and technology surcharges.**~~

(c) ~~**(f)**~~ Payment of Rent. Rent is payable in arrears on the 20th of the succeeding month at the following address: City of Sacramento, Attention: Capital City Golf, 1030 15th Street, Suite 220, Sacramento, CA 95814, or at another address that Landlord may designate by written notice to Tenant. Each rental payment shall be accompanied by a statement identifying the Revenue Streams and amounts set forth in this section as well as golf patron play statistics for the month. A sample report identifying the information to be provided in the monthly statement is set forth in **Exhibit E**.

(d) Books and Records.

~~**(i)**~~ Tenant shall keep and maintain ~~**on the Premises**~~at 3645 Fulton Avenue, Sacramento, California 95821, full, complete, and appropriate books and records of ~~**sales**~~all revenues from the ~~**Premises**~~Property in accordance with standard accounting ~~**practice**~~practices. In addition, Tenant shall separately account for ~~**its operation**~~all revenues of each ~~**golf course located on the Property**~~Golf Course. These books and records shall at all reasonable times ~~**and upon one (1) week's prior notice be**~~be open for inspection and copying by Landlord, Landlord's auditors, or any other authorized representatives of Landlord. If the books or records are kept at a different location ~~**other than the premises**~~ or ~~**Tenant's**~~ address ~~**set forth in Section 34**~~, Tenant shall give prompt notice of that location to Landlord. If ~~**an**~~at any time during the Term of this Lease, the books and records prove inadequate to record ~~**Gross Receipts**~~ all revenues in the detail requested in this Lease, Tenant shall, upon the request of Landlord, procure and maintain those books, records, and accounts in an adequate form and character to carry out the requirements ~~**in**~~of this Lease. Tenant shall provide all customers with a receipt for their purchase of goods or services. Copies of all ~~**sales**~~revenues and other excise tax reports that Tenant may be required to furnish to any government or governmental agency shall at all reasonable times be open for inspection at the place mentioned above. Landlord shall have the right to audit and examine the records of Tenant when necessary for a proper

determination of the amount of Gross ~~Receipts~~Revenues from the ~~Premises,~~ Property, and all the necessary records shall be held available for ~~this~~that purpose. If the statements of Gross ~~Receipts~~Revenues previously made by Tenant to Landlord are found to be more than ~~five percent (5%)~~2.00% less than the amount of Gross ~~Receipts~~Revenues made by Tenant shown by the audit, Tenant shall immediately pay the cost of the audit~~, as well as the~~ (i) ~~additional amounts shown to be payable by Tenant to Landlord;~~ ; otherwise the cost of the audit shall be paid by Landlord.

~~(ii)~~ Tenant further agrees to furnish to Landlord on or before ~~the fifteenth (15th) of February~~April 1st an annual financial statement for the previous Lease Year. ~~This statement~~ Beginning in the third Lease Year, and every third year thereafter, Tenant shall provide an audited financial statement for the previous Lease Year. All financial statements must consist of a balance sheet and income statement covering the previous Lease Year. The ~~statement~~ statements must be prepared by an independent certified accountant on his or her stationary for the Tenant and shall only (ii) include financial data related to the ~~Premises.~~Property.

~~(iii)~~ Tenant shall provide Landlord with a copy of all ~~of~~ Tenant's quarterly State Board of Equalization reports relating to the ~~Premises~~Property filed during the term of the Lease within ~~ten (~~10~~)~~ days (iii) of the filing of each such report.

(iv) ~~(g)~~ Landlord may conduct unannounced cash and starter sheet audits during Tenant's normal business hours.

Acceptance of Payments. Acceptance of ~~Monthly Rent payments~~ Rent and Percentage Payments in accordance with Section 5 (c) shall not be an admission of the accuracy of ~~the amounts of~~ those ~~payments~~reports, but Landlord shall be entitled at any time within four ~~(4)~~ years after the receipt of any ~~Monthly Rent Payments~~ monthly percentage payment to question the sufficiency of the amount or the accuracy of the statements furnished by Tenant to justify the payments. To enable Landlord to check the accuracy of any ~~statements and the sufficiency of any Monthly Rent Payments~~statement, Tenant shall retain all records for a period of at least five ~~(5)~~ years after the termination of each Lease Year, and after that in the

event of arbitrationlitigation, until that arbitrationlitigation terminates in final judgment.

Tenant shall, upon request, make these available to Landlord, Landlord's Landlords auditor, or Landlord's representative or agent for

(e) examination at any time.

(h) Accounting Statements. Tenant shall prepare and deliver to Landlord within (15)20 days after the end of each month separate statements of revenues, by golf course, showing the rounds of golf played, by round type and price, and itemized gross receipts for all revenue categories Revenue Streams resulting from the products and, services and fees set forth in Section 5(a) above for the preceding month. Such statements shall be in a format as may be reasonably requestrequested by Landlord formfrom time to time. If Tenant fails to provide such accounting statement and such failure continues after thirty (30) days' days notice by Landlord to Tenant, Landlord may cause an audit to be made of Tenant's operations on the Premises for such delinquent accountaccounting period and may prepare the statement failed to be provided by Tenant. Tenant shall pay on

(f) demand all expenses of such audit and preparation of such statements.

(i)(g) Future Golf Revenues. Landlord intendsand Tenant intend to investigatecontinue exploring ways to generate new revenues from the construction of the three (3) academy holes at Haggin Oaks Golf Complexsources of revenues. Any future uses of the academy holes by Landlord or Tenant, and anynew revenue sources generated therefromfrom the Property, will be subject to further negotiationnegotiations between the Landlord and Tenant.

6. Use.

6. Use. The Premises shall, during the Term of this Lease,Special Funds.

(a) Generally. In addition to paying Rent, Tenant shall also pay the amounts specified below into the Special Funds (referred to individually as "**Special Fund**" or "**Fund**") described in subsections (b)-(f) on a monthly basis or as otherwise required, below. Each of the Special Funds shall be maintained by Tenant in a separate bank account subject to the terms and conditions of this Lease.

(i) Expenditures. By November 1 of each year, Tenant shall propose a list of items and/or projects (and their estimated costs) to be funded by Special Funds 3, 4, and 5 in the upcoming year. Landlord, in its sole discretion, may approve or reject Tenant's proposal, however it is the intent of the parties to utilize such funds during the initial Lease

Term for the stated Special Fund purposes. Once the proposal is approved by Landlord and thus deemed an "**Approved Plan**," Tenant may make expenditures from Special Funds 3, 4, and 5 consistent with the Approved Plan throughout the year, subject to the requirements below. The Approved Plan may be amended at any time by agreement of the parties.

(ii) Reporting. Within 30 days of expending money from any of the Special Funds, Tenant shall provide Landlord with a written report that details the use of each fund along with accompanying receipts. By the 20th of each month, Tenant shall provide copies of the monthly bank statements for each Special Fund. By April 1 of each year, Tenant shall provide Landlord with a written report that summarizes the deposits and withdrawals from each of the Special Funds in the prior year.

(iii) Remaining Balance. At the termination of the Lease, any remaining balances in the Special Funds not already committed to a designated project or use, shall be disbursed to Landlord, less amounts necessary to complete projects and uses in progress as of the termination of the Lease, which shall remain in the applicable Special Fund and shall be used and disbursed by Landlord for the payment of the applicable project or use. Landlord agrees to use such disbursed funds for the future operation of the Golf Courses.

(b) Special Fund 1: Technology Fund.

(i) Purpose. This fund shall be used to pay for technology repairs, replacements, upgrades of hardware, new technology, and/or software that may be needed to support Golf Courses operations.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 1:

(1) Year 1: .125% of Gross Revenues; and

(2) Years 2 and Beyond: .25% of Gross Revenues.

(iii) Starting Balance. The balance as of the Effective Date in Account No. 811055663 with River City Bank after transfer of $100,000 into Special Fund 2 and $80,000 into Special Fund 3.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 1.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the purpose of the Fund.

(c) Special Fund 2: Building Repairs and Minor Upgrades Fund.

(i) Purpose. This fund shall be used to pay for short-term general facility repairs and maintenance, minor upgrades and renovations, and other normal general repairs and maintenance as they arise that are required to keep the buildings and structures in good

working condition. For example, this fund may be used for painting, replacing, or repairing a portion of floor coverings, windows, heating and air, building structures, sound systems, lockers, storage spaces, doors, security systems, permanent signage, bulletin boards, locks, door closing devices, light fixtures, and restrooms. This fund shall not be used for Tenant's labor costs for Tenant's own employees in performing such repairs, upgrades, and minor renovations.

(ii) Payment. Tenant shall pay .5% of Gross Revenues into Special Fund 2.

(iii) Starting Balance. $100,000, which as of the Effective Date is in Account No. 811055663 with River City Bank, to be transferred into Special Fund 2 by Tenant within 14 days of the Effective Date.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 2.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the purpose of the Fund. If, due to unforeseen circumstances beyond Tenant's control, the water supply to one or more of the Golf Courses is cut off or significantly impaired such that one or more of the Golf Courses may not operate, Tenant may withdraw that amount reasonably necessary to remedy the situation. Landlord, in its reasonable discretion, may require that Tenant reimburse the fund for such expenditures.

(d) Special Fund 3: Capital Improvement Fund for Buildings and Support Facilities.

(i) Purpose. This fund shall be used to pay for Capital Improvements ("**Capital Improvements**"), defined as additions, structures, replacements, or upgrades to the Property that enhance its value and have a useful life of at least five years and cost in excess of $20,000, excluding the addition or replacement of irrigation systems.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 3:

(1) If Tenant's Percentage Payments for any Lease Year exceed Rent for that Lease Year, an amount calculated as follows: (A) the amount of Tenant's Percentage Payments for that Lease Year, less (B) the Rent for that Lease Year (the difference being referred to as "**Capital Reserve Amount**"). The Capital Reserve Amount shall be deposited in Special Fund 3 no later than January 30 of the following Lease Year; and

(2) Years 1-2: $0.00; and

(3) Years 3-25 – .25% of Gross Revenues.

(iii) Starting Balance. $80,000, which as of the Effective Date is in Account No. 811055663 with River City Bank, to be transferred into Special Fund 3 by Tenant within 14 days of the Effective Date.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 3.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan. For expenditures outside the Approved Plan, Tenant may, in its discretion, withdraw up to $5,000 annually from the fund. For expenditures in excess of $5,000 that are not addressed in the Approved Plan, Tenant must secure Landlord's prior approval. To secure approval, Tenant must provide Landlord with a written proposal that details the proposed use of the funds. Landlord, in its sole discretion, may approve or deny the proposal.

(e) Special Fund 4: Special Projects Fund.

(i) Purpose. This fund will be used for improvements that will enhance Golf Course operations and/or increase Gross Revenues. Examples of Capital Improvements that may be financed through this fund include upgrades or renovations to the driving ranges and power cart facilities, and improvements to the clubhouses.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 4:

(1) Years 1-2: – $0.00; and

(2) Years 3 and Beyond: .25% of Gross Revenues.

(iii) Starting Balance – $0.00

(iv) Minimum Balance – $0.00

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan. For expenditures outside the Approved Plan, Tenant may, in its discretion, withdraw up to $5,000 annually from the fund. For expenditures in excess of $5,000 that are not addressed in the Approved Plan, Tenant must secure Landlord's prior approval. To secure approval, Tenant must provide Landlord with a written proposal that details the proposed use of the funds. Landlord, in its sole discretion, may approve or deny the proposal.

(f) Special Fund 5: Irrigation Fund.

(i) Purpose. This fund may be used to replace the irrigations systems at the Bing Maloney and Haggin Oaks driving ranges, as well as the Bing Maloney 18 and Arcade Creek Golf Courses.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 5:

(1) Years 1-2: $0.00; and

(2) Years 3-4: $.25 from each Green Fee; and

(3) Years 5-25: $.50 from each Green Fee.

(iii) Starting Balance. $134,847, to be deposited by Landlord in an account designated by Tenant within 14 days of the Effective Date of the Lease.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 5.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan.

7. Use.

(a) Use. Tenant shall be responsible for all aspects of running the City's Golf Courses, unless specifically excluded under this Agreement. To that end, the Property, during the Term of this Lease, shall be used for the purpose of providing and conducting thereon the following uses and for no other purpose without Landlord's written consent, which shall not be unreasonably withheld:

(i) ~~the~~The playing of golf;

The sale, rental, storage, and repair of ~~all~~ items ~~relating~~related to the
(ii) game of golf;

(iii) ~~(ii) the~~The teaching and instruction of golf;

(iv) ~~(iii) the provisions~~The provision of starter and marshaling services~~, including the collection of~~;

~~greens fees:~~

(v) ~~(iv) the~~The rental of power-driven and manually-operated golf carts;

~~(v) the~~The operation of the driving ~~range~~ranges, pro ~~shop~~shops, locker rooms,
(vi) restrooms, storage~~, patio~~ areas, patios, and workshop areas~~:~~;

(vii) ~~(vi) the~~The operation of ~~a~~ food and beverage (including alcoholic beverages) services; ~~and~~

(viii) ~~(vii) related~~ The operation of golf course maintenance services; and

Related office and administration uses subject to all terms,

(ix) conditions, and limitations specified in this Lease~~;~~.

~~**It is the understanding of the parties that the responsibilities of the Tenant are clearly delineated in and limited to those expressly set forth in this Lease and that all other aspects of operating and managing the Property, including, without limitations the golf courses located on the Property as provided in Section 8 below, are and shall remain the responsibility of the Landlord.**~~

(b) Compliance with Insurance. Tenant shall not commit any ~~acts~~act on the ~~Premises,~~Property nor use the ~~Premises~~Property in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the ~~Premises~~Property or ~~improvements~~improvement on the ~~Premises,~~Property. Tenant shall, at ~~Tenant's~~its own cost and expense, comply with all requirements of Landlord's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Property and the improvements on the Property.

(c) Waste. Tenant shall not commit ~~any~~ waste or any public or private nuisance upon the ~~Premises or use the Premises for any immoral or unlawful purpose.~~ Property.

(d) Compliance with Laws. During the Term, Tenant~~,~~ at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the ~~Premises~~Property pertaining to (a) the physical condition of any improvements constructed by Tenant ~~in~~on the ~~Premises~~Property; and (b) Tenant's specific business operations in the ~~Premises. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Premises, or comply with any future requirements Landlord may impose on its city contractors or vendors (except those imposed by governmental authorities other than Landlord), in order to comply with the requirements of this Section. Landlord shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, and/or Property.~~Property. With regard to the construction of ~~the~~ Capital Improvements or use of the Special Funds for repairs and/or Capital Improvements, the

parties ~~shall~~agree to comply with all applicable city and state regulations pertaining to the bidding for and construction of public projects and the payment of prevailing wages.

(e) ~~Operation~~Operations. Tenant shall operate Tenant's business on the ~~Premises~~Property with due diligence and efficiency so as to maximize ~~the~~ Gross ~~Receipts~~Revenues that may be produced profitably. To this end, Tenant shall maintain ~~the business hours and~~ levels of stock, inventory, ~~personnel, and advertising that in Tenant's reasonable judgment is necessary to maximize Gross Receipts profitably~~equipment, and marketing consistent with the operation of the ~~businesses on the Premises~~Golf Courses and the terms and conditions of the Lease.

(f) Non-competition. Tenant shall not, within a five ~~(5)~~ mile radius of each of the ~~three golf complexes located on the Property~~Golf Courses, provide any services similar to those outlined in this Lease so as to conflict or compete with Landlord's public golf course business operations, unless ~~otherwise~~ approved by Landlord. Such approval ~~shall not~~may be ~~unreasonably~~granted or withheld~~.~~ in Landlord's sole discretion. Landlord approves and consents to Tenant's arrangement, as it exists as of the Effective Date, with The First Tee of Greater Sacramento to manage and operate the William Land Golf Course, which is owned by Landlord.

(g) Guidelines for Operation of Property. ~~Landlord~~

~~(g)~~(i) Golf Manual. Tenant shall ~~establish form time to time~~maintain a golf operations manual that sets forth guidelines for the reasonable operation and maintenance of the Property~~, excluding~~. Landlord and Tenant shall agree to the ~~Premises,~~content of the initial manual as ~~established by Landlord's Golf Manager. Such guidelines shall be in writing in the Golf Operations Manual and may be subject, to change and modification~~well as ~~the parties deem necessary during the Term of this Lease. Tenant agrees to comply with the Golf Operations Manual and shall not change the policies and procedures set forth in the Manual without first obtaining the written consent of Landlord's Golf Manager, which consent shall not be unreasonably withheld. In addition, Tenant agrees to comply with the following specific procedures during the Term of this Lease:~~subsequent amendments.

~~(i)~~ Memberships. Tenant ~~shall~~, at its cost, shall maintain ~~facility~~ memberships in the United States Golf Association (USGA) ~~and the~~ for each Golf Course. Tenant shall also maintain at its cost one membership in the National Golf Foundation (NGF~~), and~~). Tenant shall provide

(ii) ~~the Golf Manager~~Landlord with proof of such memberships ~~if~~upon request.

~~requested.~~

~~(i) Golf Handicapping Equipment. Tenant shall, at its cost, provide golf handicapping equipment/computers at the Premises.~~

~~(ii) Ratings. Tenant shall be responsible for all costs associated with securing and maintaining the Northern California Golf Association (NCGA) and Pacific Women's Golf Association (PWGA) ratings for the Golf Course~~

~~(ii) Reservation/Information System Technology. Subject to the agreement of the parties, Tenant shall, with the use of the technology surcharge referenced in Section 5(c), provide automated/computerized telephone and internet accessible golf tee time reservation system technology, which shall be integrated with Tenant's point-of-sale system. Tenant shall at its cost provide the initial hardware and software for its point of sale system. The technology surcharge shall be used to purchase, install, maintain, repair and replace all communication lines, hardware, software, software upgrades, and equipment associated with the ongoing reservation/information system at the Premises. Tenant shall be able to use all existing Landlord-owned golf course computer hardware and software currently in use for providing automated tee time reservations and card-production. Tenant shall provide a computer terminal at the Capital City Golf Administration Offices that is linked "real-time" to the Tenant's reservation/information system and that may be used to create and print reports of information as reasonably requested by Landlord. Landlord shall pay existing contract obligations to Fairway Systems. Tenant shall assume contract obligations for the existing Data Card System and all costs associated with the production of the Capital City Golf cards, effective September 1, 2001. The technology surcharges shall be used to provide technical support and oversee the care, maintenance, upgrade and repair of the computer systems used on the Premises. Any and all hardware, software, licenses and equipment purchased with the technology surcharge funds are and shall remain the property of the Landlord.~~

(iii) Ratings. A number of independent golf clubs use one of the Golf Courses as their home base (the "**Home Clubs**"). Because the Home Clubs are members of the Regional Golf Associations, the NCGA and PWGA, these Associations provide (USGA) Handicap Approved Ratings at no cost based on the number of Tee Marker locations at each golf facility. It is the Tenant's responsibility to make sure these Allied Associations are provided access to each Golf Course so each of the facilities maintain accurate and up to date ratings.

(iv) Technology. Tenant shall maintain a modern tee time reservation system, play card system, point of sale system, and website and internet technology system that services each of the Golf Courses.

~~(iii)~~(v) Hours of Operation. ~~**Tenant shall comply with the Hours of Operation schedules outline in Exhibit "D" of this Lease. Tenant may close operations or change the hours of operations due to inclement weather or other conditions with prior approval by the Golf Manager, which approval shall not be unreasonably withheld**~~The Golf Courses shall be open for business seven days a week, with hours consistent with other golf courses in the Sacramento region. Tenant shall, at its sole cost and expense, post hours of operations in prominent locations.

~~**(iv) Food & Beverage. Tenant shall, at its sole cost and expense, provide all labor, materials and supplies necessary to provide food and beverage services on the Property and the Premises, including but not limited to, the preparation, set-up and clean up of special events and golf tournaments relating to food & beverage service. If Tenant wishes to provide food and beverage services to the Property excluding the Premises, Tenant shall first obtain approval of the location from the Golf Manager, and shall be responsible for preparation, set-up and clean up of the site. Tenant shall, at its sole cost and expense, remove the "Outpost" snack bar trailer located on the Arcade Creek Golf Course at Haggin Oaks and replace this service with a new roving food and beverage cart service by march 1, 2003. Tenant shall, at its sole cost and expense, be responsible for providing phone-in food and beverage services from the #9 tee at Bartley Cavanaugh Golf Course, including but not limited to the phone, wiring, menu and safe keeping of the phone and stand. Tenant may request that it receive a credit towards its capital improvement obligations set forth in Section 12. If Landlord in its reasonable discretion approves such a credit, any equipment designated a "capital improvement" shall belong to Landlord upon the termination of this Lease. If Tenant does not receive a capital improvement credit for such equipment, then such equipment shall belong to Tenant upon termination of this Lease.**~~

(vi) Food, Beverage, Alcohol, and Catering Services. Tenant, at its sole cost and expense, shall have the exclusive right to provide food, beverage, alcohol and catering services at the Property. Tenant shall provide all labor, inventory, accessories, materials, and supplies necessary for the delivery of food, beverage, and catering services at the Property. Tenant may request permission from Landlord to allow outside catering (not

including alcohol) for tournaments and special events when it is financially prudent for Tenant and Landlord to acquire large revenue producing corporate outings, charity tournaments and/or special events. Tenant, during special events, may allow vendors to distribute promotional or sample-size food and beverage items, excluding alcohol, at no charge to participants.

~~(v)~~(vii) Cooperation. Tenant shall reasonably cooperate with Landlord's other tenants, contractors, and Landlord's employees.

~~(vi) Golf Carts. Tenant shall at its cost provide and maintain at least one single-rider golf cart for golfers with disabilities at Haggin Oaks, Bing Maloney and Bartley Cavanaugh, or more as may be required by law. Landlord shall in its fiscal year 2001-1002 purchase two single-rider carts which shall be provided to Tenant for its use out of Landlord's CIP Account #CC-00. Tenant shall at its cost move the carts as needed between golf courses. Tenant shall, at its cost, provide flags for golf carts that permit golfers with disabilities to drive their carts closer to tees and greens. Tenant, at its sole cost and expense, shall provide additional carts for tournament and special events as necessary. Tenant shall, at its sole cost and expense, provide gasoline powered carts at Bing Maloney Golf Course until an electric golf cart charging and storage building is constructed by Landlord at Landlord's cost. Landlord shall complete construction of the storage building as soon as reasonably possible. Tenant shall provide its own gas, and fuel, oil, gasoline, diesel fuel for its vehicles and equipment and comply with all laws and regulations in their use. Tenant shall, at its sole cost and expense, provide high-pressure washers at Bing Maloney, Bartley Cavanaugh and Haggin Oaks maintenance yards to be used by Tenant and Landlord. Tenant shall keep the maintenance yards clean from any refuse removed from the golf carts. Tenant shall, at its cost, fill and maintain the golf cart soil bottles and other equipment on each golf cart. Landlord shall provide soil, at its expense, for the golf cart soil bottles. Tenant shall not place into, or maintain in service, golf carts that are greater than five (5) years old, except as the parties may otherwise reasonably agree.~~

(viii) Golf Carts. Tenant shall provide and maintain an adequate number of high quality power-driven golf carts, consistent with other golf courses in the Sacramento region, and a minimum of one single-rider golf cart (for golfers with disabilities) at each of the Golf Courses. Tenant may redistribute the single-rider golf carts between the Golf Courses on a temporary basis to accommodate special needs or events at one of the Golf Courses, provided the carts are returned following that necessity so that one is generally

present at each of the Golf Courses. Tenant shall use the cart storage areas at each of the Golf Courses and keep the maintenance yards clean from any refuse removed from the carts.

~~(vii)~~(ix)Recycling Program. Tenant agrees to implement a recycling program at the ~~Premises~~Property.

~~(viii)~~(x) Customer ~~Services~~Service. Tenant shall ~~at~~provide regular customer-service training to its ~~cost~~employees to ensure patrons experience an efficient and enjoyable experience while on the Property, provide customer comment forms ~~that~~, and periodically perform customer-service surveys in a manner satisfactory to both parties. Tenant shall ~~be prominently displayed in the Premises~~share the results of such surveys with Landlord. In addition, Tenant shall accept all major credit cards and electronic payments from its customers. Tenant shall, at its sole cost and expense, provide name tags for its employees. ~~Landlord and Tenant shall from time to time undertake to determine customer satisfaction in a method satisfactory to both parties.~~ Tenant's monthly inventory should not be less than ~~fifteen percent (15%)~~10% of projected annual retail sales. ~~Tenant agrees to adequately train and equip its employees to as to provide customers with efficient and high quality service and to~~ Tenant shall provide brand name golf equipment and supplies for sale. Tenant agrees to provide "**Basic Staffing Levels**~~"~~" as set forth in **Exhibit** ~~"~~**G**~~"~~ attached during the Term of this Lease.

~~(ix) Community Involvement. Tenant, at its cost, shall designate a management level employee to be responsible for the ongoing coordination and implementation of Landlord's Gifts to Share Program, Hole-in-One Program, Greens Aerification "Bounce Back" Program, and Free Golf Etiquette Classes for Adults and Juniors. Landlord's Golf Marshals shall assist Tenant's staff in coordinating and implementing the FREE Golf Etiquette Classes. Tenant shall cooperate with landlord to facilitate Landlord's efforts with regard to Home Golf Clubs, Capital City Golf Historians, and the Sacramento Golf Council. Tenant shall provide a management level employee to attend SGC regular meetings. Tenant shall at its cost purchase trophies for the SGC junior golf events held on the Property, not to exceed $500 per year.~~

~~(x) Tournament and Tournament Directors. Tenant shall, at its cost, provide full-time golf tournament directors in charge of operations at the Bing Maloney, Haggin Oaks Golf Complexes throughout the Term of the Lease. Tenant shall provide a part-time golf tournament director in charge of operations at Bartley Cavanaugh Golf Complex beginning September 1, 2002 and throughout the Term of this Lease. Tenant acknowledges that~~

~~Landlord has entered into contracts for tournaments to take place after the Commencement Date. Tenant agrees to assume, observe and be bound by the provisions of those tournament contracts.~~

~~(xi) Employee Training and Development. Tenant, at its sole cost and expense, agrees to train certain of its employees in adult CPR/First Aid. It is the intent of the Tenant and Landlord to implement the use of Automatic External/Defibrillators (AFD's). Tenant shall assist Landlord in seeking funding for implementing the AED program. Tenant shall train sufficient numbers of its employees to ensure that at least one CPR/First Aid trained employee is on duty during normal business hours. In addition, Tenant shall provide Landlord with an opportunity to meet with Tenant's employees during a regularly scheduled employee meeting to discuss operational issues, at least twice a year. Tenant shall, at its cost, prepare and print an employee newsletter for distribution to Tenant and Capital City Golf division's staff, on a quarterly basis. Golf Management shall be responsible for contributing information for articles in the employee newsletter. Tenant shall be responsible for replacement, at its sole cost, of radios used by Tenant for communication between Tenant and Landlord's staff, in the event such radios are lost, damaged or destroyed by Tenant.~~

~~(xii) Golf Course Supplies: Tenant shall pay for all costs associated with the annual printing of golf scorecards and shall provide golf pencils. Landlord and Tenant shall agree upon the style, design and quality of the scorecards. Tenant shall, at its cost, provide ice to Landlord for Landlord's operations consistent with this Lease. Tenant shall, at its sole cost and expense, shall provide portable restrooms as necessary to service the Premises or for Tenant's special events on the Property.~~

~~(xiii) Capital Spirit. Tenant hereby acknowledges that it has received a copy of the agreement between Landlord and Pepsi-Co under the Capital Spirit Program, and Tenant agrees to comply with the terms of this agreement.~~

~~(xiv) Setting of Fees. Landlord shall, in consultation with Tenant, set the green fees, cart fees and range fees on the Property from time to time.~~

(xi) Community Involvement. Tenant will make every effort to encourage local programs to foster growth of the game and will work with Home Clubs to help them maximize their membership levels. Tenant will provide a General Manager or Head Golf

Professional to support the Sacramento Golf Council ("**SGC**") in an advisory or management capacity to help maximize participation in SGC events. Tenant, on behalf of the Morton Golf Foundation, will also make efforts to raise money through fund raisers, grant opportunities, and private donations to help support youth golf, disabled golf and underserved local programs that support the Property, with the net proceeds of funds so raised to go to the Morton Golf Foundation.

(xii) Tournaments. Tenant will provide an experienced tournament coordinator to promote, book, and administer tournaments on a full-time basis or part-time basis as described in **Exhibit G**.

(xiii) Employee Safety Training and Development. Tenant agrees to have at least one employee on duty at all times during business hours who is trained in CPR and First Aid, with a reasonable effort to have two such employees on duty. All employees shall be trained as reasonably necessary in safety measures and precautions. Tenant's employees will also be trained to properly handle emergencies and prepare City Incident Reports.

(xiv) Setting of Fees. Tenant, with approval from the Landlord shall set the standard green fees, cart fees, and range ball rental fees on the Property, at a minimum, annually. Tenant agrees to periodically survey the pricing schemes of other golf courses in the Sacramento Metropolitan Area to ensure the Golf Courses' prices are competitive. Landlord agrees to respond within 14 days of receiving fee proposals from Tenant. Tenant, from time to time, may offer specials, off-peak rates, coupons, promotions, and/or other deviations from the standard fees in order to increase rounds played and corresponding revenues.

(xv) Security. Tenant shall be **solely** responsible**, at its sole cost** for the costs and **expense,**expenses for securing the **Premises**Property and for providing, maintaining, and operating all private or internal security services and systems as it deems appropriate for the **Premises.**Property.

7. Utilities. During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, heat, electricity, gas, water, sewer service, diesel, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the **Premises. Landlord, at its cost,** Property. Tenant shall **provide gas, water and**also be responsible for maintaining the sewer **services**system up to **Tenant.**

8. Landlord's Obligation.

(a) Maintenance of Golf Courses. Landlord shall, in addition the lift station at Haggin Oaks, with City to **its other**

~~**obligations set forth in this Lease, operate and**~~ maintain ~~**the public golf courses at Haggin Oaks, Bing Maloney and Bartley Cavanaugh adjacent**~~

(xvi) ~~**to the Premises, and**~~ beyond the lift station. When it is practical or possible, Landlord shall include Tenant in any ~~**other property**~~rate saving utility programs it ~~**owns adjacent to the Premises,**~~ receives in connection with the Property.

