



## County Executive Office

### Memorandum

S29C

March 6, 2018

**To:** Clerk of the Board of Supervisors  
**From:** Frank Kim, County Executive Officer *FK*  
**Subject:** Exception to Rule 21

RECEIVED  
2018 MAR -8 PM 3:07  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

The County Executive Office is requesting a Supplemental Agenda Staff Report for the March 13, 2018, Board Hearing.

**Agency:** County Executive Office  
**Subject:** Mile Square Golf Course Lease Amendment  
**Districts:** 1

**Reason for supplemental:** The Board's approval of the item of March 13, 2018, will allow for changes to the current lease to be implemented expeditiously. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

*Andrew Do*  
Chairman Andrew Do, Supervisor, First District

cc: Board of Supervisors  
County Executive Office  
County Counsel



## SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

RECEIVED  
2018 MAR -8 PM 3:07  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

MEETING DATE: 3/13/18  
LEGAL ENTITY TAKING ACTION: Board of Supervisors  
BOARD OF SUPERVISORS DISTRICT(S): 1  
SUBMITTING AGENCY/DEPARTMENT: County Executive Office  
DEPARTMENT HEAD REVIEW: Scott D. Mayer  
Department Head Signature  
DEPARTMENT CONTACT PERSON(S): Scott D. Mayer (714) 834-3046  
Stacy Blackwood (949) 923-3743

**SUBJECT:** Mile Square Golf Course Lease Amendment

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

[Signature]  
CEO Signature

Approval as to form  
Action  
[Signature]  
County Counsel Signature

Budgeted: No

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

# of Positions: N/A

Sole Source: N/A

Current Fiscal Year Revenue: See Financial Impact Section

Funding Source: Other: 100% (Lease Rents)

County Audit in last 3 years: Yes

Prior Board Action: 5/25/1999 #S41B, 12/9/1997 #54, 4/9/1969

### RECOMMENDED ACTION(S)

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act, Class 1 (Existing Facilities), pursuant to CEQA Guidelines Section 15301.
2. Approve the First Amendment to Lease with Mile Square Golf Course, a California limited partnership, to adjust the percentage rents and minimum annual rent, relinquish to the County no less than 85 acres of the lease area to resolve \$3.6 million in rent arrears, and other related revisions.
3. Authorize the Chief Real Estate Officer or designee to execute a subsequent Second Amendment to the Lease with Mile Square Golf Course to attach and incorporate a completed survey of the realigned premises to the Lease.

### SUMMARY:

Approval of the First Amendment to Lease will adjust the percentage rents and minimum annual rent paid to the County by the tenant, Mile Square Golf Course, a California limited partnership, and relinquish to

the County no less than 85 acres to allow for the continued operation and maintenance of the Mile Square Golf Course.

## **BACKGROUND INFORMATION:**

On April 9, 1969, a portion of Mile Square Regional Park was leased to Mile Square Golf Course (MSGC), a California limited partnership, for the development and operation of an 18-hole golf course facility. The original lease expired April 17, 1997, and was superseded by an Interim Lease agreement approved by the Board on December 9, 1997, wherein the County granted MSGC an option to redevelop and expand the Mile Square Golf facility by constructing an additional 18-hole golf course on land in the center area of the park, commonly known as the "Triangle." On May 25, 1999, Draft EIR 570 (Draft EIR) to amend the Mile Square Regional Park General Development Plan (GDP) was adopted by the Board via Resolution 99-204. The amendment to the GDP allowed for the development of 137 acres of the triangle located in the center of the Mile Square Park, which included renovation of the existing 18-hole course; addition of a new, more challenging 18-hole course (for a total of 36 holes); renovation and expansion of the existing clubhouse; and expansion of parking and landscaping. On June 18, 1999, as the construction was being completed, the County executed a 40-year lease with MSGC commencing on July 1, 1999, and expiring on June 30, 2039 (Current Lease).

As is customary with County revenue-generating leases, OC Community Resources/OC Parks (OC Parks) worked with Internal Audit to determine whether MSGC's records adequately supported its monthly gross receipts reported to the County and rent owed was properly paid in accordance with the Current Lease. The August 28, 2017 audit found that there was a miscalculation of MSGC's minimum annual rent in 2009 and 2014, which has resulted in an accumulated rent underpayment of approximately \$3.6 million to date.

In discussions following County notification to MSGC regarding the underpayment, MSGC stated that since the commencement of the Current Lease in 1999, declines in the golf market over the years have impacted overall revenue, compromising its ability to construct required maintenance and capital improvement projects, as well as its ability to meet its rent obligations to the County. Additionally, MSGC indicated that wages, utility costs and other operating expenses have continued to outstrip revenue over the years, further compromising its financial sustainability under the Current Lease.

MSGC's feedback, combined with the Internal Audit findings, presented an opportunity to restructure the Current Lease in a manner that would enhance the benefit to the County through the remaining term of the lease. Given that MSGC is located in a highly-urbanized, park-deficient area of the County and since Mile Square Park currently has three 18-hole golf courses (two 18-hole golf courses under the Current Lease, plus the David L. Baker Golf also located in Mile Square Park), the principal objectives of the negotiation were to re-incorporate into Mile Square Park a sizable portion of the leasehold for a wide variety of public park uses and to reduce golf operations in the Park to well-maintained, economically viable courses. Additionally, staff sought to preserve a lease-revenue stream through establishment of new terms that remain competitive within the local golf industry.

OC Parks requested from CEO Real Estate a comparison of MSGC with other golf course leases in the County portfolio, in order to review MSGC's assertion that its Current Lease rent structure is far more burdensome than its competitors in the local industry. Those terms are provided in the table below.

Facility	Mile Square Golf	Strawberry Farm Golf	David L. Baker Golf	Newport Beach Golf	Riverview Golf
County Agency	OC Parks	OC Parks	OC Parks	John Wayne	OC Flood
Location	Fountain Valley	Irvine	Fountain Valley	Newport Beach	Santa Ana
Start of Lease (Year)	1999	1996	1987	2010	1969, Amended 1994
# of holes	36	18	18	18	18
Min. Annual Rent	\$ 3,071,357	\$ 713,558	\$ 295,517	\$ 190,566	\$ 52,602
Percentage Rent					
Green Fees	35%	20%	20%	10%	7%
Driving Range	35%	20%	20%	N/A	7%
Golf Cart / Equipment	35%	20%	25%	N/A	7%
Golf Instruction	15%	5%	0%	7.5%	7%
Pro Shop	6%	5%	3%	2.5%	2%
Restaurant / Banquet Food	6%	7.5%	3%	3.5%	N/A

MSGC currently provides percentage rent on golf revenue (green fees, driving range, and golf cart/equipment rental) to the County that is 75% greater than the next highest paying lessee in the portfolio. The Current Lease will further escalate MSGC percentage rent for golf revenue from 35% to 40% in 2019, bringing it to at least double that of other County golf courses.

In support of the County's desire to reacquire Mile Square Park space for general recreation use and in consideration for the \$3.6 million in underpaid rent owed the County, MSGC has offered to transfer to the County a portion of its current leasehold of no less than 85 acres. This would be accomplished through reconfiguration of the premises from a 36-hole golf course to an 18-hole golf course. The land conveyed back to the County would increase available public parkland in Mile Square Regional Park by 15%, providing an opportunity to meet the growing demand for park amenities for the more than 750,000 people who visit the park each year. Given the relative deficiency of park space in the vicinity, returning a substantially sized parcel within Mile Square Regional Park to County operations meets a high priority need without requiring significant capital outlay for land acquisition.

In addition to the intrinsic value of the transaction, staff also assessed the monetary value of the recovered acreage of the lease premises. The Current Lease provides an option for the County to purchase MSGC's leasehold and improvements at a price calculated based on projected net operating income from the option date to the expiration of the lease term. Using that formula and applying it to the period from the relinquishment of the property to the end of the Current Lease in 2039, CEO Real Estate calculated an option price to purchase the parcel of over \$6.7 million. If the County were to lease or purchase a similarly sized parcel of land in the vicinity for recreation, the cost would far exceed the \$3.6 million in underpaid rent owed the County and forgiven under the proposed lease restructure.

The Current Lease terms were negotiated at the height of the golfing industry and do not appear to be sustainable given the projected declines in demand for golf and increases in operation and maintenance costs over the term of the lease. A First Amendment to the Current Lease (First Amendment) has been prepared that proposes to transfer at least 85 acres of the Current Lease premises back to the County within 34 months, and adjusts the terms of the ongoing percentage and minimum annual rent structures to more closely align with the two other 18-hole golf course leases on park property.



To provide the funds necessary for MSGC to reconfigure the golf course from 36 to 18-holes, percentage rent is proposed to be reduced from 35% to 18% of gross receipts for green fees, driving range, golf cart and equipment rental for the initial 34 months following the effective date of the lease amendment. From the 35th month and for the remainder of the lease term through June 2039, percentage rents are proposed to escalate to 22%. The minimum annual rent would be reduced from \$3 million to \$850,000 per year, and would be revised every five years thereafter.

The First Amendment would also add percentage rent escalators for green fees, driving range, golf cart and equipment rental from the 35th month through the remainder of the term that would incrementally increase percent rents to 27.5% for the revenue between \$6 and \$7.5 million and 35% for the revenue above \$7.5 million. All other percentage rents for food, beverages, sales, and golf lessons would remain the same. Additionally, the First Amendment includes an option for MSGC to extend the lease term for an additional 10 years beyond June 2039, if MSGC remains current in paying all rents owed to the County and is not otherwise in default of the terms of the Lease. A table depicting percentage rents in the Current Lease as compared to the First Amendment are provided below.

Business Activities/ Service or Use	Current Lease	FIRST AMENDMENT						
		First 34 months	35 <sup>th</sup> Month to June 2039			10-Year Extension (if exercised by Tenant)		
			Total Golf Revenue \$0 - \$6M	Total Golf Revenue \$6M - \$7.5M	Total Golf Revenue \$7.5M+	Total Golf Revenue \$0 - \$6M	Total Golf Revenue \$6M - \$8M	Total Golf Revenue \$8M+
Green Fees	35%	18%	22%	27.5%	35%	25%	27.5%	35%
Driving Range	35%	18%	22%	27.5%	35%	25%	27.5%	35%
Golf Cart & Equipment Rental	35%	18%	22%	27.5%	35%	25%	27.5%	35%
Golf Lessons & Instruction	15%	15%	15%	15%	15%	15%	15%	15%
Pro Shop Sales	6%	6%	6%	6%	6%	6%	6%	6%
Food/Beverage	6%	6%	6%	6%	6%	6%	6%	6%
Newspaper Racks/ Miscellaneous	6%	5%	5%	5%	5%	5%	5%	5%
Charity Golf Tournaments	0%	0%	0%	0%	0%	0%	0%	0%

MSGC has committed to reconfiguring the leased premises according to the First Amendment and completing improvements that could draw more visitors to other revenue-generating activities, such as enhanced special event and dining facilities. Specifically, the First Amendment requires MSGC to set aside at least \$1 million for renovation and modernization improvements that are to be completed within 60 months from the date of the First Amendment. Improvements include outdoor lighting to allow nighttime events, a new dressing/bride's quarters for weddings, enhancements to the kitchen, and various improvements to the golf course. The improved banquet and event facility will bring new, unique features to Mile Square Regional Park that may also serve as amenities for County events and programs in the future.

A summary of the proposed changes to the Current Lease contained in the First Amendment is provided as Attachment C.

**Compliance with CEQA:** The proposed project is Categorical Exempt (Class 1) from the provisions of CEQA pursuant to Section 15301 because it amends an existing lease, involving negligible or no expansion of use beyond that existing.

**FINANCIAL IMPACT:**

Rent revenue received from this First Amendment will be the greater of minimum annual rent or percentage rents. Minimum annual rent will be adjusted to \$850,000 upon approval of this First Amendment, and will be revised every five years thereafter. Percentage rents will be reduced from 35% of gross golf revenue to 18% during the first 34 months after the effective date of the lease amendment and will increase to 22% after reconfiguration of the premises, from the 35th month until the Current Lease end date of June 30, 2039.

The loss of revenue as a result of the First Amendment is estimated at \$7.2 million, which includes both the \$3.6 million rent underpayment and an estimated \$3.6 million decrease in percentage rent over the upcoming 34 months at the reduced rent prior to the reconfiguration of the golf course premises and transfer of land to the County. This loss is offset by both the assessed option price of \$6.7 million of the portion of the premises relinquished to the County – assessed on the basis of the net present value discounted utilizing a rate as determined by Clause 26 of the Current Lease – along with the intrinsic value of reclaiming a large piece of parkland and expanding the recreation potential of Mile Square Park for multiple future generations.

The revenue from this lease is included in OC Parks FY 2017-18 Budget and will be included in the budgeting process for future fiscal years.

**STAFFING IMPACT:**

N/A

**REVIEWING AGENCY**

OC Community Resources/OC Parks

**ATTACHMENT(S):**

Attachment A – Location Map

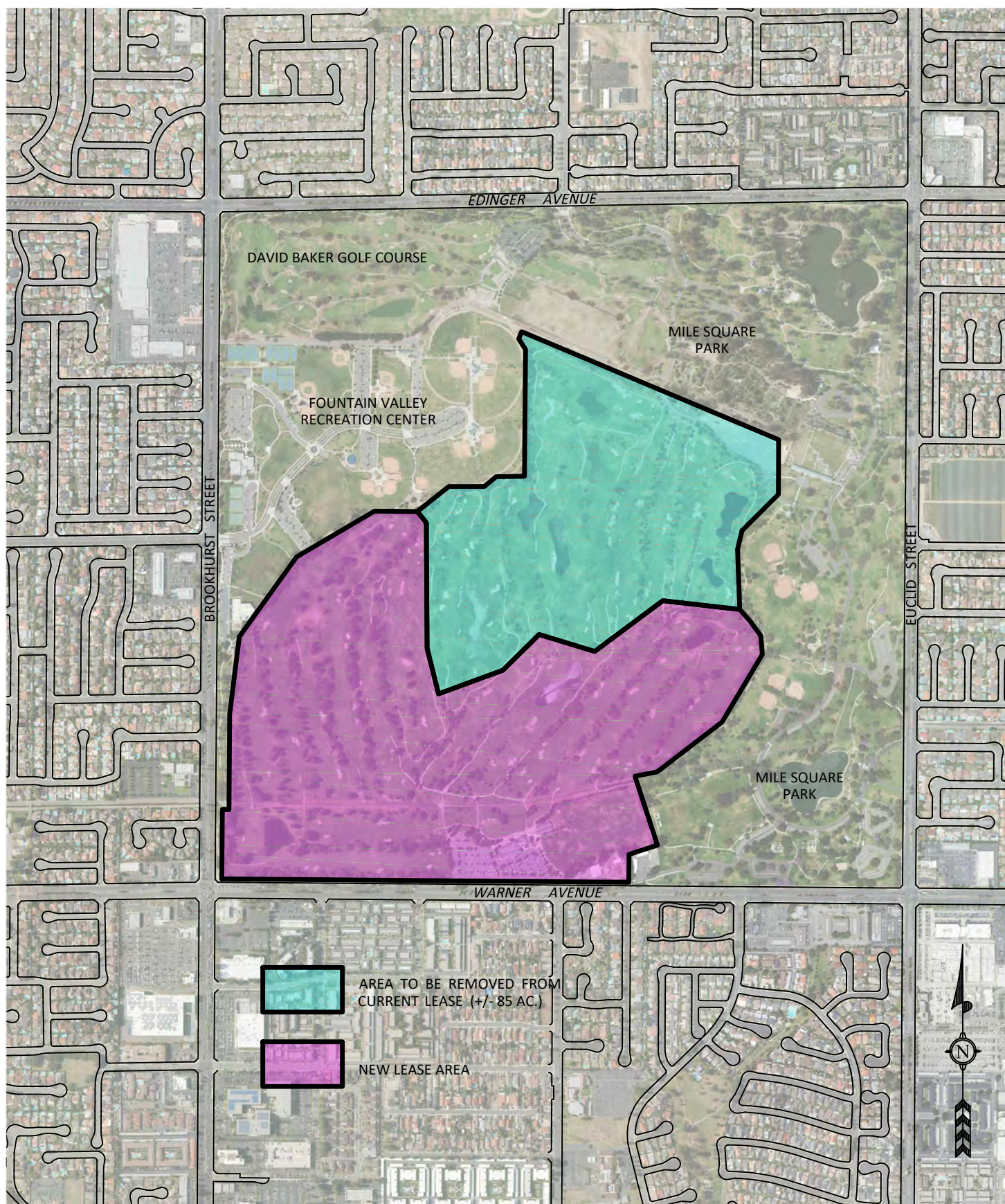
Attachment B – First Amendment to Lease

Attachment C – First Amendment Summary

Attachment D – Current Lease

Attachment E – Real Estate Questionnaire





**OC PUBLIC WORKS  
OC SURVEY**

RIGHT-OF-WAY SERVICES

ROW ID NO. 2017-083

SCALE: 1" = 1000'

**LOCATION MAP**

**PROJECT: Mile Square (PR37A-152) Golf Course Lease Agreement**

PREPARED BY:  
J.V.



PR37A-152  
 Mile Square Regional Park  
 Mile Square Golf Course

### **FIRST AMENDMENT TO LEASE**

THIS FIRST AMENDMENT TO LEASE ("**Amendment**") is made on \_\_\_\_\_, 2018 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**COUNTY or LESSOR**") and MILE SQUARE GOLF COURSE, a California limited partnership ("**TENANT**"). COUNTY and TENANT may sometimes be referred to herein individually as a "**Party**," or collectively as the "**Parties**."