~~**including, but not limited to the Property, in a manner and condition appropriate to a first class public golf course in the Sacramento Metropolitan Area. Landlord shall provide an adequate maintenance and grounds crew to ensure proper maintenance of the property at all times. If any condition arises on the property that limits the public's use of the golf courses, Landlord shall immediately and diligently repair such condition. Landlord shall establish written maintenance standards to meet the obligations set forth in this Section.**~~

(xvii) Chemical Storage and Pesticide License. Tenant shall maintain current pesticide and Environmental Protection Act permits in accordance with federal, state, and local law. Tenant shall train its employees in proper chemical and pesticide storage and use.

(xviii) Hiring. When initially staffing its workforce to assume the obligations of this Lease, Tenant shall interview all of Landlord's former employees who were employed at the Golf Courses as of 12/31/11, who apply for a job with Tenant at the Golf Courses. In addition, when hiring, Tenant shall use reasonable business efforts to reach out to residents of the City of Sacramento, including by advertising vacant positions at each of the Golf Courses.

(xix) Employee Wages. Tenant has the sole right and responsibility to establish and pay the wages and benefits of its employees. Tenant agrees that it shall pay its Golf Course Maintenance Employees initially in accordance with the schedule in **Exhibit H**, but Tenant reserves the right to increase its employees' wages and benefits and as to later new hirees only, decrease wages and benefits, including those of its Golf Course Maintenance Employees, at any time in its sole discretion.

(xx) Collective Bargaining . It is expressly understood that Tenant does not assume and shall not adopt any obligation pursuant to any collective bargaining agreement to which Landlord is currently or may at any time have been bound with any labor organization. Tenant may, but shall not be obligated to, hire certain of Landlord's golf course maintenance employees ("**Landlord's Employees**"). Landlord warrants that Landlord has complied with the terms of any and all obligations under any collective bargaining agreement with respect to Landlord's Employees, including but not limited to all requirements regarding layoff and/or termination of employment, and specifically warrants further that as of the Effective Date: (I) there are no pending, or to the best of Landlord's knowledge, threatened unfair labor practice charges or claims arising under the Meyers Milias Brown Act and/or the National Labor Relations Act; (II) there are no pending, or to the best of Landlord's knowledge threatened, grievance or arbitration proceedings or awards

arising out of or pursuant to any collective bargaining agreement; (III) Landlord has made all payments heretofore required to be made to or on behalf of Landlord's Employees and/or eligible retirees and their covered dependents, spouses, and/ or survivors under Landlord's employee benefit plans, including but not limited to health and welfare, dental, retirement, disability and life insurance, and sick leave, and further warrants that Landlord will continue to meet such obligations, if any; and (IV) Landlord has made all payments of earned and accrued salaries, wages, vacation pay, bonuses, sick or other types of leave, holiday pay, longevity pay, or compensation of any sort required to be made to Landlord's Employees by any collective bargaining agreement or policy or law. Landlord and Tenant agree that Tenant shall have no duties or liabilities of any sort for any obligations arising under any employee benefit plan to which Landlord is now or has ever been a party. The parties expressly agree that Tenant is not assuming any obligation under any trust agreement and that this transaction shall not be construed in any way to be an asset sale pursuant to ERISA.

~~(a)~~8. Golf Marshal Program. ~~**Landlord**~~Tenant shall provide an ~~**adequately**~~adequate number of trained and equipped staff of marshals to ~~**operate**~~manage and supervise play on the ~~**golf courses at Haggin Oaks, Bing Maloney and Bartley Cavanaugh. Such marshals**~~Golf Courses. The marshal staff shall be the employees and/or volunteers of ~~**Landlord, and Tenant shall not be responsible for such employees or volunteers**~~Tenant.

9. ~~9.~~ Taxes.

~~(a)~~ Tenant's Obligation. Subject to the terms of Section 9(d), Tenant shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, ~~**as additional rent,**~~ all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the ~~**Premises or arise**~~Property because of the occupancy, use, or possession of the ~~**Premises**~~ Property (including but not limited to taxes on, or which shall be ~~**measure**~~measured by, any rents or rental income, and taxes on Tenant's personal property, subsequent to the commencement of the Term, and all installments of (a) assessments that are due during the Term~~.~~).

~~(a)~~(b) Records, Failure to Pay. Landlord agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges payable by Tenant to make sure that statements and billings will be mailed directly by public authorities to Tenant at the address set forth in Section 34. Tenant shall deliver to Landlord, on demand, original receipts or photocopies evidencing payment of all taxes assessments, and public charges payable by Tenant. If Tenant fails to pay taxes, assessments, and charges on or

before the last day on which payment may be made without penalty of interest, other than as provided for in this Section- 9, Landlord may, but shall not be obligated to, pay those taxes, assessments, or charges, together with interest and penalties. Any amounts that Landlord may pay pursuant to this provision, together with interest at the rate of ten percent (10%)% per annum, shall be repaid to Landlord by Tenant on demand as additional rent.

(b)(c) Possessory Interest. This lease may create a possessory interest subject to property taxation. Tenant shall be liable for the payment of any possessory interest tax, and Tenant shall be responsible for the payment of any tax associated with Tenant's business on the PremisesProperty, including but not limited to possessory interest and sales tax.

(c)(d) Contested Taxes. Tenant shall not be required to pay, discharge, or remove any tax (including penalties and interest), assessment, tax lien, forfeiture, or other imposition or charge against the PremisesProperty or any part of the PremisesProperty or any improvements, so long as Tenant diligently and in good faith contests the validity or the legality of the assessment, levy, or charge by appropriate legal proceedings, which should prevent the collection of the tax, assessment, imposition, or charge contested; provided however, that Tenant, prior to the date that the tax, assessment, imposition, or charge is due and payable, shall either have paid it under protest or shall have given to Landlord a letter executed by an officer or managing member of Tenant assuring Landlord that the tax, assessment, imposition, or charge will be paid when and to the extent that the legal proceedings conclude in a final determination that the tax, assessment, imposition, or charge is valid, legal and owing. Upon such final determination, Tenant agrees to immediately pay the contested tax, assessment, imposition, or charge, together with all interest and penalties, if any, and remove and discharge any lien or forfeiture arising from the prior nonpayment.

(d)(e) Assessments. If any assessments for local improvements become a lien after the CommencementEffective Date, Tenant shall pay only the installments of the assessments that become due and payable during the Term. On the request of Tenant, Landlord agrees to cooperate or join with Tenant in any application that may be necessary to permit the payment of the assessment in installments.

(e)(f) Business Operations Tax. Tenant shall obtain, at its own expense, any required City business operations tax certificate and shall pay any business operations tax attributable thereto.

10. 10. Condition of PremisesProperty.

Condition; Exceptions to Condition. Tenant acknowledges that as of the date of this Lease,

Tenant has inspected the ~~**Premises**~~Property and all improvements on the ~~**Premises**~~Property and affirms that the ~~**Premises**~~Property and improvements are in ~~**good**~~acceptable order, repair, and condition, except for those improvements ~~**which are scheduled for capital improvements as outlined in Section 12 below, and except for those**~~ noted in Landlord and Tenant's Joint Inspection Report~~.~~, and those improvements described below in this Section 10. Landlord warrants that the

(a) Property is suitable for use as a public golf course. Landlord shall deliver the Property in a condition at least as good as it exists as of October 13, 2011, and shall make such repairs as are reasonably required to bring the Property into such condition in the event of any damage or destruction between the foregoing date and midnight on December 31, 2011.

(b) ~~**11.**~~ Potable Water Facilities. Landlord agrees to expend up to $108,283 (the "**Potable Water Allocated Amount**"), in its sole discretion, to repair and/or install potable water lines at Haggin Oaks and Bartley Cavanaugh (the "**Potable Water Work**"). If completion of the Potable Water Work costs less than the Potable Water Allocated Amount, then, upon completion, Landlord shall deposit the difference, divided into equal amounts, into Special Funds 2 and 3. Landlord, in its sole discretion, shall have the right to control the manner and method of such work and shall not be obligated to pursue the Potable Water Work; however, Landlord shall in good faith diligently pursue its determination of the feasibility of completing the process. In the event Landlord chooses not to pursue the Potable Water Work, Landlord shall deposit $108,283, divided into equal amounts, into Special Funds 2 and 3. In the event Landlord pursues the Potable Water Work, Landlord shall not be obligated to expend the entire Potable Water Allocated Amount if such work can be accomplished for a lesser amount.

(c) Dry Rot Repair. Landlord agrees to expend up to, but not to exceed, $200,000 (the "**Dry Rot Allocated Amount**"), during the first three Lease Years, as necessary to repair and replace siding on the Bartley Cavanaugh Clubhouse and Maintenance buildings affected by dry rot **("Dry Rot Work**"). Landlord, in its sole discretion, shall have the right to control the manner and method of such work and shall not be obligated to expend the entire Dry Rot Allocated Amount if such work can be accomplished for a lesser amount.

(d) Foundation/Settling Issue. Landlord agrees, at Landlord's cost, to obtain a structural analysis of the Bartley Cavanaugh Clubhouse from an independent structural engineer reasonably acceptable to Landlord. Tenant shall not be responsible for any structural defects that are discovered during the analysis or any third party claims resulting from such structural defects. If any defects are discovered during the analysis that render the building structurally unfit for occupation, Landlord, at its option, may either 1) correct the structural deficiencies; or 2) replace the clubhouse. In either event, Tenant shall be entitled to a reduction in Rent based on losses reasonably incurred as a result of the inability to use the building.

11. Repairs and Maintenance.

General Obligations. Tenant ~~agrees~~, at Tenant's own expense, ~~to maintain the interiors of the Premises in good condition and repair, and to deliver to Landlord~~ shall be solely responsible for maintaining the Property in good condition and repair in a manner appropriate to a first class public golf course in the Sacramento Metropolitan Area and in accordance with all applicable laws, including but not limited to federal and state disability access laws (referred to as the "**Repair and Maintenance Obligation**"). At the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord physical possession of the ~~Premises at the end of the Term~~Property in good condition and repair~~,~~ considering reasonable wear and tear and use~~, and~~ of the Property, excluding loss caused by

(a) fire ~~or other casualty or by~~ , earthquake, fatality or other act of God~~, excepted~~.

~~**Such interior maintenance shall include by way of example loudspeakers, interior walls, lockers and storage spaces, furniture and furnishings, floor coverings, windows, doors, security systems, signs, bulletin boards, locks, door closing devices, and light fixtures. Tenant shall at its cost provide cleaning services and janitorial supplies for the Premises. Tenant shall also at its cost clean and sweep the parking lots an average of twice a month, and shall be responsible for the daily collection and removal of trash or debris generated from the Premises. Tenant at its cost shall maintain the landscape areas within the Premises (including irrigation systems in the flowerbeds) and drinking fountains located on the Premises. Tenant shall, at its sole cost and expense, maintain repair and replace all tournament scoreboards at each of the three golf facilities. Tenant specifically agrees that it shall maintain the electrical panel and electrical charging units associated with the charging of golf carts. In the event that emergency repairs are required, Landlord, if it has resources available, shall respond to Tenant's request for services, for which Tenant shall pay Landlord's customary charges.**~~

(b) Maintenance Standards. If any condition arises on the property that limits or impacts the public's use of the Golf Courses, Tenant shall immediately and diligently repair such condition. Tenant shall maintain the courses in accordance with United States Golf Association ("**USGA**") standards. Tenant shall provide Landlord with a copy of Tenant's maintenance manual within 180 days of the Effective Date of this Agreement and subsequent updates thereafter.

(c) Maintenance Funding. All necessary repairs and maintenance that are not funded by the Special Funds remain Tenant's sole responsibility. Tenant shall be responsible

for repairing and maintaining Morton Golf Property at its sole cost and expense. No Special Funds shall be used to repair or maintain Morton Golf Property.

(a)(d) Maintenance Records. Tenant shall keep all records and documentation of maintenance activities required by law to be kept, and shall make same available to at Landlord's reasonable request. In order to permit Landlord to assure accurate responses to inquiries by regulatory agencies on health and safety, and to permit Landlord to compile data upon which to base decisions on whether to repair or replace a given item, Tenant's maintenance records shall include the following information:

(i) a A description of the work, defining the specific nature of the (i) request for services;

(ii) (ii) the The location of the service to be provided;

(iii) the The name of the person (initiator) requesting service with a telephone number (iii) for future contact;

(iv) the The date of the request and the time of completion of the (iv) maintenance; and

(v) any All health or safety violations to be corrected should be (v) identified, and , with corrections noted.

(c) Failure to Maintain. If at any time during the Term, Tenant fails to maintain the Premises Property or make any repairs or replacements as required by this Section, Landlord may, but shall not be required to, enter the Premises Property and perform the maintenance or make the repairs or replacements for the account of Tenant; any. Any sums expended by Landlord in so doing, performing the maintenance will, together with interest at ten percent (10%)% per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord. All work performed by Tenant on the Premises Property shall be done so as to avoid to the extent reasonably possible any disruption of Landlord's or the public's use of the Property.

(d) Landlord shall be responsible for maintaining the remainder of the Premises in good condition and repair, including but not limited to the

~~roofs, public restrooms including fixtures (except as provided in Section 11(a), exteriors of the buildings, foundations, HVAC systems, electrical systems, plumbing systems, water distribution systems, sewer systems, irrigation systems (except for the irrigation systems in the flowerbeds) and drainage systems. Landlord shall also bear sole responsibility for maintaining the Property and all public lands appurtenant to the Premises in good condition, suitable for its intended use.~~

~~(c) Should Landlord, after notice from the Tenant, fail to make with reasonable promptness any repairs to the Premises or the Property which are the obligation of the Landlord pursuant to this Lease, Tenant may (but shall not be required to do so) make the repairs necessary to restore the Premises or the~~ Property ~~to good order, condition and repair, and the reasonable cost of said repairs shall become due and payable by Landlord as an offset against future rents.~~

(e) ~~All works to be performed on the Property pursuant to this Section shall be done so as to avoid to the extent reasonably possible~~or any disruption of Tenant's business ~~in or around the Premises. If such work requires~~.

~~(e)~~(f) Abatement of Rent. Should any project within Landlord's responsibility under this Lease require Tenant's business to cease operation, there shall be a pro rata abatement of ~~all~~ Rent and taxes otherwise payable by Tenant hereunder to Landlord for each day Tenant's business operations are ceased.

(g) Water Well Maintenance. Tenant shall be responsible for maintaining, repairing, and permitting all potable and nonpotable irrigation water wells on the Property, up to $60,000 annually. Landlord shall be responsible for necessary repairs and maintenance of these wells in excess of $60,000.

~~(f)~~(h) Annual Inspections. Landlord and Tenant shall conduct a joint inspection of the ~~Premises~~Property on an annual basis on a date mutually agreed upon. The parties shall provide to each other a letter specifying any maintenance deficiencies revealed by the joint inspection. The party responsible for the maintenance shall correct the specified deficiencies within ~~thirty (~~30~~)~~ days of receipt of the letter or list from the party, or as otherwise agreed by the parties. Landlord reserves the right to conduct more frequent inspections as it deems appropriate.

12. Capital Improvements.

~~(a) Within twelve (12) months of the Commencement Date, Tennant shall begin construction of the capital improvements described in Exhibit~~

"E" attached ("General Obligations. Tenant shall be solely responsible for all Capital Improvements**"). Such Capital Improvements shall be undertaken at Tenant's cost. Tenant agrees that it shall make expenditures of at least Seven Hundred Fifty Thousand Dollars ($750,000) for Capital Improvements and other alterations and improvements during the Initial Term, and shall make expenditures of at least Four hundred Thousand Dollars ($400,000) for other alterations and improvements**, subject to the **Premises in each of the extended** terms **if** and conditions of this Lease **is extended pursuant to Section 2(b). Landlord shall have the right to approve the Capital Improvements, alterations, and improvements, and such approval shall not be unreasonably withheld.** . Tenant shall provide Landlord with a set of plans and specifications for such improvements no later than **forty-five (**45**)** days prior to the scheduled construction of the improvements; Landlord shall either approve or refuse for reasonable reasons to approve within **thirty (**30**)** days after Tenant's request for approval. All Capital Improvements, alterations, additions, and major repairs shall be made in accordance with applicable laws **and at Tenant's own expense**. Tenant shall supply Landlord with a written summary of all expenditures for the Capital Improvements, including upon reasonable request, receipts for the work performed. Landlord agrees, when requested by Tenant, to execute and deliver any applications, consents, or other instruments required to permit Tenant to **do this work and obtain**seek the appropriate permits **for**and perform the work. Tenant shall properly complete and tender to Landlord the form attached as **Exhibit "F"** in developing the Capital Improvements

(a) or other alterations to the **Premises.** Property.

(b) If Tenant obtains private financing to build the Capital Improvements and the alterations and improvements required under this Lease, then, upon prior approval of the terms of the loan agreement by Landlord, Tenant shall not be required to make loan payments beyond the Initial Term of the Lease, or any extension thereof.

(c) If the Tenant obtains financing either through the Landlord or based

(b) **in part on** Financing. If Tenant elects to construct Capital Improvements or repairs and upgrades to the irrigation systems the cost of which exceed the amounts available in applicable Special Funds ("**Unfunded Improvements**"), Tenant will be solely responsible for any private financing that Tenant may require for Unfunded Improvements. Landlord shall not be required to assume any loan, debt, or lease for which Tenant is obligated. Both parties agree that Landlord may, in the future, choose to finance Capital Improvements and Unfunded Improvements. Tenant agrees to make every effort to make

sure any Capital Improvement Projects that Landlord finances are completed in a timely and reasonable manner. It is understood by both parties that if a Golf Course is shut down (partially or completely) during a project, Landlord may authorize a rent reduction, the amount to be determined in Landlord's sole discretion.

(c) Landlord Approval of Certain Financing. Landlord requires prior approval of any financing that requires Landlord's credit or collateral~~, then Landlord shall first~~.

~~approve such financing.~~

(d) No Liens. Tenant shall not cause any lien, mortgage, or other encumbrance to be placed on the Property without Landlord's express written consent.

~~(b)~~(e) Expiration or Termination; Standards. All Capital Improvements, alterations and improvements (excluding those made to ~~the Premises shall become the property of Landlord and~~Morton Golf Property and any other yet-to-be built structure as agreed to between Tenant and Landlord), whether financed by Tenant, Landlord, or through the Special Funds, shall remain on ~~and be surrendered with the Premises~~the Property at the expiration or sooner termination of this Lease~~, including any renewals or extensions.~~ and become Landlord's property. All work, alterations and/or improvements shall be performed in a good workmanlike manner, shall substantially comply with the plans and specifications provided by Tenant and approved by Landlord, and shall comply with all applicable governmental permits, laws, codes, ordinances and regulations, including but not limited to the ~~ADAAG~~Americans with Disabilities Act Accessibility Guidelines, Title 24 of the California Code of Regulations, and the California Environmental Quality Act ~~(~~("**CEQA**~~).~~"). It is further agreed that upon expiration or earlier termination of this Lease, Tenant will remove Morton Golf Property within a reasonable time frame and at no cost to the Landlord, but before Tenant removes Morton Golf Property, Landlord shall have the option to purchase Tenant's structures at fair market value if Landlord so chooses.

~~(c)~~(f) Notices. At least ~~thirty (~~30~~)~~ days before any construction commences or materials are delivered for any alterations that Tenant is making to the ~~Premises~~Property, Tenant shall give written notice to Landlord as to when the construction is to commence or the materials are to be delivered. Landlord shall then have the right to post and maintain on the ~~Premises~~Property any notices that are required to protect ~~Landlord and~~ Landlord's interest in the ~~Premises~~Property from any liens for work and labor performed or materials furnished in making the alterations; provided , however, that it shall be Tenant's duty to keep the ~~Premises~~Property free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the ~~Premises~~Property at the request of Tenant.

(g) Liens. Tenant shall pay as soon as due all mechanics'~~,~~ laborers', materialmans', contractors', subcontractors', or other similar charges or liens on the

~~Premises~~Property. Nothing contained in this Section shall in any respect make Tenant the agent of Landlord or authorize Tenant to do any act or to make any contract encumbering or in any manner affecting the title or rights of Landlord in or to the ~~Premises~~Property. If any such mechanics' or other such similar liens shall at any time be filed against Landlord's interest in the ~~Premises~~Property, Tenant shall cause the same to be discharged of record within ~~thirty (~~30~~)~~ days after the date of filing the same, or otherwise free the ~~Premises~~Property from such claim or within such time period furnish Landlord with a bond in the amount issued by a surety company satisfactory to Landlord, securing Landlord against any payment of such lien and against all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien. Tenant may in good faith contest any of such liens without payment of a bond ~~provded~~provided it does so with due diligence and further provided that the Tenant shall fully pay and immediately discharge the amount of any final judgment granted against Landlord or Tenant in any litigation involving the enforcement of such liens or the validity thereof. In the event Tenant fails or refuses to discharge of record any such uncontested lien within said ~~thirty (~~30~~)~~ day period, or fails to pay and satisfy any such judgment as provided above~~.~~, Landlord~~,~~ following ~~twenty (~~20~~) days~~ days' written notice to Tenant of Landlord's intent, may, but shall not be obligated to, pay the amount thereof inclusive of any interest thereon or any court costs assessed against Tenant in litigation. Any amounts so expended paid by Landlord and all reasonable attorneys' fees and other expenses of Landlord, together with interest ~~theron~~thereon at the rate of ~~ten percent (~~10~~%)~~% per annum from the date of payment, shall be deemed additional rent and shall be paid by Tenant to Landlord on demand.

~~(d)~~(h) Force Majeure Delays. Tenant shall not be considered in breach or default of any obligation with respect to the construction of the Capital Improvements or any improvements required pursuant to this Section 12 if the delay in construction is due to causes beyond Tenant's control. In the event of such delay, the time for construction shall be extended by the period of the delay, as reasonably determined by the Landlord, provided that Tenant has within ten ~~(~~10~~)~~ days after the beginning of such delay notified the Landlord in writing of the delay and the need for the extension.

~~**13. Marketing and Promotion. Landlord and Tenant agree that they shall each market and promote the public's use of the golf courses on the Property and the Premises. The parties shall jointly develop a marketing plan for the Property and budget annually and shall coordinate their efforts. Tenant shall provide Landlord with reasonable technical support and personnel to accomplish its marketing efforts under the plan. Landlord, shall, at its sole cost and expense, maintain membership in the Golf Sacramento regional marketing effort. Tenant shall, at its sole cost and expense, within three months of the Commencement Date of this Lease, hire a Director of Special Events. Tenant shall pay for annual advertising of the properties in the Sacramento yellow pages. Tenant shall spend at least two and a half percent (2.5%) of its ten**~~

~~percent (10%) of the green fee revenue (as provided in Section 5(c) on marketing efforts for the Property annually. Landlord shall spend at least Fifty Thousand Dollars ($50,000) on marketing efforts for the Property annually. The expense incurred by Landlord in maintaining membership in the Golf Sacramento Regional Marketing effort shall be an offset against Landlord's $50,000 obligation. Tenant's expenditures for advertising related to its retail golf equipment business do not count against Tenant's obligations set forth in this Section.~~

13. ~~**14.**~~ **Marketing, Public Relations, Advertising and Promotions.** Tenant and Landlord agree that marketing, public relations, advertising and promotions within a wide range of medias and demographics is critical to be able to compete for dollars people have available to spend towards recreation and entertainment. Tenant will be required to spend at Tenant's sole expense any salaries for marketing personnel, advertising on websites, radio, television, newspapers, magazines, social media, e-mail blasts, direct mail, customer tracking systems, vendor tracking systems or any other media as Tenant chooses and in the amounts Tenant decides is necessary for Tenant's business and the City of Sacramento Golf Courses to compete. Tenant will submit a quarterly marketing report showing costs for direct marketing with samples of advertising, and media promotions so Landlord is aware of Tenant's marketing outreach. All marketing materials and marketing initiatives are to be done in a first class manner for the good of golf, the good of the community and within the marketing policies of the City of Sacramento. Landlord will offer free Public Service Announcements ("**PSA's**") and free billboard opportunities. Tenant agrees to consider with all marketing, promotions, advertising and public relations opportunities, the policies of the City of Sacramento. Landlord, in its discretion, may direct Tenant to terminate any marketing activity Landlord deems not in the best interest of the Property and/or Landlord.

Entry. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the ~~**Premises**~~Property at all reasonable times and upon reasonable notice to inspect the ~~**Premises**~~Property to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the ~~**Premises**~~Property under this Lease

14. or to perform Landlord's duties under this Lease.

15. ~~**15.**~~ **Surrender of** ~~**Premises:**~~ **Property; Holding Over.**

(a) Surrender. On the ~~**Termination**~~Expiration Date or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the ~~**Premises**~~Property to Landlord in the same condition as received on the ~~**Commencement**~~Effective Date~~**subject to the requirements for Tenant's Capital Improvements under this Lease**~~, reasonable wear and tear excepted.

(b) Hold Over. At the end of the Term, should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. ~~Tenant~~Rent shall be paid at the rates then prevailing under the terms of this Lease and the month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

~~(c)~~16. Liability and Indemnity.

~~(a)~~ Exemption of Landlord from Liability. Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or Tenant's employees, contractors, invitees, customers~~,~~ or any other person ~~in or about~~on the ~~Premises~~Property during the term of this Lease, from any cause whatsoever, to the extent caused by the use, occupancy and enjoyment of the ~~Premises by the Tenant, provided, however, that the provisions of this Section 16 shall not exempt Landlord from liability for the negligence or intentional conduct of Landlord or its agents, employees, or contractors.~~

~~(b) Tenant's Indemnity of Landlord. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord and Landlord's agents, officers, directors, employees, volunteers and contractors harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities of every type and descriptions to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, the performance of this Lease or the use of the Property by Tenant, provided, however, that Landlord shall not be relieved from liability, and the Tenant shall not indemnify Landlord, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Landlord or its agents, employees, or contractors. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.~~

~~(c) Landlord's Indemnity of Tenant. Landlord shall indemnify, defend (with counsel reasonably satisfactory to Tenant) and hold Tenant harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities arising out of, involving, or in connection with, (i) the use and/or occupancy of the Property by Landlord, (ii) any intentional act or negligence of Landlord or Landlord's agents, employees or contractors, or (iii) any breach or default in the performance of any obligation on Landlord's part to be performed under this lease, provided, however that Tenant shall not be relieved from liability, and the~~

~~**Landlord shall not indemnify Tenant, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Tenant or its agents, employees, or contractors. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur prior to termination of this Lease.**~~

~~**16. Liability and Indemnity.**~~

(a) ~~**Exemption of Landlord from Liability. Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or Tenant's employees, contractors, invitees, customers or any other person in or about the Premises during the term of this Lease, from any cause whatsoever, to the extent caused by the use, occupancy and enjoyment of the Premises**~~Property by the Tenant, provided, however, that the provisions of this Section 16 shall not exempt Landlord from liability for the negligence or intentional conduct of Landlord or its agents, employees, or contractors.

(b) Tenant's Indemnity of Landlord. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord and Landlord's agents, officers, directors, employees, volunteers and contractors harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities of every type and descriptions to which any or all of them may be subjected (collectively, "**Damages**") by reason of, or resulting from, directly or indirectly, the performance of this Lease or the use of the Property by Tenant, provided, however, that Landlord shall not be relieved from liability, and the Tenant shall not indemnify Landlord, for ~~**damage or injury**~~Damages to the extent occasioned by the negligence or intentional conduct of the Landlord or its agents, employees, or contractors. This indemnity shall survive expiration or termination of this Lease only as to claims arising out of events that occur prior to expiration or termination of this Lease.

(c) Landlord's Indemnity of Tenant. Landlord shall indemnify, defend (with counsel reasonably satisfactory to Tenant) and hold Tenant harmless from and against any and all ~~**claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorney's fees and costs), expenses and/or liabilities**~~Damages arising out of, involving, or in connection with~~,~~; (i) the use and/or occupancy of the Property by ~~**the**~~ Landlord~~,~~; (ii) any intentional act or negligence of Landlord or Landlord's agents, employees or contractors~~,~~; (iii) claims by employees (or their unions) of Landlord relating to their employment by Landlord, including but not limited to claims arising from or ~~**(iii**~~connected with any termination of that employment; (iv) any claims by any party, including employees of Landlord or any beneficiaries, arising from any trust or collective bargaining agreement to which Landlord has been a party, including but not limited to alleged violations of the Meyers Milias Brown Act or the National Labor Relations Act, alleged violation of any employee benefit plan to which Landlord is a party, and any liability to retirees or former employees of Landlord or the dependents, spouses or survivors thereof; or (v) any breach or default in the performance of any obligation on Landlord's part to be performed under this

Lease, provided, however~~,~~ that Tenant shall not be relieved from liability, and the Landlord shall not indemnify Tenant, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Tenant or its ~~agent~~agents, employees, or contractors. This indemnity shall survive expiration or termination of this Lease only as to claims arising out of events that ~~occurs~~occur prior to expiration or termination of this Lease.

17. ~~17.~~ Insurance.

(a) ~~(a)~~ Liability Insurance~~.~~

~~(i)~~ Carried by Tenant. Tenant shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is typically called commercial general liability insurance, contract liability, legal liability, liquor liability, personal injury liability, and products and completed operation liability covering Tenant's use and occupancy of the ~~**Premises ant Tenant's Super Shop.**~~ Property and Morton Golf Property. The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the ~~**Premises**~~Property and ~~**the Super Shop**~~Morton Golf Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than $~~**3**~~5,000,000 per occurrence and shall name Landlord as an additional insured. Tenant may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Tenant. The policy shall stipulate that this insurance will operate as a Primary Insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder. In addition, Tenant shall provide automobile liability insurance covering liability arising out of any automobile incident, including owned, hired and /or non-owned automobiles. The amount of the policy shall be no less than $1,000,000 single limit per occurrence and shall name Landlord as an additional insured. The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by Landlord will be

(i) called on to contribute to a loss covered thereunder.

~~(ii)~~ Carried by Landlord. Landlord shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is typically called "commercial general liability insurance" covering Landlord's use and occupancy of the Property.

The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than ~~$3~~$5,000,000 per occurrence and shall name Tenant as an additional insured. Landlord may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Landlord. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if any. Landlord shall provide an affidavit of self-insurance, (ii) if any.

~~(a)~~(b) Property Insurance.