### **RECITALS**

**WHEREAS**, COUNTY is the owner of certain property known as Mile Square Regional Park, which consists of 640 acres of parkland in the City of Fountain Valley, CA; and

**WHEREAS**, on April 9, 1969, a portion of said property was leased to TENANT for development and operation of an 18-hole golf course; and

**WHEREAS**, the original Lease expired on April 17, 1997 and was superseded by the Interim Lease dated December 9, 1997; and

**WHEREAS**, under an Option Agreement between the Parties, dated December 9, 1997, COUNTY granted TENANT an option to redevelop and expand the Mile Square Golf facility to include an additional 18-hole golf course in that portion of Mile Square Regional Park commonly referred to as the center "Triangle;" and

**WHEREAS**, after the expiration of the Option Agreement a Lease was approved on June 18, 1999 ("**Lease**") for a 36 hole golf facility with a Lease term commencing on July 1, 1999; and

**WHEREAS**, COUNTY and TENANT now desire to reallocate the TENANT's Premise and amend other clauses within the Lease as noted below; and

**WHEREAS**, this Amendment provides for a reduction in TENANT's Premise and that return of certain areas of the Premises to the COUNTY as consideration for the obligations of TENANT under the Lease and as more fully set forth in this Amendment, and TENANT and its counsel represent that this Amendment is hereby executed by individuals with the appropriate authority to bind TENANT in the ordinary course of the TENANT's business and consistent with TENANT's business purpose.

NOW, THEREFORE, for consideration as set forth herein and in the above Recitals, COUNTY and TENANT hereby agree that effective on the date first written above, the Lease is amended as follows:

PR37A-152  
 Mile Square Regional Park  
 Mile Square Golf Course

- A. Clause 1 [DEFINITIONS] is deleted from the Lease in its entirety and the following clause is substituted:

**‘1. DEFINITIONS**

The following words in this Lease have the meanings attached to them in this clause unless otherwise apparent from the context:

**“Auditor Controller”** means the Auditor Controller, County of Orange, or designee, or upon written notice to TENANT, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

**“Board of Supervisors”** means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

**“Chief Real Estate Officer”** means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to TENANT, such other entity as shall be designated by the County Executive Officer.

**“County Executive Officer”** means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

**“County Counsel”** means the County Counsel, County of Orange, or designee, or upon written notice to TENANT, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

**“Director of Internal Audit”** means the Director of Internal Audit, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

**“Director of OC Parks”** or **“Director”** means the Director, Orange County Parks, OC Community Resources, County of Orange, or designee, or upon written notice to TENANT, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

**“OCPW/OC Survey/Map Check & Right Of Way Services”** means the Orange County Public Works/OC Survey/Map Check & Right Of Way Services, or designee, or upon written notice to TENANT, such other person or entity acting in a similar capacity as shall be either designated by OCPW/OC Survey/Map Check & Right Of Way Services or the Board of Supervisors.

**“Reconfiguration,” “Reconfigure”** or **“Reconfigured”** means the reduction in TENANT’s Premises and physical conversion thereof from the current thirty-six (36) hole golf course to an eighteen (18) hole golf course, any design and

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 Mile Square Regional Park  
 Mile Square Golf Course

construction activity required to effectuate the reduced Premises as set forth herein, and the return of the Recovered Acreage, as defined in Section 2, below, of TENANT's Premises to COUNTY pursuant to the terms and conditions required herein.

**"Total Golf Revenue"** is defined in Section 7.B below.

- B. Clause 2 [PREMISES] of the Lease is deleted from the Lease in its entirety and the following clause is substituted:

"LESSOR leases to TENANT that certain property hereinafter referred to as **"Premises,"** described in **Exhibit A** and shown on **Exhibit B** of the Lease dated June 18, 1999.

Pursuant to the terms and conditions contained herein, COUNTY agrees to accept TENANT's return of no less than eighty-five (85) acres of the Premises (**"Recovered Acreage"**) under this Lease after thirty-four (34) months of the Effective Date of the First Amendment to this Lease as consideration for, and in satisfaction of, all past-due rents owed to COUNTY, as identified by the COUNTY's Auditor-Controller as \$3,551,046.94 as of December 31, 2017 and including any additional past-due amount from that date through the Effective Date of the First Amendment to this Lease. Moreover, the terms of the of the First Amendment to this Lease represent the COUNTY's agreement to a reduction in Rents for the initial thirty-four (34) months following the Effective Date of the First Amendment to this Lease, and a restructuring of Rents for the remainder of the term of this Lease, as consideration for TENANT's Reconfiguration of the Premises pursuant to the of the First Amendment to this Lease, including the Reconfiguration necessary to return the Recovered Acreage to the COUNTY. Except as amended herein, all of TENANT's other duties and obligations under this Lease remain intact, including, but not limited to, TENANT's obligations for maintenance and modernization of the Premises and/or leasehold structures.

TENANT hereby represents and confirms that, at the time of execution of the First Amendment to this Lease, TENANT has fully complied with the terms of any agreements, contracts or loan documents between the TENANT and any third party lenders, lienholders or other parties having any interest in the leasehold Premises, including, but not limited to interests arising from outstanding notes, liens, deeds of trust or other encumbrances, in, or in any way, related to the Premises and TENANT's leasehold interest therein. TENANT agrees to pay for and provide to COUNTY a policy of title insurance, in a form and coverage as approved by the COUNTY, dated as of the date that the Recovered Acreage is returned to COUNTY as provided herein, ensuring that no liens or other encumbrances would preclude, or otherwise interfere with, transfer of TENANT's leasehold interest in the Recovered Acreage to COUNTY and that the leasehold interest and the COUNTY's underlying fee interest are free from any loans, liens or encumbrances. TENANT hereby agrees

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 Mile Square Regional Park  
 Mile Square Golf Course

to indemnify, hold harmless, protect and defend COUNTY, its officials, officers, agents and employees, against any and all claims, loss, demands, damages, cost, expenses or liability in any way related to, or arising from, the transfer of the Recovered Acreage, or portion thereof, to COUNTY. TENANT's failure to obtain any prior approval as may be required from third parties with an interest in TENANT's leasehold, or provide title insurance as required herein, shall be deemed a material default under this Lease whereby COUNTY, at its sole option, may assert and enforce all rights and remedies available to it, including, but not limited to those remedies provided in Section 16(A) of the General Conditions of this Lease.

TENANT will operate the current 36-hole golf course premises, as depicted on **Exhibit A** and **Exhibit B** of this Lease dated June 18, 1999, for the initial thirty-four (34) months following the Effective Date of the First Amendment to this Lease, except as provided herein. By the first day of the thirty-fifth (35<sup>th</sup>) month following the Effective Date of the First Amendment to this Lease (the "**Completion Date**"), TENANT hereby agrees to complete all Reconfiguration of the Premises, adjusting to an 18-hole golf course within a reduced Premises not to exceed 173.732 acres (259.732 – 85 acres), an approximation of which is described in **Exhibit A-1** and shown on **Exhibit B-1**, attached to the First Amendment to this Lease and made a part hereof.

Upon TENANT's completion of Reconfiguration of the Premises to an 18-hole golf course described in **Exhibit A-1** and shown on **Exhibit B-1** pursuant to the terms and conditions of the First Amendment to Lease, TENANT will no longer maintain any leasehold interest in any areas outside of said Premises, which shall be returned to COUNTY. TENANT's failure to complete Reconfiguration of its Premises as provided herein, and/or TENANT's failure or inability to return to COUNTY any areas outside of the Premises described in **Exhibit A-1** and shown on **Exhibit B-1** by the Completion Date, shall result in an increase in percentage rents of ten percent (10%) in addition to all percentage rents provided in Clause 7 until such date that TENANT has completed Reconfiguration of the Premises and returns all other areas to COUNTY in a condition acceptable to Director. TENANT's failure to complete said construction and/or Reconfiguration by the Completion Date shall further be deemed a material default under this Lease whereby COUNTY, at its sole option, may assert and enforce all rights and remedies available to it, including, but not limited to those remedies provided in Section 16(A) of the General Conditions of this Lease."

- C. Clause 5 [REQUIRED AND OPTIONAL SERVICES AND USES] is deleted from the Lease in its entirety and the following clause is substituted:

**"5. REQUIRED AND OPTIONAL SERVICES AND USES**

- A. **Required Services and Uses.** COUNTY's primary purpose for entering into this Lease is to promote the continued operation and maintenance of a thirty-

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 Mile Square Regional Park  
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six (36) hole golf course for thirty-four (34) months following the Effective Date of the First Amendment to this Lease, except as provided herein, and to operate an eighteen (18) hole golf course facility thereafter. In furtherance of that purpose, TENANT shall, for the remainder of the Lease term, maintain and operate:

1. Two 18-hole golf courses for up to thirty-four (34) months following the Effective Date of the First Amendment to this Lease, except as provided herein. For purposes of facilitating TENANT's Reconfiguration of the Premises from a thirty-six (36) hole golf course to an eighteen (18) hole golf course during the initial thirty-four (34) months, TENANT may operate as few as eighteen (18) holes during the construction and Reconfiguration of TENANT's Premises pursuant to the terms and conditions contained in **Exhibit C-1**, which is attached to the First Amendment to this Lease and incorporated herein by reference.
  2. One 18-hole golf course commencing on the first day of the thirty-fifth (35<sup>th</sup>) month following the Effective Date of the First Amendment to this Lease and for the remainder of the Lease term;
  3. Driving Range;
  4. Pro Shop;
  5. Equipment Rental (e.g. carts and clubs);
  6. Clubhouse; and
  7. Restaurant (with banquet facilities to accommodate 350 to 400 people).
- B. Optional Services and Uses. Subject to the prior written approval of Director of OC Parks, TENANT is granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein. Said optional services may include but are not limited to the following:
1. Vending machines for beverages and snacks;
  2. Newspaper racks
  3. Other services approved in writing by the Director of OC Parks at least 90 days in advance of commencement.
- C. Restricted Use. The above listed services and uses, both required and optional, shall be the only services and uses permitted. TENANT agrees not to use the Premises for any other purpose or engage in or permit any other business activity within or from the Premises.

NO TOBACCO PRODUCTS MAY BE SOLD ON THE PREMISES &  
 SMOKING IS PROHIBITED INSIDE ANY BUILDING WITHIN THE  
 PREMISES."



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- E. Clause 6 [TERM] is deleted from the Lease in its entirety and the following clause is substituted:

“6. TERM

The term of this Lease shall be forty (40) years, commencing July 1, 1999 and shall expire on June 30, 2039.

Subject to the Rents provided in Clause 7 and all other terms and conditions as provided herein, including, but not limited to, Lessor's Option to Purchase Leasehold Interest provided in Clause 26 of the Lease, TENANT may exercise its option to extend the Lease term for one (1) additional ten (10) year term only if TENANT is current in paying all rents owed to COUNTY and is not otherwise in default of the terms of this Lease. Notification of the TENANT's desire to exercise of this extension shall be done in writing by TENANT to Director at least one (1) calendar year prior to the Lease expiration date, but no earlier than two (2) years prior to the Lease expiration date. In the event the extension is not exercised by TENANT, no fee, payment or settlement of any kind shall be owed or collected for allowing the Lease to terminate without further extension.

- F. Clause 7 [RENT] is deleted from the Lease in its entirety and the following clause is substituted:

“7. RENT

- A. Minimum Annual Rent. The minimum annual rent shall be \$850,000, subject to any increases provided in Clause 8 [Revision of Rent] below (“**Minimum Annual Rent**”).
- B. Percentage Rent. Commencing the Effective Date of the First Amendment to this Lease, TENANT shall pay percentage rent on a monthly basis for the Premises. Percentage rent shall be calculated using the following percentages of gross receipts from business operations conducted on or from the Premises in accordance with the schedule below. The term “Total Golf Revenue” as used in the schedule below means the sum of all gross receipts for the following revenue categories: Green Fees, Driving Range, and Golf Cart & Equipment Rental.

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Mile Square Regional Park  
Mile Square Golf Course

Business Activities/ Service or Use	First 34 months	35 <sup>th</sup> Month to June 2039			10 Year Extension (if exercised by Tenant)		
		Total Golf Revenue \$0 - \$6M	Total Golf Revenue \$6M - \$7.5M	Total Golf Revenue \$7.5M+	Total Golf Revenue \$0 - \$6M	Total Golf Revenue \$6M - \$8M	Total Golf Revenue \$8M+
Green Fees	18%	22%	27.5%	35%	25%	27.5%	35%
Driving Range	18%	22%	27.5%	35%	25%	27.5%	35%
Golf Cart & Equipment Rental	18%	22%	27.5%	35%	25%	27.5%	35%
Golf Lessons & Instruction	15%	15%	15%	15%	15%	15%	15%
Pro Shop Sales	6%	6%	6%	6%	6%	6%	6%
Food/Beverage	6%	6%	6%	6%	6%	6%	6%
Newspaper Racks/ Miscellaneous	5%	5%	5%	5%	5%	5%	5%
Charity Golf Tournaments	0%	0%	0%	0%	0%	0%	0%

The increase in percentage rent triggered pursuant to the tier thresholds in the table above shall be applied incrementally. (For example, if, the Total Golf Revenue collected by TENANT in a year (after the 35<sup>th</sup> month, but prior to the beginning of the 10 year extension) amounted to \$8.2 million, then percentage rent for green fees would be paid to COUNTY as follows: [\$6 million x 22% = \$1,320,000] + [\$1,500,000 x 27.5% = \$412,500] + [\$700,000 x 35% = \$245,000] = \$1,977,500).

Percentage rents for approved optional services and uses other than those listed above shall be determined by the Director in accordance with the above schedule.

Should TENANT fail to complete Reconfiguration of the Premises by the Completion Date consistent with Clause 2, all percentages of gross receipts provided in the table above shall be ten percent (10%) higher for each business activity/service or use through the date which work has been deemed by COUNTY as complete. For example, if Total Golf Revenues (*i.e.*, the sum of the gross receipts for Green Fees, Driving Range, and Golf Cart & Equipment Rental) in the thirty-fifth (35<sup>th</sup>) month following the Effective Date are less than five (5) million dollars, and TENANT has failed to complete the Reconfiguration as required herein by the Completion Date, then percentage rent for Green Fees in month thirty-five (35) would be thirty-two percent (32%), rather than twenty-two percent (22%) as shown above.

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- C. Annual Rent. TENANT shall pay to COUNTY for each accounting year either the Minimum Annual Rent or the percentage rent, whichever is greater.
- D. Payment of Rent. Rent payments shall be made in accordance with the provisions of the Clause entitled RENT PAYMENT PROCEDURE.
- E. Charity Golf Tournaments. For charity events, to the extent that any amounts received by the TENANT are for the benefit of the charity and are not being retained by the TENANT, those amounts shall not be used in the calculation of gross receipts for the purposes of percentage rent and this TENANT shall be excused from paying percentage rent on those amounts received for green fees, driving range and equipment (cart and club rentals). Such charity golf tournaments must be approved in writing by the Director of OC Parks, and TENANT shall give such written notice with documentation of the charity's 501(c)(3) status at least sixty (60) days in advance of any such event. Such charity golf tournaments shall not exceed two (2) per calendar year.
- F. Golf Lesson Gift Certificates. TENANT agrees it will report the sale for percentage rent calculation of golf lesson gift certificates as of the day the gift certificate is sold to the public. The gross receipts for the sale of said golf lesson gift certificate will be reported monthly under Golf Lessons & Instruction category listed above.
- G. Clause 8 [REVISION OF RENT] is deleted from the Lease in its entirety and the following clause is substituted:

“8. REVISION OF RENT (N)

Six (6) years [seventy-two (72) months] following the Effective Date of the First Amendment to this Lease, and every five (5) years thereafter, the Minimum Annual Rent shall be automatically adjusted to Seventy percent (70%) of the average (mean) rent (either minimum annual or percentage as the case may be) paid by TENANT to LESSOR for the preceding three (3) years. (For example, if, on July 1, 2024, the rent paid by TENANT to LESSOR for three preceding years was \$2,000,000 for 2024/2023, \$1,500,000 for 2023/2022 and \$1,000,000 for 2022/2021, then the average rent paid would have been \$1,500,000 ( $\$2,000,000 + \$1,500,000 + \$1,000,000 = \$4,500,000 / 3 = \$1,500,000$ ). Seventy percent (70%) of the average rent paid would be \$1,050,000 ( $\$1,500,000 \times 70\% = \$1,050,000$ )

Notwithstanding the foregoing, in no event shall the Minimum Annual Rent be reduced by reason of any such adjustment.”

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- H. Subsection "E(1)" of Clause 9 [DEFINITION OF GROSS RECEIPTS] is deleted from the Lease. The remainder of Clause 9 shall remain in full force and effect.
- I. Clause 14 [INITIAL CONSTRUCTION AND TIMING] is deleted from the Lease in its entirety and the following clause is substituted:

"14. CONSTRUCTION AND TIMING.

A. Minimum Construction and Timing.

TENANT shall cause to be designed, constructed, and installed within the Premises, at no cost to COUNTY, appropriate improvements to adequately accommodate those services and uses, both required and any other optional services and uses approved pursuant to the Clause 5 entitled "Required and Optional Services and Uses." The improvements, at a minimum, shall include:

1. Reconfigured current 36-hole golf course to 18-hole golf course within the new Premise, an approximation of which is described in **Exhibit A-1** and shown in **Exhibit B-1**, attached to the First Amendment to this Lease.
2. Reconfiguration is to be completed no later than the final day of the thirty-fourth (34<sup>th</sup>) month after the execution of the First Amendment to this Lease.
3. Pursuant to the requirements set forth in **Exhibit C-1**, TENANT to submit conceptual plans, which includes, but is not limited to, fencing of Reconfigured Premise described in **Exhibit A-1**, and shown in **Exhibit B-1** to Director of OC Parks no later than the end of the seventh (7<sup>th</sup>) month following the execution of the First Amendment to this Lease.

Should TENANT choose to develop the Premises in approved increments, all parking and landscaping required to fulfill TENANT's ultimate development plan shall be constructed or installed during the initial construction increment, subject to modification approved in writing by Director of OC Parks. Provisions, acceptable to Director of OC Parks, shall be made for maintenance of undeveloped portions of the Premises, and TENANT shall provide such provisions in writing to the Director of OC Parks.

B. Development Plan and Construction Standards.

For the first thirty-four (34) months following the Effective Date of the First Amendment to this Lease, all design and construction shall continue to conform with the construction and architectural standards contained in **Exhibit C** of the lease (Design Criteria; Minimum Specifications and Construction Approval Process for Mile Square Golf Course), except as provided herein, including any and all terms for approvals and Reconfiguration contained in **Exhibit C-1** attached to the First Amendment to this Lease. Design and construction of

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Reconfigured Premises shall conform to all standards contained in **Exhibit C-1** and shall be diligently performed to completion once commenced. COUNTY reserves all rights and remedies available under the Lease, including, but not limited to, those rights and remedies available in the event that TENANT fails to complete any tasks or development set forth in **Exhibit C-1**.

C. Permits.

All COUNTY approved improvements to the Premises shall be constructed in accordance with valid permits and all applicable laws and in a good and workmanlike manner. All preparation and processing for environmental clearance shall be at TENANT's sole cost and expense. In the event that the environmental process results in any required mitigation measures, performance of such mitigation measures, including all associated costs and expenses shall be the sole responsibility of TENANT.

COUNTY has no obligation to notify TENANT regarding requirements for permits, licenses, approvals or other consents from governmental agencies, including the County of Orange in its regulatory capacity, nor shall COUNTY have any obligation to obtain permits, licenses, approvals or other consents from governmental agencies on behalf of TENANT. COUNTY agrees to give its consent as property owner to any application made with regard to any such permits, licenses, approvals or other consents which may be required by any governmental agency or by the County of Orange in its regulatory capacity related to activities or design and construction of improvements approved by COUNTY in accordance with this Lease. Any such consent given by COUNTY as the property owner is not to be interpreted to obligate COUNTY to pay any fees related to the application or issuance of any such permit, license, approvals or other consents, nor shall such consent be deemed a waiver of any fee which may be charged by County's Property Permit department. Any conditions placed on TENANT's design and construction or operation of the Premises as a result of the issuance of permits, licenses, approvals or other consents shall be the sole obligation of TENANT with regard to performance responsibilities, cost and expense.

Any approvals or consents given by COUNTY under this Lease, as a party to this Lease, shall not be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules and/or regulations or approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements nor shall COUNTY, as a party to this Lease be responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of TENANT's construction and/or maintenance plans. Any and all permits must

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be approved by the appropriate governing agency controlling the area in which the Premise is located.

D. Labor Code Compliance.

TENANT acknowledges and agrees that all construction performed by or on behalf of TENANT per the terms of this Lease shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.). These provisions may be applicable to improvements or modifications costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under 1720.2

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Orange County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations.

Where applicable, TENANT hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all construction or modifications to be completed within the Premises, and TENANT herein agrees that TENANT shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the any such or modifications are performed.

Where applicable, TENANT shall require any contractor or subcontractor performing work on the Premises to maintain certified payroll records for all workers assigned work on the Premises, and shall require said contractors or subcontractors to provide Director, upon Director's request, with the applicable certified payroll records for all workers that will be assigned to work on the Premises. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. At Director's request, TENANT shall provide or cause Director to be provided with bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

If TENANT neglects, fails, or refuses to provide said payroll records to Director, such occurrence shall constitute an event of default of this Lease. TENANT hereby agrees to indemnify, hold harmless, protect and defend COUNTY, its officers, agents, employees, and contractors against any and all claims, loss,

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demands, damages, cost, expenses or liability arising under or relating to Article 2 of Chapter 1, Part 7. Division 2 of the Labor Code of the State of California (Sections 1770 et. seq.).

E. Right to Works and Minimum Wage Laws.

In accordance with the United States Immigration Reform and Control Act of 1986, TENANT shall require its employees that directly or indirectly service or conduct construction activities on the Premises pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. TENANT shall also require and verify that its contractors or any other persons servicing or conducting construction activities on the Premises pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, TENANT shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service or conduct construction activities on the Channel, in any manner whatsoever. TENANT shall require and verify that all its contractors or other persons servicing or conducting construction activities on the Premises on behalf of TENANT also pay their employees no less than the greater of the Federal or California Minimum Wage.

TENANT shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing or conducting any construction activities on the Premises pursuant to the terms and conditions of this Lease.

Notwithstanding the minimum wage requirements provided for in this sub-section, TENANT, where applicable, shall comply or cause its contractors or subcontractors to comply with the prevailing wage and related requirements, as provided for in the sub-section of this Lease entitle "Labor Code Compliance."

- J. Clause 17 [MECHANICS LIENS OR STOP NOTICES] is deleted from the Lease in its entirety.
- K. Clause 21 [MAINTENANCE OBLIGATION] of the Lease is amended to include the following clause:

During the remaining term of the Lease from the Effective Date of the First Amendment to this Lease, TENANT shall maintain the Premises in accordance with **Exhibit D** (Golf Course Maintenance Program) to the Lease and also with **Exhibit D-1**, which is attached



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to the First Amendment to this Lease and incorporated into the Lease by this reference as of the Effective Date of the First Amendment to this Lease.”

- L. Clause 22 [INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES] is deleted from the Lease in its entirety and the following clause is substituted:

“22. INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES

While TENANT has completed the initial construction of certain improvements required under the original Lease terms prior to the Effective Date of the First Amendment to Lease, TENANT’s duties related to any Reconfiguration, construction, maintenance and modernization of its Premises set forth herein remain. TENANT and LESSOR hereby understand and agree that in addition to the Reconfiguration of the Premises and ongoing maintenance and repair required in this Lease, the following renovation and modernization program shall be a requirement of TENANT, or anyone holding by, under or through TENANT.

A major renovation and modernization program, to bring the exterior and interior of all structures including the parking lot on the Premises up to a competitive quality and prevailing standards for the uses authorized, must be scheduled to occur and shall be completed within sixty (60) months following the Effective Date of the First Amendment to this Lease.

The renovation and modernization undertaken by TENANT must satisfy the Director that the improvement(s) on the Premises will, for the balance of the Lease term, retain attractiveness as a recreational facility, remain structurally sound, and provide appropriate facilities for the uses authorized, thus assuring both satisfactory service and income.

TENANT shall retain an engineer/building inspection company approved by Director to inspect the structures on the Premises for the purpose of providing a report (hereinafter referred to as an “Inspection Report”) on the condition of the major structural components including but not limited to the roof, walls, foundation, heating, air conditioning systems, plumbing, electrical, ventilating and the parking lot.

Recommendations by the engineer/building inspection company will be made on the basis that the improvements be maintained in a commercially reasonable fashion for the remainder of the Lease term. Within thirty (30) days of the completion of the Inspection Report, TENANT shall deliver a copy of the Inspection Report to the Director. TENANT shall correct all deficiencies as identified in the Inspection Report to the satisfaction of the Director.

In addition to all modernization improvement requirements provided in **Exhibit C-1**, a minimum modernization program will include reconditioning exteriors by repainting, replacement of exterior material with like materials, reroofing and replacement of landscaping materials to original equivalent as necessary. Interior modernization will



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include as necessary painting; replacement of carpeting or other floor covering; replacement or refinishing of cabinets, hardware, and bath fixtures; and repair or replacement of plumbing, electrical, heating, ventilating, air-conditioning systems, as necessary. Refinishing or replacement of interior furnishings shall also be included as necessary.

The complete modernization plan and implementation schedule will be submitted to and approved by the Director as provided in **Exhibit C-1** before implementation and must be scheduled for completion no later than the Completion Date provided above.

The reason for the renovation and modernization provision of this agreement is to assure that a high quality facility compatible with the recreational needs of the public is maintained for the full Lease term. TENANT agrees to establish a Capital Replacement Fund ("CRF") to be used for replacement of furniture, fixtures, and equipment, and for capital repairs and renovations to improvements constructed within the Premises. Such reserves shall be required by this Lease and identified by TENANT. TENANT shall annually provide LESSOR with an itemized accounting of the reserves for replacement concurrently with submittal of its annual financial statement. Additionally, on a monthly basis concurrent with the payment/reporting of Rents due, TENANT shall provide a monthly report with a detailed accounting of all expenditures from the CRF toward the renovation and modernization improvements required herein. The purpose of the CRF is to assure that TENANT maintains a sufficient reserve to accomplish renovation and modernization and TENANT shall not seek concessions from LESSOR, financial or otherwise, as a condition for fulfilling the requirements to undertake the renovation and modernization program. All work shall be done at TENANT's expense. TENANT's failure to either complete all renovation and modernization work as required herein, maintain adequate funds in the CRF necessary for the timely completion of all renovation and modernization work, or provide the monthly report of CRF expenses may constitute a default under the Lease at COUNTY's discretion.

TENANT further agrees that the minimum cost of renovation and modernization of the Premises, including the improvements required above and in **Exhibit C-1** by the Completion Date, shall be One Million Dollars (\$1,000,000). If TENANT's cost of renovation and modernization improvements as required above and in **Exhibit C-1** is less than one million dollars (\$1,000,000) when all of the improvements are completed, the remaining balance shall be placed in the CRF by the Completion Date, held in the CRF and used for additional future improvements after obtaining the prior written approval of Director, approval for which may not be unreasonably withheld, for capital improvements to the Premises which shall be in addition to TENANT's ongoing maintenance and repair obligations under this Lease. Said remaining balance shall be expended on COUNTY-approved capital improvements prior to ten (10) years of the expiration of the Lease term on June 30, 2039. Reporting on remaining funds in the CRF and approval for the additional future improvements will follow the same guidelines outlined above and in accordance with **Exhibit C-1**. The terms "cost of renovation and modernization" shall mean direct construction costs, including costs paid to contractors, architects, engineers, laborers, and suppliers, but not indirect costs such as financing costs, administrative and overhead expenses, bond premiums, permit fees, and/or developer fees.

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- M. Clause 24 [INSURANCE] is deleted from the Lease in its entirety and the following clause is substituted:

“24. INSURANCE

TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

TENANT agrees that TENANT shall not operate on the Lease Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director of OC Parks. In no cases shall assurances by TENANT, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director of OC Parks will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. TENANT also agrees that upon cancellation, termination, or expiration of TENANT's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Lease Area until such time as the Director of OC Parks reinstates the Lease.

If TENANT fails to provide Director of OC Parks with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, COUNTY and TENANT agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to TENANT, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the Lease Area, and to prevent any persons, including, but not limited to, members of the general public, and TENANT's employees and agents, from entering the Lease Area until such time as Director of OC Parks is provided with adequate evidence of insurance required herein. TENANT further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

LESSEE may occupy the [Premises] only upon providing to County the required insurance stated herein and maintain such insurance for the entire term of this Lease. County reserves the right to terminate this Lease at any time TENANT's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. TENANT shall pay COUNTY a fee of \$750.00 for processing the reinstatement of the Lease. TENANT shall provide to County immediate notice of said insurance cancellation or termination.

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All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for TENANT. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the TENANT under this Lease. It is the obligation of the TENANT to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Lease Area. Such proof of insurance must be maintained by TENANT through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of TENANT's current audited financial report. If TENANT's SIR is approved, TENANT, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from TENANT's, its agents, employee's or subcontractor's performance of this Lease, TENANT shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) TENANT's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the TENANT's SIR provision shall be interpreted as though the TENANT was an insurer and the County was the insured.

#### Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the TENANT shall provide the

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minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision.

#### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

#### **Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary

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and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees*. Blanket coverage may also be provided which will state- *As Required By Written Agreement*.

All insurance policies required by this Lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Director of OC Parks. TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

COUNTY expressly retains the right to require TENANT to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to TENANT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

- N. Clause 26 [LESSOR'S OPTION TO PURCHASE LEASEHOLD INTEREST] is deleted from the Lease in its entirety and the following clause is substituted:

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**"26. LESSOR'S OPTION TO PURCHASE LEASEHOLD INTEREST**

Prior to five (5) years of the expiration of the Lease term on June 30, 2039, upon mutual agreement of COUNTY and TENANT, COUNTY may offer to purchase TENANT's leasehold estate and improvements at the Option Price, hereinafter defined, existing on the date such agreement is reached. If TENANT's leasehold interest is not purchased by COUNTY at that time, and if this Lease is extended for an additional ten (10) years pursuant to Clause 6 above, then, prior to the last five (5) years of the extended term, COUNTY reserves and TENANT hereby grants to COUNTY at COUNTY's sole discretion the right to purchase TENANT's leasehold estate and improvements at the Option Price, hereinafter defined, existing on the date such option is exercised. Such option to purchase shall be exercisable by COUNTY delivering to TENANT advance written notice of COUNTY's exercise of said purchase option at any time prior to five (5) years of the expiration date of the extended Lease term.

The Option Price for purposes of this Lease shall be calculated on the basis of the then net present value of all net operating income before debt service projected to be realized by TENANT from the Option Date, hereinafter defined, to the expiration date of the Lease Term. All rent paid by TENANT to COUNTY under this Lease during said period from the effective date to the expiration of the Lease term shall be included as an expense for the purposes of calculating said net operating income.

The Option Price, as defined, shall be determined by making the following assumptions:

1. The net operating income shall be the same annually for the remainder of the Lease term as it is in the year of the buyout corrected by the Consumer Price Index annually, based on the average of the prior three (3) years. The Consumer Price Index shall be for the Los Angeles-Anaheim-Riverside (All Urban consumer-All Items) as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor, or any replacement index thereto.
2. The discount rate shall be the prime rate, as established for major New York banks, plus five hundred (500) basis points at the time the option is exercised.

Within one hundred eighty (180) days following the written notice to exercise this option by the provisions above the following shall be completed and upon the day of completion shall be deemed the "Option Date": (i) COUNTY shall pay the price, as so determined, to TENANT in cash, and return to TENANT all unexpended security deposits made under the Lease, and (ii) TENANT shall deliver to COUNTY all unexpended security deposits received from subtenants, concessionaires, operators and licensees. COUNTY and TENANT shall execute, acknowledge and deliver such documents and instruments as shall be necessary to assign to COUNTY and for COUNTY to assume the Lease, the leasehold estate and all rights and obligations of TENANT thereunder.

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- O. Clause 29 [NOTICES] is deleted from the Lease in its entirety and the following clause is substituted:

“29. NOTICES

All notices, documents, correspondence and communications concerning this Lease shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by facsimile and so given shall be deemed to have been given upon receipt if provided by personal delivery; or if by facsimile on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To COUNTY:

County of Orange  
OC Parks  
13042 Old Myford Road  
Irvine, CA 92602

To TENANT:

Mile Square Golf Course  
10401 Warner Avenue  
Fountain Valley, CA 92708

With a copy to:

County Executive Office/Real Estate  
Attn: Chief Real Estate Officer  
333 West Santa Ana Blvd., 3rd Floor  
Santa Ana, CA 92701-4084

- P. Clause 30 [ATTACHMENTS TO LEASE] of the Lease is amended to include the following language:

- VI. EXHIBIT A-1 – Revised Legal Description
- VII. EXHIBIT B-1 – Revised Parcel Map
- VIII. EXHIBIT C-1 – Revised Construction Design Criteria
- IX. EXHIBIT D-1 – Revised Golf Course Maintenance Program



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Q. Clause 31 [INDEMNIFICATION] is added to the Lease as follows:

“31. INDEMNIFICATION

TENANT hereby releases and waives all claims and recourse against COUNTY including the right of contribution for injury to or death of any person, or damage to or loss or destruction of property, arising from, growing out of or in any way connected with or related to this Lease, except for claims arising from, or related to, the concurrent active or sole negligence, recklessness, or intentional misconduct of COUNTY, its officials, officers, agents, and employees. TENANT hereby warrants, and accepts the sole responsibility to ensure, the safe design and operation of the Premises, including, but not limited to, providing a safe design and operation of the Premises, construction of any structures or safety devices (e.g. buildings, fences, nets, landscape/trees and/or any other safety device) and implementation, construction or installation, of any other safety measures necessary to protect against injury to persons or property within the Premises and its surrounding parcels.

TENANT hereby agrees to indemnify, hold harmless, protect and defend COUNTY, its officials, officers, agents and employees, with counsel approved in writing by COUNTY), and hold harmless, COUNTY, its officers, agents, employees and contractors against any and all claims, loss, demands, damages, cost, expenses or liability arising from or related to the use, design, operation or maintenance of the property described herein, activities occurring thereon, and/or TENANT's exercise of the rights under this Lease, except for liability arising out of, the concurrent active or sole negligence of COUNTY, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event COUNTY is named as co-defendant, TENANT shall notify COUNTY of such fact and shall represent COUNTY, with counsel approved by COUNTY, in such legal action unless COUNTY undertakes to represent itself as a co-defendant in such legal action, in which event, TENANT shall pay to COUNTY its litigation costs, expenses, and attorneys' fees. In the event judgment is entered against COUNTY and TENANT because of concurrent active negligence of COUNTY and TENANT, their officers, agents, or employees, COUNTY and TENANT agree that liability will be apportioned as determined by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

In the event a lien or stop notice is imposed upon the Premises as a result of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities made by or for the TENANT within the Premises, TENANT shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of Civil Code, which frees the Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien.



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Should TENANT fail to accomplish either of the two optional actions above within 15 days after the filing of such a lien or stop notice, the Lease may be in default and may be subject to immediate termination. TENANT acknowledges hereby that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

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

TENANT, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.”

- R. Clause 4 [CONTROL OF HOURS, PROCEDURES, AND PRICES] of the GENERAL CONDITIONS is deleted from the Lease in its entirety and the following clause is substituted:

“4. CONTROL OF HOURS, PROCEDURES, AND PRICES

- A. General. TENANT shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained.

Upon written request, TENANT shall furnish the Director of OC Parks a copy of said schedules and procedures. Should Director of OC Parks, upon review and conference with TENANT, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, TENANT, upon written notice from Director of OC Parks, shall modify said schedules or procedures to the satisfaction of said Director of OC Parks.