~~(i)~~ Carried by Tenant. Tenant, at its cost, shall maintain on the ~~Premises~~ Property a policy of standard fire and extended coverage insurance, boiler and machinery, with vandalism and malicious mischief endorsements, to the extent of at least ~~ninety percent (~~90~~%)~~% of the full replacement value of Tenant's owned improvements on the ~~Premises~~Property. The policy shall name Landlord as an additional insured. The policy shall provide that any proceeds shall be payable to ~~the~~ Landlord, excluding therefrom any proceeds payable to Tenant as insurance on ~~its property located on the Premises~~Morton Golf Property. The policy shall stipulate that this insurance will operate as a primary insurance and that no other insurance effected by Landlord (i) will be called on to contribute to a loss covered thereunder.

~~(ii)~~ Carried by Landlord. Landlord shall obtain and keep in force and pay for a policy of fire and extended coverage, vandalism, malicious mischief, and special extended perils (all risk) insurance in the name of Landlord, with loss payable to Landlord, insuring loss or damage to the Property and the structures ~~on the Premises~~thereon (excluding ~~Tenant's owned improvements~~Morton Golf Property), including all fixtures and equipment therein installed by Landlord, for the full replacement value ~~therof~~thereof, as the same may exist from time to time, without deduction for depreciation, but exclusive of excavations, foundations and footings, and a loss rental endorsement (the available proceeds of which shall go to Landlord for any right of abatement hereunder of Tenant). Landlord shall also obtain and maintain insurance coverage on all of Landlord's personal property and trade fixtures. Such insurance shall be used by

Landlord for the replacement of its personal property and trade fixtures. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if (ii) any. Landlord shall provide an affidavit or self-insurance, if any.

(c) Worker's Compensation Insurance. Tenant shall carry Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than $1,000,000. The Worker's Compensation policy shall include a waiver of subrogation.

~~(b)~~(d) Insurance Policies. Insurance shall be by companies duly licensed or admitted to transact business in California and maintaining during the policy term a "General Policyholders Rating" of at least A:VII as set forth in the most current issue of the "~~Best's~~Best Insurance Guide", or the State Compensation Insurance Fund. Neither party shall do nor permit to be done anything which invalidates the required insurance policies. Each party shall, prior to the ~~Commencement~~Effective Date, deliver to the other party certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after ~~thirty (30)~~30 days prior written notice to the other party. Each party shall, at least 30 days prior to the expiration of such policies, furnish the other party with evidence of renewals or "insurance binders" evidencing renewal thereof, or the other party may order such insurance and charge the cost thereof to the other party, which amount shall be payable by said non-performing party to the other party upon demand.

~~(c)~~(e) Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other for loss of or damage to their respective properties arising out of or incident to the perils required to be insured against. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

(f) ~~18.~~ Review. Insurance requirements are subject to review and revision every five years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable property.

Trade Fixtures. Tenant shall have the right, at any time and from time to time during the Term and any renewals or extensions, at Tenant's sole cost and expense, to install and affix on the interior of the ~~Premises~~buildings items for use in Tenant's trade or business, which Tenant ~~in Tenant's trade or business, which~~

~~Tenant~~, in Tenant's sole discretion, deems advisable (collectively "**Trade Fixtures~~").~~**"). Except for the Capital Improvements~~, Trade Fixtures~~ and fixtures installed ~~in~~ on the ~~Premises by Tenant shall always remain~~Property and acquired through the ~~property of Tenant.~~ Special Funds, Trade Fixtures may be removed at the expiration of the Term or any extension, provided that any damage to the ~~Premises~~buildings caused by the removal of the Trade Fixtures shall be repaired by Tenant, and Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove at Tenant's expense any Trade Fixtures that Tenant might otherwise elect to abandon. In addition, any equipment owned or purchased by Tenant without the use of Special Funds during the Term of this Lease shall

18. remain the exclusive ~~Property~~property of Tenant. ~~If Tenant retains any such Trade~~

~~**Fixtures or equipment, Tenant acknowledges that it shall not receive a credit towards its Capital Improvement obligations set forth in Section 12.**~~

~~**19.**~~ **Signs and advertising.** Tenant, at its cost, shall have the right to install or place permanent signs, awnings, or other advertising materials ~~in~~, on or about the ~~Premises or the~~ Property ~~to the~~ that are family friendly and related to the Golf Courses to the maximum extent permitted by law and subject to Landlord's reasonable sign criteria and approval, provided that Tenant obtains Landlord's consent (a) as to the method of attaching signs that will be permanently attached to the exterior of ~~the Premises;~~a building or placed on the Property; (b) for any awnings; and (c) for the location and design of any pylon signs. Landlord shall not unreasonably withhold, condition or delay its consent. Tenant shall submit plans and specifications for its exterior signs and awnings to Landlord for approval prior to submitting the plans and specifications to the local authorities for permitting. Landlord shall be deemed to have consented to such proposed signs and awnings unless Landlord notifies Tenant in writing of its specific objections within ~~thirty (~~30~~)~~ days of receiving such proposal. All signs and awnings shall be in compliance with all applicable laws, regulations and rules. If Landlord consents to any sign, awning, canopy, marquee, ~~decoration~~decorations, or advertising matter, Tenant shall at its

19. expense maintain it in good appearance and repair at all times during this ~~lease.~~Lease.

20. ~~**20.**~~ **Damage and Destruction.**

(a) ~~(a)~~ Damage or Destruction to the ~~Premises.~~ Property.

~~(i)~~ Insured Loss. If the ~~Premises~~Property shall during the Term be damaged or destroyed by fire or other insured casualty, either in whole or in part, such that Tenant's gross revenues decrease by ~~twenty-five percent (~~25~~%)~~% or more, then Tenant shall have the option to terminate this Lease. If Tenant chooses to rebuild, Tenant shall remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, in accordance with the plans and specifications pursuant to which such property was constructed~~.~~, updated as necessary to comply with current law. Tenant and Landlord agree that any applicable insurance proceeds shall be made available to Tenant for the restoration and repair of the ~~Premises~~ Property, and Landlord shall pay the excess cost necessary to return the Property to its pre-damaged condition. Until such time as the ~~premises are~~Property is repaired, rebuilt and put in good and tenantable order, all rent and other charges, or a fair and just proportion thereof shall be abated according to the nature and extent of the damage sustained and the degree of impact such damage and repairs have on Tenant's operations within the ~~Premises~~Property as measured by the proportionate reduction in Tenant's gross sales, as more particularly described in Section (b) below. If Tenant, however, after diligently pursuing applications for building permits with appropriate governmental authorities and contracts for such work with qualified contractors is unable to commence to repair, rebuild and put the ~~Premises~~Property in good and tenantable order following damage or destruction within ~~ninety (~~90~~)~~ days after the date when such damage or destruction occurred, or if it is reasonably estimated that such repair or rebuilding cannot be completed in less than ~~one hundred and eighty (~~180~~)~~ days after the date such damage or destruction occurred, both for reasons beyond the reasonable control of Tenant, then Tenant, in addition to such other rights and remedies as may be accorded Tenant by law, shall have the right and option to terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repairs or rebuilding, and upon such notice being given this lease shall automatically terminate and Landlord shall be entitled to all insurance proceeds for such damages. The parties agree that (i) if the ~~Premises~~Property should be damaged or destroyed by fire or other cause to such an extent that the cost of restoration would exceed ~~fifty percent (~~50~~%)~~% of the amount it would have cost to replace the ~~Premises~~Property in its entirety at the time such damage or destruction took place, and (ii) if at the time of such damage or destruction the Term of this Lease is scheduled to expire within a period of one ~~(1)~~ year, Landlord or Tenant shall have the right and option to terminate the Term of this Lease by giving the other party to

this Lease notice of such **notice is given, the Term of this Lease shall terminate as of the date Tenant vacates the Premises, which date shall be no later than thirty (**election within 30**)** days after such damage or destruction shall have taken place, and if such notice is given, the Term of this Lease shall terminate as of the date Tenant vacates the **Premises**Property, which date shall be no later than **thirty (**30**)** days after the giving of such notice and Landlord shall be entitled to receive all insurance proceeds for such

(i) damages.

(ii) Uninsured Loss. If, at any time prior to the expiration or termination of this Lease, the **Premises are**Property is totally or partially damaged or destroyed from a casualty not covered by insurance maintained (or required to be maintained) by Tenant hereunder, which damage renders the **Premises** Property totally or partially inaccessible or unusable to Tenant in the ordinary course of its business, Tenant may, at its option, upon written notice to Landlord within **sixty (**60**)** days after the occurrence of such damage or destruction, elect to repair or restore such damage or destruction. If Tenant elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect but the rent and all charges payable to Landlord shall be proportionately reduced as provided in Section (i) above. If Tenant does not elect by written notice to Landlord to repair such damage, or if the damage cannot, in Tenant's judgment, be completed within **six (6) months** 180 days following the date of such damage or

(ii) destruction, this Lease shall terminate.

(b) Damage or Destruction of Property Excluding Premises. If any portion of the Property excluding the Premises shall be damaged or destroyed by fire or any other casualty, then Landlord shall forthwith remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, in accordance with the plans and specifications pursuant to which such property was constructed. During such period following damage and repair of the Property excluding the Premises, all rent and other charges hereunder shall abate, proportionately, to the extent of the impairment caused to Tenant's and Tenant's customers' use of the Premises as a result of the damage or destruction of the Property. Such abatement shall be calculated by multiplying each item of rent and other charges by a fraction, the denominator of which shall be Tenant's monthly gross sales for the last twelve (12) calendar months preceding the month in which the damage or destruction occurred and the numerator of which shall be Tenant's gross sales for the month the item of rent or other charge in question arise; however, in no event shall the fraction be greater than one (1) for the purposes of this calculation. Any annual fees shall be divided by twelve and shall be abated on as monthly basis in the same

~~**manner. For example, if the taxes applicable to the Premises for the year is $96,000, the monthly average would be $8,000. If the Property is in disrepair during four calendar months of such year and the fractions determined as described above for these four (4) months were ½, ¾, ¾ and 7/8, the payments of taxes for such for months respectively would be $4,000, $6,000, $6,000 and $7,000; which equals $23,000 which amount would be added to the payments for the eight unaffected months which equal $64,000 (8 x $8,000) making the total Taxes Applicable to the Premises payable for the year equal to $87,000. the abatement calculation described above shall be applicable for each calendar month beginning in the month the fire or other casualty to the Property occurs until the month a certificate of completion is issued by the architect supervising such work evidencing the repairs to the Property are completed.**~~

~~**In the event the Property excluding the Premises is damaged or destroyed so that the same cannot be adequately repaired with due diligence within one hundred eighty (180) days after such destruction or damage, then this Lease shall, at the option of Tenant, terminate as of the date Tenant ceases doing business from the Premises. Said option must be exercised within thirty (30) days from the date of damage or destruction. If there shall be a termination, as provided for above, Tenant shall immediately surrender and yield up said Premises and all interest therein to Landlord within ninety (90) days after the date of Tenant's notice to Landlord, in which event Tenant shall not be liable for any further payments of rental or any other monetary obligations on account of this Lease after the date of such surrender. Landlord may, in that event, re-enter and repossess said Premises and be discharged from this Lease and may remove all persons therefrom.**~~

21. ~~21.~~ Condemnation.

(a) Taking of Whole ~~**Premises or**~~ Property. If, during the Term, the whole ~~**of the Premises or**~~ Property shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the ~~**Premises or**~~ Property is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease, except that Landlord shall refund to Tenant any prepaid rent or similar sums as may be equitable and ~~**property**~~properly applied to the portion taken, and Tenant shall pay to Landlord all sums that it may be obligated to pay to Landlord to and including the effective date of termination.

Partial Taking of ~~**Partial Premises or**~~ Property. If, during the Term only a part of ~~**the Premises or Property**~~a Golf Course is taken pursuant to any condemnation proceeding and ~~**the remaining portion is not in Tenant's sole judgment**~~

~~suitable or adequate for the purposes for which Tenant was using the~~ ~~Premises or Property prior to the~~such taking has a material, adverse effect on the Gross Revenues from such Golf Course, or if by reason of any state, federal or county law or ordinance the use of the ~~Premises or Property~~Golf Course for the purposes specified in this ~~lease~~Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Landlord or Tenant shall have the option to terminate the Lease as to such Golf Course, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving ~~ten (~~not less than 10~~) days'~~ days and up to 30 days written notice to Landlord, and ~~rent~~Rent shall be paid only to the

(b) time when Tenant surrenders possession of the ~~Premises.~~ Property.

~~(a)~~(c) Restoration. If only a part of the ~~Premises or~~ Property is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the ~~Premises~~Property to a self-contained architectural unit of like quality, character and condition which existed immediately prior to the taking. During the period between the effective date of taking and the completion of restoration, rebuilding and refixturizing of the ~~Premises and the~~ Property, all rent and other charges payable by Tenant to Landlord hereunder shall be equitably abated to the extent that the ~~Premises or~~ Property ~~are~~is not then reasonably suitable for the conduct of Tenant's business ~~(based on the reduction in gross sales formulas used in Section 20(b), above.~~ .

~~(b)~~(d) Condemnation Award. If the whole or any part of the ~~premises~~Property are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award; provided that nothing contained in this section shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any ~~interest in or to require Tenant to assign to Landlord any~~ award made to Tenant for (i) the taking of Tenant's personal property or trade fixtures, (ii) Tenant's unamortized cost of the Capital Improvements or Tenant Improvements to the extent paid for by Tenant or (iii) interruption of or damage to Tenant's business. Furthermore, Tenant is granted the right to recover from the condemning authority ~~one hundred percent (~~100~~%)~~% of the "~~bonus value"~~**Bonus Value"** of the leasehold estate which shall be equal to the difference between the rental rate payable under this Lease and the rate established by the condemning authority as an award for compensation purposes, together with any amount ~~Tennant~~Tenant is able to obtain from the condemning authority attributable to Tenant's relocation expenses; provided that no such claim shall diminish or otherwise ~~effect~~affect Landlord's award.

22. 22. Environmental Liability.

(a) Environmental Law. The term "**Environmental Law**"" means any federal, state, local law, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

(a)(b) Hazardous Substances. The term "**Hazardous Substance**"" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.

(b)(c) Landlord's Covenants. Landlord warrants, represents, covenants and agrees as follows:

(i) To the best of Landlord's knowledge, no Hazardous Substance has been released, discharged or disposed of, on, under or about the Premises or the Property (or off-site of the Premises, which might affect the Premises or the Property) by any entity, firm or person, or

(i) from any source whatsoever.

(ii) Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply

(ii) with all applicable Environmental Laws.

(iii) To the best of Landlord's knowledge, (1) there are no underground storage tanks on the Premises or the Property; (2) no underground storage tanks have been removed from the Premises or the Property; and (3) no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than five hundred (500) gallons of any Hazardous Substance per year, have been located on the Premises orProperty. If any underground storage tank is subsequently discovered on the Property.

(iii) (iv), Landlord shall be responsible for its removal and remediation of any Hazardous Substance releases.

Landlord shall give prompt notice to Tenant of: (1) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the ~~Premises or the~~ Property (or off-site of the ~~Premises that might affect the Premises or the~~ Property~~) or~~ that might affect the Property) or related to any loss or injury that might result from any Hazardous Substance; (2) all claims made ~~or~~on threatened by any third party against Landlord or the ~~Premises or the~~ Property relating to any loss or injury resulting from any Hazardous Substance; and (3) Landlord's discovery of any occurrence or condition on the ~~Premises or the~~ Property (or off-site of the ~~Premises~~Property that might affect the ~~Premises)~~ Property) that could cause the ~~Premises~~Property or any part thereof, to be subject to any restriction on occupancy or use of the ~~premises~~Property under any Environmental Law.

(iv)

~~(v)~~ If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the ~~Premises or the~~ Property, Landlord, at Landlord's expense, shall (subject to Tenant's obligations set forth in Section ~~9~~ (d) below), in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to ~~persons~~person, property or the environment as a result of the presence of such Hazardous ~~Substances.~~ Substance. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant during all activities related to remediation. If any asbestos is discovered ~~in~~on the ~~premises~~Property during Tenant's inspection of ~~the Premises~~the Property or construction of ~~its tenant~~any improvements, then ~~Landlord~~Tenant shall promptly remove the asbestos as required ~~or cause it to be removed at Landlord's sole cost and expense. Upon prior approval of Landlord, however, Tenant may remove such asbestos by employing, at Tenant's expense, a licensed contractor approved by Landlord. All reasonable expenses incurred by Tenant for the asbestos removal may be applied to Tenant's Capital Improvement~~

(v)

~~obligation under~~ by using the appropriate Special Fund in accordance with Section ~~12~~6 of this agreement.

~~(c)~~ Tenant's Use of Any Hazardous Substance. ~~The~~ Tenant will use only those Hazardous Substances ~~Tenant may use in its operations~~that are ~~cleaning solutions, office supplies and other substances as are customarily used in Tenant's business or otherwise as reasonably approved by Landlord. Tenant will manage~~

(d) ~~such use in accordance with~~permitted under Environmental Laws. ~~Other than using the~~Tenant will manage, transport, generate or dispose of any Hazardous Substance on the Property in appropriate and lawful methods throughout the length of this agreement and extensions thereof.

~~foregoing, Tenant does not have direct or indirect responsibility for or authority to manage or control use, transportation, generation or disposal of any Hazardous Substance on the Premises or the Property.~~

(e) ~~(e)~~ Indemnities.

~~(i)~~ Tenant shall protect, defend, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all claims, loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the ~~Premises~~Property to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ~~("Claims")~~ directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the ~~Premises or the~~

(i) Property. This indemnity shall survive the expiration or termination of this Lease.

~~(ii)~~ Landlord shall protect, defend, indemnify and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any ~~Claims~~ claim, cause of action, loss, damage, cost, expense (including attorneys' fees and costs) or liability (collectively, "**Damages**") directly or indirectly related to: (1) a violation of or responsibility under Environmental Laws ~~except that if~~unless such ~~Claims~~Damages are directly or indirectly related to Tenant's, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance on ~~the Premises or~~ the Property, or (2) a breach of any representation, warranty, covenant or agreement contained in this Section 22. This indemnity shall survive the expiration or termination of this Lease. In the event of any governmental or court order concerning Hazardous Substances on ~~the Premises or~~ the Property (not caused by Tenant) that precludes Tenant from reasonable operation of its business on the ~~Premises,~~ Property, Tenant may cease operating and its rents and all other charges shall be abated. If such governmental or court order is not resolved within six

(ii) ~~(6)~~ months, Tenant may give the Landlord 30 days notice to terminate this Lease.

23. ~~23.~~ Assignment and Subletting.

(a) Restriction on Assignment and Subletting. Except as provided in Section (b) below, Tenant shall not assign or sublet this Lease without the prior written consent of Landlord, which ~~shall not~~may be ~~unreasonably~~ withheld in Landlord's sole discretion, provided that subsequent to any assignment or sublease (except as provided below) Tenant shall remain primarily liable for the rental to be paid under this Lease and the performance of all terms and conditions of this Lease. When requesting Landlord's consent to an assignment or sublease of the Lease, Tenant shall provide to Landlord, in writing, the following information:

~~(i)~~ information regarding the proposed assignee or sublessee ("**Assignee~~")~~**") including the name, address, and ownership of the Assignee's business; and the Assignee's current financial

(i) statements (certified by an officer, a partner, or an owner of Assignee);

~~**Assignee);**~~

~~(ii)~~ the portion of the ~~**Premises**~~Property that is the subject of the proposed assignment or sublease; a general description of any planned alterations or improvements to the ~~**Premises**~~Property, if any; and the

(ii) proposed use of the ~~**Premises**~~Property by Assignee; and

~~(iii)~~ all other and additional information or documentation

(iii) reasonably ~~**request**~~requested by Landlord.

~~(a)~~ Permitted Assignment. Tenant may, however, assign this Lease without Landlord's written consent upon ~~sixty (~~60~~)~~ days' written notice to Landlord if the assignment is made to an entity in which Tenant's partners (Ken Morton Sr., ~~Tenant,~~ Kathy Morton, Terry Daubert, Ken Morton Jr., Tom Morton, and /or Mike Woods) or any or all of them, either collectively or individually,

(b) hold a majority interest.

Release. Upon delivery to Landlord, by a successor entity to which this Lease is assigned or transferred, of the agreement of the entity to be bound by the terms, covenants, and conditions of this Lease to be performed by Tenant after the date of the assignment or transfer, Tenant shall be released and discharged from all obligations later arising under this Lease, except where the transfer is to ~~b~~a wholly-

(c) owned subsidiary of Tenant.

(d) ~~24.~~ Special Events. From time to time during a special event, tournament or charity event (together "**Special Event**"), a vendor, company or restaurant may request to provide services or products. This kind of request is not considered to be an assignment or subletting as long as revenues are not received by the vendor, company or restaurant. If revenues are received, all revenues shall be treated as Gross Revenues. If Tenant agrees to allow a vendor, company or restaurant to provide services or products, the vendor, company or restaurant must comply with all governmental, health and safety laws.

Default. Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace

24. period, shall constitute an event of default (each an "**Event of Default~~"):~~**").

(a) Failure to Pay. The failure of Tenant to pay any amount in full when it is due under the Lease where such failure shall continue for a period of ~~ten (~~10~~)~~ business days after Landlord notifies Tenant in writing of such failure;

(b) ~~(b)~~ Failure to Perform. The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ~~thirty (~~30~~)~~ days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ~~thirty (~~30~~)~~ days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the ~~thirty (~~30~~)~~ day period and thereafter diligently completing the cure.

~~(a)~~(c) Bankruptcy Matters. Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation~~,~~ or surrender of the ~~Premises~~Property by Tenant without Landlord's prior written consent; or the

dispossession of Tenant from the ~~Premises~~Property (other than by Landlord) by process of law or otherwise;

~~(b)~~(d) Trustee, Attachment, Filing. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the ~~Premises~~Property or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within ~~thirty (~~30~~)~~ days; or the involuntary filing against Tenant, or any general partner of Tenant is a partnership, of

~~(i)~~ a petition to have Tenant, or any partner of Tenant if Tenant is a
(i) partnership, declared bankrupt, or

~~(ii)~~ a petition for reorganization or arrangement of Tenant under any law
relating to insolvency or bankruptcy, unless, in the case of any
(ii) involuntary filing, it is dismissed within ~~sixty (~~60~~)~~ days;

~~(c)~~(e) Abandonment. The abandonment of the ~~Premises~~Property by Tenant;

25. ~~25.~~ Remedies.

(a) Landlord's Remedies on Tenant's Default. On the occurrence of an Event of Default by Tenant, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to ~~Landlord~~landlord at law or in equity. These remedies are not exclusive but cumulative.

~~(i)~~ Termination of Lease. Landlord may terminate this Lease and recover
possession of the ~~Premises~~Property. Once Landlord has terminated this Lease,
Tenant shall immediately surrender the ~~Premises~~Property to Landlord. On
termination of this Lease, Landlord may recover from Tenant all of
(i) the following:

(1) The worth at the time of the award of any unpaid rent and accumulated late charges that had been earned at the time of the termination, to be computed by allowing interest at the rate of ~~ten percent (~~10~~%)~~% but in no case greater than the maximum amount of interest permitted by law;

(2) ~~(2)~~ The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate of ~~ten percent (~~10~~%)~~% but in no case greater than the maximum amount of interest permitted by law;

~~(1)~~(3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Lease Term after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus ~~one percent (1%);~~1%;

~~(2)~~(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the ~~Premises~~Property for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and

~~(3)~~(5) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

~~(ii)~~ Continuation of Lease in Effect. Landlord shall have the remedy described in Civil Code section 1951.4 -which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the ~~landlord~~Landlord may continue the lease in effect after the ~~tenant's~~tenant' breach and abandonment and recover rent as it becomes due. Accordingly, ~~if~~ Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it

(ii) becomes due.

~~(iii)~~ Tenant's Subleases. If Landlord elects to terminate this Lease on

(iii) account of any default by Tenant, ~~Landord~~Landlord may:

(1) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the ~~Premises~~Property, except as otherwise provided in subsection (b) below.

(2) ~~(2)~~ Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

~~(iv)~~ Efforts to ~~relet~~Relet. For purposes of this Section 25, Tenant's right to possession shall not be considered to have been terminated by Landlord's efforts to relet the ~~Premises~~Property, by Landlord's acts of maintenance or preservation with respect to the ~~Premises~~Property, or by appointment of a receiver to protect Landlord's interests under this Lease. This list is merely illustrative of acts that may be performed by Landlord without terminating Tenants right to

(iv) possession.

~~(v)~~ Acceptance of Rent Without Waiving Rights. Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts payments after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of

(v) default.

(b) ~~(b)~~ Tenant's Remedies on Landlord's Default.

~~(i)~~ Landlord's Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a default by Landlord ~~under this Lease shall constitute a default by Landlord~~ under the Lease if the failure continues for ~~thirty (~~30~~)~~ days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within ~~thirty (~~30~~)~~ days, Landlord's failure to perform shall constitute a default under the Lease unless Landlord undertakes to cure the failure within ~~thirty (~~30~~)~~ days and diligently and continuously attempts to complete this

(i) cure as soon as reasonably possible.

~~(ii)~~ Rent Abatement. If Tenant is prevented from using, and does not use, all or part of the ~~Premises (~~Property (termed "**Affected Area~~")~~" for purposes of this paragraph) as a result of an Abatement Event, as defined in subsection (iv) below, and if this Abatement Event continues for either ~~ten (~~10~~)~~ consecutive ~~business~~ days after Landlord's receipt of notice from Tenant of the Abatement Event or ~~twenty (~~20~~) business~~ days in any ~~twelve-month (~~12-month~~)~~ period after Landlord's receipt of such notice ("**Eligibility Period~~"),~~**"), the rent payable under this Lease shall be abated or reduced after the expiration of the Eligibility Period for such time that Tenant continues beyond the Eligibility Period to be prevented from using, and does not use, the Affected Area in the proportion that the rentable area of the Affected Area bears to the total rentable area of the ~~Premises~~Property. To establish an Eligibility Period of ~~twenty (~~20~~) business~~ days in a ~~twelve-month (~~12-month~~)~~ period, Tenant must give Landlord notice on each of the ~~twenty (~~20~~) business~~ days that an Abatement Event has occurred,

(ii) continues, or has recurred.

~~(iii)~~ Full Abatement. If as a result of an Abatement Event, as defined in Section (iv) below, Tenant is prevented from using, and does not use, a substantial portion of the ~~Premises~~Property for a period of time in excess of the Eligibility Period and the remaining portion of the ~~Premises~~Property is not sufficient to allow Tenant to conduct its business ~~in the Premises~~, all rent due under this Lease for the entire ~~Premises~~Property affected shall be abated for the time after expiration of the Eligibility Period during which Tenant is precluded from using, and does not use, the entire ~~Premises~~Property. If~~,~~ however, Tenant reoccupies any portion of the ~~Premises~~Property during this period, the rent allocable to this reoccupied portion (based on the proportion that the rentable area of the reoccupied portion of the ~~Premises~~ Property bears to the total rentable area of the ~~Premises~~Property) shall be payable

(iii) by Tenant from the date on which Tenant reoccupies this portion of the Property.

~~of the Premises.~~

(iv) ~~(iv)~~ Abatement Event. An "**Abatement Event~~"~~**" is:

~~(1)~~ Landlord's performance of or failure to perform any repair

(1) or alteration that substantially interferes with Tenant's use of the Property;

of the Premises;

(2) Any failure of or interruption in utilities or services required

(2) to be supplied by Landlord to the **Premises or the** Property.

(3) **(3)** Any failure of Landlord to provide Tenant with access to the **Premises or the** Property.

(v) Termination. If any Abatement Event is not cured within **sixty (**60**)** days after expiration of the Eligibility Period, Tenant may terminate this Lease, by giving written notice to Landlord, as to

(v) one of the following:

(1) The Affected Area, in which event the rent payable by Tenant shall be adjusted accordingly and the parties shall amend this Lease to reflect the adjusted rent and configuration of the **Premises**Property; or

(2) The entire **Premises**Property, in which **event** the termination shall be effective on Tenant's vacation of the **entire Premises**Property but in no event more than one **(1)** year after Landlord's receipt of

(2) the termination notice.

26. **Late Charge.** Tenant acknowledges that Tenant's failure to pay any **installment of Monthly Rent** Percentage Payments, Payment Deficiency, or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering **into**in this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any **installment of Monthly Rent Payments,**Percentage Payment, Payment Deficiency or any other amount due under the Lease, is not received by Landlord **as and when**within 10 days after the due date, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to **six percent (**6**%)**% of the past due amount, which the parties agree represents a fair and reasonable estimate of the

26. costs incurred by Landlord as a result of the late payment by Tenant.

~~27.~~ **Default Interest.** If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at ~~ten percent (~~10~~%)~~% per annum, not to exceed the maximum rate then allowable by law, from the

27. due date until paid.

~~28.~~ **Waiver of Breach.** Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of

28. rent accepted.

~~29.~~ **Estoppel Certificates.** At any time, with at least ~~fifteen (~~15~~) days'~~ days prior notice by ~~Landlord, Tenant~~ a party, the other party shall execute, acknowledge, and deliver to

29. ~~Landlord~~ the requesting party a certificate certifying to ~~Tenant's~~ the delivering party's actual knowledge:

(a) ~~(a)~~ the ~~Commencement~~Effective Date and the Term,

(b) ~~(b)~~ the amount of the ~~Monthly Rent Payment~~Rent and the preceding months' Percentage Payments,

(c) ~~(c)~~ the dates to which ~~rent~~Rent and other charges have been paid,

~~(d)~~ that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating

(d) the date and nature of each modification,

~~(e)~~ that no notice has been received by ~~Tenant~~ the delivering party of any default by ~~Tenant~~ the requesting party that has not been cured, except, if any exists, those defaults must be specified in the certificate, and ~~Tenant~~ the delivering party must certify that no event has occurred that, but for the expiration of the applicable time period ~~of~~or the giving of notice or both, would constitute ~~an~~and Event of Default under this

(e) Lease,

(f) that no default of **Landlord** the requesting party is claimed by **Tenant**the delivering party, except**,** if any, those

(f) defaults must be specified in the certificate, and

(g) **(g)** other matters as may be reasonably requested by **Landlord**the requesting party.

Any certificate may be relied on by the addressee of such certificate, including, without limitation prospective purchasers, **mortgages**credit providers, mortgagees, or beneficiaries under any deed of trust on the **Premises**Property or any part of it.