TENANT shall continuously conduct TENANT’s business within the Premises during the Term of this Lease and any extension thereof, and shall continuously keep the Premises open for business during reasonable and normal business hours; provided, however, that this provision shall not apply if the Premises should be closed and the business of TENANT temporarily discontinued on account of an event of casualty or condemnation, or strikes, lockouts or similar causes beyond the reasonable control of TENANT. Notwithstanding the foregoing, this provision shall only be abated for the period of time reasonably necessary to effectuate a re-opening of TENANT’s business.

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Primary consideration shall be given to the public's benefit in implementing this clause. All prices charged for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the market prices charged by other competing and/or comparable businesses.

TENANT agrees to abide by the terms and conditions of the Mile Square Golf Course reservation system approved by the Board of Supervisors Minute Order dated January 3, 1978 for the existing Mile Square golf course.

TENANT agrees that he will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

TENANT shall at all times retain active, qualified, competent, and experienced personnel to supervise TENANT'S operation and to represent and act for TENANT.

TENANT shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. TENANT shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

TENANT shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. TENANT shall replace any employee whose conduct is detrimental to the best interests of the public.

- B. Green Fees. TENANT agrees to maintain green fees for the golf courses comparable to other concessionaire-operated public golf courses charging green fees throughout the entire term of the Lease. On the fifth (5<sup>th</sup>) anniversary of the Effective Date of the First Amendment to this Lease and every three (3) years thereafter, TENANT shall submit to the Director of OC Parks, a report demonstrating the green fees for golf course are within the range of other moderate-priced concession-operated public golf courses in the Orange County area.

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- S. Clause 19 [CONDITION OF DEMISED PREMISES] of the GENERAL CONDITIONS is deleted from the Lease in its entirety and the following clause is substituted:

“19. CONDITION OF DEMISED PREMISES

Except as otherwise agreed to herein, upon adjustment of the Premise from a 36-hole course to an 18-hole course, and upon termination of the Lease, TENANT shall deliver Premises in serviceable condition relative to improvements required by the Lease agreement, thereon, reasonable wear and tear, earthquakes, war, and any act of war, excepted. Reference to the “Termination of the Lease” in this Lease shall include termination by reason of the expiration of the Lease term.

TENANT agrees to indemnify, defend with counsel approved in writing by COUNTY against, and hold COUNTY, and its respective elected officials, officers, agents, employees, and independent contractors harmless from any and all claims, judgments, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, penalties, punitive damages, or expenses, including reasonable attorneys’ fees, losses and expenses resulting from, arising out of, or related to the condition of the real property returned by the TENANT to the COUNTY, including but not limited to those resulting from, arising out of, or related to: (1) Hazardous Materials (as defined in Section 28) present on the Premises at the time the real property is returned to the COUNTY which were generated by operations or activities of TENANT and/or TENANT’s contractors, licensees, invitees, etc. and (2) failure of TENANT and/or TENANT’s contractors, licensees, invitees, etc. to comply with any regulatory requirements and/or orders that apply to activities on and/or use of the returned Premises. This indemnification includes, without limitation, costs incurred by COUNTY in connection with cleanup, remediation, removal, or restoration work required by any federal, state, or governmental entity because of Hazardous Materials and/or any other regulated materials upon, within, and/or under the Premises. TENANT shall be and remain liable for any hazardous or toxic substances or materials which are located on the Premises as a result or consequence of TENANT’s operations upon, within, or under the real property returned to the COUNTY.

Further, prior to returning the property to COUNTY, TENANT shall inspect the returned property and disclose to COUNTY all known defects in the returned property, including but not limited to records regarding the presence of hazardous materials; any reports, violations, or similar documents issued by regulatory agencies to the TENANT; all information, documents, records, and studies maintained by, or in the possession of, TENANT in connection with the Premises concerning Hazardous Substances. Also, at the time the property is returned to the COUNTY, TENANT shall represent and warrant:

- No condition on the Premises violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.
- There are no buried or partially buried storage tanks located on the Premises, except for a sewage tank servicing the restroom located near tee #14 of the players

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course. TENANT shall regularly inspect the condition of the sewage tank for as long as it remains within the Premises. TENANT hereby represents that the tank remains in good working condition, and warrants against any contamination therefrom. In the event that any contamination is detected, TENANT shall fully remediate any contamination, including any hazardous materials, prior to returning the property to the COUNTY.

- TENANT has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Premises are or have been in violation of any Environmental Law, or informing TENANT that the Premises is subject to investigation or inquiry regarding Hazardous Substances on the Premises or the potential violation of any Environmental Law.
- No leases, licenses, or other agreements allowing any third party rights to use the returned Premises are or will be in force.
- There will be no service contracts in effect and affecting the Premises.
- There are no unrecorded encumbrances, including but not limited to liens, leases, easements, or licenses on all or any portion of the returned Property.
- There is no pending or threatened litigation, administrative or regulatory proceeding, or other legal or governmental action with respect to the Premises regarding the environmental, health, safety, and any other aspects of the Premises.

T. Except as set forth herein, all other terms and conditions of the Lease, shall remain in full force and effect. In the event of a conflict between this Amendment and the Lease, this Amendment shall control.

U. The terms and conditions of this Amendment shall be effective from the Effective Date first written above.

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

APPROVED AS TO FORM:  
 OFFICE OF COUNTY COUNSEL  
 County of Orange, California

By: 

Deputy County Counsel

Signed and certified that a copy of this document has been delivered to the clerk of the Board per GC Sec. 25103, Resolution 79-1535

Attest:

\_\_\_\_\_  
 Robin Stieler  
 Clerk of the Board of Supervisors  
 County of Orange, California

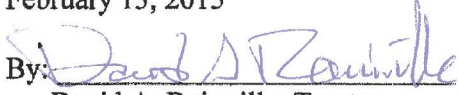
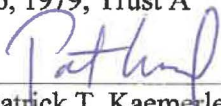

**COUNTY**

COUNTY OF ORANGE

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

Chair, Board of Supervisors  
 County of Orange, California

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	<p><b><u>TENANT</u></b></p> <p>Mile Square Golf Course          A California Limited Partnership</p> <p>By: Rainville Revocable Declaration of Trust          dated July 31, 1992 as amended          November 13, 1998 and first restated on          February 13, 2015</p> <p>By:           David A. Rainville, Trustee          Its: General Partner</p> <p>By: Kaemerle Family Trust dated          June 6, 1979, Trust A</p> <p>By:           Patrick T. Kaemerle, Trustee          Its: General Partner</p> <p>By: Heuler Family Trust dated          October 10, 1988 and amended on          August 16, 2017</p> <p>By:           Elizabeth A. Moen, Co-Trustee          Its: General Partner</p>
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**EXHIBIT A-1****LEGAL DESCRIPTION**

Mile Square Regional Park  
 Facility No.: PR37A  
 Parcel No.: 152.01

That portion of Section 20, Township 5 South, Range 10 West, of the Rancho Las Bolsas, in the City of Fountain Valley, County of Orange, State of California, as shown on the map filed in Book 51, Page 12 of Miscellaneous Map and more particularly shown on Record of Survey filed in Book 88, Page 9 of Records of Survey both in the office of the County Recorder of said county described as follows:

Commencing at the intersection of the centerline of Ward Street and Warner Avenue as shown on said Record of Survey; thence South 89°33'07" West, 791.66 feet along the centerline of said Warner Avenue; thence leaving said centerline North 00°26'42" West, 85.00 feet to an intersection with a line which lies parallel with and 85.00 feet Northerly of said centerline, said intersection being the TRUE POINT OF BEGINNING; thence South 89°33'07" West, 1740.03 feet along said parallel line to an intersection with a line which lies parallel with and 110.00 feet Easterly of the centerline of Brookhurst Street as shown on said Record of Survey; thence North 00°30'40" West, 521.00 feet along said parallel line; thence leaving last said parallel line North 89°29'20" East, 50.00 feet to an intersection with a line which lies parallel with and 160.00 feet Easterly of said centerline of Brookhurst Street; thence North 00°30'40" West, 718.00 feet along said parallel line; thence leaving last said parallel line North 06°07'00" East, 587.00 feet; thence North 34°43'00" East, 739.00 feet; thence North 58°40'00" East, 680.00 feet; thence North 89°29'20" East, 322.74 feet; thence South 39°29'04" East, 109.43 feet; thence South 01°15'37" East, 942.83 feet; thence South 15°01'34" East, 354.51 feet; thence North 68°55'54" East, 515.73 feet; thence North 44°20'59" East, 383.04 feet; thence South 73°59'16" East, 437.69 feet; thence North 52°21'34" East, 639.12 feet; thence South 84°23'25" East, 582.47 feet; thence South 42°36'44" East, 122.75 feet; thence South 36°52'12" East, 130.00 feet; thence South 06°04'21" East, 141.80 feet; thence South 29°51'10" West, 592.64 feet; thence South 51°35'13" West, 616.42 feet; thence South 78°04'28" West, 169.23 feet; thence South 19°03'00" East, 545.00 feet; thence South 71°03'00" West, 225.00 feet; thence South 00°26'58" East, 210.00 feet to an intersection with aforementioned parallel line which lies 85.00 feet Northerly of said centerline of Warner Avenue; thence along said parallel line South 89°33'02" West, 531.32 feet; thence continuing along said parallel line South 89°33'07" West, 791.65 feet to TRUE POINT OF BEGINNING.

Containing 166.37 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED  
 Kevin Hills, County Surveyor, L.S. 6617

  
 By: Raymond J. Rivera, L.S. 8324

Date: Nov 20, 2017







## EXHIBIT C-1

### DESIGN CRITERIA; MINIMUM SPECIFICATIONS AND CONSTRUCTION APPROVAL PROCESS FOR MILE SQUARE GOLF COURSE

#### 1. PREAMBLE

The Design Criteria contained herein are intended as an outline of minimum standards and requirements for guidance of Mile Square Golf Course, referred to hereinafter as "Tenant," in preparing plans for improvements at Mile Square Regional Park. The Design Criteria is in addition to all other Orange County ordinances, codes, rules, and regulations. Lessor recognizes that the basic facilities are to remain and that Tenant shall implement improvements of the facilities in accordance with the Design Criteria to the extent reasonably possible.

The Lease and the General Conditions attached thereto shall be controlling in the event of an inconsistency between them and these Design Criteria.

All services, labor, materials, and equipment furnished and the performance of all operations in connection with the work necessary for the improvement of the premises shall be in accordance with the Lease and this Design Criteria. Unless otherwise provided, all work and materials shall conform to the specific requirements set forth in applicable portions of the following codes and specifications incorporated herein by reference:

Uniform Building Code, National Electrical Code, Uniform Mechanical Code, Uniform Heating and Ventilating Code, Uniform Plumbing Code, grading and excavation code, all as amended and adopted by the County of Orange.

All fire protection ordinances and rules and regulations of the Orange County Fire Authority.

All applicable ordinances of the County of Orange and codes and specifications of County, State, and Federal Agencies.

#### 2. DESIGN AND CONSTRUCTION APPROVAL PROCESS

##### A. DESIGN REVIEW

Director to review and approve site development and construction plans proposed by Tenant at Mile Square Regional Park.

##### B. SUBMISSION OF PLANS AND OTHER DATA

###### 1. General

All submittals shall be made to the office of the Director. Caution should be exercised not to proceed with working drawings until such time as proper approvals have been obtained

for preliminary submittals of schematic drawings, architectural renderings, plot plans, landscape, and irrigation plans, and parking requirements.

After the preliminary submittal has been approved by the Director, the Tenant shall contact the County of Orange's OC Development Services (OCDS) to ascertain whether the design, construction, quality of materials, use and occupancy, and location of any buildings, structures and/or grading of the Premises, as proposed, will comply with County regulations. Said preliminary approvals prior to the preparation of construction contract documents will eliminate misunderstanding as to the final development.

Upon approval of construction contract documents by the Director, the Tenant shall submit them along with an application for a building permit and the necessary fees to OCDS for plan checking and subsequent issuance of building permits.

Unless otherwise indicated, whenever data is submitted for approval, the following number of copies shall be submitted:

- a. Preliminary plans, intermediate plans, construction contract documents:
  - (1) Director - three sets of prints, one set in PDF format.
  - (2) OCDS – submit number of sets as required by OCDS.
- b. All other data, such as calculations, reports, pencil renderings, etc.: three sets of prints, one set in PDF format.

The design and preparation of the plans and specifications for construction under the terms of the Lease shall be by engineers, architects, and landscape architects duly licensed under the Business and Professions Code of the State of California.

## 2. Materials for Submission

### a. Preliminary Plans

Preliminary plans for the reconfiguration shall be submitted to the Director by no later than the end of the seventh (7<sup>th</sup>) month following the Effective Date of the First Amendment to the Lease.

Preliminary plans, where applicable, for the renovation and modernization requirements under the Lease shall be submitted to the Director by no later than the end of the thirty-fourth (34<sup>th</sup>) month following the Effective Date of the First Amendment to the Lease. In addition to the minimum modernization program requirements contained in the Lease Agreement, plans shall include proposed improvements including, but not limited to:

- Clubhouse HVAC
- Event venue adjacent restrooms/dressing rooms
- Event lawn lighting
- Kitchen modernization/upgrades

- Patio Trellis
- Practice Range improvements

Preliminary plans shall include a site layout of the premises showing uses, buildings, landscape development, and other features; demolition plan (including the Recovered Acreage returned to County); schematic floor plans of all structures, simple elevations of buildings, architectural theme, and a general description of improvements and methods of operation; and a general outline specification indicating materials and methods of construction and an estimate of the total cost of improvements planned.

**b. Survey**

Upon approval from the Director of the reconfiguration preliminary plans, County shall conduct a survey, which shall include legal description and plot map of the property boundary under Tenant's premise pursuant to the First Amendment to Lease. In no case shall the premise being returned to the County pursuant to the First Amendment of Lease be less than eighty-five (85) acres. The survey will be reviewed by OCPW/OC Survey/Map Check & Right Of Way Services. Within thirty (30) days after the County's completion of the survey, Tenant hereby agrees to amend the Lease Agreement to incorporate a new Exhibit A-2 and B-2, the respective legal description and parcel map, describing the revised Premise consistent with the survey.

**c. Intermediate Plans**

Intermediate plans shall consist of the following:

- (1) A detailed site plan for the premises showing all improvements planned for the site. This plan shall include any easements, location of all utilities, drainage plan, grading plan, and grade elevations of all structures.
- (2) Floor plans, elevations, and sections of all structures.
- (3) Landscape development plans with plant palette and irrigation plans for the golf course.
- (4) Draft specifications to cover all phases of the work.
- (5) A detailed cost estimate of all improvements.
- (6) Exterior color scheme.
- (7) Colored rendering or model.

At the conclusion of the intermediate work, plans shall be submitted for approval. Upon approval of the intermediate drawings, the working drawings shall then be prepared.

**d. Construction Contract Documents**

These shall consist of the following:

- (1) Complete architectural, landscape, and engineering working drawings.
- (2) Complete specifications.
- (3) Construction contract form.
- (4) Construction schedule.

e. Project Record Documents

All project record drawings shall be maintained in a clean, dry and legible condition as specified herein. One copy of the following shall comprise the project record documents:

- (1) Construction drawings
- (2) Supplementary conditions
- (3) Addenda
- (4) Reviewed shop drawings
- (5) Change orders
- (6) Modifications to the construction documents
- (7) Field test records
- (8) Building permit set, unmarked and kept separate from other copies of the construction documents

Tenant shall have on file one set of construction drawings, hereinafter referred to as "Record Drawings," upon which shall be recorded all variations between the work "As Built" and the construction drawings. This shall be supplemented by any detailed sketches as necessary or directed to indicate fully the work "As Built."

(a) Daily Record

Tenant shall provide and keep up to date a complete as-built set of prints, which shall be corrected daily to show every change from the original drawings and specifications and this set shall be the record set. As-Built entries shall be completed in a neat, clear, professional manner. Upon completion of the work, Tenant shall obtain inspector's signature on the record set verifying information. The prints shall be marked to show equipment, including concealed or embedded piping and conduit. This set shall not be construed as authorization for Tenant to make changes in the layout work without definite instructions in each case and approval by the Director as needed.

(b) Tenant shall submit the record drawings set of prints, and the notes to County and shall make such changes and corrections as the County may require for final approval.

(c) Final reproducible submittal of "As-Builts" information shall be transmitted to the County. The corrected and approved record drawing set of prints and the notes shall be transmitted to County by Tenant prior to final project permit inspection.

### 3. Renovation and Modernization:

Plans, where applicable, shall be submitted to the Director for approval, and approval must be granted in advance of any construction, remodeling, alterations, or additions undertaken throughout the term of the Lease. Approval by the Director shall not relieve the Tenant of his obligation to obtain appropriate permits from OCDS (or other agency with jurisdiction) prior to any work being done. As referenced in previous sections, and in addition to the minimum renovation and modernization program requirements contained in the Lease Agreement, proposed improvements shall also include, but are not limited to:

- Clubhouse HVAC
- Event venue adjacent restrooms/dressing rooms
- Event lawn lighting
- Kitchen modernization/upgrades
- Patio Trellis
- Practice Range improvements

## C. APPROVAL OF PRELIMINARY PLANS, INTERMEDIATE PLANS, AND CONSTRUCTION CONTRACT DOCUMENTS BY DIRECTOR

The Director shall promptly review plans properly submitted by Tenant and shall grant its approval or require changes. Corrections or modifications required by the Director shall be made and revised drawings re-submitted within thirty (30) days of Director action. The basis of Director approval of plans and specifications will be as follows:

### 1. Permitted Uses

The uses proposed for the development must comply with all ordinances and with the Lease.

### 2. Adequacy of Facilities

Consideration will be given as to how adequately the proposed development will serve the purposes for which it is intended. The following will be among factors considered:

#### a. Functional Adequacy

Facilities shall be properly sized and related for intended uses.

b. Circulation and Parking

All driveways, entrances, exits, loading areas, and other parts of the vehicular circulatory system safe, efficient, of adequate dimension and shall be properly signed/marked. Parking areas shall be located close to the activity they serve and in sufficient quantity.

c. Compatibility of Design

The proposed design shall reflect the park environment, provide public access, and fit in with surrounding development.