30. Attorney Fees. If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees and costs, the amount of which shall be fixed by the court or arbitrator, and shall be made a part of any judgment rendered. Should Landlord elect to use the services of in-house attorneys, the reasonable hourly rate for services provided by said attorneys is hereby determined to be the prevailing hourly rate charged by private attorneys with similar qualifications practicing in the greater Sacramento metropolitan area.

31. Security Deposit.of Rent Payments. Upon delivery of possession of the **Premises**Property to Tenant, Tenant shall **deposit with a bank the sum of Fifty Thousand Dollars ($50,000) or a letter of credit as a security deposit** do one of the following for the purpose of securing the performance of Tenant's obligations **under this Lease. If** to Landlord under this Lease, including the payment of Rent and Percentage Payments: (i) maintain a minimum open Letter of Credit in the amount of $100,000 with a bank; (ii) have deposited in a separate account $100,000; or (iii) obtained a performance bond in the amount of $100,000 for the benefit of Landlord **uses any portion of the security deposit,**. Tenant **shall, within ten (10) days after written request therefore, deposit monies with**will provide Landlord **sufficient to restore the security deposit to the full amount required by this Lease. Within fourteen (14) days after the expiration of this Lease, If**with confirmation from a bank of a Letter of Credit or separate account or a copy of the performance bond. If and/or when the Letter of Credit or account balance is less than $100,000, Tenant will notify Landlord **elects to apply the security deposit only to unpaid rent,** and **otherwise within thirty (30) days after the Premises have been vacated, Landlord shall return that portion of the security deposit not used or applied by Landlord. No part of the security deposit shall be considered to be**

~~held in trust, but the security deposit shall bear interest to Tenant which may~~
30. ~~be removed by~~ Tenant ~~from~~will replenish the letter of credit or replace the separate account ~~at the end of each Lease Year.~~within 30 days.

~~32.~~ **Authority.** ~~If~~ Tenant is a ~~corporation, trust, or general or limited partnership, all~~Limited Liability Corporation. All individuals executing this Lease on behalf of ~~that~~the entity represent that they
31. are authorized to execute and deliver this Lease on behalf of ~~that~~the entity. ~~If~~

~~Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord.~~

~~33. Arbitration. The parties shall attempt to resolve any disputes they may have in good faith. Any disputes which cannot be resolved informally between the parties shall be submitted to final and binding arbitration in Sacramento, California. A party seeking to arbitrate a dispute arising out of this Lease must notify the other party in writing of its intent to arbitrate any claim for breach of enforcement of any provision of this Lease within six (6) months of discovery of the last event giving rise to the claim for breach or enforcement. Notification to the other party of a written request for arbitration shall comply with Section 34 governing Notices. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association and its Rules excepting such Rules as may be in conflict with federal or California law. Within ten (10) business days after notice of a dispute subject to arbitration is given, the parties shall select an arbitrator. If the parties fail to select an arbitrator within the designated period, then on the request of either party, the American Arbitration Association shall select the arbitrator. If the American Arbitration Association shall select the arbitrator. The parties shall each pay half of the arbitrator's fees and expenses. The decision of the arbitrator shall be final and conclusive, and the parities waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision or as otherwise may be required by law. The parties expressly intend to arbitrate disputes between them. Therefore, this arbitration clause shall be construed so as to be consistent with applicable federal and California law, and to be enforceable to the maximum extent allowable by law. If necessary, any portion of this clause that is unenforceable by law shall be stricken, and the arbitrator or the court, as the case may be, shall have the power to reform this clause to the extent necessary to comply with applicable law and to give effect to the parties intent that they shall arbitrate their disputes.~~

~~34. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they~~

are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Tenant at:

Kathken Corporation

32. Notices. All notices, requests, demands or other documents shall be: (a) personally delivered; (b) mailed, certified or registered mail, return receipt requested; (c) delivered by recognized overnight delivery service to Landlord or Tenant at its address below; or (d) sent by fax to the fax number below. A personally delivered notice or one sent by recognized overnight courier is effective on delivery. A mailed notice is effective 48 hours after notices to all parties have been deposited in United States mailboxes, postage paid, and addressed as indicated above. A faxed notice is effective on the day sent by fax before 5 pm or the next business day if sent after 5 pm or on a non-business day. A party giving notice by fax shall send a copy of the notice by first class mail on the same day as the fax is sent. Either party may, by written notice to the other, specify a different address for notice purposes.

If to Tenant: Morton Golf LLC
Attention: **Ken Morton Sr., Chairman of the Board**
Terry Daubert, President
3645 Fulton Avenue **3645 Fulton Avenue**
Sacramento, California 95821

Or Fax: (916) 808-2523

If to Landlord **at:**

Capital : City **Golf** of Sacramento
Attention: **Ann Weaver,** Golf **Manager** Division
8325 River Road
1030 15th Street, Suite 220
Sacramento, California **95832** 95814

Fax: (916) 808-6317

For ease of administration of this Lease, Tenant provides the following identifying information:

City of Sacramento Business Operations Tax Certificate #**15161** 1002924
Federal Tax ID #**94-2662378** 80-0026405
California State Board of Equalization #SRKH-**28-902113** 97-986679
Sacramento Metropolitan Air Quality Management District #37373

State of California Alcoholic Beverage License #~~41-351593-3405-23~~397476

~~**Either party may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.**~~

~~35.~~ **Nondiscrimination.** Tenant shall not discriminate against any employee ~~or~~, applicant for employment, or Golf Course patron on the basis of race, color, religion, disability, ancestry, gender, sexual orientation, national origin, age, or any other basis protected by law. Tenant will provide equal employment opportunities to ensure that applicants are employed, and that employees are treated during employment without regard to their protected basis. Such opportunities shall exist with regard to, but not ~~be~~ limited by, the following actions; employment, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tenant shall post in conspicuous places, available to employees and applicants, notices setting forth the provision of this **33.** paragraph.

34. ~~36.~~ **Nondiscrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized **Exhibit I**. Tenant is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

Heirs and Successors. This Lease shall be binding on and shall inure to the **35.** benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

~~**Landlord and Tenant.**~~

~~37.~~ **Partial Invalidity.** Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining **36.** provisions of this Lease shall remain in effect, unimpaired by the holding.

~~38.~~ **Entire Agreement.** This instrument constitutes the sole agreement between Landlord and Tenant respecting the ~~**Premises**~~Property, the leasing of the ~~**Premises**~~Property to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. This Lease supersedes all prior leases or agreements, including City Agreement 2001-134 and any amendments and supplements thereto, whether written or oral. Any agreement or representations respecting the

~~Premises or their leasing~~lease of the Property by Landlord to Tenant not expressly set forth in this instrument are void.

Time of Essence. Time is of the essence in this Lease.

Rent. ~~All monetary obligations~~ In the event of any failure on the part of Tenant to pay to Landlord any monetary obligation under ~~the~~this Lease~~,~~ when due, such monetary obligation of Tenant to Landlord under the Lease, including but not limited to the ~~Monthly~~ Rent ~~Payments~~, shall be deemed rent~~.~~ and Landlord shall have the right to exercise any and all remedies it may have with respect to such monetary obligation as if such monetary obligation were Rent.

Amendments. This lease may be modified only in writing and only if signed by the parties at the time of the modification.

Recordation. This Lease shall not be recorded. Notwithstanding the foregoing, concurrently with the execution of this ~~Lease~~lease, Landlord shall execute before a notary and deliver to Tenant for recording a standard form "**Memorandum of Lease Agreement**~~".~~". Tenant shall execute and deliver to Landlord on the expiration or termination of this Lease, immediately upon Landlord's request, a quitclaim deed to the ~~Premises~~Property or a memorandum of lease termination, in recordable form, designating Landlord as transferee.

City Representative Authority. Authority to act on behalf of the City in the administration of the Lease is hereby delegated to the City Manager or his or her designee.

Reasonableness and Good Faith. Except as expressly limited elsewhere in this Lease, whenever this Lease requires Landlord or Tenant to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

Relationship of Parties. Neither party shall be deemed in any way or for any purpose to have become, by the execution of this Lease or any action taken hereunder, a partner of the other party in its business or otherwise or a joint venturer or a member of any joint enterprise with such other party, it being expressly understood and agreed that neither the method of a calculation of rent nor any other provisions contained in this ~~Lease~~lease nor any act or acts of the parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

~~45.~~ **Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease shall not be effective until the execution by and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one
45. of such completely executed counterparts shall be sufficient proof of this Lease.

~~46.~~ **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of the Landlord, terminate all or any existing sub-tenancies or may, at the option of the Landlord, operate as an assignment
46. to a Landlord of any of the sub-tenancies.

~~47.~~ **Exhibits.** The Exhibits attached to this ~~**Lease**~~lease are a part of this ~~**Lease**~~lease and are
47. incorporated into this Lease by reference.

~~48.~~ **Municipal Authority.** The execution and delivery of this Lease and the consummation of the transactions contemplated by this Lease have been duly authorized and approved by all requisite action of the City of Sacramento, and this Lease has been duly executed and delivered by Landlord and constitutes a
48. valid and binding obligation of Landlord.

49. Governing Law. This Lease shall be governed by and construed in accordance with California law.

(Signature Page Follows)

Tenant (Morton Golf LLC)

By: _____
Ken Morton, Sr.
Chief Executive Officer
Date: _____, 2011

By: _____
Terry Daubert
President

Landlord (City of Sacramento)

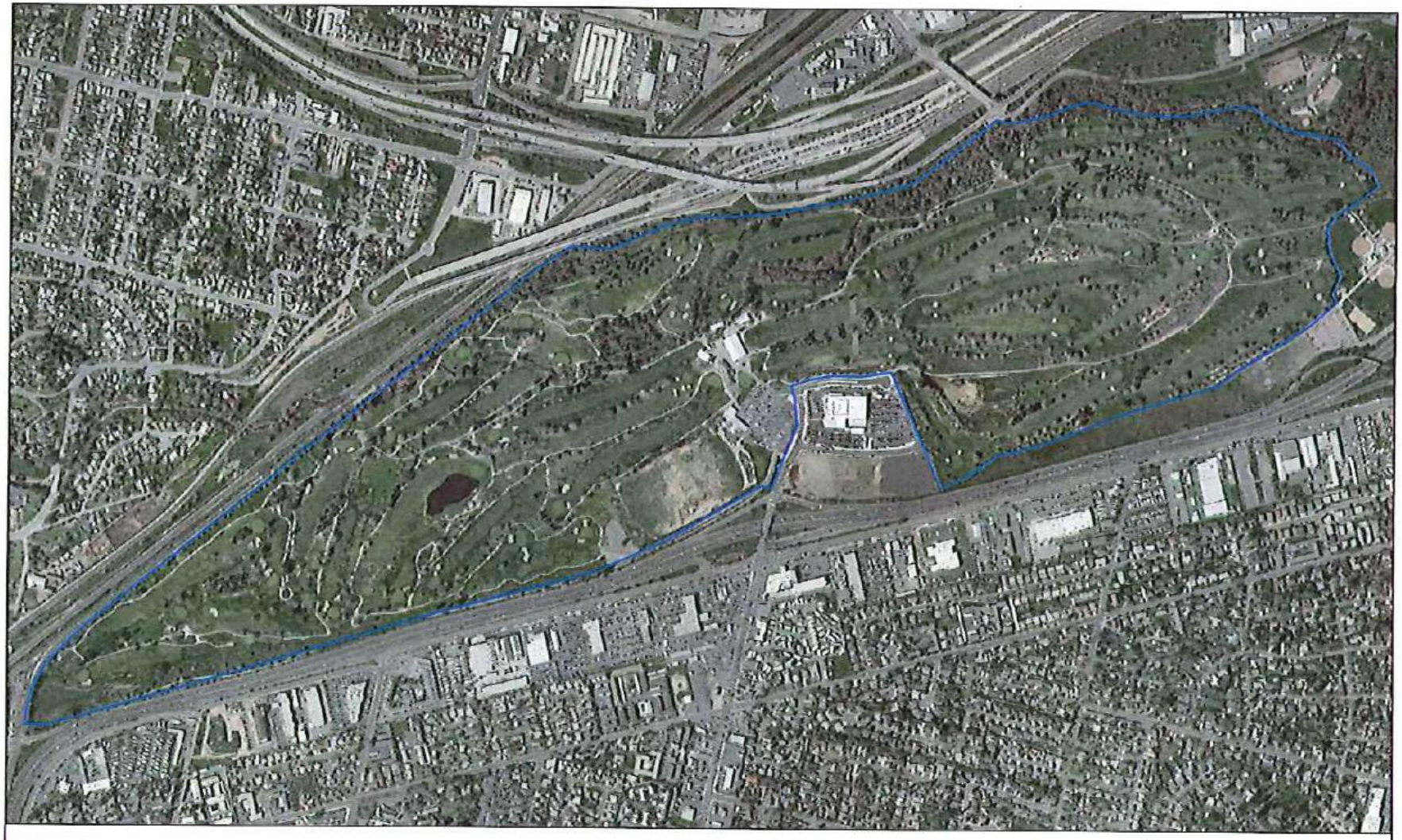
By: _____
John F. Shirey
City Manager
Date: _____, 2011

ATTEST
Sacramento City Clerk

By: _____

APPROVED AS TO LEGAL FORM
Sacramento City Attorney

By: _____
Kourtney Burdick
Deputy City Attorney



Legend

Haggin Oaks Golf Course

Haggin Oaks Golf Course
Exhibit A-2
07.27.2011

500 0 500 Feet

Legend

Bing Maloney Golf Course

Bing Maloney Golf Course
Exhibit A-3
07.27.2011

300 0 300 Feet

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RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MORTON GOLF LLC TO MANAGE AND OPERATE ALL ASPECTS OF THE HAGGIN OAKS, BING MALONEY, AND BARTLEY CAVANAUGH GOLF COURSES

BACKGROUND

A. In June 1999, through Resolution 99-320, Council approved collection of an irrigation surcharge of $0.50 for all 9-hole, and $1.00 for all 18-hole, rounds of golf played at Haggin Oaks, Bing Maloney, and Bartley Cavanaugh golf courses (the "Golf Courses"), through June 30, 2005, to finance irrigation replacements and upgrades on the courses.

B. In January 2001, through Resolution 2001-054, Council approved a bundled-fees structure at Alister MacKenzie Golf Course at Haggin Oaks ("Alister MacKenzie") and extended the irrigation surcharge until such time that all necessary irrigation work was completed and the associated debt retired.

C. In July 2001, Council approved a ten-year agreement with Kathken Corp. to manage the Golf Courses, excluding maintenance and upkeep of the courses and the golf-marshal program, both of which remained the City's responsibility. In January 2002, Kathken Corp. assigned the agreement to Morton Golf, LLC ("Morton"). In April 2009, Morton exercised the first of three options to renew the agreement. The renewal term runs from October 1, 2011, through September 30, 2016.

D. The City now desires to have a third party manage the maintenance and upkeep of the Golf Courses and the golf-marshal program, such that all Golf Course operations will be handled by a third party.

E. Partnering with Morton to manage the maintenance and upkeep of the Golf Courses is in the best interest of the City in light of the City's current contractual relationship with Morton Golf to handle all other golf course operations. The term of this agreement runs through September 30, 2016. Relying on one vendor, instead of two, to manage all aspects of running the Golf Courses will create operational efficiencies, ensure accountability for delivery of a high-quality service, and ease the City's contract administration. In addition, Morton has already helped the City provide a high-quality golfing experience for the public.

F. Under the proposed agreement with Morton (attached as Exhibit A), the irrigation surcharge and bundled-fees structure at Alister MacKenzie are no longer needed.

G. Funds from Capital Improvement Project M17400000 (Golf Course Maintenance) will be used to connect the Haggin Oaks and Bartley Cavanaugh golf courses to

domestic water lines ("Water Connection Projects"). Following completion or cancellation of the Water Connection Projects, transferring the remaining balance of M17400000, less $60,000, to Morton Golf LLC to deposit into specific accounts designated in the proposed agreement, to be used in accordance with the agreement, will provide an initial funding source for various capital improvements and repairs to the Golf Courses.

H. Withdrawing $134,847 from M17400200 (Golf Irrigation System) and transferring that sum to Morton Golf, LLC to deposit into Special Fund 5 (Irrigation Fund), identified in the proposed agreement, will provide an initial funding source for irrigation replacement projects.

I. Reserving $150,000 of the cash balance available in the Golf Fund (Fund 2603) will allow the City to make up any shortfall in rent in the event Morton's percentage rent is less than minimum annual rent during any of the first three years of the contract, not to exceed 50,000 per year.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. (a) It is in the best interest of the City to enter into the agreement attached as Exhibit A ("Agreement") with Morton Golf, LLC without bidding; and (b) the City Manager is authorized to execute the Agreement.

Section 2. Resolutions 99-320 and 2001-054, relating to the irrigation surcharge at the three golf facilities and bundled-fees structure at Alister MacKenzie, are repealed as of January 1, 2012.

Section 3. Following completion or cancellation of the Water Connection Projects, the deposit of the remaining balance of M17400000, less $60,000, into Special Fund 2 (Building Repairs and Minor Upgrades Fund) and Special Fund 3 (Capital Improvement and Major Maintenance Fund for Buildings and Support Facilities) in accordance with the Agreement is approved.

Section 4. The withdrawal of $134,847 from M17400200 (Golf Irrigation System Replacement) and deposit into Special Fund 5 (Irrigation Fund) in accordance with the Agreement is approved.

Section 5. The transfer of title from the City to Morton Golf, LLC of that equipment specified in Exhibit C of the Agreement is approved.

Section 6. Suspension of interest accrual on the Golf Fund (Fund 2603) operating loan from the Risk Management Fund, effective July 1, 2011, with repayment of loan beginning in 2021 is approved.

Section 7. Commitment of$150,000 of the cash balance available in the Golf Fund (Fund 2603) is approved, to be used in the event Morton's Percentage Payments, as defined in the Agreement, are less than minimum annual rent in any of the first three years of the contract, not to exceed $50,000 per year, is approved.

Section 8. Exhibit A is a part of this Resolution.

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Exhibit A	Agreement with Morton Golf, LLC for the Lease and Operation of Haggin Oaks, Maloney, and Bartley Cavanaugh Golf Courses
Exhibit B	Transfer of Capital Improvement Funds to Morton Golf

Exhibit B

Transfer of Funds To Morton Golf

City CIP	Description	Amount	Morton Golf Special Fund	Description
M17400000	Golf Course Maintenance	Balance upon completion of Water Connection Projects, less $60,000, deposited equally between Special Funds #2 and #3	#2	Building Repairs and Minor Upgrades
M17400000	Golf Course Maintenance	Balance upon completion of Water Connection Projects, less $60,000, deposited equally betwen Special Funds #2 and #3	#3	Capital Improvemen t Fund for Buildings and Support Facilities
M17400200	Golf Irrigation System Replacement	$134,847	#5	Irrigation

City of Sacramento

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Tax ID # if applicable:

Requires Council Approval: ☐ No ☒ YES Meeting: 10/25/11

☐ Real Estate ☐ Other Party Signature Needed ☐ Recording Requested

General Information

Type: Select Contract Type PO Type: Select PO Type $ Not to Exceed: $	Attachment: Original No.: Original Doc Number:
Other Party: Morton Golf, LLC	Certified Copies of Document::
Project Name: Agreement for Lease and Operation of Haggin Oaks, Bing Maloney, and Bartley Cavanaugh Golf Courses	Deed: ☐None ☐ Included ☐Separate
Project Number: Bid Transaction #:	E/SBE-DBE-M/WBE:

Department Information

Department: CCL Division: Golf

Project Mgr: Mike Kerton Supervisor: Barbara Bonebrake

Contract Services: Date: Division Mgr:

Phone Number: 808-6316 Org Number: 17001211

Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	MPK	10/19/11
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:	KCB	10/19/11

City Attorney	Signature or Initial	Date
City Attorney:		

☐ Send Interoffice Mail ☐ Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director Department Director:	BEB	
City Mgr: yes ☒ No ☐		

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:
Initial:
Date:

Imaged:
Initial:
Date:

Received:
(City Clerk Stamp Here)

AGREEMENT FOR THE LEASE AND OPERATION OF HAGGIN OAKS, BING MALONEY, AND BARTLEY CAVANAUGH GOLF COURSES

by and between

City of Sacramento, a California municipal corporation
("Landlord"),

and

Morton Golf LLC, a California limited liability company
("Tenant")

January 1, 2012

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Agreement for the Lease and Operation of Haggin Oaks, Bing Maloney, and Bartley Cavanaugh Golf Courses

This agreement ("**Lease**"), between the City of Sacramento, a California municipal corporation ("**Landlord**"), and Morton Golf LLC, a California limited liability company ("**Tenant**"), is effective January 1, 2012 ("**Effective Date**"). This agreement supersedes the prior agreement between the parties and all prior amendments.

Recitals

A. Landlord is the owner of that certain land, buildings, and improvements commonly known as the Haggin Oaks Golf Complex ("**Haggin Oaks**"), which consists of the Arcade Creek and Alister MacKenzie golf courses; Bing Maloney Golf Complex ("**Bing Maloney**"), which consists of the Bing Maloney 18 and Executive 9 golf courses; and Bartley Cavanaugh Golf Complex ("**Bartley Cavanaugh**"), all located in the County of Sacramento, California, and more particularly described on attached **Exhibits A-1**, **A-2**, **A-3**, and **A-4** (referred to individually and collectively as the "**Property**" or "**Golf Course**" or "**Golf Courses**").

B. Morton Golf is the owner of certain buildings on the Property, commonly known as the Haggin Oaks Golf Super Shop, Haggin Oaks Player Performance Studio, Haggin Oaks Tuff Shed next to the Player Performance Studio, F&B Trailer at the Haggin Oaks Driving Range, Storage Container behind the Super Shop at Haggin Oaks, Haggin Oaks Conference Room Trailer, and Tuff Shed Storage Building on Driving Range at Bing Maloney, as described on attached **Exhibits B-4** and **B-5** (referred to individually and collectively as "**Morton Golf Property**").

C. To meet the professional and financial needs of the Property and to permit Tenant to operate the Property for the benefit of the Sacramento region, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord all of the Property, which includes the buildings outlined in **Exhibits B-1**, ***B-2***, and **B-3**, but excludes, for now, the area shown in **Exhibit B-6**, identified as the "**Levick Property**," on the terms and conditions as set forth in this Lease.

For good and valuable consideration, the parties agree as follows:

1. Lease.

(a) Lease of Property. Landlord leases to Tenant and Tenant leases from Landlord the Property on the terms and conditions in this Lease. Landlord hereby agrees to provide full access to Tenant to the Property at all times to give full force and effect to the rights and obligations of the parties pursuant to this Lease.

(i) With respect to the Hack House, identified in **Exhibit B-6**, Tenant shall maintain the property in good repair, expending up to $2,000 per year on maintenance if necessary. Any maintenance in excess of $2,000 shall be done at Landlord's sole discretion and at Landlord's expense. Landlord, in its sole discretion, may terminate the lease of the Hack House to Tenant upon 365 days notice. All other terms and conditions of this Lease shall remain in full effect.

(ii) At the time of execution of the Lease, the Lease excludes the Levick Property, identified in **Exhibit B-6**, within parcels 1190190054000 and 1190190052000, occupied by Floyd and Ruth Levick (the "**Levicks**"). Upon the termination of the City's lease with the Levicks for the Levick Property (City Agreement 87-280-1), "Property" for purposes of this Lease between Landlord and Tenant shall also include the Levick Property. At such time, Tenant, subject to Landlord's agreement, may use the Levick Property, including the dwelling on the property, in a manner that enhances Golf Course operations, such as a golf learning center or green maintenance nursery. Tenant, at its expense, may choose to remove the dwelling to enhance Golf Course operations, subject to Landlord's agreement.

(iii) Landlord retains the right to redesign, reconfigure, and/or relocate (together referred to as "**Redesign**") the Arcade Creek golf course during the term of this Lease. Such Redesign shall be done at Landlord's expense and the redesigned course shall be comparable to other first class public golf courses in the Sacramento Metropolitan Area. During the Redesign, Tenant's Rent shall be abated by that amount of Tenant's lost Gross Revenues, if any, due to and during the Redesign. Landlord will not unreasonably interfere with ongoing business operations at Haggin Oaks during the Redesign Process. Landlord will consult on a regular basis with Tenant about the design, configuration, location and elements of the Redesign.

(b) Equipment. Landlord agrees to transfer title to that certain equipment, currently being used in connection with golf course operations ("**Landlord Equipment**") and set forth in attached **Exhibit C**, to Tenant. Tenant has inspected the Landlord Equipment and accepts it in its existing condition, without any express or implied warranties of any kind from Landlord. Tenant may use the Landlord Equipment during the term of this Lease to run the Golf Courses and only to run the Golf Courses. Any equipment Tenant purchases or leases during the term of this Lease shall be referred to as "**Additional Equipment**". Prior to entering into any lease agreement for Additional Equipment that extends beyond the current term of the Lease, Tenant shall secure the written approval of City. Landlord shall be permitted to inventory and inspect Landlord Equipment and Additional Equipment on an annual basis.

Upon termination or expiration of the Lease or upon the end of the useful life of Landlord Equipment or Additional Equipment, or a portion thereof, whichever shall occur first, Tenant, at Landlord's option, shall either transfer title of such equipment to Landlord at no cost or dispose of the equipment at no cost to Landlord. In addition, upon termination or expiration of the Lease, Tenant shall transfer title of six trucks to Landlord, at no cost to

Landlord, of similar make, model and age of the six trucks identified in Exhibit C. The trucks identified in Exhibit C are as follows: two 2005 Ford Compact Trucks (Rangers), one 2001 Dodge Compact Truck (Dakota), one 2000 Dodge Full Size Truck (1500 EC 4x4), one 2007 Ford Compact Truck (Ranger), and 2008 Ford Compact Truck (Ranger Ex-Cab). Thus, for example, with respect to the two 2005 Ford Compact Trucks, Tenant, upon termination or expiration of the Lease, shall transfer to Landlord title of two seven-year old trucks of similar make and model. The condition of such trucks transferred to Landlord shall be of comparable or better condition to the condition of such trucks when transferred to Tenant.

So long as Tenant occupies the Property, Tenant shall maintain and repair Landlord Equipment and Additional Equipment in good repair, ordinary wear and tear excepted, and in accordance with the manufacturers' specifications. Additionally, Tenant shall maintain all licenses and permits as required by law for Landlord Equipment and Additional Equipment. Tenant must also adequately insure Landlord Equipment and Additional Equipment. With respect to all trucks and vehicles, such insurance shall include auto liability with physical automobile damage coverage, including non-owned vehicles, and with respect to all other equipment, property insurance on a replacement-cost basis.

Tenant is the owner of the existing equipment identified as "Property of Morton" in Exhibit D ("**Tenant's Equipment**"), which shall remain the property of Tenant to maintain, remove or dispose of as Tenant sees fit.

2. Term of Lease.

(a) Initial Term. The initial term of this Lease ("**Initial Term**") shall be for ten (10) years commencing on January 1, 2012 ("**Effective Date**"), and ending on December 31st, 2021, unless sooner terminated pursuant to the terms of this Lease ("**Expiration Date**"). "**Lease Year**" is defined as the calendar year beginning January 1 and ending on December 31.

(b) Options to Extend. Provided that Tenant is not in material default under the Lease beyond any applicable notice and cure period, Tenant may extend the term of this Lease for three additional periods of five years each, subject to Landlord's written consent, which shall not be unreasonably withheld. All extensions shall be upon the same terms and conditions as this Lease. Tenant shall exercise the option to extend by delivering written notice to Landlord no later than one year before the expiration of the Initial Term or any extension period, as applicable. If Tenant is in material default beyond any applicable notice and cure period on the date the extended term is to commence, the extended term shall not commence and this Lease shall terminate.

3. Delay in Possession. If for any reason Landlord fails to deliver physical possession of the Property or any part thereof to Tenant on or before the Effective Date, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from the failure to deliver possession, so long as Landlord has exercised, and continues to exercise, reasonable diligence to deliver possession; provided, however, that

rent shall be abated in proportion to the Property lease compared to that not delivered until Landlord delivers physical possession of all the premises to Tenant. The Term shall not be extended by Landlord's failure to deliver possession of the Property to Tenant on the Effective Date.

4. Rent. For the term of this Lease, Tenant shall pay to Landlord Rent ("**Rent**") in the following amounts each Lease Year. Rent shall be paid monthly as described in Section 5.

Rent:
Years 1-3 (Calendar Years 2012-2014) – $1,325,000
Years 4-6 – $1,330,000
Years 7-9 – $1,335,000
Years 10-19 – $1,000,000
Years 20-21 – $755,000
Years 22-25 – $575,000

5. Percentage Payments.

(a) Monthly Obligation. Rent shall be paid monthly in an amount equal to the percentages of Gross Revenues (as defined in subsection (b)) from the various Revenue Streams described in the following Table 5(a) ("**Revenue Streams**") earned by Tenant from the Property each month during the Lease Year ("**Percentage Payments**"). If Tenant's aggregate Percentage Payments to Landlord for any Lease Year is less than Rent for the Lease Year (a "**Payment Deficiency**"), Tenant shall pay the amount of the Payment Deficiency to Landlord by January 20 of the following year. If, however, during the first three Lease Years, the Percentage Payments to Landlord for a Lease Year are less than Rent for that Lease Year, Landlord shall release Tenant of its obligation to pay the Payment Deficiency, or a portion thereof, for such Lease Year; provided, however, in no event shall Landlord waive any Payment Deficiency in excess of $50,000 per Lease Year. Following the first three Lease Years and thereafter for the duration of the Lease, Tenant shall pay to Landlord the full Payment Deficiency occurring in any Lease Year.