3. Architectural Design and Landscape Development

Approval of the architectural design and landscape development by the Director will be based upon the adequacy of the design meeting the requirements listed in Section 3 of this criteria titled "Buildings and Course Design Criteria" and Section 4(G) of this criteria titled "Landscape Development." Judgment of the design submitted will be as objective as possible in order to achieve a structure which is sound, efficient, and harmonious with the aesthetic character of Mile Square Regional Park. The purpose of a distinctive character for the Park is to create a total environment in which all aspects, both natural and man-made, are harmonious and will survive the passage of time aesthetically and structurally.

4. Miscellaneous Considerations

Easements, setbacks, height limitations, and other physical restrictions shall be in accordance with the existing laws and the Lease.

D. ISSUANCE OF BUILDING PERMITS BY OCDS

After the Tenant has received approval of his preliminary plans by the Director, Tenant shall contact OCDS and the Division of Environmental Health, Orange County Health Department, for a preliminary discussion concerning the proposed occupancy of the building and the type of construction proposed. Such a meeting, prior to the preparation of the final construction documents will minimize possible misunderstandings and be in the best interest of all concerned.

After the Tenant has completed his construction documents. Tenant shall make application to OCDS for a building permit and shall include sufficient sets of prints of completed drawings to facilitate simultaneous plan checking of all mechanical and electrical systems. The Tenant shall obtain and pay for all permits and plan check fees required under the applicable building codes, including plumbing, electrical, mechanical, grading, or other items of construction as required by County ordinance. All licenses, plan checks, permit, and inspection fees in connection with construction by the Tenant shall be the responsibility of the Tenant or his contractor.



All inspection of work as required by code shall be requested by the contractor to OCDS and in accordance with normal operating procedures.

### 3. BUILDINGS AND COURSE DESIGN CRITERIA

#### A. DESIGN CRITERIA

1. **Golf Courses.** The existing course shall be refurbished; all greens and tees shall be rebuilt to United States Golf Association (USGA) standards, the ponds shall be drained and rebuilt as necessary and a dual irrigation system shall be installed to provide well water to the greens and tees and reclaimed water to the fairways and rough areas. The rebuilt course shall retain the same play characteristics present on the existing course and difficulty of play shall not be appreciably increased. Construction of greens and tees shall meet USGA standards.
2. **Clubhouse Complex and Banquet Facilities.** The clubhouse complex shall include a pro shop, snack bar, restaurant, lounge, offices, restrooms, cart storage and banquet facilities to accommodate groups of 350 - 400 (including kitchen capable of serving the maximum capacity). The banquet facility shall have the capability to function as a center for community events.
3. **Landscape Within Lessor's Recovered Acreage.** Landscape, including trees and turf, shall be in acceptable health. All dead and hazardous trees within the Recovered Acreage shall be removed by TENANT prior to first day of the thirty-fifth (35<sup>th</sup>) month following the Effective Date of the First Amendment to Lease. Turf to receive final maintenance procedures, including, but not limited to, aeration, fertilization, and seeding, if necessary.
4. **Utilities Within Lessor's Recovered Acreage.** All utilities within Lessor's property shall be separated by Tenant from Tenant's infrastructure, provided Lessor determines termination of utilities at the boundary of Tenant's reconfigured Premises is infeasible, or is otherwise cost prohibitive, in which case Lessor shall have the option to keep utility connections intact and submeter utility connections from the Tenant's infrastructure to Lessor's infrastructure. Utilities may include, but are not limited to, irrigation, electric, sewer, domestic water, reclaimed water, storm water drainage, and gas. All utilities shall be in good working order.
5. **Restroom Within Lessor's Recovered Acreage.** The restroom shall be in good working condition and devoid of structural damage. Any septic or sewage tank must be structurally intact and in good working condition, devoid of any leaks, contamination, or discharge of any waste or hazardous materials.
6. **Golf Amenities Within Lessor's Recovered Acreage.** All golf amenities shall be removed from Lessor's property, including, but not limited to tee markers, putting cups, site furnishings, signage, and flag poles.

7. Fencing Within Lessor's Recovered Acreage. Fencing along the old property boundary existing beyond TENANT's reconfigured Premises shall be removed by TENANT prior to first day of the thirty-fifth (35<sup>th</sup>) month following the Effective Date of the First Amendment to Lease, unless Lessor determines removal of fencing along the old property boundary is not suitable for the Recovered Property, in which case Lessor shall have the option to direct TENANT to keep the fencing intact.
8. Ponds on Lessor's Acquired Property. All ponds and any related water quality equipment (including, but not limited to, pumps and aerators) shall be in good working condition and well-maintained prior to acquisition by Lessor. TENANT agrees to allow the existing pond drainage system to remain until or unless the LESSOR elects to alter its pond property in any manner deemed appropriate by Lessor within its discretion. In an effort to maintain the health of its ponds and the water quality therein, LESSOR agrees to evaluate its pond water quality within the Recovered Acreage at minimum three (3) times per month, and will test each pond for contaminants at minimum once per month.

#### B. ARCHITECTURAL THEME

The object of the design of any and all structures at Mile Square Regional Park is to enhance the environment of the park by providing a compatible character, while meeting the needs of the Tenant and providing needed services to the public.

It is the intent of this section to provide guidelines for coordination of design so that the final development plan reflects a unifying theme for development, including plant palette and construction materials, and enhances the existing park setting at Mile Square Regional Park. The elements of design shall be coordinated by the Director. To achieve this character, the following design requirements have been established:

1. The design shall make use of the view created by the golf course and parkland.
2. Materials shall create a self-weathering, low-maintenance structure.
3. The appearance of the structure must be attractive from all angles.
4. All utility and mechanical equipment shall be screened from view. All roof projections such as vents, exhaust fans, ducts, and pipes shall be gathered and grouped together and housed in an enclosed structure.
5. Trash collection centers shall be located on easy to clean concrete surfaces. Said centers are to be kept from public view by use of a screening fence or wall not less than seven feet in height and constructed so as to be easily cleaned. Screen planting will also be required. Service areas shall be so located and designed as to be out of public view.
6. Design must reflect the architectural elements of the developed portions of Mile Square Regional Park.

7. Graphics, street furniture, lighting, paving, plants material, etc., shall follow a uniform theme.
8. The circulation plan shall provide free flow of traffic and pedestrians between parking areas, buildings.
9. The design of facilities shall focus equally inward toward the center of Mile Square Regional Park as well as to the perimeter.

#### C. MATERIALS AND FINISHES

A materials palette identifying specific characteristics of texture, color, and durability will be prepared and used for the construction of any improvement that shall take place in Mile Square Regional Park. Once established by the Tenant, any deviation from this palette is subject to prior written approval by the Director. Submittals should indicate manufacturers of these products to be established as standards. Similar products by other manufacturers may be used as long as they match color and texture of materials in accordance with the manufacturers' listed specifications. All new structures shall conform to the architectural style of the existing clubhouse.

#### 4. SITE WORK AND SPECIFICATIONS

##### A. GENERAL

Site work includes paving, walks, landscaping, drainage features, lighting, signs, restrooms, and street furniture. It is essential that all of these features be harmonious with the general appearance of the park. Unattractive things, such as trash collection centers, shall be screened from view. Signs, light standards, and similar items must be unobtrusive and tastefully designed and located. Textures and finishes must complement the overall aesthetic quality of the park environment.

All new construction and renovations shall be in compliance with the most recent Americans with Disabilities Act (ADA) Standards.

##### 1. Cultural and Scientific Resources

No known cultural/scientific resources (i.e., archaeological, paleontological burial grounds or remains, ceremonial objects, petroglyphs, or other artifacts of a like nature) are known to exist within the premises.

In the event the Tenant's development uncovers or Tenant agents/employees finds any burial grounds, or remains, ceremonial objects, petroglyph, and archaeological or paleontological or other artifacts of like nature within the construction area, Tenant shall immediately notify Director of Tenant's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such findings from Director.

Any findings of a cultural/scientific resource nature shall remain the property of the County and do not become the property of the person or persons making the discovery.

## 2. Sound Control Requirements

The Tenant shall ensure that Tenant or Tenant's contractor shall comply with all County and local sound control and noise level rules, regulations and ordinances which apply to any Work performed on the premises, and shall make every effort to control any undue noise resulting from the construction operation.

Each internal combustion engine used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

The noise level from the construction operations between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control". The noise level from the Contractor's operations during the above-specified times shall not exceed 85 dBA at a distance of 50 feet. This requirement in no way relieves the Tenant or his contractor from responsibility for complying with local ordinances regulating noise level.

Said noise level requirement shall apply to all equipment on the premises or related to the premises, including but not limited to trucks transit mixers or transient equipment that may or may not be owned by the Tenant or his contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

## B. PAVED AREAS

### 1. General

Parking areas and vehicle access ways shall be clearly defined and identified, completely paved and graded for drainage. Parking stalls shall be clearly marked with painted striping.

### 2. Parking and Vehicle Access Ways

Parking stalls shall, at least, have minimum dimensions to meet current County codes. Vehicle access ways shall have a minimum width of 12 feet. Parking area layouts will be judged on their adequacy to provide parking facilities for the intended purposes. Wheel bumpers, where used, shall be a concrete bumper approved by the Director.

The parking areas shall be plainly marked for vehicular parking stalls, access ways, and pedestrian walkways. The stalls shall be hairpin-striped: The stripes shall be four inches wide, and painted with a non-reflective type of white traffic paint.

The parking lot shall include sufficient landscape treatment including trees, shrubs and ground cover to be aesthetically pleasing.

### 3. Materials

The entire parking area except landscaped areas including all access ways shall be paved with a bituminous surface course over a prepared base course where needed. Reference Orange County Standard Plans 804 and 805.

The bituminous surface course shall conform to the applicable provisions of the Standard Specifications of the APWA and Orange County Standard Plans, as amended, for Asphalt Concrete.

Base course shall conform to the applicable provisions of the Standard Specifications of the APWA and Orange County Standard Plans, as amended, for Aggregate Bases.

The thickness of any paved area shall be designed for a minimum of a 4,000-pound wheel load, but in all instances the minimum thickness of the bituminous surface course shall be three inches.

#### 4. Grading

All vertical control within the premise areas shall be tied to the level net grade established by the Tenant and approved by the Director.

The entire paved area shall be graded to provide adequate surface drainage. The transverse slope of a paved area shall be toward the curb and gutter and shall be a minimum of one percent. Low points shall not be located in marked pedestrian walkways.

### C. CURBS AND GUTTERS

Curbs and gutters shall be a concrete combined curb and gutter conforming to the details shown for Type A or Type D in the Orange County Standard Plans, as revised. Curbs and gutters shall have a minimum longitudinal slope of 0.25 percent.

### D. WALKWAYS

All walkway areas, except golf paths, within the premises where buildings are located shall be paved. Walkway areas shall be defined as walks and those areas of courts, patios, plazas, arcades, landings, terraces, and porches which will carry foot traffic.

Mixing the use of various paving materials is encouraged. The surface treatment of concrete will provide for textures such as salt rock, broom finish, and exposed aggregate. Score lines shall be a maximum of four feet in any direction. The color and type of all paving materials is subject to Director approval.

All walkways shall be in compliance with the most recent ADA Standards. Walkways must be adequately drained and lighted.

### E. DRAINAGE FACILITIES

All paved areas shall drain toward the curb and gutters and the drainage waters shall be picked up by means of a side inlet catch basin or a grated inlet catch basin adjacent to the curb. A preliminary drainage plan shall be submitted for approval. No drainage waters shall flow over public sidewalks.

All catch basins shall be designed in accordance with Orange County Standard Plans, as revised. Complete hydrological and hydraulic calculations substantiating the design shall be submitted for approval.

#### F. AREA LIGHTING

The design objective for area lighting is to light landscape areas, walls, structures, and buildings for utilitarian and/or decorative purposes. The light must not dominate above the buildings and landscapes, but blend in as an integral part of the area. The public must view the park improvements as seeing the building(s) and landscape plantings first and noticing the brightness of a light source last, thereby creating a complimentary impression to the overall appearance.

The lighting shall not constitute a hazard by either its location or type. All lighting shall be shielded from adjoining properties when it would create an annoyance. In particular, lighting shall take into account consistency and compatibility between the various improvements and facilities of the overall areas within Mile Square Regional Park.

Lighting standards shall be protected from automobile damage by the use of curbs or by mounting the standards upon reinforced concrete pedestals. Height of pedestals shall be a minimum of thirty (30) inches. Concrete pedestal reinforcement shall have a minimum three-inch coverage. Where feasible, light standards should be designed as part of a planter area.

All lighting standards and fixtures are to be of non-corrosive materials or treated with a corrosion-proof material.

#### G. LANDSCAPE DEVELOPMENT

Landscape development plans should be prepared by a landscape architect licensed in the State of California. On a site composed of a variety of uses ranging from clubhouse, golf course, to open recreation areas, the landscape development shall function as a unifying element, integrating all areas into a comprehensive and orderly whole. To achieve this end, certain controls have been established to serve as guidelines for the designer. Working within these design guidelines, using materials and processes selected with a purpose, it is planned that the landscape development will complement and enhance the basic concept and character of the park.

The landscape plans shall blend the major improvements and facilities into a consistent and harmonious pattern, including compatibility with the surrounding bicycle/pedestrian pathway and related public improvements.

The scope of the landscape design shall include a planting program, an irrigation plan, treatment of paving, the designation of street furniture (golf course) and the planning of related amenities.

##### 1. Extent of Landscape Development

The total land area within the parking lot shall be sufficiently landscaped.



## 2. Design Criteria and Requirements

### a. Shrubs, Vines, and Ground Cover

- (1) As applicable, chain link fencing may have vines, shrubs, or trees in espalier form, planted on and against them. This requirement shall not apply to the practice range protective fencing.
- (2) Flowering vines shall be used for color and for softening effect.

### b. Trees

- (1) Trees shall be planted within the premises.
- (2) The Tenant shall propose the basic planting pattern and use tree varieties specified in item 3 of this section titled "Planting Plan." The specific location and variety of trees to be planted to fulfill the requirements of said plan shall be proposed by the Tenant and approved by the Director. Trees equal in design aspects to those listed may be substituted provided prior written approval of the Director has been obtained.
- (3) Trees in patios, plazas, and in proximity to the buildings shall be selected for sculptural qualities of their structure.
- (4) Sculptural character of trees shall be emphasized through supervised pruning.
- (5) Consideration shall be given to the skyline effect of trees.
- (6) Tree wells in paved parking areas shall be a minimum of 12 square feet in size and shall be curb lined or otherwise protected from vehicular traffic.

### c. Paving

- (1) Paving shall serve as a connecting, unifying element (See Section 4.D, Walkways).
- (2) The total landscape development of the parcel shall involve material other than plants, i.e., concrete, wood, stone, gravel, sand, etc.
- (3) Paved areas intended for parking or vehicular access shall not be considered a part of the landscape development.

## 3. Planting Plan

Preliminary planting plans shall be reviewed and approved by the Director. Preliminary planting plans shall identify type, size and location of all plant material, and any other construction materials (i.e., stone). Use of native and drought resistant plants adaptable to the environmental conditions are highly encouraged. Selection of street trees shall be made from the Orange County approved street tree list (Orange County Standard Plan #700).

Slow growing trees should not be less than 15 gallons in size and slow growing shrubs not less than five gallons in size to provide adequate landscape.

#### 4. Irrigation Plan

The irrigation system shall be automatic. Plans shall identify size and location of all lines as well as type and location of all irrigation hardware, including manufacturer, model number and hydrology data. Irrigation systems shall be designed to eliminate overspray of all hardscapes and to fully utilize water conservation techniques. Exposed impact heads or shrub heads or risers shall not be used adjacent to walkways or other areas where they constitute a personal hazard or may be subject to vandalism. Backflow preventers shall be of the reduced pressure type to provide positive cross connections control. Irrigation controllers shall in all cases be enclosed in a vandal resistant and weatherproof security enclosure and be sited to avoid visual prominence. Electrical conductors passing under a paved area shall be installed in a rigid non-metallic conduit.

### H. RESTROOM FACILITIES

Restroom facilities for all structures shall be the best quality and conform to the requirements of the Uniform Plumbing Code and the Uniform Building Code. Restroom facilities shall be designed to be available and easily accessible to the public.

### I. SIGNS

Signage shall be planned, designed, and developed to be consistent among the facilities shall be carried out with a compatible and consistent design theme, using similar materials and similar scale. Course signs shall have consistent theme but may be constructed of different and more weather resistant materials.

#### 1. Objectives

- a. To provide sign criteria as a standard to be used by the Tenant for his sign submittal, and by the Director for its administration of these submittals;
- b. To provide adequate signing direction and information as to where the activity is, and what is available when one arrives on the scene;
- c. To architecturally maintain the theme of Mile Square Regional Park as it pertains to signs;
- d. To assist the individual concessionaires and tenants in identifying their activities.

#### 2. Two Types of Signing (Permanent and Temporary)

##### a. Permanent Signs (Informational and Business Operations)

##### (1) Informational - Where and What

(A) Directional Signs that may be provided by the State, County of Orange, or the City of Fountain Valley to direct the public to Mile Square Regional

Park; to identify the park; and to direct the public to the various activities within the park.

(B) Functional or Parcel Identification Signs - provided by the Tenant to identify their parcel and present the activities of their tenants.

(i) Location shall be recommended by Tenant and approved by Director.

(ii) Dimensions and color to be approved by the Director.

(C) Tenant Identification Signs - located at the place of business.

(2) Other Signs

Activity identification, such as Bicycle Trail, Parking, No Parking, One Way, Pedestrian Crossing, etc., will be left to the discretion of the Director.

b. Temporary Signs

(1) Community and Public Interest Signs

(A) Example - YMCA Pancake Breakfast, Veterans Day, etc.

(B) Point of display left to the discretion of the Tenant (Parcel information directory or displayed in store window)

(2) Special Occasion

(A) Example - Grand Opening, Special Event

(i) Tenant may display a banner with the words "Grand Opening" or other appropriate words when construction is completed.