TABLE 5(a)

Revenue Streams	Percentage
Green Fees and Play Card Revenues (Less Payments to Special Funds described in Section 6); calculation further explained below.	10%
Food, beverage, snack bar, roving cart, on-facility and off-facility catering, and revenues from special events,	10%

including facility rental fees	
Rentals (power carts and range ball rentals)	10%
Retail sales; golf club repairs; golf lessons, including club-fittings; pull carts; club rentals; and booth rentals from special events	5%
Online retail sales	2.5%
Wholesale sales	0%
Revenues from signage and advertising on Property	5%
Commissions earned by Morton Golf from online travel business	5%

Percentage Payments for Green Fees and Play Card Revenues is calculated as the difference between Green Fees and Play Card Revenues and all amounts deposited by Tenant into the Special Funds (identified in Section 6), multiplied by 10%. For example, assuming the total Green Fees and Play Card Revenues is $100,000 and the total contributions to all of the Special Funds (Technology Fund, Building Repairs and Minor Upgrades Fund, etc.) is $12,500, the Green Fees and Play Card Revenues Percentage Payment is $8,750. Numerically, the calculation is as follows:

$ 100,000 (Green Fees and Play Card Revenues)
− $ 12,500 (Total Contributions to the Special Funds)
$ 87,500

$ 87,500
x .10 (Percentage)
$ 8,750 = Percentage Payment from Green Fees and Play Card Revenues

(b) Gross Revenue. The term "**Gross Revenue**" as used in this Lease shall mean all money, cash receipts, receivables, assets, property, or other things of value actually received by Tenant, including but not limited to gross charges, sales, rentals, fees and commissions made or earned, and all gross sums received and earned, by Tenant, whether collected or accrued, in the Revenue Streams listed in Table (5)(a) above. Gross Revenues shall not include:

(i) Sales and excise taxes required to be collected by Tenant;

(ii) Federal, state, municipal, and other taxes paid by Tenant, including those taxes required by law to be collected from consumers, provided the amount of such taxes is recorded in the books and records required to be kept under this Lease;

(iii) Receipts from the sale or trade-in value of any equipment or merchandise returns, including Replacement Equipment owned by Tenant and used on the Premises;

(iv) Receipts in the form of refunds from, or the value of, merchandise, supplies, services or equipment returned to the shippers, suppliers, or manufacturers;

(v) Sums from consumer refunds of revenue previously included in Gross Revenues;

(vi) Any income or receipts from the management or sponsorship of professional golf players on tour;

(vii) Any revenues received by The First Tee of Greater Sacramento or the Morton Golf Foundation.

(c) Payment of Rent. Rent is payable in arrears on the 20th of the succeeding month at the following address: City of Sacramento, Attention: Capital City Golf, 1030 15th Street, Suite 220, Sacramento, CA 95814, or at another address that Landlord may designate by written notice to Tenant. Each rental payment shall be accompanied by a statement identifying the Revenue Streams and amounts set forth in this section as well as golf patron play statistics for the month. A sample report identifying the information to be provided in the monthly statement is set forth in **Exhibit E**.

(d) Books and Records.

(i) Tenant shall keep and maintain at 3645 Fulton Avenue, Sacramento, California 95821, full, complete, and appropriate books and records of all revenues from the Property in accordance with standard accounting practices. In addition, Tenant shall separately account for all revenues of each Golf Course. These books and records shall at all reasonable times be open for inspection and copying by Landlord, Landlord's auditors, or any other authorized representatives of Landlord. If the books or records are kept at a different location or address, Tenant shall give prompt notice of that location to Landlord. If at any time during the Term of this Lease, the books and records prove inadequate to record all revenues in the detail requested in this Lease, Tenant shall, upon the request of Landlord, procure and maintain those books, records, and accounts in an adequate form and character to carry out the requirements of this Lease. Tenant shall provide all customers with a receipt for their purchase of goods or services. Copies of all revenues and other excise tax reports that Tenant may be required to furnish to any government or governmental agency shall at all reasonable times be open for inspection at the place mentioned above. Landlord shall have the right to audit and examine the records of Tenant when necessary for a proper

determination of the amount of Gross Revenues from the Property, and all the necessary records shall be held available for that purpose. If the statements of Gross Revenues previously made by Tenant to Landlord are found to be more than 2.00% less than the amount of Gross Revenues made by Tenant shown by the audit, Tenant shall immediately pay the cost of the audit; otherwise the cost of the audit shall be paid by Landlord.

(ii) Tenant further agrees to furnish to Landlord on or before April 1st an annual financial statement for the previous Lease Year. Beginning in the third Lease Year, and every third year thereafter, Tenant shall provide an audited financial statement for the previous Lease Year. All financial statements must consist of a balance sheet and income statement covering the previous Lease Year. The statements must be prepared by an independent certified accountant on his or her stationary for the Tenant and shall only include financial data related to the Property.

(iii) Tenant shall provide Landlord with a copy of all Tenant's quarterly State Board of Equalization reports relating to the Property filed during the term of the Lease within 10 days of the filing of each such report.

(iv) Landlord may conduct unannounced cash and starter sheet audits during Tenant's normal business hours.

(e) Acceptance of Payments. Acceptance of Rent and Percentage Payments in accordance with Section 5 (c) shall not be an admission of the accuracy of those reports, but Landlord shall be entitled at any time within four years after the receipt of any monthly percentage payment to question the sufficiency of the amount or the accuracy of the statements furnished by Tenant to justify the payments. To enable Landlord to check the accuracy of any statement, Tenant shall retain all records for a period of at least five years after the termination of each Lease Year, and after that in the event of litigation, until that litigation terminates in final judgment. Tenant shall, upon request, make these available to Landlord, Landlords auditor, or Landlord's representative or agent for examination at any time.

(f) Accounting Statements. Tenant shall prepare and deliver to Landlord within 20 days after the end of each month separate statements of revenues, by golf course, showing the rounds of golf played, by round type and price, and itemized gross receipts for all Revenue Streams resulting from the products, services and fees set forth in Section 5(a) above for the preceding month. Such statements shall be in a format as may be reasonably requested by Landlord from time to time. If Tenant fails to provide such accounting statement and such failure continues after 30 days notice by Landlord to Tenant, Landlord may cause an audit to be made of Tenant's operations for such delinquent accounting period and may prepare the statement failed to be provided by Tenant. Tenant shall pay on demand all expenses of such audit and preparation of such statements.

(g) Future Revenues. Landlord and Tenant intend to continue exploring ways to generate new sources of revenues. Any future new revenue sources generated from the Property, will be subject to further negotiations between the Landlord and Tenant.

6. Special Funds.

(a) Generally. In addition to paying Rent, Tenant shall also pay the amounts specified below into the Special Funds (referred to individually as "**Special Fund**" or "**Fund**") described in subsections (b)-(f) on a monthly basis or as otherwise required, below. Each of the Special Funds shall be maintained by Tenant in a separate bank account subject to the terms and conditions of this Lease.

(i) Expenditures. By November 1 of each year, Tenant shall propose a list of items and/or projects (and their estimated costs) to be funded by Special Funds 3, 4, and 5 in the upcoming year. Landlord, in its sole discretion, may approve or reject Tenant's proposal, however it is the intent of the parties to utilize such funds during the initial Lease Term for the stated Special Fund purposes. Once the proposal is approved by Landlord and thus deemed an "**Approved Plan,**" Tenant may make expenditures from Special Funds 3, 4, and 5 consistent with the Approved Plan throughout the year, subject to the requirements below. The Approved Plan may be amended at any time by agreement of the parties.

(ii) Reporting. Within 30 days of expending money from any of the Special Funds, Tenant shall provide Landlord with a written report that details the use of each fund along with accompanying receipts. By the 20th of each month, Tenant shall provide copies of the monthly bank statements for each Special Fund. By April 1 of each year, Tenant shall provide Landlord with a written report that summarizes the deposits and withdrawals from each of the Special Funds in the prior year.

(iii) Remaining Balance. At the termination of the Lease, any remaining balances in the Special Funds not already committed to a designated project or use, shall be disbursed to Landlord, less amounts necessary to complete projects and uses in progress as of the termination of the Lease, which shall remain in the applicable Special Fund and shall be used and disbursed by Landlord for the payment of the applicable project or use. Landlord agrees to use such disbursed funds for the future operation of the Golf Courses.

(b) Special Fund 1: Technology Fund.

(i) Purpose. This fund shall be used to pay for technology repairs, replacements, upgrades of hardware, new technology, and/or software that may be needed to support Golf Courses operations.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 1:

(1) Year 1: .125% of Gross Revenues; and

(2) Years 2 and Beyond: .25% of Gross Revenues.

(iii) Starting Balance. The balance as of the Effective Date in Account No. 811055663 with River City Bank after transfer of $100,000 into Special Fund 2 and $80,000 into Special Fund 3.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 1.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the purpose of the Fund.

(c) Special Fund 2: Building Repairs and Minor Upgrades Fund.

(i) Purpose. This fund shall be used to pay for short-term general facility repairs and maintenance, minor upgrades and renovations, and other normal general repairs and maintenance as they arise that are required to keep the buildings and structures in good working condition. For example, this fund may be used for painting, replacing, or repairing a portion of floor coverings, windows, heating and air, building structures, sound systems, lockers, storage spaces, doors, security systems, permanent signage, bulletin boards, locks, door closing devices, light fixtures, and restrooms. This fund shall not be used for Tenant's labor costs for Tenant's own employees in performing such repairs, upgrades, and minor renovations.

(ii) Payment. Tenant shall pay .5% of Gross Revenues into Special Fund 2.

(iii) Starting Balance. $100,000, which as of the Effective Date is in Account No. 811055663 with River City Bank, to be transferred into Special Fund 2 by Tenant within 14 days of the Effective Date.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 2.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the purpose of the Fund. If, due to unforeseen circumstances beyond Tenant's control, the water supply to one or more of the Golf Courses is cut off or significantly impaired such that one or more of the Golf Courses may not operate, Tenant may withdraw that amount reasonably necessary to remedy the situation. Landlord, in its reasonable discretion, may require that Tenant reimburse the fund for such expenditures.

(d) Special Fund 3: Capital Improvement Fund for Buildings and Support Facilities.

(i) Purpose. This fund shall be used to pay for Capital Improvements (**"Capital Improvements"**), defined as additions, structures, replacements, or upgrades to the Property that enhance its value and have a useful life of at least five years and cost in excess of $20,000, excluding the addition or replacement of irrigation systems.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 3:

(1) If Tenant's Percentage Payments for any Lease Year exceed Rent for that Lease Year, an amount calculated as follows: (A) the amount of Tenant's Percentage Payments for that Lease Year, less (B) the Rent for that Lease Year (the difference being referred to as "**Capital Reserve Amount**"). The Capital Reserve Amount shall be deposited in Special Fund 3 no later than January 30 of the following Lease Year; and

(2) Years 1-2: $0.00; and

(3) Years 3-25 – .25% of Gross Revenues.

(iii) Starting Balance. $80,000, which as of the Effective Date is in Account No. 811055663 with River City Bank, to be transferred into Special Fund 3 by Tenant within 14 days of the Effective Date.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 3.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan. For expenditures outside the Approved Plan, Tenant may, in its discretion, withdraw up to $5,000 annually from the fund. For expenditures in excess of $5,000 that are not addressed in the Approved Plan, Tenant must secure Landlord's prior approval. To secure approval, Tenant must provide Landlord with a written proposal that details the proposed use of the funds. Landlord, in its sole discretion, may approve or deny the proposal.

(e) Special Fund 4: Special Projects Fund.

(i) Purpose. This fund will be used for improvements that will enhance Golf Course operations and/or increase Gross Revenues. Examples of Capital Improvements that may be financed through this fund include upgrades or renovations to the driving ranges and power cart facilities, and improvements to the clubhouses.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 4:

(1) Years 1-2: – $0.00; and

(2) Years 3 and Beyond: .25% of Gross Revenues.

(iii) Starting Balance – $0.00

(iv) Minimum Balance – $0.00

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan. For expenditures outside the Approved Plan, Tenant may, in its discretion, withdraw up to $5,000 annually from the fund. For expenditures in excess of $5,000 that are not addressed in the Approved Plan, Tenant must secure

Landlord's prior approval. To secure approval, Tenant must provide Landlord with a written proposal that details the proposed use of the funds. Landlord, in its sole discretion, may approve or deny the proposal.

(f) Special Fund 5: Irrigation Fund.

(i) Purpose. This fund may be used to replace the irrigations systems at the Bing Maloney and Haggin Oaks driving ranges, as well as the Bing Maloney 18 and Arcade Creek Golf Courses.

(ii) Payment. Tenant shall pay the following amounts into Special Fund 5:

(1) Years 1-2: $0.00; and

(2) Years 3-4: $.25 from each Green Fee; and

(3) Years 5-25: $.50 from each Green Fee.

(iii) Starting Balance. $134,847, to be deposited by Landlord in an account designated by Tenant within 14 days of the Effective Date of the Lease.

(iv) Minimum Balance. Tenant must maintain, at all times, a minimum balance of $25,000 in Special Fund 5.

(v) Withdrawals. Tenant may make withdrawals throughout the year, consistent with the Approved Plan.

7. Use.

(a) Use. Tenant shall be responsible for all aspects of running the City's Golf Courses, unless specifically excluded under this Agreement. To that end, the Property, during the Term of this Lease, shall be used for the purpose of providing and conducting thereon the following uses and for no other purpose without Landlord's written consent, which shall not be unreasonably withheld:

(i) The playing of golf;

(ii) The sale, rental, storage, and repair of items related to the game of golf;

(iii) The teaching and instruction of golf;

(iv) The provision of starter and marshaling services;

(v) The rental of power-driven and manually-operated golf carts;

(vi) The operation of the driving ranges, pro shops, locker rooms, restrooms, storage areas, patios, and workshop areas;

(vii) The operation of food and beverage (including alcoholic beverages) services;

(viii) The operation of golf course maintenance services; and

(ix) Related office and administration uses subject to all terms, conditions, and limitations specified in this Lease.

(b) Compliance with Insurance. Tenant shall not commit any act on the Property nor use the Property in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Property or improvement on the Property. Tenant shall, at its own cost and expense, comply with all requirements of Landlord's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Property and the improvements on the Property.

(c) Waste. Tenant shall not commit waste or any public or private nuisance upon the Property.

(d) Compliance with Laws. During the Term, Tenant at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Property pertaining to (a) the physical condition of any improvements constructed by Tenant on the Property; and (b) Tenant's specific business operations in the Property. With regard to the construction of Capital Improvements or use of the Special Funds for repairs and/or Capital Improvements, the parties agree to comply with all applicable city and state regulations pertaining to the bidding for and construction of public projects and the payment of prevailing wages.

(e) Operations. Tenant shall operate Tenant's business on the Property with due diligence and efficiency so as to maximize Gross Revenues that may be produced profitably. To this end, Tenant shall maintain levels of stock, inventory, equipment, and marketing consistent with the operation of the Golf Courses and the terms and conditions of the Lease.

(f) Non-competition. Tenant shall not, within a five mile radius of each of the Golf Courses, provide any services similar to those outlined in this Lease so as to conflict or compete with Landlord's public golf course business operations, unless approved by Landlord. Such approval may be granted or withheld in Landlord's sole discretion. Landlord approves and consents to Tenant's arrangement, as it exists as of the Effective Date, with The First Tee of Greater Sacramento to manage and operate the William Land Golf Course, which is owned by Landlord.

(g) Guidelines for Operation of Property.

(i) Golf Manual. Tenant shall maintain a golf operations manual that sets forth guidelines for the reasonable operation and maintenance of the Property. Landlord and Tenant shall agree to the content of the initial manual as well as subsequent amendments.

(ii) Memberships. Tenant, at its cost, shall maintain memberships in the United States Golf Association (USGA) for each Golf Course. Tenant shall also maintain at its cost one membership in the National Golf Foundation (NGF). Tenant shall provide Landlord with proof of such memberships upon request.

(iii) Ratings. A number of independent golf clubs use one of the Golf Courses as their home base (the "**Home Clubs**"). Because the Home Clubs are members of the Regional Golf Associations, the NCGA and PWGA, these Associations provide (USGA) Handicap Approved Ratings at no cost based on the number of Tee Marker locations at each golf facility. It is the Tenant's responsibility to make sure these Allied Associations are provided access to each Golf Course so each of the facilities maintain accurate and up to date ratings.

(iv) Technology. Tenant shall maintain a modern tee time reservation system, play card system, point of sale system, and website and internet technology system that services each of the Golf Courses.

(v) Hours of Operation. The Golf Courses shall be open for business seven days a week, with hours consistent with other golf courses in the Sacramento region. Tenant shall, at its sole cost and expense, post hours of operations in prominent locations.

(vi) Food, Beverage, Alcohol, and Catering Services. Tenant, at its sole cost and expense, shall have the exclusive right to provide food, beverage, alcohol and catering services at the Property. Tenant shall provide all labor, inventory, accessories, materials, and supplies necessary for the delivery of food, beverage, and catering services at the Property. Tenant may request permission from Landlord to allow outside catering (not including alcohol) for tournaments and special events when it is financially prudent for Tenant and Landlord to acquire large revenue producing corporate outings, charity tournaments and/or special events. Tenant, during special events, may allow vendors to distribute promotional or sample-size food and beverage items, excluding alcohol, at no charge to participants.

(vii) Cooperation. Tenant shall reasonably cooperate with Landlord's other tenants, contractors, and Landlord's employees.

(viii) Golf Carts. Tenant shall provide and maintain an adequate number of high quality power-driven golf carts, consistent with other golf courses in the Sacramento region, and a minimum of one single-rider golf cart (for golfers with disabilities) at each of the Golf Courses. Tenant may redistribute the single-rider golf carts between the Golf Courses on a temporary basis to accommodate special needs or events at one of the Golf

Courses, provided the carts are returned following that necessity so that one is generally present at each of the Golf Courses. Tenant shall use the cart storage areas at each of the Golf Courses and keep the maintenance yards clean from any refuse removed from the carts.

(ix) Recycling Program. Tenant agrees to implement a recycling program at the Property.

(x) Customer Service. Tenant shall provide regular customer-service training to its employees to ensure patrons experience an efficient and enjoyable experience while on the Property, provide customer comment forms, and periodically perform customer-service surveys in a manner satisfactory to both parties. Tenant shall share the results of such surveys with Landlord. In addition, Tenant shall accept all major credit cards and electronic payments from its customers. Tenant shall, at its sole cost and expense, provide name tags for its employees. Tenant's monthly inventory should not be less than 10% of projected annual retail sales. Tenant shall provide brand name golf equipment and supplies for sale. Tenant agrees to provide "**Basic Staffing Levels**" as set forth in **Exhibit G** attached during the Term of this Lease.

(xi) Community Involvement. Tenant will make every effort to encourage local programs to foster growth of the game and will work with Home Clubs to help them maximize their membership levels. Tenant will provide a General Manager or Head Golf Professional to support the Sacramento Golf Council ("**SGC**") in an advisory or management capacity to help maximize participation in SGC events. Tenant, on behalf of the Morton Golf Foundation, will also make efforts to raise money through fund raisers, grant opportunities, and private donations to help support youth golf, disabled golf and underserved local programs that support the Property, with the net proceeds of funds so raised to go to the Morton Golf Foundation.

(xii) Tournaments. Tenant will provide an experienced tournament coordinator to promote, book, and administer tournaments on a full-time basis or part-time basis as described in **Exhibit G**.

(xiii) Employee Safety Training and Development. Tenant agrees to have at least one employee on duty at all times during business hours who is trained in CPR and First Aid, with a reasonable effort to have two such employees on duty. All employees shall be trained as reasonably necessary in safety measures and precautions. Tenant's employees will also be trained to properly handle emergencies and prepare City Incident Reports.

(xiv) Setting of Fees. Tenant, with approval from the Landlord shall set the standard green fees, cart fees, and range ball rental fees on the Property, at a minimum, annually. Tenant agrees to periodically survey the pricing schemes of other golf courses in the Sacramento Metropolitan Area to ensure the Golf Courses' prices are competitive. Landlord agrees to respond within 14 days of receiving fee proposals from Tenant. Tenant, from time to time, may offer specials, off-peak rates, coupons, promotions, and/or other

deviations from the standard fees in order to increase rounds played and corresponding revenues.

(xv) Security. Tenant shall be responsible for the costs and expenses for securing the Property and for providing, maintaining, and operating all private or internal security services and systems as it deems appropriate for the Property.

(xvi) Utilities. During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, heat, electricity, gas, water, sewer service, diesel, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Property. Tenant shall also be responsible for maintaining the sewer system up to the lift station at Haggin Oaks, with City to maintain beyond the lift station. When it is practical or possible, Landlord shall include Tenant in any rate saving utility programs it receives in connection with the Property.

(xvii) Chemical Storage and Pesticide License. Tenant shall maintain current pesticide and Environmental Protection Act permits in accordance with federal, state, and local law. Tenant shall train its employees in proper chemical and pesticide storage and use.

(xviii) Hiring. When initially staffing its workforce to assume the obligations of this Lease, Tenant shall interview all of Landlord's former employees who were employed at the Golf Courses as of 12/31/11, who apply for a job with Tenant at the Golf Courses. In addition, when hiring, Tenant shall use reasonable business efforts to reach out to residents of the City of Sacramento, including by advertising vacant positions at each of the Golf Courses.

(xix) Employee Wages. Tenant has the sole right and responsibility to establish and pay the wages and benefits of its employees. Tenant agrees that it shall pay its Golf Course Maintenance Employees initially in accordance with the schedule in **Exhibit H**, but Tenant reserves the right to increase its employees' wages and benefits and as to later new hirees only, decrease wages and benefits, including those of its Golf Course Maintenance Employees, at any time in its sole discretion.

(xx) Collective Bargaining . It is expressly understood that Tenant does not assume and shall not adopt any obligation pursuant to any collective bargaining agreement to which Landlord is currently or may at any time have been bound with any labor organization. Tenant may, but shall not be obligated to, hire certain of Landlord's golf course maintenance employees ("**Landlord's Employees**"). Landlord warrants that Landlord has complied with the terms of any and all obligations under any collective bargaining agreement with respect to Landlord's Employees, including but not limited to all requirements regarding layoff and/or termination of employment, and specifically warrants further that as of the Effective Date: (I) there are no pending, or to the best of Landlord's knowledge, threatened unfair labor practice charges or claims arising under the Meyers Milias Brown Act and/or the National Labor Relations Act; (II) there are no pending, or to the best of Landlord's knowledge threatened, grievance or arbitration proceedings or awards

arising out of or pursuant to any collective bargaining agreement; (III) Landlord has made all payments heretofore required to be made to or on behalf of Landlord's Employees and/or eligible retirees and their covered dependents, spouses, and/ or survivors under Landlord's employee benefit plans, including but not limited to health and welfare, dental, retirement, disability and life insurance, and sick leave, and further warrants that Landlord will continue to meet such obligations, if any; and (IV) Landlord has made all payments of earned and accrued salaries, wages, vacation pay, bonuses, sick or other types of leave, holiday pay, longevity pay, or compensation of any sort required to be made to Landlord's Employees by any collective bargaining agreement or policy or law. Landlord and Tenant agree that Tenant shall have no duties or liabilities of any sort for any obligations arising under any employee benefit plan to which Landlord is now or has ever been a party. The parties expressly agree that Tenant is not assuming any obligation under any trust agreement and that this transaction shall not be construed in any way to be an asset sale pursuant to ERISA.

8. Golf Marshal Program. Tenant shall provide an adequate number of trained and equipped staff of marshals to manage and supervise play on the Golf Courses. The marshal staff shall be the employees and/or volunteers of Tenant.

9. Taxes.

(a) Tenant's Obligation. Subject to the terms of Section 9(d), Tenant shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the Property because of the occupancy, use, or possession of the Property (including but not limited to taxes on, or which shall be measured by, any rents or rental income, and taxes on Tenant's personal property, subsequent to the commencement of the Term, and all installments of assessments that are due during the Term).

(b) Records, Failure to Pay. Landlord agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges payable by Tenant to make sure that statements and billings will be mailed directly by public authorities to Tenant at the address set forth in Section 34. Tenant shall deliver to Landlord, on demand, original receipts or photocopies evidencing payment of all taxes assessments, and public charges payable by Tenant. If Tenant fails to pay taxes, assessments, and charges on or before the last day on which payment may be made without penalty of interest, other than as provided for in this Section 9, Landlord may, but shall not be obligated to, pay those taxes, assessments, or charges, together with interest and penalties. Any amounts that Landlord may pay pursuant to this provision together with interest at the rate of 10% per annum, shall be repaid to Landlord by Tenant on demand as additional rent.

(c) Possessory Interest. This lease may create a possessory interest subject to property taxation. Tenant shall be liable for the payment of any possessory interest tax, and Tenant shall be responsible for the payment of any tax associated with Tenant's business on the Property, including but not limited to possessory interest and sales tax.

(d) Contested Taxes. Tenant shall not be required to pay, discharge, or remove any tax (including penalties and interest), assessment, tax lien, forfeiture, or other imposition or charge against the Property or any part of the Property or any improvements, so long as Tenant diligently and in good faith contests the validity or the legality of the assessment, levy, or charge by appropriate legal proceedings, which should prevent the collection of the tax, assessment, imposition, or charge contested; provided however, that Tenant, prior to the date that the tax, assessment, imposition, or charge is due and payable, shall either have paid it under protest or shall have given to Landlord a letter executed by an officer or managing member of Tenant assuring Landlord that the tax, assessment, imposition, or charge will be paid when and to the extent that the legal proceedings conclude in a final determination that the tax, assessment, imposition, or charge is valid, legal and owing. Upon such final determination, Tenant agrees to immediately pay the contested tax, assessment, imposition, or charge, together with all interest and penalties, if any, and remove and discharge any lien or forfeiture arising from the prior nonpayment.

(e) Assessments. If any assessments for local improvements become a lien after the Effective Date, Tenant shall pay only the installments of the assessments that become due and payable during the Term. On the request of Tenant, Landlord agrees to cooperate or join with Tenant in any application that may be necessary to permit the payment of the assessment in installments.

(f) Business Operations Tax. Tenant shall obtain, at its own expense, any required City business operations tax certificate and shall pay any business operations tax attributable thereto.

10. Condition of Property.

(a) Condition; Exceptions to Condition. Tenant acknowledges that as of the date of this Lease, Tenant has inspected the Property and all improvements on the Property and affirms that the Property and improvements are in acceptable order, repair, and condition, except for those improvements noted in Landlord and Tenant's Joint Inspection Report, and those improvements described below in this Section 10. Landlord warrants that the Property is suitable for use as a public golf course. Landlord shall deliver the Property in a condition at least as good as it exists as of October 13, 2011, and shall make such repairs as are reasonably required to bring the Property into such condition in the event of any damage or destruction between the foregoing date and midnight on December 31, 2011.

(b) Potable Water Facilities. Landlord agrees to expend up to $108,283 (the "**Potable Water Allocated Amount**"), in its sole discretion, to repair and/or install potable water lines at Haggin Oaks and Bartley Cavanaugh (the "**Potable Water Work**"). If completion of the Potable Water Work costs less than the Potable Water Allocated Amount, then, upon completion, Landlord shall deposit the difference, divided into equal amounts, into Special Funds 2 and 3. Landlord, in its sole discretion, shall have the right to control the manner and method of such work and shall not be obligated to pursue the Potable Water Work; however, Landlord shall in good faith diligently pursue its determination of the

feasibility of completing the process. In the event Landlord chooses not to pursue the Potable Water Work, Landlord shall deposit $108,283, divided into equal amounts, into Special Funds 2 and 3. In the event Landlord pursues the Potable Water Work, Landlord shall not be obligated to expend the entire Potable Water Allocated Amount if such work can be accomplished for a lesser amount.

(c) Dry Rot Repair. Landlord agrees to expend up to, but not to exceed, $200,000 (the "**Dry Rot Allocated Amount**"), during the first three Lease Years, as necessary to repair and replace siding on the Bartley Cavanaugh Clubhouse and Maintenance buildings affected by dry rot (**"Dry Rot Work"**). Landlord, in its sole discretion, shall have the right to control the manner and method of such work and shall not be obligated to expend the entire Dry Rot Allocated Amount if such work can be accomplished for a lesser amount.

(d) Foundation/Settling Issue. Landlord agrees, at Landlord's cost, to obtain a structural analysis of the Bartley Cavanaugh Clubhouse from an independent structural engineer reasonably acceptable to Landlord. Tenant shall not be responsible for any structural defects that are discovered during the analysis or any third party claims resulting from such structural defects. If any defects are discovered during the analysis that render the building structurally unfit for occupation, Landlord, at its option, may either 1) correct the structural deficiencies; or 2) replace the clubhouse. In either event, Tenant shall be entitled to a reduction in Rent based on losses reasonably incurred as a result of the inability to use the building.

11. Repairs and Maintenance.

(a) General Obligations. Tenant, at Tenant's own expense, shall be solely responsible for maintaining the Property in good condition and repair in a manner appropriate to a first class public golf course in the Sacramento Metropolitan Area and in accordance with all applicable laws, including but not limited to federal and state disability access laws (referred to as the "**Repair and Maintenance Obligation**"). At the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord physical possession of the Property in good condition and repair considering reasonable wear and tear and use of the Property, excluding loss caused by fire, earthquake, fatality or other act of God.

(b) Maintenance Standards. If any condition arises on the property that limits or impacts the public's use of the Golf Courses, Tenant shall immediately and diligently repair such condition. Tenant shall maintain the courses in accordance with United States Golf Association ("**USGA**") standards. Tenant shall provide Landlord with a copy of Tenant's maintenance manual within 180 days of the Effective Date of this Agreement and subsequent updates thereafter.

(c) Maintenance Funding. All necessary repairs and maintenance that are not funded by the Special Funds remain Tenant's sole responsibility. Tenant shall be responsible for repairing and maintaining Morton Golf Property at its sole cost and expense. No Special Funds shall be used to repair or maintain Morton Golf Property.

(d) Maintenance Records. Tenant shall keep all records and documentation of maintenance activities required by law to be kept, and shall make same available at Landlord's reasonable request. In order to permit Landlord to assure accurate responses to inquiries by regulatory agencies on health and safety, and to permit Landlord to compile data upon which to base decisions on whether to repair or replace a given item, Tenant's maintenance records shall include the following information:

(i) A description of the work, defining the specific nature of the request for services;

(ii) The location of the service to be provided;

(iii) The name of the person (initiator) requesting service with a telephone number for future contact;

(iv) The date of the request and the time of completion of the maintenance; and

(v) All health or safety violations to be corrected, with corrections noted.

(e) Failure to Maintain. If at any time during the Term, Tenant fails to maintain the Property or make any repairs or replacements as required by this Section, Landlord may, but shall not be required to, enter the Property and perform the maintenance or make the repairs or replacements for the account of Tenant. Any sums expended by Landlord in performing the maintenance will, together with interest at 10% per annum, be deemed additional rent and shall be immediately due from Tenant on demand of Landlord. All work performed by Tenant on the Property shall be done so as to avoid to the extent reasonably possible any disruption of Landlord's or the public's use of the Property or any disruption of Tenant's business.

(f) Abatement of Rent. Should any project within Landlord's responsibility under this Lease require Tenant's business to cease operation, there shall be a pro rata abatement of Rent and taxes otherwise payable by Tenant hereunder to Landlord for each day Tenant's business operations are ceased.