(ii) Individual tenants may participate with Grand Opening signs on display in their windows. (Signs to be professionally laid out and approved by the Director.)

(iii) Maximum time limit for this type of sign display is fourteen (14) days.

(B) For Rent or Recognition Before a Permanent Sign is Approved

(i) Signs shall be displayed on a three-legged easel or hung on a wire inside the glass line of completed space.

(ii) Sign must be professionally done.

(iii) Credit signs for Contractors/Architects and Designers

(a) Standard office or company sign may be used.

(b) Maximum size to be four (4) feet by eight (8) feet.

c. Construction Requirements and Permits

- (1) All exterior bolts, fastenings, and clips of all types to be hot-dipped galvanized iron, stainless steel, or brass.
- (2) Location of all openings for conduit in signs or building walls to be approved by architect responsible for design of building or complex.
- (3) Signs with interior lighting shall bear the U. L. label, and their installation must comply with all legal building and electrical codes.
- (4) All exterior individual letters shall be mounted at least 3/4 inch from the wall to permit proper dirt and water drainage.
- (5) All permits for the sign and its installation shall be obtained by the Tenant or his contractor.

d. Restrictions

- (1) No signs of any type other than those described in the foregoing shall be allowed to become attached to, or permanently placed within the display windows of any store, or attached to the outside walls of any store, or placed in a hanging position either parallel or perpendicular to a storefront, or free standing, without first being approved by the Director.
- (2) No flashing or animated signs.
- (3) No revolving or oscillating signs.
- (4) No exposed neon or "can-type" fluorescent signs.

e. Approval of Signs

- (1) Two copies of all sign documents being proposed shall be submitted to the office of the Director at least two weeks in advance of the next Director meeting.
- (2) The following items will be specified:
  - (A) A picture or sketch of the proposed sign
  - (B) A color designation
  - (C) Sign layout, including dimensions and size of lettering and logo
  - (D) Graphics
  - (E) Location on the building; or in the case of architectural structure, the location on the parcel
  - (F) Materials used for construction

- (3) Both copies of sign documents are to be approved by the Tenant and stamped and dated accordingly.
- (4) Any sign(s) installed without the approval of the Director will be taken down immediately upon notification of the Tenant. All expenses incurred in this sign removal will be borne by the party responsible for installation of the sign.

**EXHIBIT D-1**  
**GOLF COURSE MAINTENANCE PROGRAM**  
**AMENDMENT TO EXHIBIT D**

Tree Maintenance

This Tree Maintenance clause will ensure the Tenant will continue to be responsible for and provide necessary maintenance to the health and sustainability of trees located on and within their Premise. Such responsibility shall include, but not be limited to, for adequate tree growth, water, fertilizer and pruning of trees. The clause is amended in order to provide the following:

- A. At minimum maintain the existing number of trees on the Premise;
- B. Maintain trees in a healthy and nonhazardous condition;

If Tenant does not provide necessary maintenance for the successful growth of trees as stated above, and should the tree(s) become sick, and said sickness is due from the Tenant's lack of adequate tree maintenance, then, the Tenant shall be responsible for aiding the tree(s) back to health, which level of health shall be determined by the County. Tenant may elect to or if Tenant does not perform to aiding trees back to health, then, County can require Tenant to/can pay the fair market value of tree(s) that are deemed unhealthy due to neglect. Should Tenant not perform to this request, such non-performance can be construed as a default to the lease.

If any tree(s) die and need to be removed from the Tenant's Premise, Tenant shall be responsible for the removal and replacement of said tree(s). Replacement trees or new planting shall be, at a minimum, 15 gallon size, and species of new or replacement trees shall be approved by OC Parks.

The cost of treatment and/or removal of any tree(s) within Tenant's Premise due to invasive tree pests shall be Tenant's responsibility.



## SUMMARY OF FIRST AMENDMENT TO LEASE

### **ORIGINAL LEASE**

#### **LESSOR**

County of Orange/OC Parks

#### **TENANT**

Mile Square Golf Course, LP  
a California limited partnership

#### **PREMISES**

258.732 acres located at Mile Square Regional Park which consist of 36-hole golf course and related amenities.

#### **TERM**

July 1, 1999 – June 30, 2039 (40 years)

#### **OPTION TO EXTEND**

None

#### **USE**

##### Required:

Two 18-Hole Golf Course  
Driving Range  
Pro Shop  
Equipment Rental  
Clubhouse  
Restaurant  
Banquet Facilities to accommodate 350-400 people  
Pay Phones

##### Optional:

Vending machines--beverages and snacks  
Newspaper racks  
Pay Telephones

### **FIRST AMENDMENT**

Same

Same

173+/- acres consisting of 18-hole golf course and related amenities by the first day of the 35<sup>th</sup> month following the Effective Date of the First Amendment to Lease.

Effective Date of the First Amendment to Lease through June 30, 2039.

Option to Extend for a one (1) additional ten (10) year term if Tenant is not in default of the Lease. Tenant shall provide County written notice no later than one (1) year prior to Lease expiration, but no earlier than two (2) years prior to lease expiration.

##### Required:

One 18-Hole Golf Course  
Driving Range  
Pro Shop  
Equipment Rental  
Clubhouse  
Restaurant  
Banquet Facilities to accommodate 350-400 people.

##### Optional:

Vending machines--beverages and snacks  
Newspaper Racks  
Other uses approved by  
Director, OC Parks  
No pay telephones

## RENT

The greater of Min Ann Rent of \$3,071,357.64, or Percentage Rent of 35% of receipts for green fees, driving range, equipment rental; 15% for golf lessons,

and 6% for pro shop, food/beverage, and pay phones/newspaper racks, whichever is greater.

For the remaining term of the lease the percentage rents are as follows;

1999 – 2009: 30% of green fees, driving range, golf cart & equipment rentals.

2009 - 2019: 35% of green fees, driving range, golf cart & equipment rentals.

2019 – 2039: 40% of green fees, driving range, golf cart & equipment rentals.

## FIRST 34 MONTHS

The greater of Min. Ann. Rent of \$850,000, or Percentage Rent of 18% of Total Golf Revenue, defined as green fees, driving range and golf cart/equipment,

15% for golf lessons, 6% for pro shop and food/beverage and 5% for newspaper racks/miscellaneous for first 34 months of First Amendment, whichever is greater.

## MONTHS 35 TO 2039

Rent is the greater of Minimum Annual Rent or Percentage Rent of 22% of Total Golf Revenue, defined as green fees, driving range, and golf cart/equipment.

15% for golf lessons and 6% for pro shop and food/beverage and 5% for newspaper racks/miscellaneous, whichever is greater.

For Total Golf Revenue between \$6-\$7.5 million dollars, Percentage Rent will be 27.5% of Total Golf Revenue 15% for golf lessons; 6% for pro shop and food/beverage and 5% for newspaper racks/miscellaneous, whichever is greater.

For Total Golf Revenue greater than \$7.5 million dollars, Percentage Rent will be 35% of Total Golf Revenue; 15% for golf lessons; 6% for pro shop and food/beverage and 5% for newspaper/miscellaneous, whichever is greater.

35th month to June 2039

Business Activity	First 34 months	Total Golf Revenue \$0-\$6M	Total Golf Revenue \$6M-\$7.5M	Total Golf Revenue \$7.5M +
Green Fees	18%	22%	27.50%	35%
Driving Range	18%	22%	27.50%	35%
Golf Cart/Equipment	18%	22%	27.50%	35%
Golf Lessons	15%	15%	15%	15%

Golf Lessons/Instruction. Golf lesson gift certificate income claimed at time gift certificate is redeemed.

Golf Lesson/Instruction. Golf lesson gift certificate income claimed at time of sale of gift certificate.

## **REVISION OF RENT**

The minimum annual rent shall be adjusted on the 10<sup>th</sup> anniversary of the effective date and every 5 years thereafter to the greater of 1) 70% of the average annual rent for prior 3 years, or 2) in proportion to changes in the Consumer Price Index.

Beginning six (6) years from the Effective Date and every five (5) years thereafter, minimum annual rent to be adjusted to 70% of the average rent paid in the preceding Three (3) years.

## **DEFINITION OF GROSS RECEIPTS**

The sale price of all goods, wares, merchandise, and products sold from premise including all sums deposited into any coin-operated pay telephones

Deleted from Clause 9.E1, pay telephone and gross receipts.

## **INITIAL CONSTRUCTION**

Tenant shall design, construct and install the following:

1. Renovate existing 18-hole course
2. Develop more challenging 18-hole course
3. Renovate existing clubhouse with banquet facility for 350-400 people
4. Other renovations specified in Clause 22

Tenant shall reconfigure 36-hole course to 18-hole course no later than the final day in the 34<sup>th</sup> month of the Effective Date.

Conceptual plans submitted to the Director of OC Parks no later than the end of the seventh month from Effective Date of this First Amendment to Lease

## **MAINTENANCE OBLIGATION**

Tenant to maintain the Premises in a first class condition and repair making such replacements as necessary.

Add tree maintenance removal and replacement to Tenant's Maintenance responsibilities.

## **INTERIM MODERNIZATION OF STRUCTURES**

Tenant is required to implement a major renovation and modernization between the 20<sup>th</sup> and 25<sup>th</sup> year of this lease and must be to the satisfaction of the Director of OC Parks. Tenant agrees to establish a Capital Replacement Fund for capital renovations.

Tenant to implement a major renovation and modernization program, identified in Exhibit C1, including parking lot and must be completed within the first day of the sixtieth (60) month following the Effective Date of the First Amendment to Lease and to the satisfaction of the Director of OC Parks.

Tenant agrees to establish a Capital Replacement Fund and submit annual accounting of said fund simultaneously with its submission of its annual financial

statement filings. Tenant shall also report on its monthly gross receipts form any expenditure from the Capital Replacement Fund during that month money was used for renovation & modernization of the Premises as per the modernization clause.

Tenant agrees the minimum cost of renovation and modernization required herein, shall be \$1,000,000.

## INSURANCE

Tenant shall maintain insurance during the term of the Lease in the following amounts:

<u>Coverage</u>	<u>Minimum Limits</u>
Comprehensive General Liability incl. broad form property damage	\$1,000,000
Automobile Liability	\$1,000,000
Fire and Extended Coverage	90% of replacement cost
Workers Compensation	Statutory
Other requirements:	
<ul style="list-style-type: none"><li>• 30 day cancellation notice</li><li>• County to be named as additional insured</li><li>• County to be loss payee</li><li>• Waiver of Subrogation</li></ul>	

Replaced existing insurance language with new, revised insurance language from CEO/Risk Management.

## LESSOR'S OPTION TO PURCHASE LEASEHOLD

During the last five years of the lease term, LESSOR reserves the right to purchase TENANT's leasehold Estate at the Option Price.

Prior to the last five years of the lease term, or last five years of the Option period, COUNTY may offer to purchase TENANT's leasehold estate at the Option Price.

## NOTICES

<u>County</u> County of Orange PFRD Real Property/Acquisitions 300 N. Flower Street Santa Ana, CA 92702	<u>Tenant</u> Mile Square Golf Course 10401 Warner Avenue Fountain Valley, CA 92708
--	--

County  
County of Orange  
OC Parks  
13042 Old Myford Road  
Irvine, CA 92602

and

County of Orange  
PFRD  
Harbors, Beaches & Parks  
300 N. Flower Street  
P.O. Box 4048  
Santa Ana, CA 92702

With a copy to:  
County Executive Office/Real Estate  
Attn: Chief Real Estate Officer  
333 West Santa Ana Blvd. 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

Tenant  
Mile Square Golf Course  
10401 Warner Avenue  
Fountain Valley, CA 92708

## INDEMNIFICATION

County Standard

County Standard, plus language below:  
TENANT hereby releases and waives all claims and recourse against COUNTY including the right of contribution for injury to or death of any person

TENANT hereby agrees to indemnify, hold harmless, protect and defend COUNTY, its officials, officers, agents and employees, with counsel approved in writing by COUNTY), and hold harmless, COUNTY, its officers, agents, employees and contractors against any and all claims, loss, demands, damages, cost, expenses or liability out of the operation or maintenance of the property.

## HOURS OF OPERATION

Tenant agrees to maintain moderate-priced green fees comparable to other concessionaire operated public golf courses.

Tenant agrees to maintain green fees comparable to other concessionaire operated public golf courses.

Tenant shall conduct business from the Premise and keep the Premise open during reasonable and normal hours, unless business of Tenant is temporarily discontinued on account of an event of casualty, condemnation, strike, lockout or similar causes beyond the reasonable control of Tenant.

## CONDITION OF PREMISES

Tenant shall re-deliver possession of said Premises In substantially the same condition that existed prior to Tenant's entry thereon, with reasonable wear and tear excepted.

Tenant to deliver Premises in serviceable condition relative to improvements required by the Lease agreement, reasonable wear and tear excepted.

Tenant agrees to indemnify County with Counsel. Prior to returning the property to County, Tenant to disclose all known defects on returned property.

## **ATTACHMENTS**

- I. General Conditions
- II. Exhibit A – Legal Description
- III. Exhibit B – Parcel Map
- IV. Exhibit C – Design Criteria
- V. Exhibit D – Golf Course Maintenance Program

- Exhibit A-1 - Revised Legal Description
- Exhibit B-1 - Revised Parcel Map
- Exhibit C-1 – Revised Design Criteria
- Exhibit D-1 – Revised Golf Course  
Maintenance Program  
(tree maintenance)



PR37A-152  
Mile Square Regional Park

**LEASE  
(Mile Square Golf Course)**

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1 PR37A-152  
2 Mile Square Regional Park

3  
4  
5 LEASE

6  
7 THIS LEASE is made June 18, 1999, by and between County of Orange, hereinafter referred  
8 to as "LESSOR," and Mile Square Golf Course, a California limited partnership, hereinafter referred to as  
9 "TENANT," without regard to number and gender.

10 RECITALS

- 11 A. WHEREAS, LESSOR is owner of certain real property in the City of Fountain Valley, commonly known as  
12 Mile Square Regional Park; and  
13 B. WHEREAS, on April 9, 1969, a portion of said real property was leased ("Original Lease") to TENANT by  
14 LESSOR for development and operation of a 18-hole golf course facility, commonly known as the Mile  
15 Square Golf Course; and  
16 C. WHEREAS, the Original Lease expired April 17, 1997 and was superseded by the Interim Lease dated  
17 December 9, 1997; and  
18 D. WHEREAS, LESSOR desires to redevelop and expand the Mile Square Golf Course facility to include an  
19 additional 18-hole golf course in that portion of Mile Square Regional Park commonly referred to as the  
20 center "Triangle;" and  
21 E. WHEREAS, under the Option Agreement dated December 9, 1997 LESSOR granted TENANT an option to  
22 redevelop and expand the Mile Square Golf facility; and  
23 F. WHEREAS, TENANT is willing to redevelop and expand the golf facilities at Mile Square Regional Park  
24 and undertake the obligations of TENANT contemplated in this Lease.

25 NOW, THEREFORE, in consideration of the above, LESSOR and TENANT agree as follows:

26 1. DEFINITIONS

27 The following words in this Lease have the significance attached to them in this clause unless otherwise apparent  
28 from context:

"Auditor-Controller" means the Auditor-Controller, County of Orange, or designee, or upon written notice to  
TENANT, such other person or entity as shall be designated by the Board of Supervisors.

"Board of Supervisors" means the Board of Supervisors of the County of Orange, a political subdivision of the  
State of California.

"Director" means the Director, Public Facilities & Resources Department, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

"Director of Internal Audit" means the Director of Internal Audit, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

## 2. PREMISES (PMA3.1 S)

LESSOR leases to TENANT that certain property hereinafter referred to as "Premises," described in "Exhibit A" and shown on "Exhibit B," which exhibits are attached hereto and by reference made a part hereof.

## 3. TERMINATION OF PRIOR AGREEMENTS (PMA4.1 S)

It is mutually agreed that this Lease shall terminate and supersede any prior leases or agreements, including any amendments thereto, between the parties hereto covering all or any portion of the Premises, except Board of Supervisors Minute Order dated January 3, 1978, hereinafter incorporated into this Lease by reference.

## 4. LIMITATION OF THE LEASEHOLD (PMA5.1 S)

This Lease and the rights and privileges granted TENANT in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including the quitclaim deed dated March 9, 1973 from the United States of America to the County of Orange, hereinafter incorporated into this Lease by reference. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to TENANT of rights in the Premises which exceed those owned by LESSOR, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or LESSOR's interest therein. TENANT acknowledges that TENANT has conducted a complete and adequate investigation of the Premises and that TENANT has accepted the Premises in its "as is" condition.

The LESSOR hereby delivers and TENANT accepts this Lease for the use of the Premises herein described, subject to the terms and conditions contained herein. The purpose of this Lease is that the property utilized hereunder shall be used and maintained for the public purpose for which it was conveyed in perpetuity. As such, the public shall be authorized the use of, ingress and egress across all of the Premises, subject to reasonable restrictions and conditions contained herein and otherwise provided for under this agreement.

## 5. REQUIRED AND OPTIONAL SERVICES AND USES (PMB1.3 S)

A. Required Services and Uses. LESSOR's primary purpose for entering into this Lease is to promote the operation and maintenance of a thirty-six-hole golf course facility. In furtherance of that purpose, TENANT shall, during the entire Lease term, maintain and operate:

- (1) Two 18-Hole Golf Courses
- (2) Driving Range
- (3) Pro Shop
- (4) Equipment Rental (e.g. carts and clubs)
- (5) Clubhouse
- (6) Restaurant (with banquet facilities to accommodate 350 to 400 people)
- (7) Pay Telephones

B. Optional Services and Uses. Subject to the prior written approval of Director, TENANT is granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein. Said optional services may include but are not limited to the following:

- (1) Vending Machines for Beverages and Snacks
- (2) Newspaper Racks

C. Restricted Use. The above-listed services and uses, both required and optional, shall be the only services and uses permitted. TENANT agrees not to use the Premises for any other purpose or engage in or permit any other business activity within or from the Premises.

NO TOBACCO PRODUCTS MAY BE SOLD ON THE PREMISES. SMOKING IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

#### 6. TERM (PMB2.1 S)

The term of this Lease shall be forty (40) years, commencing the first day of the first full calendar month following the date of execution of this Lease by LESSOR.

#### 7. RENT (PMC12 N)

A. Minimum Annual Rent. The minimum annual rent shall be as follows:

(1) Construction Period. Commencing on the effective date of this Lease and ending on the day prior to the commencement date of the Operation Period, as defined below, the minimum annual rent shall be One Million Dollars (\$1,000,000).

(2) Operation Period. The minimum annual rent for the Operation Period shall be as follows:

First Year of the Operation Period	\$1,800,000
Second Year of the Operation Period	\$1,850,000
Third Year of the Operation Period	\$1,900,000
Fourth Year of the Operation Period	\$1,950,000
Fifth Year of the Operation Period	\$2,000,000
Sixth Year of the Operation Period	\$2,050,000
Seventh Year of the Operation Period	\$2,100,000
and thereafter subject to revision	

For the phase-in period of the Operation Period, the posted greens fees for the existing Mile Square Golf Course on the effective date of this Lease of \$26 weekdays and \$35 weekends, hereinafter referred to as the "Base Fees," shall not be adjusted cumulatively by more than five percent (5%) annually from the effective date of this Lease.

In the event the posted greens fees for the existing Mile Square Golf Course exceed the maximum allowable Base Fees, as adjusted, the minimum annual rent shall automatically increase to Two Million One Hundred Thousand Dollars (\$2,100,000), retroactive to the beginning of the Operation Period. On the anniversary of the effective date of this Lease for each year of the phase-in period of the Operation Period, TENANT shall submit to LESSOR a schedule of the then current posted greens fees for the existing Mile Square Golf Course and the calculations to determine whether or not the then current greens fees are less than, equal to or more than the maximum allowable Base Fees, as adjusted. In the event the then current posted greens fees exceed the maximum allowable Base Fees and TENANT is obligated to pay retroactive minimum annual rent, TENANT shall pay to LESSOR the retroactive rent, if any, within thirty (30) days.

The commencement date of the Operation Period shall be the earlier of (a) or (b):

(a) The first day of the first full month following the date both 18-hole golf courses are fully built or renovated, as the case may be, and are open to the public; or

(b) The third anniversary of the effective date of this Lease.



Should the commencement date of the Operation Period commence during an accounting year or should the Lease be terminated during an accounting year, the applicable minimum annual rent shall be prorated.

On the tenth (10th) anniversary of the effective date of this Lease, and every five (5) years thereafter, the minimum annual rent shall be automatically adjusted in accordance with the provisions of the Clause entitled REVISION OF RENT.

B. Percentage Rent. Commencing with the effective date of this Lease, percentage rent for the Premises shall be calculated using the following percentages of gross receipts from business operations conducted on or from the Premises in accordance with the following schedule:

<u>Business Activities/ Service or Use</u>	<u>Percentage Rents and Effective Dates</u>		
	<u>First Ten Years</u>	<u>Next Ten Years</u>	<u>Thereafter</u>
Greens Fees	30%	35%	40%
Driving Range	30%	35%	40%
Golf Cart & Equipment Rentals	30%	35%	40%
Golf Lessons & Instructions	15%	15%	15%
Pro Shop Sales	6%	6%	6%
Food/Beverage	6%	6%	6%
Pay Telephones/Newspaper Racks	6%	6%	6%
Charity Golf Tournaments (limited to two events per year)	0%	0%	0%

Percentage rents for approved optional services and uses other than those listed above shall be determined by the Director in accordance with the above schedule.

C. Annual Rent. TENANT shall pay to LESSOR for each accounting year either the minimum annual rent or the percentage rent whichever is greater.

D. Payment of Rent. Rent payments shall be made in accordance with the provisions of the Clause entitled RENT PAYMENT PROCEDURE.

#### 8. REVISION OF RENT (PMC4.5 S)

On the tenth (10th) anniversary of the effective date of this Lease, and every five (5) years thereafter, the minimum annual rent shall be automatically adjusted to the greater of the following:

(1) Seventy percent (70%) of the average (mean) annual rent paid by TENANT to LESSOR for the preceding three (3) years, or

(2) The base minimum annual rent of Two Million One Hundred Thousand Dollars (\$2,100,000) adjusted in proportion to changes in the Consumer Price Index for Los Angeles-Anaheim-Riverside (All Urban Consumers-All Items) promulgated by the Bureau of Labor Statistics of the U. S. Department of Labor. This automatic adjustment shall be calculated by means of the following formula:

$$A = \$2,100,000 \times \frac{B}{C}$$

1 A = Annual Rent

2 B = Monthly index for the fourth month prior to the month in which each rental rate  
is to become effective

3 C = Monthly index for the month in which the Lease becomes effective

4 Notwithstanding the foregoing, in no event shall the minimum annual rent be reduced by reason of any such  
adjustment. In the event that the Consumer Price Index is not issued or published for the period for which such  
5 minimum annual rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics  
of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by  
6 any other branch or department of the U.S. Government shall be used and if none is so published, then another  
index generally recognized and authoritative shall be substituted by LESSOR.

7 9. DEFINITION OF GROSS RECEIPTS (PMC5.2 S)

8 As used in this Clause, the term "TENANT" shall include TENANT, TENANT's agents, sublessee  
9 concessionaires, or licensees, or any person acting under contract with TENANT. The term "gross receipts" upon  
which percentage rents for this Lease shall include:

10 A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by TENANT,  
11 whether for cash or credit and whether payment is actually made or not, whether delivery of the items sold is  
12 made from the Premises and whether title to such items is transferred;

13 B. The charges made by TENANT for the sale or rendition on or from the Premises of services of any nature  
14 or kind whatsoever, whether for cash or credit, whether payment is actually made or not and whether the  
services are actually performed or not;

15 C. All admission, entry, rental, and other fees of any nature or kind charged by TENANT (including but not  
16 limited to deposits accepted by TENANT);

17 D. TENANT shall be excused from paying rent on any amount received on a non-profit basis in conjunction  
with the conducting of golf tournaments and events for the benefit of non-profit charitable organizations  
18 approved in writing in advance, by LESSOR. Any revenue retained by TENANT in excess of TENANT's  
tournament/event expenses plus contribution to such non-profit charitable organization shall be subject to  
19 payment of rent by TENANT. In promotional materials for such charitable golf tournaments and events,  
TENANT shall acknowledge LESSOR, if requested by LESSOR.

20 E. All sums deposited into any coin-operated vending machine or other device except pay telephones and  
21 newspaper racks maintained on the Premises, regardless of the ownership of the machine or device, or  
whether such sums are removed and counted by TENANT or others, and regardless of what percentage  
22 thereof TENANT is entitled to receive.

23 (1) Pay telephones gross receipts shall be determined as follows:

24 a. If telephones are owned by TENANT, gross receipts shall be the gross amount deposited or  
25 charged for use of the telephones.

26 b. If telephones are owned and operated by a third party, gross receipts shall be the commission or  
27 payment received by TENANT.

(2) For newspaper racks gross receipts shall be the commission or payment received by TENANT from racks owned and operated by a third party.

F. Gross receipts for golf lessons by PGA golf pros affiliated with TENANT, whereby TENANT does not receive or retain any revenue, are hereby excluded from gross receipts for percentage rent purposes.

G. Gratuities/tips accepted on behalf of employees or charged by TENANT for the benefit of employees and paid to employees are hereby excluded from gross receipts.

Subject to the paragraph below, the term "gross receipts" also includes the fair rental value of facilities used by TENANT or its employees for purposes other than the business purposes for which the Premises are leased and the value of all consideration, including consideration other than cash, received by TENANT or its employees in exchange for the items sold or services rendered.

Gross receipts shall not include rounds of golf by TENANT or its representatives for purposes of evaluating playing conditions provided the public is not precluded or unduly delayed from golf play.

Under the Clause entitled REQUIRED AND OPTIONAL SERVICES, TENANT has been granted the option to provide certain additional services and uses subject to further approval. The term "gross receipts" as it applies to these business operations shall be determined by the Director at the time approval is granted.

Gross receipts shall exclude all sales and excise taxes payable by TENANT to federal, state, county or municipal governments as a direct result of operations under this Lease. Refunds for goods returned and deposits shall be deducted from current gross receipts upon return. Bad debt losses shall not be deducted from gross receipts.

#### 10. RENT PAYMENT PROCEDURE (PMC6.1 S)

A. Payment of Rent. On or before the twentieth (20th) day of each month, TENANT shall deliver to Auditor-Controller a correct statement of all applicable gross receipts for that portion of the accounting year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or TENANT's responsible agent under penalty of perjury, and shall be in the form prescribed by Auditor-Controller. Each statement shall indicate:

- (1) One-twelfth of the minimum annual rent payment;
- (2) The total gross receipts for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental is established. A breakdown of the gross receipts of each business conducted on the Premises must be attached to each statement where a reported business category is comprised of more than one business operation;
- (3) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
- (4) The total rent previously paid by TENANT for the accounting year within which the preceding month falls; and
- (5) The rent due for the preceding month.

Concurrently with the rendering of each monthly statement, TENANT shall pay to LESSOR the greater of the following two amounts:

(a) The total percentage rent computed for that portion of the accounting year ending with and including the last day of the preceding month [Item (3), above] less total rents previously paid for the accounting year [Item (4), above], or

(b) One-twelfth of the minimum annual rent, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rents previously paid for the accounting year [Item (4), above].

B. Place of Payment and Filing. Rental payments shall be delivered to, and statements required by this Clause and the Clause entitled RECORDS AND ACCOUNTS shall be filed with the County of Orange, Office of the Auditor-Controller, P. O. Box 567 (12 Civic Center Plaza), Santa Ana, California 92702. The designated place of payment and filing may be changed at any time by LESSOR upon ten (10) days written notice to TENANT. Rent payments may be made by check made payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail.

C. All rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by TENANT or receipt by LESSOR of a lesser amount than the rent due shall be deemed to be other than on account of the rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and LESSOR shall accept such check or payment without prejudice to LESSOR's right to recover the balance of said rent or pursue any other remedy in this Lease.

#### 11. CHARGE FOR LATE PAYMENT (PMC7.1 S)

TENANT hereby acknowledges that the late payment of rent or any other sums due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent as specified in the Clause entitled RENT or of any other sum due LESSOR is not received by LESSOR by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus One Hundred Dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to LESSOR. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and LESSOR hereby agree that such late charges represent a fair and reasonable estimate of the costs that LESSOR will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by LESSOR shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent LESSOR from exercising any of the other rights and remedies granted hereunder.

#### 12. RECORDS AND ACCOUNTS (PMC8.1 S)

A. Records. TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. All copies of voided documents should be retained, along with the reasons for voiding.

1 Except as otherwise provided herein, all retail sales and charges shall be recorded by means of cash registers  
 2 or other comparable devices which display to the customer the amount of the transaction and automatically  
 3 issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction  
 4 records, or with counters which are not resettable and which record transaction numbers and sales details.  
 5 Totals registered shall be read and recorded by TENANT at the beginning and end of each business day.  
 6 In the event of admission charges or rentals, TENANT shall issue serially numbered tickets for each such  
 7 admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

8 All retail sales and charges may be recorded by a system other than cash registers or other comparable  
 9 devices provided said system is approved by Auditor-Controller.

10 B. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year  
 11 may be established by TENANT, provided TENANT notifies Auditor-Controller in writing of the accounting  
 12 year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-  
 13 Controller has objected to TENANT's selection in writing within sixty (60) days of TENANT's written  
 14 notification.

15 In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the  
 16 accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the  
 17 Lease.

18 Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease  
 19 commencement not be the same, shall be accounted for as if it were a complete accounting year.

20 Once an accounting year is established, it shall be continued through the term of the Lease unless Auditor-  
 21 Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve  
 22 a change in accounting years in the event of undue hardship being placed on either the TENANT or LESSOR,  
 23 and not because of mere convenience or inconvenience.

24 C. Financial Statements. Within ninety (90) days after the end of each accounting year, TENANT shall at its  
 25 own expense submit to Auditor-Controller a balance sheet and income statement prepared by a Certified  
 26 Public Accountant who is a member of AICPA and the California Society of CPAs, reflecting business  
 27 transacted on or from the Premises during the preceding accounting year. The Certified Public Accountant  
 28 must attest that the balance sheet and income statement submitted are an accurate representation of  
 TENANT's records as reported to the United States of America for income tax purposes. At the same time,  
 TENANT shall submit to Auditor-Controller a statement certified as to accuracy by a Public Accountant who  
 is a member of AICPA and the California Society of CPAs, wherein the total gross receipts for the accounting  
 year are classified according to the categories of business established for percentage rent and listed in the  
 Clause entitled RENT and for any other business conducted on or from the Premises. TENANT shall provide  
 LESSOR with copies of any Certified Public Accountant's (CPA) management letters prepared in conjunction  
 with any audit or review of TENANT's operations from the Premises. Copies of management letters shall be  
 provided directly to LESSOR by the CPA at the same time TENANT's copy is provided to TENANT.

TENANT acknowledges its understanding that any and all of the Financial Statements submitted to the  
 LESSOR pursuant to this Lease become Public Records and are subject to public inspection pursuant to §§  
 6250 et seq. of the California Government Code.

All TENANT's books of account and records and supporting source documents related to this Lease or to  
 business operations conducted within or from the Premises shall be kept and made available at one location  
 within the limits of the County of Orange. LESSOR shall, through its duly authorized agents or

representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. Said books and records shall be retained by TENANT for a period no less than five years.

Director of Internal Audit, upon request of TENANT and at said Director of Internal Audit's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided TENANT shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the Director of Internal Audit to send a representative to audit said books and records. Said right shall not be exercised by Internal Audit Department more than once each accounting year.

The full cost of said audit, as determined by Director of Internal Audit, shall be borne by TENANT if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by said audit;
- (2) TENANT has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section A "Records" above. The adequacy of records shall be determined at the sole discretion of Director of Internal Audit.

Otherwise, LESSOR shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of Auditor-Controller, TENANT shall promptly provide, at TENANT's expense, necessary data to enable LESSOR to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to TENANT's use of the Premises. Such data shall include, if required, a detailed breakdown of TENANT's receipts and expenses.

In addition to any other remedies available to LESSOR at law or in equity or under this Lease, including, but not limited to, the right to declare TENANT to be in default under this Lease pursuant to Clause 16 of the General Conditions attached to the Lease, in the event the TENANT fails to accurately and completely maintain and keep books, records, and accounts from the Premises and/or source documents relating thereto, or to make the same available to LESSOR for examination and audit, or to record accurately and completely sales and/or to maintain accurately and completely registers to record sales, or to provide accurate and complete financial statements and other information to LESSOR regarding gross sales as required by this Lease, LESSOR, at LESSOR's option, may:

(I) Perform such examinations, audits, and/or investigations itself or through agents or employees as LESSOR and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by LESSOR in connection therewith shall be promptly reimbursed to LESSOR by TENANT upon demand.

(II) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Premises, and, at LESSOR's option, maintain personnel on the Premises to observe and/or record such sales during TENANT's business hours, or from time to time, all at TENANT's sole cost and expense and, in such event, TENANT shall promptly reimburse LESSOR for any and all costs incurred by LESSOR in connection therewith; and/or

(III) Require that TENANT pay percentage rents based on LESSOR's best good faith estimate of TENANT's gross receipts from business operations conducted on or from the premises and any such determination made by LESSOR shall be conclusive and binding upon TENANT.

The above costs payable by TENANT shall include reimbursement to LESSOR of LESSOR-provided services at such rates as LESSOR may from time to time, in good faith, establish for such services. In the case of services provided by LESSOR's employees, such rates shall be sufficient to reimburse LESSOR for employees' salaries, including employee taxes and benefits and LESSOR's overhead or, at LESSOR's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by LESSOR, if engaged by LESSOR to perform such services.

### 13. SECURITY DEPOSIT (PMC9.2 S)

During the term of this Lease and subject to the provisions for adjustment as provided hereinafter, TENANT shall provide LESSOR with a security deposit in the sum of Fifty Thousand Dollars (\$50,000). Concurrently with each revision of the rent pursuant to the Clause entitled REVISION OF RENT, the security deposit to be provided by TENANT shall be adjusted in proportion to changes in the Consumer Price Index for Los Angeles-Anaheim-Riverside (All Urban Consumers-All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor, or any replacement index published thereto. Each adjustment shall be calculated by the following formula:

$$X = \$50,000 \times \frac{A}{B}$$

X = Adjusted security deposit

A = Monthly index for the fourth month prior to the month in which the adjustment is to become effective

B = Monthly index for the month in which the Lease becomes effective

In no event shall the amount of the security deposit be reduced. All increased amounts in the security deposit that result from the above adjustment shall be due and payable to County of Orange within ten (10) days of receipt of a notice of security deposit adjustment from Director.

In the event that the Consumer Price Index is not issued or published for the period for which such adjustment is to be computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by another branch or department of the U.S. Government selected by LESSOR shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by LESSOR.

The security deposit shall take one of the forms set out below and shall guarantee TENANT's full and faithful performance of all the terms, covenants, and conditions of this Lease:

A. Cash

B.. The assignment to County of Orange of a savings deposit held in a financial institution in Orange County acceptable to the Director. At the minimum, such assignment shall be evidenced by the delivery to the Director of the original passbook reflecting said savings deposit and a written assignment of said deposit to County of Orange in a form approved by the Director.



C. A Time Certificate of Deposit from a financial institution in Orange County wherein the principal sum is made payable to County of Orange or order. Both the financial institution and the form of the certificate must be approved by the Director.