(g) Water Well Maintenance. Tenant shall be responsible for maintaining, repairing, and permitting all potable and nonpotable irrigation water wells on the Property, up to $60,000 annually. Landlord shall be responsible for necessary repairs and maintenance of these wells in excess of $60,000.

(h) Annual Inspections. Landlord and Tenant shall conduct a joint inspection of the Property on an annual basis on a date mutually agreed upon. The parties shall provide to each other a letter specifying any maintenance deficiencies revealed by the joint inspection. The party responsible for the maintenance shall correct the specified deficiencies within 30 days of receipt of the letter or list from the party, or as otherwise

agreed by the parties. Landlord reserves the right to conduct more frequent inspections as it deems appropriate.

12. Capital Improvements.

(a) General Obligations. Tenant shall be solely responsible for all Capital Improvements, subject to the terms and conditions of this Lease. Tenant shall provide Landlord with a set of plans and specifications for such improvements no later than 45 days prior to the scheduled construction of the improvements; Landlord shall either approve or refuse for reasonable reasons to approve within 30 days after Tenant's request for approval. All Capital Improvements, alterations, additions, and major repairs shall be made in accordance with applicable laws. Tenant shall supply Landlord with a written summary of all expenditures for the Capital Improvements, including upon reasonable request, receipts for the work performed. Landlord agrees, when requested by Tenant, to execute and deliver any applications, consents, or other instruments required to permit Tenant to seek the appropriate permits and perform the work. Tenant shall properly complete and tender to Landlord the form attached as **Exhibit F** in developing the Capital Improvements or other alterations to the Property.

(b) Financing. If Tenant elects to construct Capital Improvements or repairs and upgrades to the irrigation systems the cost of which exceed the amounts available in applicable Special Funds ("**Unfunded Improvements**"), Tenant will be solely responsible for any private financing that Tenant may require for Unfunded Improvements. Landlord shall not be required to assume any loan, debt, or lease for which Tenant is obligated. Both parties agree that Landlord may, in the future, choose to finance Capital Improvements and Unfunded Improvements. Tenant agrees to make every effort to make sure any Capital Improvement Projects that Landlord finances are completed in a timely and reasonable manner. It is understood by both parties that if a Golf Course is shut down (partially or completely) during a project, Landlord may authorize a rent reduction, the amount to be determined in Landlord's sole discretion.

(c) Landlord Approval of Certain Financing. Landlord requires prior approval of any financing that requires Landlord's credit or collateral.

(d) No Liens. Tenant shall not cause any lien, mortgage, or other encumbrance to be placed on the Property without Landlord's express written consent.

(e) Expiration or Termination; Standards. All Capital Improvements, alterations and improvements (excluding those made to Morton Golf Property and any other yet-to-be built structure as agreed to between Tenant and Landlord), whether financed by Tenant, Landlord, or through the Special Funds, shall remain on the Property at the expiration or sooner termination of this Lease and become Landlord's property. All work, alterations and/or improvements shall be performed in a good workmanlike manner, shall substantially comply with the plans and specifications provided by Tenant and approved by Landlord, and shall comply with all applicable governmental permits, laws, codes, ordinances and

regulations, including but not limited to the Americans with Disabilities Act Accessibility Guidelines, Title 24 of the California Code of Regulations, and the California Environmental Quality Act ("**CEQA**"). It is further agreed that upon expiration or earlier termination of this Lease, Tenant will remove Morton Golf Property within a reasonable time frame and at no cost to the Landlord, but before Tenant removes Morton Golf Property, Landlord shall have the option to purchase Tenant's structures at fair market value if Landlord so chooses.

(f) Notices. At least 30 days before any construction commences or materials are delivered for any alterations that Tenant is making to the Property, Tenant shall give written notice to Landlord as to when the construction is to commence or the materials are to be delivered. Landlord shall then have the right to post and maintain on the Property any notices that are required to protect Landlord's interest in the Property from any liens for work and labor performed or materials furnished in making the alterations; provided , however, that it shall be Tenant's duty to keep the Property free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Property at the request of Tenant.

(g) Liens. Tenant shall pay as soon as due all mechanics' laborers', materialmans', contractors', subcontractors', or other similar charges or liens on the Property. Nothing contained in this Section shall in any respect make Tenant the agent of Landlord or authorize Tenant to do any act or to make any contract encumbering or in any manner affecting the title or rights of Landlord in or to the Property. If any such mechanics' or other such similar liens shall at any time be filed against Landlord's interest in the Property, Tenant shall cause the same to be discharged of record within 30 days after the date of filing the same, or otherwise free the Property from such claim or within such time period furnish Landlord with a bond in the amount issued by a surety company satisfactory to Landlord, securing Landlord against any payment of such lien and against all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien. Tenant may in good faith contest any of such liens without payment of a bond provided it does so with due diligence and further provided that the Tenant shall fully pay and immediately discharge the amount of any final judgment granted against Landlord or Tenant in any litigation involving the enforcement of such liens or the validity thereof. In the event Tenant fails or refuses to discharge of record any such uncontested lien within said 30-day period, or fails to pay and satisfy any such judgment as provided above, Landlord following 20 days' written notice to Tenant of Landlord's intent, may, but shall not be obligated to, pay the amount thereof inclusive of any interest thereon or any court costs assessed against Tenant in litigation. Any amounts so expended paid by Landlord and all reasonable attorneys' fees and other expenses of Landlord, together with interest thereon at the rate of 10% per annum from the date of payment, shall be deemed additional rent and shall be paid by Tenant to Landlord on demand.

(h) Force Majeure Delays. Tenant shall not be considered in breach or default of any obligation with respect to the construction of the Capital Improvements or any improvements required pursuant to this Section 12 if the delay in construction is due to

causes beyond Tenant's control. In the event of such delay, the time for construction shall be extended by the period of the delay, as reasonably determined by the Landlord, provided that Tenant has within ten 10 days after the beginning of such delay notified the Landlord in writing of the delay and the need for the extension.

13. Marketing, Public Relations, Advertising and Promotions. Tenant and Landlord agree that marketing, public relations, advertising and promotions within a wide range of medias and demographics is critical to be able to compete for dollars people have available to spend towards recreation and entertainment. Tenant will be required to spend at Tenant's sole expense any salaries for marketing personnel, advertising on websites, radio, television, newspapers, magazines, social media, e-mail blasts, direct mail, customer tracking systems, vendor tracking systems or any other media as Tenant chooses and in the amounts Tenant decides is necessary for Tenant's business and the City of Sacramento Golf Courses to compete. Tenant will submit a quarterly marketing report showing costs for direct marketing with samples of advertising, and media promotions so Landlord is aware of Tenant's marketing outreach. All marketing materials and marketing initiatives are to be done in a first class manner for the good of golf, the good of the community and within the marketing policies of the City of Sacramento. Landlord will offer free Public Service Announcements ("**PSA's**") and free billboard opportunities. Tenant agrees to consider with all marketing, promotions, advertising and public relations opportunities, the policies of the City of Sacramento. Landlord, in its discretion, may direct Tenant to terminate any marketing activity Landlord deems not in the best interest of the Property and/or Landlord.

14. Entry. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Property at all reasonable times and upon reasonable notice to inspect the Property to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Property under this Lease or to perform Landlord's duties under this Lease.

15. Surrender of Property; Holding Over.

(a) Surrender. On the Expiration Date or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the Property to Landlord in the same condition as received on the Effective Date, reasonable wear and tear excepted.

(b) Hold Over. At the end of the Term, should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. Rent shall be paid at the rates then prevailing under the terms of this Lease and the month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

16. Liability and Indemnity.

(a) Exemption of Landlord from Liability. Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or Tenant's employees, contractors, invitees, customers or any other person on the Property during the term of this Lease, from any cause whatsoever, to the extent caused by the use, occupancy and enjoyment of the Property by the Tenant, provided, however, that the provisions of this Section 16 shall not exempt Landlord from liability for the negligence or intentional conduct of Landlord or its agents, employees, or contractors.

(b) Tenant's Indemnity of Landlord. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord and Landlord's agents, officers, directors, employees, volunteers and contractors harmless from and against any and all claims, damages, liens, judgments, penalties, costs (including without limitation reasonable attorneys' fees and costs), expenses and/or liabilities of every type and descriptions to which any or all of them may be subjected (collectively, "**Damages**") by reason of, or resulting from, directly or indirectly, the performance of this Lease or the use of the Property by Tenant, provided, however, that Landlord shall not be relieved from liability, and the Tenant shall not indemnify Landlord, for Damages to the extent occasioned by the negligence or intentional conduct of the Landlord or its agents, employees, or contractors. This indemnity shall survive expiration or termination of this Lease only as to claims arising out of events that occur prior to expiration or termination of this Lease.

(c) Landlord's Indemnity of Tenant. Landlord shall indemnify, defend (with counsel reasonably satisfactory to Tenant) and hold Tenant harmless from and against any and all Damages arising out of, involving, or in connection with: (i) the use and/or occupancy of the Property by Landlord; (ii) any intentional act or negligence of Landlord or Landlord's agents, employees or contractors; (iii) claims by employees (or their unions) of Landlord relating to their employment by Landlord, including but not limited to claims arising from or connected with any termination of that employment; (iv) any claims by any party, including employees of Landlord or any beneficiaries, arising from any trust or collective bargaining agreement to which Landlord has been a party, including but not limited to alleged violations of the Meyers Milias Brown Act or the National Labor Relations Act, alleged violation of any employee benefit plan to which Landlord is a party, and any liability to retirees or former employees of Landlord or the dependents, spouses or survivors thereof; or (v) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease, provided, however that Tenant shall not be relieved from liability, and the Landlord shall not indemnify Tenant, for damage or injury to the extent occasioned by the negligence or intentional conduct of the Tenant or its agents, employees, or contractors. This indemnity shall survive expiration or termination of this Lease only as to claims arising out of events that occur prior to expiration or termination of this Lease.

17. Insurance.

(a) Liability Insurance.

(i) Carried by Tenant. Tenant shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is typically called commercial general liability insurance, contract liability, legal liability, liquor liability, personal injury liability, and products and completed operation liability covering Tenant's use and occupancy of the Property and Morton Golf Property. The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the Property and Morton Golf Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than $5,000,000 per occurrence and shall name Landlord as an additional insured. Tenant may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Tenant. The policy shall stipulate that this insurance will operate as a Primary Insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder. In addition, Tenant shall provide automobile liability insurance covering liability arising out of any automobile incident, including owned, hired and /or non-owned automobiles. The amount of the policy shall be no less than $1,000,000 single limit per occurrence and shall name Landlord as an additional insured. The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder.

(ii) Carried by Landlord. Landlord shall carry and maintain in full force and effect throughout the Term of this Lease, public liability insurance comparable to what is typically called "commercial general liability insurance" covering Landlord's use and occupancy of the Property. The policy shall cover personal injury, bodily injury and property damage liability arising out of the use, occupancy or maintenance of the Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than $5,000,000 per occurrence and shall name Tenant as an additional insured. Landlord may comply with its insurance obligations hereunder by endorsement to any blanket policy of insurance carried by Landlord. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if any. Landlord shall provide an affidavit of self-insurance, if any.

(b) Property Insurance.

(i) Carried by Tenant. Tenant, at its cost, shall maintain on the Property a policy of standard fire and extended coverage insurance, boiler and machinery, with vandalism and malicious mischief endorsements, to the extent of at least 90% of the full replacement value of Tenant's owned improvements on the Property. The policy shall name Landlord as an additional insured. The policy shall provide that any proceeds shall be payable to Landlord, excluding therefrom any proceeds payable to Tenant as insurance on Morton Golf Property. The policy shall stipulate that this insurance will operate as a primary insurance and that no other insurance effected by Landlord will be called on to contribute to a loss covered thereunder.

(ii) Carried by Landlord. Landlord shall obtain and keep in force and pay for a policy of fire and extended coverage, vandalism, malicious mischief, and special extended perils (all risk) insurance in the name of Landlord, with loss payable to Landlord, insuring loss or damage to the Property and the structures thereon (excluding Morton Golf Property), including all fixtures and equipment therein installed by Landlord, for the full replacement value thereof, as the same may exist from time to time, without deduction for depreciation, but exclusive of excavations, foundations and footings, and a loss rental endorsement (the available proceeds of which shall go to Landlord for any right of abatement hereunder of Tenant). Landlord shall also obtain and maintain insurance coverage on all of Landlord's personal property and trade fixtures. Such insurance shall be used by Landlord for the replacement of its personal property and trade fixtures. All or a portion of the required insurance may be satisfied through the use of a self-insurance program or pooled insurance, if any. Landlord shall provide an affidavit or self-insurance, if any.

(c) Worker's Compensation Insurance. Tenant shall carry Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than $1,000,000. The Worker's Compensation policy shall include a waiver of subrogation.

(d) Insurance Policies. Insurance shall be by companies duly licensed or admitted to transact business in California and maintaining during the policy term a "General Policyholders Rating" of at least A:VII as set forth in the most current issue of the "Best Insurance Guide", or the State Compensation Insurance Fund. Neither party shall do nor permit to be done anything which invalidates the required insurance policies. Each party shall, prior to the Effective Date, deliver to the other party certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to the other party. Each party shall, at least 30 days prior to the expiration of such policies, furnish the other party with evidence of renewals or "insurance binders" evidencing renewal thereof, or the other party may order such insurance and charge the cost thereof to the other party, which amount shall be payable by said non-performing party to the other party upon demand.

(e) Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other for loss of or damage to their respective properties arising out of or incident to the perils required to be insured against. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

(f) Review. Insurance requirements are subject to review and revision every five years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable property.

18. Trade Fixtures. Tenant shall have the right, at any time and from time to time during the Term and any renewals or extensions, at Tenant's sole cost and expense, to install and affix on the interior of the buildings items for use in Tenant's trade or business, which Tenant, in Tenant's sole discretion, deems advisable (collectively "**Trade Fixtures**"). Except for the Capital Improvements and fixtures installed on the Property and acquired through the Special Funds, Trade Fixtures may be removed at the expiration of the Term or any extension, provided that any damage to the buildings caused by the removal of the Trade Fixtures shall be repaired by Tenant, and Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove at Tenant's expense any Trade Fixtures that Tenant might otherwise elect to abandon. In addition, any equipment owned or purchased by Tenant without the use of Special Funds during the Term of this Lease shall remain the exclusive property of Tenant.

19. Signs and advertising. Tenant, at its cost, shall have the right to install or place permanent signs, awnings, or other advertising materials, on or about the Property that are family friendly and related to the Golf Courses to the maximum extent permitted by law and subject to Landlord's reasonable sign criteria and approval, provided that Tenant obtains Landlord's consent (a) as to the method of attaching signs that will be permanently attached to the exterior of a building or placed on the Property; (b) for any awnings; and (c) for the location and design of any pylon signs. Landlord shall not unreasonably withhold, condition or delay its consent. Tenant shall submit plans and specifications for its exterior signs and awnings to Landlord for approval prior to submitting the plans and specifications to the local authorities for permitting. Landlord shall be deemed to have consented to such proposed signs and awnings unless Landlord notifies Tenant in writing of its specific objections within 30 days of receiving such proposal. All signs and awnings shall be in compliance with all applicable laws, regulations and rules. If Landlord consents to any sign, awning, canopy, marquee, decorations, or advertising matter, Tenant shall at its expense maintain it in good appearance and repair at all times during this Lease.

20. Damage and Destruction.

(a) Damage or Destruction to the Property.

(i) Insured Loss. If the Property shall during the Term be damaged or destroyed by fire or other insured casualty, either in whole or in part, such that Tenant's gross revenues decrease by 25% or more, then Tenant shall have the option to terminate this Lease. If Tenant chooses to rebuild, Tenant shall remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, in accordance with the plans and specifications pursuant to which such property was constructed, updated as necessary to comply with current law. Tenant and Landlord agree that any applicable insurance proceeds shall be made available to Tenant for the restoration and repair of the Property, and Landlord shall pay the excess cost necessary to return the Property to its pre-damaged condition. Until such time as the Property is repaired, rebuilt and put in good and tenantable order, all rent and other charges, or a fair and just proportion thereof shall be

abated according to the nature and extent of the damage sustained and the degree of impact such damage and repairs have on Tenant's operations within the Property as measured by the proportionate reduction in Tenant's gross sales, as more particularly described in Section (b) below. If Tenant, however, after diligently pursuing applications for building permits with appropriate governmental authorities and contracts for such work with qualified contractors is unable to commence to repair, rebuild and put the Property in good and tenantable order following damage or destruction within 90 days after the date when such damage or destruction occurred, or if it is reasonably estimated that such repair or rebuilding cannot be completed in less than 180 days after the date such damage or destruction occurred, both for reasons beyond the reasonable control of Tenant, then Tenant, in addition to such other rights and remedies as may be accorded Tenant by law, shall have the right and option to terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the commencement of such repairs or rebuilding, and upon such notice being given this lease shall automatically terminate and Landlord shall be entitled to all insurance proceeds for such damages. The parties agree that (i) if the Property should be damaged or destroyed by fire or other cause to such an extent that the cost of restoration would exceed 50% of the amount it would have cost to replace the Property in its entirety at the time such damage or destruction took place, and (ii) if at the time of such damage or destruction the Term of this Lease is scheduled to expire within a period of one year, Landlord or Tenant shall have the right and option to terminate the Term of this Lease by giving the other party to this Lease notice of such election within 30 days after such damage or destruction shall have taken place, and if such notice is given, the Term of this Lease shall terminate as of the date Tenant vacates the Property, which date shall be no later than 30 days after the giving of such notice and Landlord shall be entitled to receive all insurance proceeds for such damages.

(ii) Uninsured Loss. If, at any time prior to the expiration or termination of this Lease, the Property is totally or partially damaged or destroyed from a casualty not covered by insurance maintained (or required to be maintained) by Tenant hereunder, which damage renders the Property totally or partially inaccessible or unusable to Tenant in the ordinary course of its business, Tenant may, at its option, upon written notice to Landlord within 60 days after the occurrence of such damage or destruction, elect to repair or restore such damage or destruction. If Tenant elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect but the rent and all charges payable to Landlord shall be proportionately reduced as provided in Section (i) above. If Tenant does not elect by written notice to Landlord to repair such damage, or if the damage cannot, in Tenant's judgment, be completed within 180 days following the date of such damage or destruction, this Lease shall terminate.

21. Condemnation.

(a) Taking of Whole Property. If, during the Term, the whole Property shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Property is taken, and after that, both

Landlord and Tenant shall be released from all obligations under this Lease, except that Landlord shall refund to Tenant any prepaid rent or similar sums as may be equitable and properly applied to the portion taken, and Tenant shall pay to Landlord all sums that it may be obligated to pay to Landlord to and including the effective date of termination.

(b) Partial Taking of Property. If, during the Term only a part of a Golf Course is taken pursuant to any condemnation proceeding and such taking has a material, adverse effect on the Gross Revenues from such Golf Course, or if by reason of any state, federal or county law or ordinance the use of the Golf Course for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Landlord or Tenant shall have the option to terminate the Lease as to such Golf Course, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving not less than 10 days and up to 30 days written notice to Landlord, and Rent shall be paid only to the time when Tenant surrenders possession of the Property.

(c) Restoration. If only a part of the Property is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Property to a self-contained architectural unit of like quality, character and condition which existed immediately prior to the taking. During the period between the effective date of taking and the completion of restoration, rebuilding and refixturizing of the Property, all rent and other charges payable by Tenant to Landlord hereunder shall be equitably abated to the extent that the Property is not then reasonably suitable for the conduct of Tenant's business.

(d) Condemnation Award. If the whole or any part of the Property are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award; provided that nothing contained in this section shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for (i) the taking of Tenant's personal property or trade fixtures, (ii) Tenant's unamortized cost of the Capital Improvements or Tenant Improvements to the extent paid for by Tenant or (iii) interruption of or damage to Tenant's business. Furthermore, Tenant is granted the right to recover from the condemning authority 100% of the "**Bonus Value**" of the leasehold estate which shall be equal to the difference between the rental rate payable under this Lease and the rate established by the condemning authority as an award for compensation purposes, together with any amount Tenant is able to obtain from the condemning authority attributable to Tenant's relocation expenses; provided that no such claim shall diminish or otherwise affect Landlord's award.

22. Environmental Liability.

(a) Environmental Law. The term "**Environmental Law**" means any federal, state, local law, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

(b) Hazardous Substances. The term "**Hazardous Substance**" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.

(c) Landlord's Covenants. Landlord warrants, represents, covenants and agrees as follows:

(i) To the best of Landlord's knowledge, no Hazardous Substance has been released, discharged or disposed of, on, under or about the Property by any entity, firm or person, or from any source whatsoever.

(ii) Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply with all applicable Environmental Laws.

(iii) To the best of Landlord's knowledge, (1) there are no underground storage tanks on the Property; (2) no underground storage tanks have been removed from the Property; and (3) no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than 500 gallons of any Hazardous Substance per year, have been located on the Property. If any underground storage tank is subsequently discovered on the Property, Landlord shall be responsible for its removal and remediation of any Hazardous Substance releases.

(iv) Landlord shall give prompt notice to Tenant of: (1) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Property (or off-site of the Property that might affect the Property) or related to any loss or injury that might result from any Hazardous Substance; (2) all claims made on threatened by any third party against Landlord or the Property relating to any loss or injury resulting from any Hazardous Substance; and (3) Landlord's discovery of any occurrence or condition on the Property (or off-site of the Property that might affect the Property) that could cause the Property or any part thereof, to be subject to any restriction on occupancy or use of the Property under any Environmental Law.

(v) If any Hazardous Substance is deposited, released, stored, disposed, discovered or present in or on the Property, Landlord, at Landlord's expense, shall (subject to Tenant's obligations set forth in Section (d) below), in a manner that complies with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to person,

property or the environment as a result of the presence of such Hazardous Substance. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant during all activities related to remediation. If any asbestos is discovered on the Property during Tenant's inspection of the Property or construction of any improvements, then Tenant shall promptly remove the asbestos as required by using the appropriate Special Fund in accordance with Section 6 of this agreement.

(d) Tenant's Use of Any Hazardous Substance. Tenant will use only those Hazardous Substances that are permitted under Environmental Laws. Tenant will manage, transport, generate or dispose of any Hazardous Substance on the Property in appropriate and lawful methods throughout the length of this agreement and extensions thereof.

(e) Indemnities.

(i) Tenant shall protect, defend, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all claims, loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Property to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Property. This indemnity shall survive the expiration or termination of this Lease.

(ii) Landlord shall protect, defend, indemnify and hold harmless Tenant and its agents, officers, directors, contractors, employees, parents, subsidiaries, successors and assigns from and against any claim, cause of action, loss, damage, cost, expense (including attorneys' fees and costs) or liability (collectively, "**Damages**") directly or indirectly related to: (1) a violation of or responsibility under Environmental Laws unless such Damages are directly or indirectly related to Tenant's, or Tenant's agents, contractors or employees use, manufacture, storage, release or disposal of a Hazardous Substance on the Property, or (2) a breach of any representation, warranty, covenant or agreement contained in this Section 22. This indemnity shall survive the expiration or termination of this Lease. In the event of any governmental or court order concerning Hazardous Substances on the Property (not caused by Tenant) that precludes Tenant from reasonable operation of its business on the Property, Tenant may cease operating and its rents and all other charges shall be abated. If such governmental or court order is not resolved within six months, Tenant may give the Landlord 30 days notice to terminate this Lease.

23. Assignment and Subletting.

(a) Restriction on Assignment and Subletting. Except as provided in Section (b) below, Tenant shall not assign or sublet this Lease without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, provided that subsequent to any assignment or sublease (except as provided below) Tenant shall remain primarily liable for the rental to be paid under this Lease and the performance of all terms and conditions of

this Lease. When requesting Landlord's consent to an assignment or sublease of the Lease, Tenant shall provide to Landlord, in writing, the following information:

(i) information regarding the proposed assignee or sublessee ("**Assignee**") including the name, address, and ownership of the Assignee's business; and the Assignee's current financial statements (certified by an officer, a partner, or an owner of Assignee);

(ii) the portion of the Property that is the subject of the proposed assignment or sublease; a general description of any planned alterations or improvements to the Property, if any; and the proposed use of the Property by Assignee; and

(iii) all other and additional information or documentation reasonably requested by Landlord.

(b) Permitted Assignment. Tenant may, however, assign this Lease without Landlord's written consent upon 60 days' written notice to Landlord if the assignment is made to an entity in which Tenant's partners (Ken Morton Sr., Kathy Morton, Terry Daubert, Ken Morton Jr., Tom Morton, and/or Mike Woods) or any or all of them, either collectively or individually, hold a majority interest.

(c) Release. Upon delivery to Landlord, by a successor entity to which this Lease is assigned or transferred, of the agreement of the entity to be bound by the terms, covenants, and conditions of this Lease to be performed by Tenant after the date of the assignment or transfer, Tenant shall be released and discharged from all obligations later arising under this Lease, except where the transfer is to a wholly-owned subsidiary of Tenant.

(d) Special Events. From time to time during a special event, tournament or charity event (together "**Special Event**"), a vendor, company or restaurant may request to provide services or products. This kind of request is not considered to be an assignment or subletting as long as revenues are not received by the vendor, company or restaurant. If revenues are received, all revenues shall be treated as Gross Revenues. If Tenant agrees to allow a vendor, company or restaurant to provide services or products, the vendor, company or restaurant must comply with all governmental, health and safety laws.

24. Default. Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "**Event of Default**").

(a) Failure to Pay. The failure of Tenant to pay any amount in full when it is due under the Lease where such failure shall continue for a period of 10 business days after Landlord notifies Tenant in writing of such failure;

(b) Failure to Perform. The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of 30 days after Landlord demands

in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within 30 days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the 30 day period and thereafter diligently completing the cure.

(c) Bankruptcy Matters. Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation or surrender of the Property by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Property (other than by Landlord) by process of law or otherwise;

(d) Trustee, Attachment, Filing. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within 30 days; or the involuntary filing against Tenant, or any general partner of Tenant is a partnership, of

(i) a petition to have Tenant, or any partner of Tenant if Tenant is a partnership, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within 60 days;

(e) Abandonment. The abandonment of the Property by Tenant;

25. Remedies.

(a) Landlord's Remedies on Tenant's Default. On the occurrence of an Event of Default by Tenant, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to landlord at law or in equity. These remedies are not exclusive but cumulative.

(i) Termination of Lease. Landlord may terminate this Lease and recover possession of the Property. Once Landlord has terminated this Lease, Tenant shall immediately surrender the Property to Landlord. On termination of this Lease, Landlord may recover from Tenant all of the following:

(1) The worth at the time of the award of any unpaid rent and accumulated late charges that had been earned at the time of the termination, to be computed by allowing interest at the rate of 10% but in no case greater than the maximum amount of interest permitted by law;

(2) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate of 10% but in no case greater than the maximum amount of interest permitted by law;

(3) The worth at the time of the award of the amount by which the unpaid rent for the balance of the Lease Term after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%;

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the Property for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and

(5) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

(ii) Continuation of Lease in Effect. Landlord shall have the remedy described in Civil Code section 1951.4 which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the Landlord may continue the lease in effect after the tenant' breach and abandonment and recover rent as it becomes due. Accordingly, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(iii) Tenant's Subleases. If Landlord elects to terminate this Lease on account of any default by Tenant, Landlord may:

(1) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Property, except as otherwise provided in subsection (b) below.

(2) Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

(iv) Efforts to Relet. For purposes of this Section 25, Tenant's right to possession shall not be considered to have been terminated by Landlord's efforts to relet the Property, by Landlord's acts of maintenance or preservation with respect to the Property, or by appointment of a receiver to protect Landlord's interests under this Lease. This list is

merely illustrative of acts that may be performed by Landlord without terminating Tenants right to possession.

(v) Acceptance of Rent Without Waiving Rights. Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts payments after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

(b) Tenant's Remedies on Landlord's Default.

(i) Landlord's Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a default by Landlord under the Lease if the failure continues for 30 days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within 30 days, Landlord's failure to perform shall constitute a default under the Lease unless Landlord undertakes to cure the failure within 30 days and diligently and continuously attempts to complete this cure as soon as reasonably possible.

(ii) Rent Abatement. If Tenant is prevented from using, and does not use, all or part of the Property (termed "**Affected Area**" for purposes of this paragraph) as a result of an Abatement Event, as defined in subsection (iv) below, and if this Abatement Event continues for either 10 consecutive days after Landlord's receipt of notice from Tenant of the Abatement Event or 20 days in any 12-month period after Landlord's receipt of such notice ("**Eligibility Period**"), the rent payable under this Lease shall be abated or reduced after the expiration of the Eligibility Period for such time that Tenant continues beyond the Eligibility Period to be prevented from using, and does not use, the Affected Area in the proportion that the rentable area of the Affected Area bears to the total rentable area of the Property. To establish an Eligibility Period of 20 days in a 12-month period, Tenant must give Landlord notice on each of the 20 days that an Abatement Event has occurred, continues, or has recurred.

(iii) Full Abatement. If as a result of an Abatement Event, as defined in Section (iv) below, Tenant is prevented from using, and does not use, a substantial portion of the Property for a period of time in excess of the Eligibility Period and the remaining portion of the Property is not sufficient to allow Tenant to conduct its business, all rent due under this Lease for the entire Property affected shall be abated for the time after expiration of the Eligibility Period during which Tenant is precluded from using, and does not use, the entire Property. If however, Tenant reoccupies any portion of the Property during this period, the rent allocable to this reoccupied portion (based on the proportion that the rentable area of the reoccupied portion of the Property bears to the total rentable area of the Property) shall be payable by Tenant from the date on which Tenant reoccupies this portion of the Property.

(iv) Abatement Event. An "**Abatement Event**" is:

(1) Landlord's performance of or failure to perform any repair or alteration that substantially interferes with Tenant's use of the Property;

(2) Any failure of or interruption in utilities or services required to be supplied by Landlord to the Property.

(3) Any failure of Landlord to provide Tenant with access to the Property.

(v) Termination. If any Abatement Event is not cured within 60 days after expiration of the Eligibility Period, Tenant may terminate this Lease, by giving written notice to Landlord, as to one of the following:

(1) The Affected Area, in which event the rent payable by Tenant shall be adjusted accordingly and the parties shall amend this Lease to reflect the adjusted rent and configuration of the Property; or

(2) The entire Property, in which the termination shall be effective on Tenant's vacation of the Property but in no event more than one year after Landlord's receipt of the termination notice.

26. Late Charge. Tenant acknowledges that Tenant's failure to pay any Percentage Payments, Payment Deficiency, or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering in this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any Percentage Payment, Payment Deficiency or any other amount due under the Lease, is not received by Landlord within 10 days after the due date, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to 6% of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

27. Default Interest. If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at 10% per annum, not to exceed the maximum rate then allowable by law, from the due date until paid.

28. Waiver of Breach. Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

29. Estoppel Certificates. At any time, with at least 15 days prior notice by a party, the other party shall execute, acknowledge, and deliver to the requesting party a certificate certifying to the delivering party's actual knowledge:

(a) the Effective Date and the Term,

(b) the amount of the Rent and the preceding months' Percentage Payments,

(c) the dates to which Rent and other charges have been paid,

(d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification,

(e) that no notice has been received by the delivering party of any default by the requesting party that has not been cured, except, if any exists, those defaults must be specified in the certificate, and the delivering party must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute and Event of Default under this Lease,

(f) that no default of the requesting party is claimed by the delivering party, except if any, those defaults must be specified in the certificate, and

(g) other matters as may be reasonably requested by the requesting party.

Any certificate may be relied on by the addressee of such certificate, including, without limitation prospective purchasers, credit providers, mortgagees, or beneficiaries under any deed of trust on the Property or any part of it.

30. Security of Rent Payments. Upon delivery of possession of the Property to Tenant, Tenant shall do one of the following for the purpose of securing the performance of Tenant's obligations to Landlord under this Lease, including the payment of Rent and Percentage Payments: (i) maintain a minimum open Letter of Credit in the amount of $100,000 with a bank; (ii) have deposited in a separate account $100,000; or (iii) obtained a performance bond in the amount of $100,000 for the benefit of Landlord. Tenant will provide Landlord with confirmation from a bank of a Letter of Credit or separate account or a copy of the performance bond. If and/or when the Letter of Credit or account balance is less than $100,000, Tenant will notify Landlord and Tenant will replenish the letter of credit or replace the separate account within 30 days.

31. Authority. Tenant is a Limited Liability Corporation. All individuals executing this Lease on behalf of the entity represent that they are authorized to execute and deliver this Lease on behalf of the entity.

32. Notices. All notices, requests, demands or other documents shall be: (a) personally delivered; (b) mailed, certified or registered mail, return receipt requested; (c) delivered by recognized overnight delivery service to Landlord or Tenant at its address below; or (d) sent by fax to the fax number below. A personally delivered notice or one sent by recognized overnight courier is effective on delivery. A mailed notice is effective 48 hours after notices to all parties have been deposited in United States mailboxes, postage paid, and addressed as indicated above. A faxed notice is effective on the day sent by fax before 5 pm or the next

business day if sent after 5 pm or on a non-business day. A party giving notice by fax shall send a copy of the notice by first class mail on the same day as the fax is sent. Either party may, by written notice to the other, specify a different address for notice purposes.

If to Tenant:	Morton Golf LLC Attention: Terry Daubert, President 3645 Fulton Avenue Sacramento, California 95821 Fax: (916) 808-2523
If to Landlord:	City of Sacramento Attention: Golf Division 1030 15th Street, Suite 220 Sacramento, California 95814 Fax: (916) 808-6317

For ease of administration of this Lease, Tenant provides the following identifying information:

City of Sacramento Business Operations Tax Certificate #1002924
Federal Tax ID #80-0026405
California State Board of Equalization #SRKH-97-986679
State of California Alcoholic Beverage License #397476

33. Nondiscrimination. Tenant shall not discriminate against any employee, applicant for employment, or Golf Course patron on the basis of race, color, religion, disability, ancestry, gender, sexual orientation, national origin, age, or any other basis protected by law. Tenant will provide equal employment opportunities to ensure that applicants are employed, and that employees are treated during employment without regard to their protected basis. Such opportunities shall exist with regard to, but not limited by, the following actions; employment, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tenant shall post in conspicuous places, available to employees and applicants, notices setting forth the provision of this paragraph.

34. Nondiscrimination in Employee Benefits. This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized **Exhibit I**. Tenant is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

35. Heirs and Successors. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

36. Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

37. Entire Agreement. This instrument constitutes the sole agreement between Landlord and Tenant respecting the Property, the leasing of the Property to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. This Lease supersedes all prior leases or agreements, including City Agreement 2001-134 and any amendments and supplements thereto, whether written or oral. Any agreement or representations respecting the lease of the Property by Landlord to Tenant not expressly set forth in this instrument are void.

38. Time of Essence. Time is of the essence in this Lease.

39. Rent. In the event of any failure on the part of Tenant to pay to Landlord any monetary obligation under this Lease when due, such monetary obligation of Tenant to Landlord under the Lease, including but not limited to the Rent, shall be deemed rent and Landlord shall have the right to exercise any and all remedies it may have with respect to such monetary obligation as if such monetary obligation were Rent.

40. Amendments. This lease may be modified only in writing and only if signed by the parties at the time of the modification.

41. Recordation. This Lease shall not be recorded. Notwithstanding the foregoing, concurrently with the execution of this lease, Landlord shall execute before a notary and deliver to Tenant for recording a standard form "**Memorandum of Lease Agreement**". Tenant shall execute and deliver to Landlord on the expiration or termination of this Lease, immediately upon Landlord's request, a quitclaim deed to the Property or a memorandum of lease termination, in recordable form, designating Landlord as transferee.

42. City Representative Authority. Authority to act on behalf of the City in the administration of the Lease is hereby delegated to the City Manager or his or her designee.

43. Reasonableness and Good Faith. Except as expressly limited elsewhere in this Lease, whenever this Lease requires Landlord or Tenant to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

44. Relationship of Parties. Neither party shall be deemed in any way or for any purpose to have become, by the execution of this Lease or any action taken hereunder, a partner of the other party in its business or otherwise or a joint venturer or a member of any joint enterprise with such other party, it being expressly understood and agreed that neither the method of a calculation of rent nor any other provisions contained in this lease nor any act or acts of the parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

45. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease shall not be effective until the execution by and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Lease.

46. Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of the Landlord, terminate all or any existing sub-tenancies or may, at the option of the Landlord, operate as an assignment to a Landlord of any of the sub-tenancies.

47. Exhibits. The Exhibits attached to this lease are a part of this lease and are incorporated into this Lease by reference.

48. Municipal Authority. The execution and delivery of this Lease and the consummation of the transactions contemplated by this Lease have been duly authorized and approved by all requisite action of the City of Sacramento, and this Lease has been duly executed and delivered by Landlord and constitutes a valid and binding obligation of Landlord.

49. Governing Law. This Lease shall be governed by and construed in accordance with California law.

(*Signature Page Follows*)

Tenant (Morton Golf LLC)

By: _____
Ken Morton, Sr.
Chief Executive Officer
Date: Oct 19, 2011

By: _____
Terry Daubert
President

Landlord (City of Sacramento)

By: _____
John F. Shirey
City Manager
Date: _____, 2011

ATTEST
Sacramento City Clerk

By: _____

APPROVED AS TO LEGAL FORM
Sacramento City Attorney

By: _____
Kourtney Burdick
Deputy City Attorney

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EXHIBIT A

DESCRIPTION OF PROPERTY

Exhibit A-1

Golf Course	Area (ac)	APN	NAME	LONG_LEGAL
Bartley Cavanaugh	94	11901900330000	CITY OF SACRAMENTO	POR OF R.O.S. BK 11, PG 43, LOC IN THE SW 1/4 OF SEC 13, T7N, R4E, MDB7M DES AS: BEG AT A PT ON TEHE'LY R/W LN OF RIVER RD LOC S14%05'40"E 246.61 FT & S 17%15'30"E 289.70 FT FR THE NW COR OF SD R.O.S. 11-43; TH FR SD POB N79%52'50"E 703.95 FT; TH N14%14
Bartley Cavanaugh		11901900350000	CITY OF SACRAMENTO	POR SLS BEG AT INTERSEC E'LY R/W LN STATE OF CALIF HWY 24 & MOST W'LY COR OF 208.818 AC TRACT DESIGNATED A. L. SWEENEY; TH S43%48'14"E 1,803.62 FT TO TRUE POB; TH N78%12'00"E 339.80 FT; TH S12%08'04"E 1,201.92 FT; TH N77%15'50"W 391.28 FT; TH N12%08'04"W
Bartley Cavanaugh		119019003/0000	CITY OF SACRAMENTO	THAT POR SEC 13 & 24, T7N, R4E, MDB&M DES AS THE 500 AC OF S.L.S. 155 AND LYING W OF THE W R/W LN OF INTERSTATE 5 AS DES IN 750617/789 AND E OF THE PCL DES AS BEG AT THE INTERSECTION OF THE E'LY R/W LN OF STATE OF CALIF HIGHWAY 24 AND THE MOST W'LY COR O
Bartley Cavanaugh		11901900400000	CITY OF SACRAMENTO	POR SEC 13, T7N, R4E, DESC AS BEG AT A PT LOC S78%19'07"E 1,469.72 FT FR NW COR O.S. 11-43; TH FR POB N79%12'E 345 FT; TH S14%14'48"E 278.62 FT; TH ALG A 9,850 FT RAD CURVE TO RT, CH BRG S11%47'21"E 844.13 FT; TH S76%12'W 330 FT; TH N12%08'04"W 1,117.52
Bartley Cavanaugh		11901900410000	CITY OF SACRAMENTO	POR SEC 13, T7N, R4E, MDB&M DESC AS BEG AT A PT LOC S14%05'40"E 246.61'; TH S17%15'30"E 289.70'; TH N79%52'50"E 703.95'; TH N14%14'42"W 165.95'; TH N78%12'00"E 265.20' FR NW COR O.S. 11-43; TH N78%12'00"E 389.60'; TH S12%08'04"E 1117.52'; TH S78%12'00"W
Bartley Cavanaugh		11901900420000	CITY OF SACRAMENTO	POR SEC 13, T7N, R4E, MDB&M AND BEING PART OF O.S. 11-43 DESC AS LYING W OF W R/W LN OF INTERSTATE I-5 AND S AND E OF THOSE PCLS GRANTED TO CITY OF SACRAMENTO BY THE SACRAMENTO REGIONAL CO SANITATION DIST. EXC M/R PER 920827/1112. CONTG 4.09 N AC M/L.
Bartley Cavanaugh		11901900470000	CITY OF SACRAMENTO	POR OF S.L.S. 155 & SECS 13, 14, T7N, R4E, MDB&M DES AS FOL: BEG AT THE INTERSECTION OF THE E R/W LN OF THE STATE OF CAL HWY ROUTE 24 & THE MOST W'LY COR OF THAT CERTAIN 208.18 AC TRACT OF LAND DESIGNATED "A. L SWEENEY 208.818 AC," ON THAT CERTAIN SURVE
Bartley Cavanaugh		11901900500000	CITY OF SACRAMENTO	POR OF SEC 13, T7N R4E, MDB&M DESC AS: BEG AT A PT LOC S10%48'30"E 2,510.66 FT FM SW COR FREEPORT ACRES; TH FM POB N78% 12'E 717.86 FT; TH S14%14'42"E 555.95 FT; TH S79%52'50"W 703.95 FT; TH N17%15'30"W 289.70 FT; TH N14%05'40"W 246.61 FT TO POB. CONTG
Bartley Cavanaugh		11901900510000	CITY OF SACRAMENTO	POR OF SEC 13, T7N, R4E, MDB&M DESC AS BEG AT INTERSECTION OF W R/W LN OF STATE OF CALIF I-5 FREEWAY WITH N. LN OF O.S. 11-43. TH S14%14'42"E 390'; TH S78%12'00"W 1000 FT; TH N14%14'42"W 390 FT; TH N78%12'00"E 1000 FT TO POB. CONTG 8.945 N AC M/L.
Bartley Cavanaugh		11901900520000	CITY OF SACRAMENTO	POR SEC 14 T7N R4E MDB&M BEG AT A PT LOC N10%07'10"W 163.66 FT AND N79%52'53"E 450' FR THE SW COR OF O.S. 11-43; TH N10%07'10"W 185'; TH N78%12'00"E 538.33'; TH S12%08'04"E 670.15'; TH S77%38'22"W 560.11'; TH S79%52'50"W 260'; TH N10%07'10"W 155'; T TH N

Bartley Cavanaugh		11901900540000	CITY OF SACRAMENTO	POR SECS 13 & 24 T7N R4E MDB&M DES AS BEG AT A PT LOC N10%07'10"W 143.66 FT; TH N79%52'53"E 450 FT; TH S10%07'10"E 288.66 FT; TH S79%52'53"W 260 FT FR SW COR OF OS 11-43; TH FR SD POB S10%07'10"E 155 FT; TH N79%08'04"E 820.26 FT; TH N77%15'50"W 698.25 FT
Bing Maloney	179	03500100170000	CITY OF SACRAMENTO	EAST 51.49 AC OF S 1/2 OF SW 1/4 SEC 36 T8N R4E EXC PORTION DESC BK 2616 O R PG 491 BEING GOLF C OURSE TERRACE UNITS 14 & 16
Bing Maloney		03500100180000	CITY OF SACRAMENTO	WEST 28.51 AC OF S 1/2 OF SW 1/4 SEC 36 T8 NR4E EXC PORTION DESC IN BOOK 2616 O R PG 491 BEING G OLF COURSE TERRACE UNITS 14 AND 16
Bing Maloney		03500100150000	CITY OF SACRAMENTO	POR OF CITY OWNED GOLF COURSE & AIR PORT IN SEC 36 T 8 N, R 4 E, M D B &M CONTG 49.22 AC M/L
Bing Maloney		03500100260000	CITY OF SACRAMENTO	POR OF CITY OWNED GOLF COURSE & AIR PORT IN SEC 35, & 36 T N R 4 E M D B &M & FRAC OF STATE R/W FOR HIWAY IN SD SEC 35 DEEDED TO CITY IN O R BK 4314 PG 812, CONTG 69.343 AC M/L
Bing Maloney		03500100520000	CITY OF SACRAMENTO	POR OF THE CITY OF SACRAMENTO DES AS: BEG AT THE SW COR OF LOT 3, GOLF COURSE TERRACE ULNIT NO 3; TH FRF SD POB W 3,850 FT M/L TO THE S'LY LN OF FREEPORT BLVD; TH ALG SD LN NE'LY 550 FT M/L TO THE SW COR OF SACRAMENTO EXCUTIVE AIRPORT; TH ALG THE S'LY L
Haggin Oaks	409	24003300090000	CITY OF SACRAMENTO	POR SEC 32, RANCHO DEL PASO BOUNDED BY S BY N LN OF SEC 31, SD RANCHO DEL PASO, E BY W'LY R/W OF WATT AVE, W BY INTERSTATE 80, N BY SACRAMENTO CITY LIMITS BOUNDRY EXC ALL THAT POR DES AS BEG AT A PT LOC S09%22'42"W 63.06 FT & N76%33'14"E 261.49 FT FR THE
Haggin Oaks		25400110280000	CITY OF SACRAMENTO	POR. OF SEC'S 26, 27 AND 31OF RANCHO DEL PASO, DESC AS FOLLOWS LYING S OF N LINE OF SD SEC 31 AND LYING NW OF US HWY 80 AND 99 S AND LYING E OF CONNIE DR AND LYING SE OF ROSEVILLE RD AND ALSO LYING SE OF PTN DEEDED TO STATE IN BK 680506/61 OR. EXCL PCLS

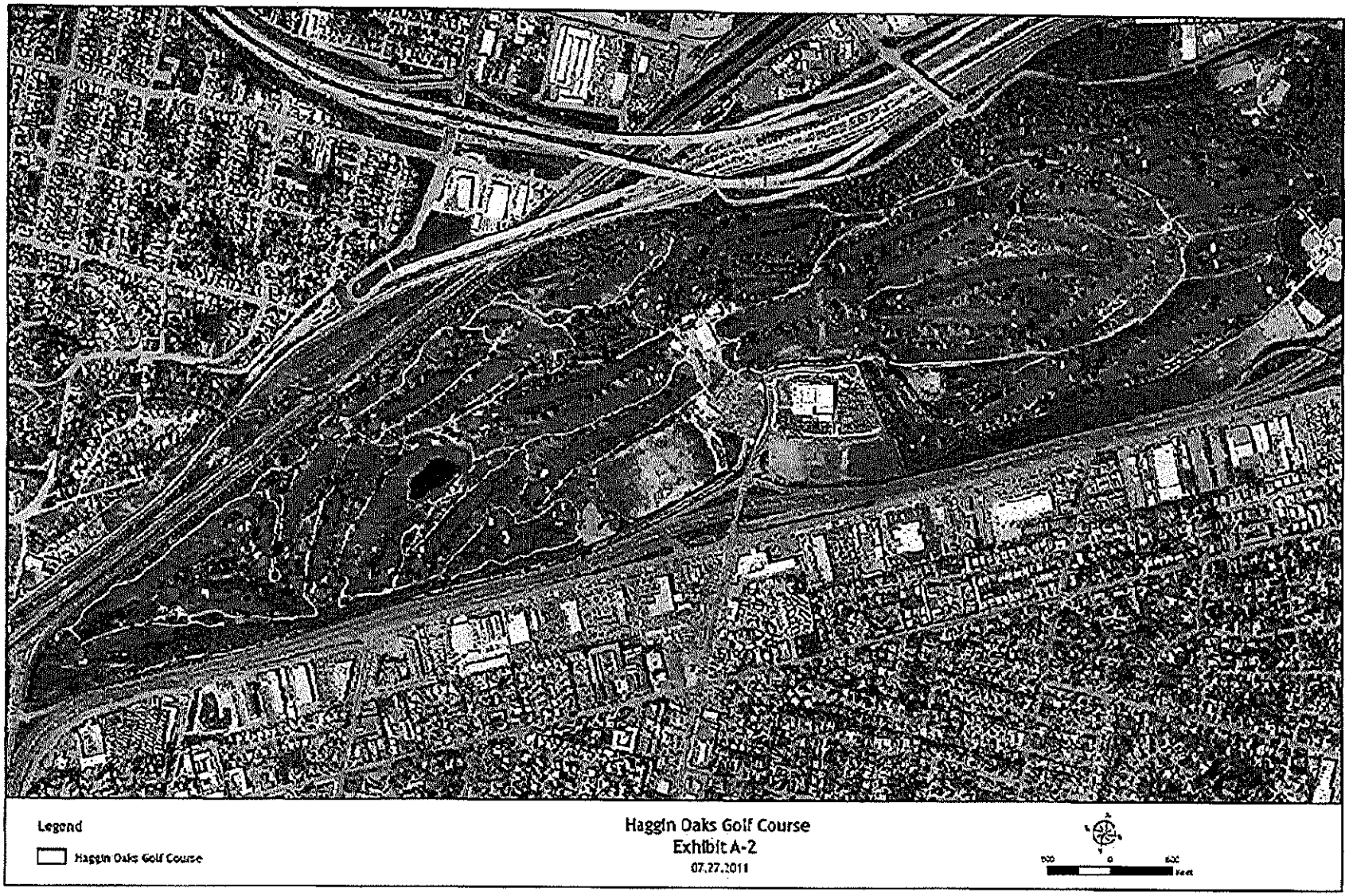

Exhibit A – Description of Property

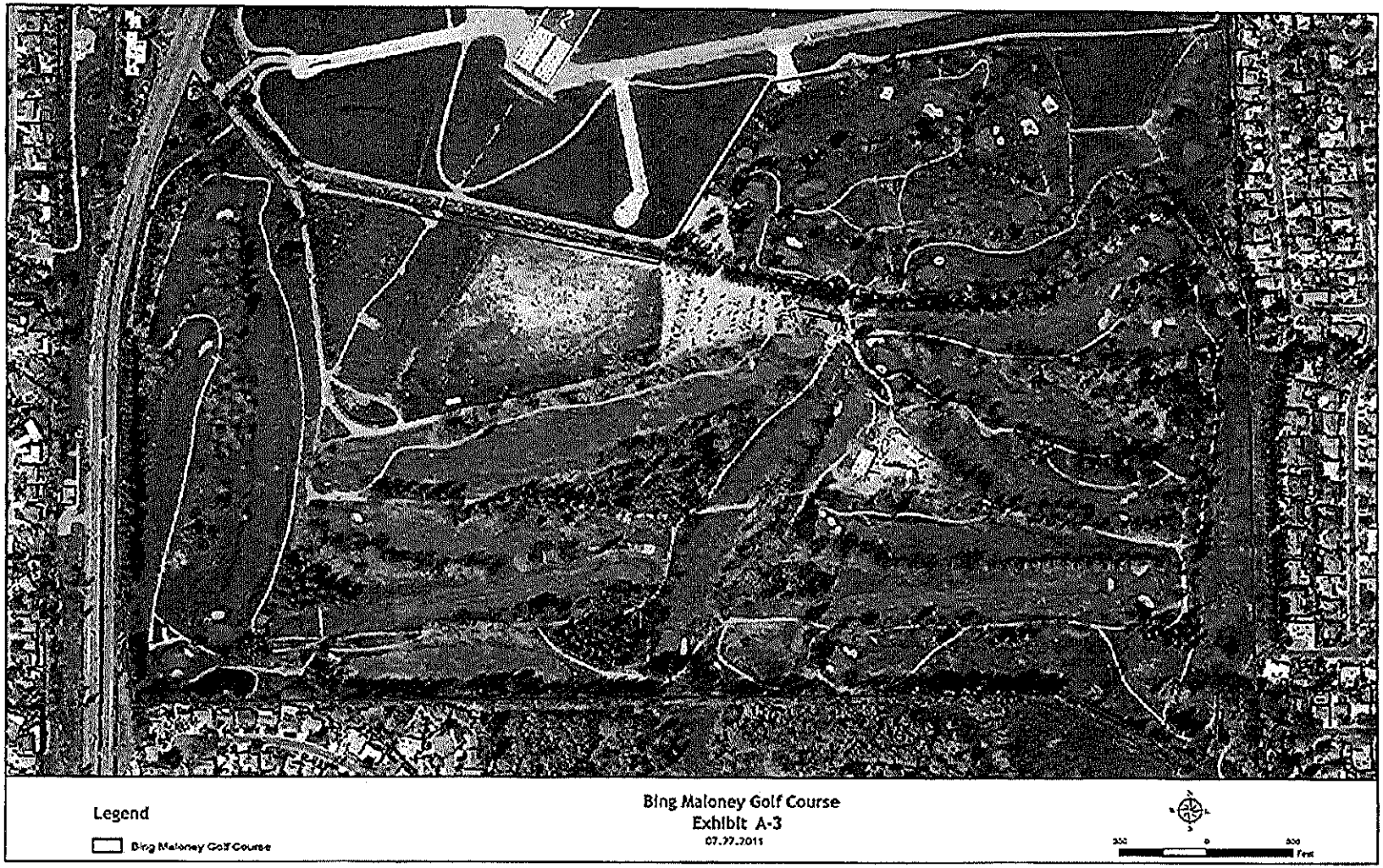

Exhibit A – Description of Property

Legend
Bartley Cavanaugh Golf Course
Bartley Cavanaugh Golf Course
Exhibit A-4
07.27.2011
200
0
200
Feet

EXHIBIT B

LEASED BUILDINGS

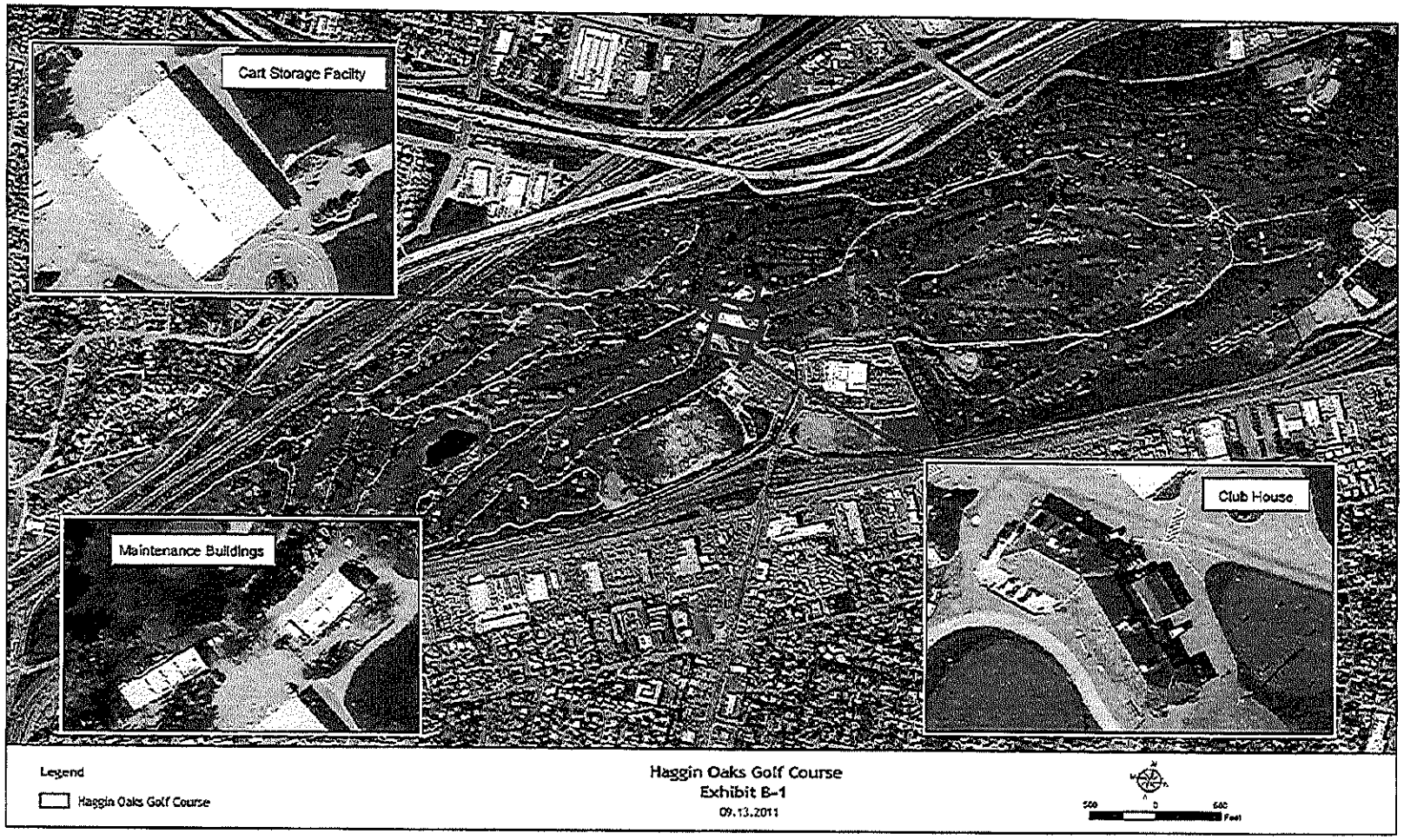

Exhibit B – Leased Buildings

425429.13

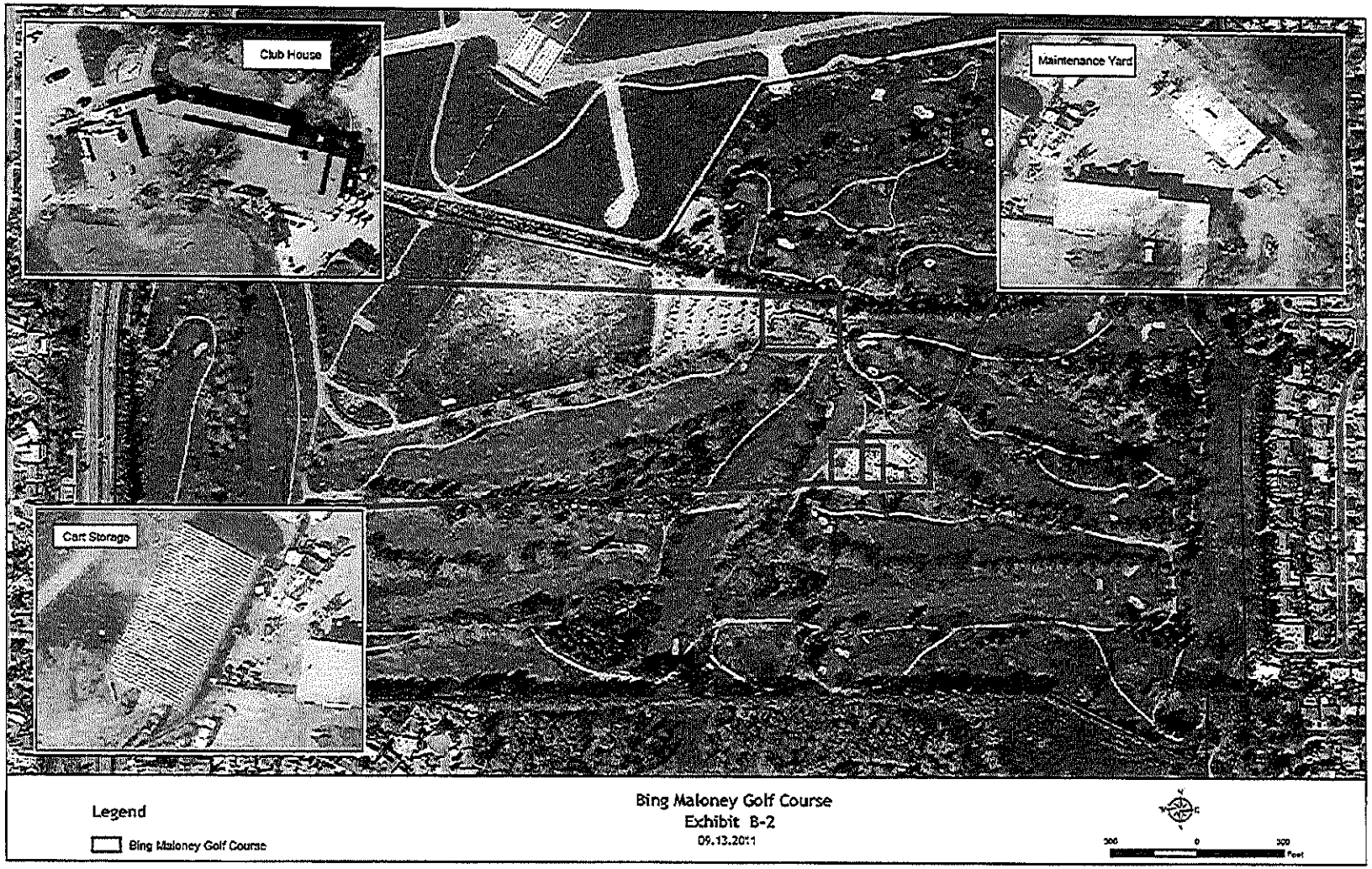

Exhibit B – Leased Buildings

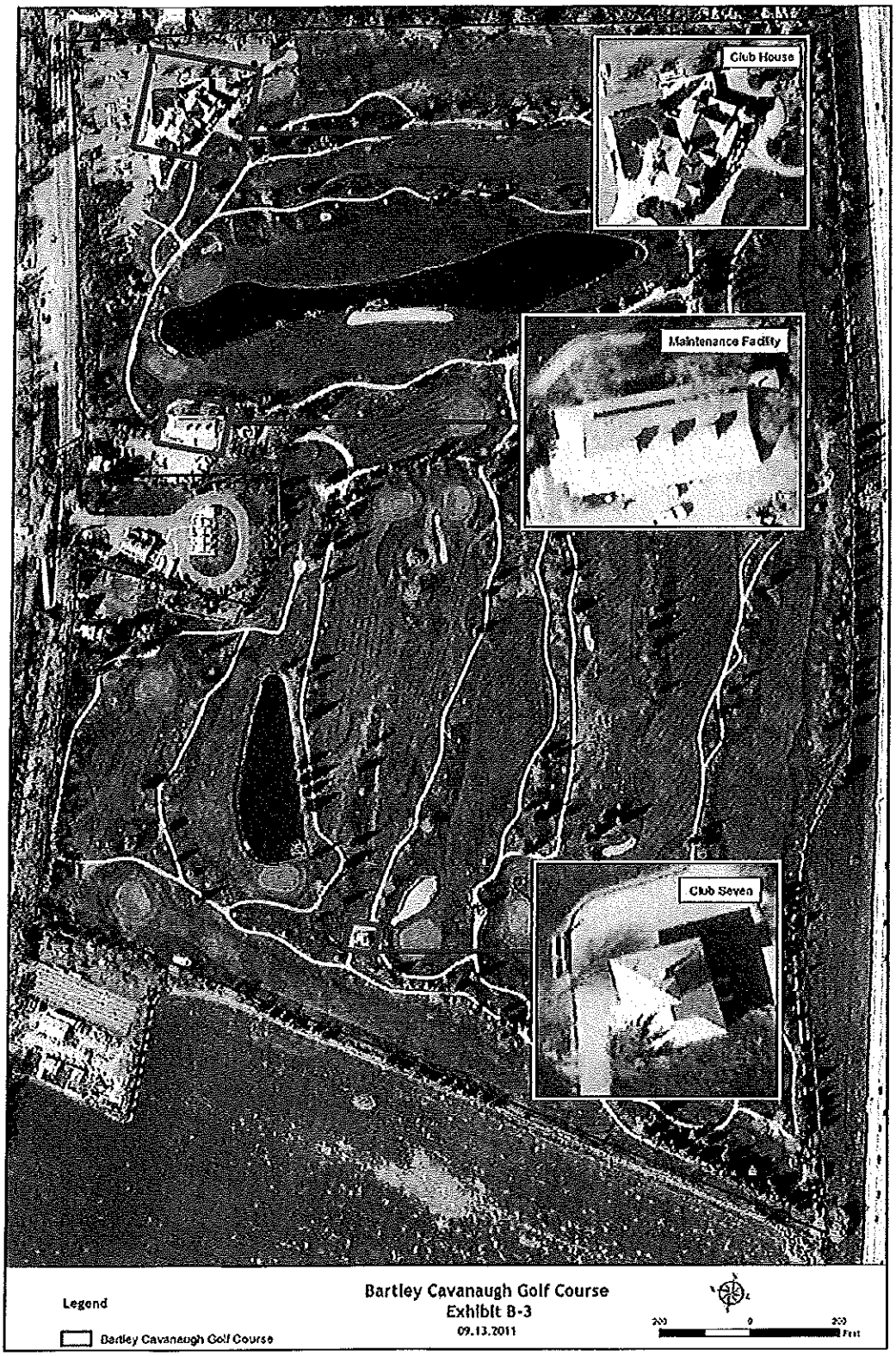

Exhibit B – Leased Buildings

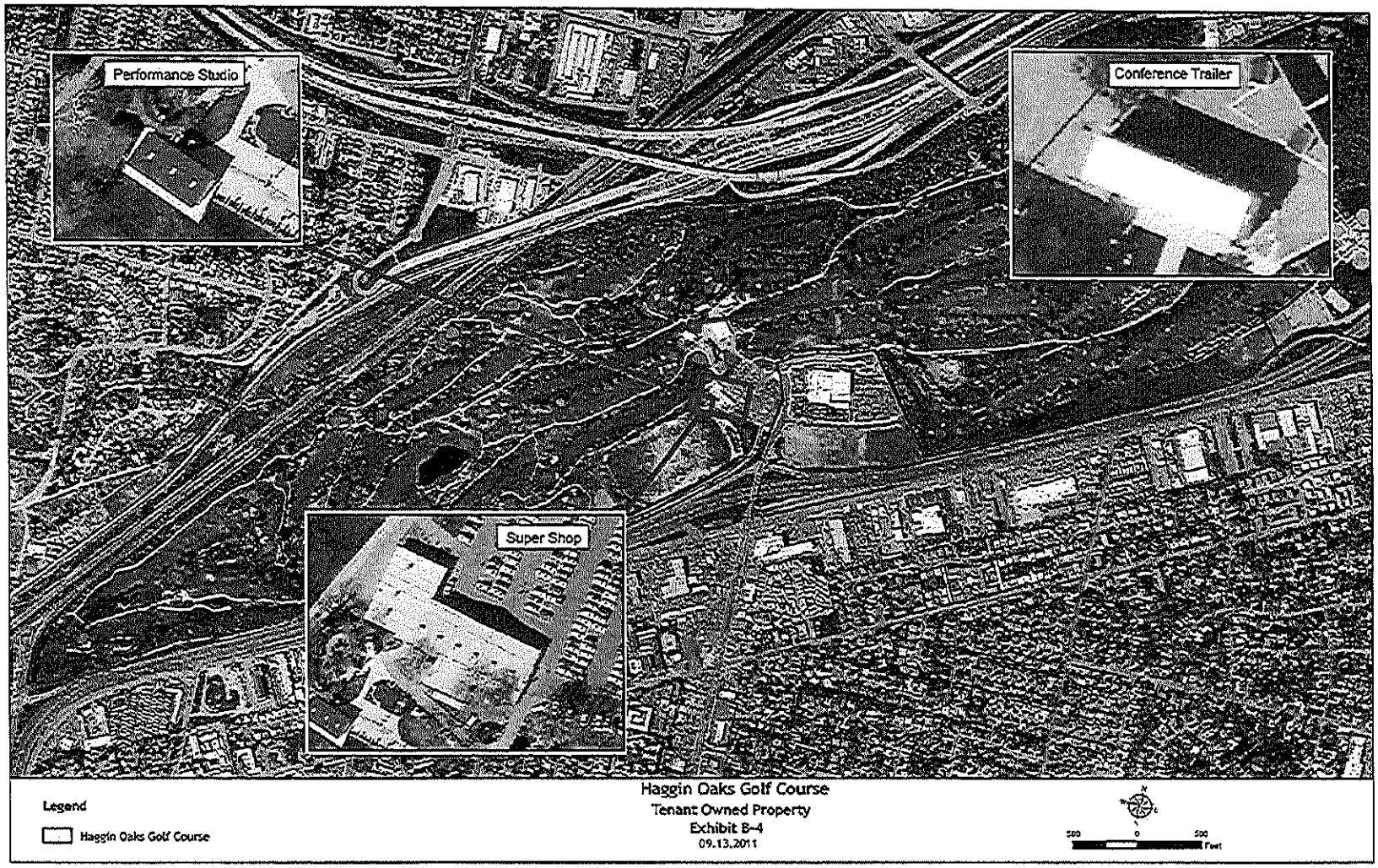

Exhibit B – Leased Buildings

Exhibit B – Leased Buildings

Exhibit B – Leased Buildings

EXHIBIT C

LIST OF CITY OWNED EQUIPMENT
CITY EQUIPMENT
HAGGIN OAKS

EXHIBIT C

EQUIPMENT NAME	MODEL	SERIAL/UNIT NUMBER
Stihl Chainsaw #4	009	
Stihl #3 Chainsaw	MS260C	021656
Jac GKIV Gas	62287	02537
Jac 3800 Fairway Mower	67948	02695
Jac 3800 Fairway Mower	67948	02697
Power Trim 150 Edger	150	C04801
Greensking IV Plus Diesel	62289	04887
HR511111 / 4WD	69116	07645
Blower Pull	KB	11148
Cushman	898657	LM12057
E-Z Go Workhorse(grn one)	800 Workhorse	1432178
9016 Jac Rough Mower	70525	1833
#2 3800 Fairway Mower	67867	1994
3100 Workman	07210	2000000195
3100 Workman	7210	2000000220
Greensking VI	62277	2043
#1 3800 Fairway Mower	67867	2066
T528D Turfcat II	66148	2099
455 Deck Mower	30455	210000106
Commander 2200	CC2200	2150362
T528D Turfcat II	66148	2189
1100 Workman (red one)	07252	230000535
Greensking IV Tee Mower	62229	2365
Hydro Seeder	T-90-T11-Kubota 3cyl	SS-2559
Ez-Go Vehicle (Sams)		2640507
Ez-Go Vehicle Marshall	76197G01	0000026598655
Ez-Go Vehicle Marshall	76197G01	0000026598656
Stihl #1 Chainsaw	MS250C	272837846
Stihl #2 Chainsaw	MS250C	272837880
Toro Greens Aerator	09110	30344
Cushman A/T 4 Wheel	898567	32000884
Greensking IV Tee Mower	62300	3670
8427 Cushman	898630A	38001796
Greensking V Arc	62247	3860
GM3000D Triplex Collar	04375	40194
GM3000D Triplex	04375	40198
Dakota Turf Tender	440	FT4800094
Smithco Trap Rake	42-000-C	4578
Metermatic Top Dresser	85417	592517 City# 40646
2300 Trim Mower	03426	52017
Kubota Tractor	M5600	50646
Ex Mark 21"	MS16KASPC	510465
Smithco Trap Rake	13-550	5208
Toro Greens Sprayer	41105	60140
Fairway Spreader	232020001	6665

EXHIBIT C

CITY EQUIPMENT
HAGGIN OAKS

EQUIPMENT NAME	MODEL	SERIAL/UNIT NUMBER
E Plex Electric GM #1	8811	701657
E-Plex Elec GM #2	8811	701658
Verti-drain	7316	A66526
Kubota Tractor	L3400HST-F	76485
Top Dresser F-12D	85423	798537
Sand Pro Trap Rake	O8811	80165
580 Toro Fairway Mower	30581-11 Blade	80268
#8431 Cushman	898630A	98001794
#8432 Cushman	898630A	98001797
#8429 Cushman	898630A	98001798
Electric Maint Veh	Hauler 800	2639934
Electric Maint Veh	Hauler 800	2639937
Electric Maint Veh	Hauler 800	2639938
Electric Maint Veh	Hauler 800	2639939
Electric Maint Veh	Hauler 800	2639940
Smithco Greens Sprayer	10-160	J238-160
Core Harvester - Lower	2701530	LM16851
Core Harvester	890009A	R98101164
FLEET EQUIPMENT		
2005 Ford Compact Truck	Ranger	10291 (Insurance required)
2001 Dodge Compact Truck	Dakota	9163 (Insurance required)
2000 Dodge Full Size Truck	1500 EC 4x4	9055 (insurance required)
1991 Ford Tractor	445C	6902
1991 Ford Tractor	445C	6904
1994 Zieman Trailer	1125	7724
Fuel Tank 900 Gallons	Unleaded	
Fuel Tank 900 Gallons	Diesel	

EXHIBIT C

CITY EQUIPMENT
BING MALONEY

EQUIPMENT NAME	MODEL	SERIAL/UNIT NUMBER
Ecko Back Pack Blo.	PB 413HT	
Buffalo Blower	7304KB	7364
Cushman Core Harvester	Cushman	
Stihl Chain Saw	009	
Stihl Chain Saw	026	
Stihl Chain Saw	034	
Cushman Cart 8430		
Cushman Cart 2200	2200	
Ezgo Cart (White)		
Golf Marshal Cart	EZGO/Electric	
Jac Bunker Mower/Tri King	Tri King 1624D	
Jac Electric Greens Mower	E-Plex	8811701655
Jac Fairway Mower 3800	3800	6794802696
Jac Greensmower 1	GK5	62247-4022
Jac Greensmower 2	GK5	62247-4034
Jac Tee/Greensmower	GK4	62287-02534
Jac Leaf Sweeper	720E	81725
Jac Utility Cart	EZ GO 1100	
Jac Utility Mower Turf Cat	528D Turf Cat	66149
Jac Verticutter	GK4	
Gast Pump	75R6	
Spreader	ACCU-PRO	
Lely Spreader	Lely	
Stihl Pole Saw	HT101	4182-011-0613
Toro 4500 Fairway Mower	4500D	03702-60118
Toro Greens Aerator	30285	9110
Toro Hydroject	HYD.	
Smith Co Trap Rake	42000-F	5512
Toro Rough Mower 580D	580D	30581-80285
Toro 455D Rough Mower	455D	30455-90322
Toro Spray Rig	Multi-Pro	41105-60139
Turf Co Top Dresser	Mete-R-Matic 85423	698997
Toro Tee Mower 1	3000D	
Toro Workman Cart	3100/07210	200000148
Ecko Weed Eater	SRM231	06036999
Ecko Weed Eater	SRM231	06037047
Honda Water Pump	WX10A4	WZBR1079003
FLEET EQUIPMENT		
2005 Ford Compact Truck	Ranger	10292 (Insurance reqluired)
1995 John Deere Tractor	1070	7823
2008 John Deere Tractor w/hoe	110	10973
1991 Trash Trailer		7025
Fuel Tank 450 Gallon	Unleaded	
Fuel Tank 450 Gallon	Diesel	

EXHIBIT C

CITY EQUIPMENT
BARTLEY CAVANAUGH

EQUIPMENT NAME	MODEL	SERIAL/UNIT NUMBER
Electric Greensmower	Jacobsen E-Plex 2005	8611701656
AR-522 5-Gang Rotary	AR-522 Jacobsen	6808201774
Electric Transport Vehicle	Jac. 1000E Hauler	2639933
Electric Transport Vehicle	Jac. 1000E Hauler	2639935
Cush 4-Wheel / Dump Bed/ At	84057 Trk	2522798
Triplex Greens Mower - Jac.	Greens King-V, Diesel	62247-4002
Triplex Greens Mower - Jac.	Greens King-V, Gas (used)	62246-3155
Triplex Greens Mower - Brush	GM3000-D	04375-40197
Triplex Greensmower - Trees	GM3000-D	04375-40198
Triplex Grnsmwr - Verticut	GM3000-D	04375-40199
Fwy Mower 5-Gang, 4-Wheel	LF3800	67867-1990
Fwy Mower 5-Gang, 4-Wheel	LF3800 (used) 1850 hrs.	67867-1672
72" Front Cut Rotary	Turfcat	66149-1765
Articulator PTO Rotary	Lastec 721X	13840699
Cushman 3-Wheel	Run-About	95001289
Jacobsen 4-Wheel	110 Hauler	84024-9487
Cushman 3-Wheel	Run-About	95001288
Cushman 3-Wheel	Run-About	95001287
Cushman 3-Wheel Dump Bed	Dump Bed	38002081
Toro 4-Wheel	Workman 3100	7210
National Triplex (used)	84" Belt Drive	6848
Smithco	Super Rake	5221
Multi Pro Spray Rig (used)	Multipro 1100	70389
National Triplex	8400	8432
Smithco Super Rake	Super Star #42-000-F	5511
Lely Towed Rotary Spreader		
Gas Can		
Diesel Can		
Foley Reel Grinder	600	59160001672
Foly Bedknife Grinder	600	59F61001223
Ryobi Blower	200	
Echo	SMR2615	6014882
Echo	260-S	566311001262
Echo	260-S	6014861
Echo 20" Chainsaw	CS440	8022959
Echo Blower	PB201	
Sprayer	TM100	32335
Aer-Way Spiker	5777	684-1
Diesel Pump	16AZ-F3L	1059805
Welder (Lincoln)	AC-DC225-125	9221609
Tero Spreader		
Red Max Reciprocator	60300360	1) 6Z3L17
		2) 6Z23N17
Landa Pressure Washer	VHWZ-110262	PO996-8908

EXHIBIT C

CITY EQUIPMENT
BARTLEY CAVANAUGH

EQUIPMENT NAME	MODEL	SERIAL/UNIT NUMBER
Greensmower Walker	62280	1750
Greens Aerator	9110	40136
Greensaire 24 Aerator		
Mataway Seeder	OMC	7717
Sod cutter	544945A	54494505419
Drill Seeder 548	M548	82548
Toro 686 Aerator (Spiker)	686	200000107
FLEET EQUIPMENT		
2007 Ford Compact Truck	Ranger	10727
2008 Ford Compact Truck	Ranger Extended-Cab	10938
1994 John Deere Tractor	1070	7712
1994 John Deere Tractor	1070	7714
1995 Ford Tractor	445D	7828
1995 Jacobsen Trailer		7925
2008 Jacobsen Tilt Trailer		11061
Fuel Tank 450 Gallons	Unleaded	
Fuel Tank 450 Gallons	Diesel	
CLUBHOUSE KITCHEN EQUIPMENT		
30" X 60" Stainless Steel Equipment Stand w/Galvanized Base		43234
Stainless Steel 72" Pot Rack		43214
36" Countertop Gas Griddle 90,000 BTU		43223
Four Burner Countertop Range 80,000 BTU		43226
Stainless Steel Clean Dish Table w/Undershelf		43230
Single Convection Oven w/Stand 115 BTU		43232
Storage Shelving w/Zinc Finish		43201-43207
400 LB Ice Machine w/260 LB Bin/Filter		43237

EXHIBIT D

LIST OF MORTON GOLF EQUIPMENT

Exhibit D

LIST OF EQUIPMENT ASSETS PURCHASED BY MORTON GOLF LLC

PURCHASES SINCE 1/1/2007

NAME OF ASSET	DATE OF PURCHASE	PROPERTY OF MORTON	STAYS W/ CITY	Dollar Amount
Electric Fryer - Bing Maloney	6/30/2011		X	$721.06
3 Door Prep Table	4/19/2011		X	$3,311.44
2 Patio Heaters	11/1/2010	X		$8,207.80
Mitchell Loft & Lie Machine	9/30/2011	X		$4,284.94
Office Furniture	9/30/2010	X		$1,628.73
Computer Servers for Administration Office	8/31/2010	X		$7,695.42
Trackman Club Fitting System	6/30/2010	X		$30,444.56
Fryer - Haggin Oaks	5/31/2010		X	$825.41
Patio Chairs and Tables	5/31/2010		X	$18,127.39
Ice Machine	5/31/2010		X	$7,878.77
Camera - Club Fitting	5/31/2010	X		$804.70
Pavilion Turf	4/30/2010		X	$22,250.86
Range Railings	4/30/2010		X	$6,700.00
Rebuilding of Putting Green in Super Shop	4/30/2010	X		$11,587.25
3 POS Systems	4/30/2010	X		$3,682.33
Patio Chairs and Tables	3/31/2010		X	$7,613.39
POS/Inventory/Accounting Software	3/15/2010	X		$19,125.00
5 New PC's, scanners, 1 Laptop	3/3/2010	X		$5,813.86
Easy Picker for Haggin Oaks Driving Range	2/28/2010	X		$4,760.24
Backup Range Picker for the Driving Range	2/28/2010	X		$10,025.24
Camera for Golf Instructors	1/21/2010	X		$816.32
Sam Putt lab for Putter Fitting	1/1/2010	X		$3,263.75
Fryer - Haggin Oaks	12/15/2009		X	$816.32
23 Workstation Credit Card Machines	12/15/2009	X		$17,228.91
Beer Dispensers	10/15/2009		X	$2,265.26
New Cable for Pro Shop	9/30/2009		X	$1,278.95
3 Inventory Taking Scanners	9/1/2009	X		$2,055.38
New Rental Sets	8/1/2009	X		$1,941.84
Ford Delivery Van	8/1/2009	X		$8,750.26
2 Workhorses for Driving Range	8/1/2009	X		$8,750.26
Fryer - Bartley Cavanaugh	6/1/2009		X	$858.04
1 Lap Top for Buyer	5/15/2009	X		$2,800.11
Technology for Player Performance Studio	4/16/2009	X		$3,619.79
Picker for Driving Range	3/1/2009	X		$5,551.96
Tuff Shed for Driving Range	2/12/2009	X		$2,235.69
Pavilion Upgrade	1/15/2009		X	$2,353.72
Kitchen Equipment	1/14/2009		X	$4,362.80
Driving Range Ball Machine	9/1/2008	X		$2,626.95
Phone System	7/1/2008		X	$30,444.34
Toaster Oven - Haggin Oaks	7/1/2008		X	$1,066.28
Slicer - Haggin Oaks	7/1/2008		X	$2,965.46
Tables & Chairs - Haggin Oaks	7/1/2008		X	$6,119.06
Computer & Software Upgrades	4/15/2008	X		$25,742.90
New Counter - F & B @ Haggin Oaks	4/1/2008		X	$2,108.45
Direct TV	2/23/2008		X	$1,021.23
Food & Beverage Freezer - Bing Maloney	9/15/2007		X	$3,017.00
Safe for Cash Audit Department	9/5/2007	X		$589.49

Range Equipment Storage Building	8/31/2007	X		$6,945.36
Driving Range Picker for Haggin Oaks	8/16/2007	X		$5,909.01
Computer Software Upgrades	6/30/2007	X		$6,900.00
Player Performance Studio	6/30/2007	X		$202,374.24
Technology for Player Performance Studio	6/30/2007	X		$74,369.43
Super Shop Building Expansion	6/30/2007	X		$443,556.95
Interior Design and Fixtures for Expansion	6/30/2007	X		$1 $191,098.85
Target Greens for Driving Range	6/30/2007		X	$9 $94,536.41
Administration Workstations and Furnishings	6/1/2007	X		$8,463.67
Driving Range Dispenser Upgrades	5/31/2007	X		$5,209.43
2 Limo Suttle Carts	5/10/2007	X		$6,919.91
Range Ball Washer - Haggin Oaks	6/1/2007	X		$8,333.38
Gazebo - Haggin Oaks	1/31/2007		X	$13,450.55
Improvements to Bing Maloney Café	7/31/2006		X	$140,810.63
Kubota Tractor - Bing Maloney	6/29/2006	X		$15,004.19
2 Kubota Tractors - Haggin Oaks	6/29/2006	X		$30,008.37
BBQ Grill - Haggin Oaks	4/24/2006		X	$2,730.39
Check Signing Equipment	3/1/2006	X		$6,807.68
Computer Hardware and Software Upgrade	3/1/2006	X		$125,247.76
1 Range Servant Range Ball Dispenser - Bing	9/1/2005	X		$19,472.40
2 Range Servant Range Ball Dispenser - HO	9/1/2005	X		$38,944.80
Wedding Chairs	6/30/2004		X	$4,646.60
MacKenzie Grille Remodel	3/31/2003		X	$549,388.44
Pavilion and Trailer Renovations	10/1/2002		X	$113,845.60

EXHIBIT E

FINANCIAL REPORTING REQUIREMENTS

Exhibit E

Morton Golf, LLC
Monthly Lease Rent Report
For the Month of: _____

Lease Rent Department	Rent %	Haggin Oaks		Bing Maloney		Bartley Cavanaugh		Total		Lease YTD Total	
		Sales	Rent	Sales	Rent	Sales	Rent	Sales	Rent	Sales	Rent
Wholesale Sales	0.0%										
On-Line Retail Sales	2.5%										
Retail Sales	5.0%										
Club Repair	5.0%										
Pull Carts/Rent Sets	5.0%										
Lessons	5.0%										
Signage/Premise Advertising	5.0%										
On-Line Travel Commissions	5.0%										
Food & Beverage											
-Grille/Cafe	10.0%										
-Alcohol Sales	10.0%										
-Catering	10.0%										
-Snack Bars, Roving Carts	10.0%										
-Pavilion/Facility Rentals	10.0%										
Power Carts	10.0%										
Range Ball Rentals	10.0%										
Green Fees											
Play Card Sales											
Gross Revenues Total											
Green Fee/Play Card Total											
-Less Special Funds Total											
-Total	10.0%										
Percentage Rent Total		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Special Funds	%	Total	YTD Total
Technology #1	0.125%		
Building, Repairs Upgrades #2	0.500%		
Capital Improvements #3	0.125%		
Special Projects #4	0.125%		
Irrigation #5	$.50 per Green Fee		
Special Funds Total		$ -	$ -

EXHIBIT E

Rounds and Green Fee Revenue Report
Course:_____
Month:_____

Player Type	No. of Golfers	Green Fee Paid	Total Green Fees

EXHIBIT F

CAPITAL IMPROVEMENTS PROJECT PROPOSAL FORM

Exhibit F

Project Proposal

Project Title: _____
Project Location: _____
Project Originator: _____
Contact Number: _____
Estimated Completion Date: _____

Project Description (attach sketch(es) and additional description as needed)

Project Assistance (Describe any administrative, planning, design, construction, or maintenance assistance you believe you will need from the City)

Work Categories

Sitework	Yes	No
Grounds		
Paving	___	___
Lawn Sprinklers	___	___
Outside Lights	___	___
Planters or Plants	___	___

Building – Structure	Yes	No
Roofs	___	___
Painting	___	___
Floors	___	___
Walls	___	___
Windows/Blinds	___	___
Doors	___	___
Ceilings	___	___

Furnishings	Yes	No
Carpet	___	___
Furniture	___	___
Other	___	___

Building – Mechanical	Yes	No
Refrigeration System	___	___
Heating System	___	___
Air-Handling System	___	___
Water Distribution	___	___
Sewage System	___	___
Fuel Storage/Distribution	___	___
Sheet Metal Work	___	___

Building – Electrical	Yes	No
Lighting	___	___
Power System	___	___
Telephone/ Communications	___	___
Cabling/Ducting	___	___
Security System	___	___
Alarm System	___	___

Other (List)

_____
_____
_____

_____ _____
Requester (Morton Golf) Date

_____ _____
Reviewed/Approved (City) Date

EXHIBIT G

BASIC STAFFING LEVELS

Exhibit G

Basic Staffing Levels

Tenant will keep Basic Staffing Levels to ensure Exceptional Customer Service within each department throughout the course of the year. In the Green Fee Department, Tenant will produce a product in alignment with the "Maintenance Standards" set forth in this contract. Tenant will choose the staffing levels, job descriptions, and positions needed to meet or exceed these Maintenance Standards. At the beginning of the contract, Tenant will have the following positions subject to change with the Landlord's approval:

Representing All Three Courses

Chief Executive Officer	(1)
President/General Manager	(1)
Director of Special Events	(1)
Controller/Accountant	(1)
Director of Retail and Marketing	(1)
Human Resources/Payroll	(1)

Haggin Oaks

Head Golf Professional or General Manager	(1)
Golf Course Superintendent	(1)
Assistant Superintendent	(1)
Equipment Mechanic	(1)
Assistant Equipment Mechanic	(1)
Irrigation Technician	(1)
Greenskeepers (Year Round)	(12)
Greenskeepers (Seasonal)	(5)
Irrigation Technician	(1)
Tournament Director	(1)
Range Supervisor	(1)
Cart Supervisor	(1)
Food & Beverage Manager	(1)

Bing Maloney

Head Professional or General Manager	(1)
Golf Course Superintendent	(1/2)
Assistant Superintendent	(1)
Equipment Mechanic	(1)
Irrigation Technician	(1)
Greenskeepers (Year Round)	(6)
Tournament Director	(1/2)
Food & Beverage Manager	(1)

Bartley Cavanaugh

Head Golf Professional or General Manager	(1)

Golf Course Superintendent	(1/2)
Assistant Superintendent	(1)
Equipment Mechanic	(1)
Irrigation Technician	(1)
Greenskeepers (Year Round)	(4)
Greenskeepers (Seasonal)	(4)
Tournament Director	(1/2)

Maintenance Wage Plan for City of Sacramento Golf Facilities
January 1, 2012

MORTON GOLF LLC

Position	Proposed Hourly Pay Rate Ranges by Position	Proposed Annual Wage Rages based on 2080 Hrs.
Superintendent		$65,000.00 - $75,000.00
Assistant Superintendent/Foreman		$36,000.00 - $45,000.00
Equipment Manager	$13.50 - $19.25	$28,080.00 - $40,000.00
Irrigation Technician	$13.00 - $19.25	$27,040.00 - $40,000.00
Assistant Equipment Manager	$12.50 - $16.00	$26,000.00 - $33,280.00
Chemical Technician	$13.00 - $15.00	$27,040.00 - $31,200.00
Landscape Horticulturist	$13.00 - $17.50	$27,040.00 - $36,400.00
Full Time Greenskeepers	$11.00 - $15.00	$22,880.00 - $31,200.00
Part Time Greenskeepers	$9.00 - $12.00	N/A
Assistant Landscape Attendant	$9.00 - $12.00	N/A

EXHIBIT I

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Morton Golf LLC

Address: 3645 Fulton Ave, Sacramento CA 95821

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.

2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the AOrdinance@).

3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:

   a. Bereavement Leave
   b. Disability, life, and other types of insurance
   c. Family medical leave
   d. Health benefits
   e. Membership or membership discounts
   f. Moving expenses
   g. Pension and retirement benefits
   h. Vacation
   i. Travel benefits
   j. Any other benefit offered to employees

   Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

   a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.

d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.

g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).

h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.

5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of $50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate

file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Terry Daubert — Oct 19, 2011

Signature of Authorized Representative — Date

TERRY DAUBERT

Print Name

PRESIDENT

Title

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding $25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing

or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A

YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

  City of Sacramento
  Procurement Services Division
  5730 24th Street, Bldg. 1
  Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

  - Reinstatement, injunctive relief, compensatory damages and punitive damages

  - Reasonable attorney's fees and costs

Attachment B

YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

O Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

O Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.