D. An irrevocable letter of credit from one or more financial institutions, subject to regulation by the state or federal government. Both the financial institution(s) and the form of the instrument(s) must be approved by the Director.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the Director for correcting any default or breach of this Lease by TENANT, its successors or assigns, or for payment of expenses incurred by LESSOR as a result of the failure of TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease. At any time that Director deems appropriate to ensure the availability of the security deposit, Director shall the right to convert any savings deposit, time certificate of deposit, or instrument of credit to cash without recourse to TENANT.

Should TENANT elect to assign a savings deposit, provide a Time Certificate of Deposit or provide an instrument of credit to fulfill the security deposit requirements of this Lease, said assignment, certificate, or instrument shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to County of Orange or order upon demand by the Director. The agreement entered into by TENANT with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above may allow the payment to TENANT or order of interest accruing on account of said deposit.

In the event the Director withdraws any or all of the security deposit as provided herein, TENANT shall, within ten (10) days of any withdrawal by the Director, replenish the security deposit to maintain it at amounts herein required. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

The security deposit shall be rebated, reassigned, released, or endorsed by the Director to TENANT or order, as applicable, at the end of the Lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

#### 14. INITIAL CONSTRUCTION BY TENANT (PMDI.1 N)

A. Minimum Construction and Timing. TENANT shall cause to be designed, constructed, and installed within the Premises, at no cost to LESSOR, appropriate improvements to adequately accommodate those services and uses, both required and any other optional services and uses approved pursuant to the Clause entitled REQUIRED AND OPTIONAL SERVICES AND USES. The improvements, at a minimum, shall include:

- (1) Renovating the existing 18-hole course.
- (2) Developing a new, more challenging 18-hole golf course in the Triangle.
- (3) Renovating and expanding the existing clubhouse (with banquet facilities to accommodate groups of 350 - 400).

The preliminary plans prepared by TENANT and approved by Director during the option period preceding execution of this Lease shall be a master plan development of the Premises, and the construction contract documents prepared by TENANT and approved by Director during the same period shall be the plans, specifications, and time schedule for constructing improvements. Development proposed by TENANT in said master plan may be scheduled in increments if approved by Director.

Should TENANT choose to develop the Premises in approved increments, all parking and landscaping required to fulfill TENANT's ultimate development plan shall be constructed or installed during the initial construction increment, subject to minor modifications approved in writing by Director. Adequate provisions, acceptable to the Director shall be made for maintenance of undeveloped portions of the Premises.

B. Development Plan and Construction Standards. Development of the Premises shall be conducted in a good and workmanlike manner. All design and construction shall conform with the construction and architectural standards contained in Exhibit C (Design Criteria; Minimum Specifications and Construction Approval Process for Mile Square Golf Course), attached hereto, and shall meet all other requirements contained in this Lease.

C. Minimum Cost of Improvements. The minimum cost of improvements shall be Seven Million Five Hundred Thousand Dollars (\$7,500,000). The term "cost of improvements" shall mean direct construction costs, including costs paid to contractors, architects, engineers, laborers, and suppliers but not indirect costs such as financing costs, administrative and overhead expenses, bond premiums, permit fees, and developer fees paid to TENANT or its affiliates.

D. Existing Improvements. TENANT shall be responsible for the demolition and removal, if necessary, of all existing improvements on the Premises.

#### 15. CONSTRUCTION AND/OR ALTERATION BY TENANT (PMD2.1 S)

A. Lessor's Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without prior written consent of LESSOR. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by LESSOR as a condition to granting such consent, shall be conditions hereof as though originally stated herein. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by TENANT.

B. Strict Compliance with Plans and Specifications. All improvements constructed by TENANT within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by Director.

#### 16. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION (PMD3.2 S)

Prior to commencement of construction of approved facilities, or any phase thereof, within the Premises by TENANT, TENANT shall furnish to LESSOR evidence that assures LESSOR that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

A. Performance and labor and material bonds issued to LESSOR as obligee.

B. Irrevocable letter of credit issued to LESSOR from a financial institution to be in effect until LESSOR acknowledges satisfactory completion of construction.

C. Cash.

D. Any combination of the above.

All bonds must be issued by a company qualified to do business in the State of California and acceptable to the Director. All bonds shall be in a form acceptable to the Director and shall insure faithful and full observance and performance by TENANT of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises.

#### 17. MECHANICS LIENS OR STOP-NOTICES (PMD4.1 S)

TENANT shall at all times indemnify and save LESSOR harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, TENANT shall either:

(1) Record a valid Release of Lien, or

(2) Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should TENANT fail to accomplish either of the two optional actions above within thirty (30) days after the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

#### 18. "AS-BUILT" PLANS AND CONSTRUCTION COSTS (PMD5.1 S)

Within sixty (60) days following completion of any substantial improvement within the Premises, TENANT shall furnish Director a complete set of reproducibles and two sets of prints of "As-Built" plans. In addition, TENANT shall furnish Director an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by TENANT or its responsible agent under penalty of perjury. TENANT must obtain Director approval of "As-Built" plans, and the form and content of the itemized statement.

#### 19. OWNERSHIP OF IMPROVEMENTS (PMD6.2 S)

All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at LESSOR's option shall become the property of LESSOR at the expiration of this Lease or upon earlier termination hereof. LESSOR retains the right to require TENANT, at TENANT's cost, to remove any or all TENANT improvements located within the Premises at the expiration or termination hereof.

#### 20. UTILITIES (PME1.1 S)

TENANT shall construct, or cause to be constructed, all utility facilities within the Premises. TENANT shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the Premises.

#### 21. MAINTENANCE OBLIGATIONS (PME2.1 S)

TENANT shall, to the satisfaction of Director, keep and maintain the Premises and all improvements of any kind which may be erected, installed, or made thereon in a first class condition and repair making such replacements as necessary or appropriate. At a minimum, the Premises and all such improvements shall be maintained in accordance with Exhibit D (Golf Course Maintenance Program), attached hereto. It shall be TENANT's

responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair. TENANT expressly agrees to maintain the Premises in a safe, clean, wholesome, sanitary condition, to the complete satisfaction of Director and in compliance with all applicable laws. TENANT further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter. The Director shall have the right to enter upon and inspect the Premises at anytime for cleanliness and safety. TENANT shall designate in writing to Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

If TENANT fails to maintain or make repairs or replacements as required herein, Director shall notify TENANT in writing of said failure. Should TENANT fail to correct the situation within thirty (30) days after receipt of written notice, Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment, and an administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by TENANT within ten (10) days of receipt of a statement of said cost from Director. Director may, at his option, choose other remedies available herein, or by law.

## 22. INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES (PSB2.1 N)

TENANT and LESSOR hereby understand and agree that in addition to the ongoing maintenance and repair required in this Lease, the following renovation and modernization program shall be a requirement of TENANT, or anyone holding by, under, or through TENANT.

A major renovation and modernization program, to bring the exterior and interior of all structures including the parking lot on the Premises up to competitive quality and prevailing standards for the uses authorized, must be scheduled to occur and shall be completed between the twentieth (20th) and the twenty-fifth (25th) year of this Lease.

The renovation and modernization undertaken by TENANT at that time must satisfy the Director that the improvement(s) on the Premises will, for the balance of the Lease term, retain attractiveness as a recreational facility, remain structurally sound, and provide appropriate facilities for the uses authorized, thus assuring both satisfactory service and income.

TENANT shall retain an engineer/building inspection company approved by the Director to inspect the structures on the Premises for the purpose of providing a report (hereinafter referred to as an "Inspection Report") on the condition of the major structural components including but not limited to the roof, walls, foundation, heating, air conditioning systems, plumbing, electrical, ventilating and the parking lot.

Recommendations by the engineer/building inspection company will be made on the basis that the improvements be maintained in a commercially reasonable fashion for the remainder of the Lease term. Within thirty (30) days of the completion of the Inspection Report, TENANT shall deliver a copy of the Inspection Report to the Director. TENANT shall correct all deficiencies as identified in the Inspection Report to the satisfaction of the Director.

A minimum modernization program will include reconditioning exteriors by repainting, replacement of exterior material with like materials, reroofing and replacement of landscaping materials to original equivalent as necessary. Interior modernization will include as necessary painting; replacement of carpeting or other floor covering; replacement or refinishing of cabinets, hardware, and bath fixtures; and repair or replacement of plumbing, electrical, heating, ventilating, air-conditioning systems, as necessary. Refinishing or replacement of interior furnishings shall also be included as necessary.

1 The complete modernization plan and implementation schedule will be submitted to and approved by the Director  
2 before implementation and must be scheduled for completion no later than the end of the twenty-fifth (25th) year  
3 of this Lease.

4 The reason for the renovation and modernization provision of this agreement is to assure that a high quality  
5 facility compatible with the recreational needs of the public is maintained for the full Lease term. TENANT  
6 agrees to establish a Capital Replacement Fund ("CRF") to be used for replacement of furniture, fixtures, and  
7 equipment, and for capital repairs and renovations to improvements constructed within the Premises. Such  
8 reserves shall be required by this Lease and identified by TENANT. TENANT shall annually provide LESSOR  
9 with an itemized accounting of the reserves for replacement concurrently with submittal of its annual financial  
10 statement. The purpose of the CRF is assure a sufficient reserve to accomplish renovation and modernization and  
11 TENANT shall not seek concessions from LESSOR, financial or otherwise, as a condition for fulfilling the  
12 requirements to undertake the renovation and modernization program. All work shall be done at TENANT's  
13 expense.

### 23. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (PME4.1 S)

10 In the event of damage to or destruction of TENANT-constructed buildings, facilities, or improvements located  
11 within the Premises or in the event TENANT-constructed buildings, facilities, or improvements located within the  
12 Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and  
13 enforce such declaration, TENANT at TENANT's sole cost shall, within thirty (30) days, commence and  
14 diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and  
15 floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit  
16 full use and occupancy of the Premises for the purposes required by the Lease. Repair, replacement, or  
17 reconstruction of improvements within the Premises shall be accomplished in a manner and according to plans  
18 approved by Director. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify  
19 TENANT's obligation under this paragraph. With respect to damage or destruction to be repaired by LESSOR or  
20 which LESSOR elects to repair, TENANT waives and releases its rights under California Civil Code Sections  
21 1932 (2) and 1933 (4).

### 24. INSURANCE (PME5.1.1 S)

18 TENANT shall maintain insurance acceptable to the Director in full force and effect throughout the term of this  
19 Lease. The policy or policies of insurance maintained by TENANT shall provide the following limits and  
20 coverages.

#### 21 A. Liability Insurance

##### 22 Coverage

23 Comprehensive General Liability

##### Minimum Limits

\$5,000,000 combined single limit coverage  
including products liability

#### 24 B. Fire and Extended Coverage:

25 TENANT shall insure all TENANT-constructed  
26 buildings, facilities and improvements to at least  
27 90% of their replacement cost, using a standard form  
28 fire insurance policy containing the "extended  
coverage" endorsement.

C. Workers' Compensation and  
Employer's Liability

Statutory

Insurance shall be in force the first day of the term of this Lease.

Each liability insurance policy required by this Lease shall contain the following three clauses:

- A. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days written notice has been given to the County of Orange, Public Facilities & Resources Department/Real Property, 300 North Flower Street, P.O. Box 4048, Santa Ana, California 92702-4048. This notice shall be sent by certified mail or registered mail and shall be deemed effective the date delivered to LESSOR, as evidenced by properly validated return receipt."
- B. "County of Orange is added as an additional insured as respects operations of the named insured at or from Premises leased from the County of Orange."
- C. "It is agreed that any insurance maintained by the County of Orange will apply in excess of, and not contribute with, insurance provided by this policy."

Each property insurance policy required by this Lease shall contain Clause A above and the following two clauses:

- D. "All rights of subrogation are hereby waived against the County of Orange and the members of the Board of Supervisors and elective or appointive officers or employees, when acting within the scope of their employment or appointment."
- E. "County of Orange is named as loss payee on this property insurance policy."

TENANT agrees to deposit with the Director, at or before the effective date of this Lease, certificates of insurance necessary to satisfy the Director that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefor on deposit with the Director during the entire term of this Lease.

The Director shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Director, insurance provisions in this Lease do not provide adequate protection for LESSOR and members of the public using the Premises, the Director may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Director's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The Director shall notify TENANT in writing of changes in the insurance requirements; and if TENANT does not deposit copies of acceptable insurance policies with the Director incorporating such changes within thirty (30) days of receipt of notice, this Lease shall be in default without further notice to TENANT, and LESSOR shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the hold harmless provisions and requirements of this Lease.

1 25. ASSIGNING, SUBLETTING, AND ENCUMBERING (PME7.1 S)

2 A. General. Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, sublease amendment, or  
 3 assignment (hereinafter in this clause referred to collectively as "Encumbrance") of TENANT's interest in the  
 4 Premises, or any part or portion thereof, shall first be approved in writing by LESSOR, unless otherwise  
 5 provided herein. Failure to obtain LESSOR's required written approval of an Encumbrance will render such  
 6 Encumbrance void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee before  
 approval of the transfer, sublease, or assignment by LESSOR shall constitute a breach of this Lease. All  
 subleases shall be between TENANT and sublessee; the entry into sub-subleases is prohibited and shall  
 constitute a breach of this Lease.

7 If the TENANT hereunder is a corporation, an unincorporated association, partnership, or limited liability  
 8 company, the Encumbrance of any stock or interest in said corporation, association, partnership or limited  
 liability company in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment  
 within the meaning of this Lease.

9 Notwithstanding the above, TENANT may reorganize into a limited liability company for the purposes of  
 10 performing the obligations of this Lease. The sale, transfer or assignment of any stock or interest to a party  
 11 affiliated with TENANT for the purpose of adding new members, shareholders or partners shall not be  
 12 deemed an assignment within the meaning of this clause. However, any such assignment, conveyance and  
 transfer shall be subject to approval by the Director which approval shall not be unreasonably withheld.  
 13 TENANT shall notify Director of any such assignment, conveyance or transfer and provide all documentation  
 thereto. Any transfer of or a change in management of the limited liability company shall be deemed an  
 assignment and shall be subject to LESSOR's prior written approval.

14 Should LESSOR consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms,  
 15 covenants, or conditions of this Lease or be construed as LESSOR's consent to any further Encumbrance.  
 16 Such terms, covenant or conditions shall apply to each and every Encumbrance hereunder and shall be  
 17 severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate,  
 encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the  
 provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

18 B. Personal Information to be Supplied LESSOR. TENANT shall supply Director with the necessary  
 19 information to conduct background investigations on all persons or firms that TENANT proposes to sublet to  
 20 or assign to, or that might establish rights to enter, control, or otherwise encumber the Premises by reason of  
 agreements made by TENANT.

21 C. Conditions of LESSOR Approval

22 (1) Subleases of five (5) years or less, assignments and amendments of subleases with a remaining term  
 23 less than five (5) years, and assignment of stock:

24 a. Subleases for a period of five (5) years or less (hereinafter referred to as short-term subleases),  
 25 assignment of subleases with a remaining term of five (5) years or less, or assignment of twenty-five  
 26 percent (25%) or less of the stock or interest as hereinbefore described shall not be subject to the  
 requirement of prior approval by LESSOR. TENANT shall not, however, be precluded from  
 requesting such prior approval.

27 b. TENANT must notify LESSOR of all short-term subleases, assignment and amendment of  
 28 subleases or assignments of stock by providing Director with:



1. A copy of all documents relating thereto, and

2. A statement of all terms and conditions of said transaction, including the consideration therefor.

c. Should TENANT choose not to obtain LESSOR's approval of short-term subleases, assignment or amendments of subleases or assignment of stock, LESSOR reserves the right to disallow any unapproved short-term subleases, sublease amendments, assignment of sublease, or assignment of stock if any of the following conditions prevail:

1. TENANT, its successors or assigns, are in default in the terms of this Lease at the time of execution of the short-term sublease, sublease amendments, assignment of sublease or assignment of the stock or interest whether notice of default has or has not been given by LESSOR.

2. Sublessee or assignee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

3. Sublessee's use is in conflict with the terms of this Lease.

4. All terms, covenants, and conditions of Encumbrance, including the consideration therefor of any and every kind, have not been revealed in writing to LESSOR.

5. Additions to or alteration of existing structures, or construction of new structures by sublessee or that are required of TENANT as a result of short-term sublease, have not been approved by LESSOR and are not in compliance with all government regulations and ordinances.

6. If sublessee or assignee prove to be of undesirable character.

Director shall notify TENANT in writing of the disallowance of short-term sublease, sublease amendment, or assignment of sublease for any of the above reasons, and TENANT shall immediately proceed to remove any persons or firms from the Premises that were indicated by said notice. Failure to comply within a reasonable time on the part of TENANT shall constitute a breach of this Lease.

(2) Assignments, including assignments of subleases with a remaining term greater than five (5) years, assignment of more than twenty-five percent (25%) of the stock or interest, transfers, subleases (both long-term and short-term), sublease amendments, hypothecations, mortgages, or other Encumbrances:

a. LESSOR agrees that it will not arbitrarily withhold consent of any Encumbrance, but LESSOR may withhold consent at its sole discretion if any of the following conditions exist:

1. TENANT or any of its successors or assigns are in default in any term, covenant, or condition of this Lease, whether notice of default has or has not been given by LESSOR.

2. The prospective Encumbrancer has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

3. All the terms, covenants, and conditions of Encumbrance, including the consideration therefor of any and every kind, have not been revealed in writing to LESSOR.

4. The construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of LESSOR.

5. The processing fee required by LESSOR and set out below has not been paid to LESSOR by delivery of said fee to LESSOR.

(a) A fee of One Thousand Five Hundred Dollars (\$1,500) shall be paid to LESSOR for processing each consent to mortgage, pledge, hypothecation, or Encumbrance submitted to LESSOR as required by this Lease. This processing fee shall be deemed earned by LESSOR when paid and shall not be refundable.

(b) A fee of Two Thousand Five Hundred Dollars (\$2,500) shall be paid to LESSOR for processing each consent to assignment, transfer, or sublease submitted to LESSOR required by this Lease. This processing fee shall be deemed earned by LESSOR when paid and shall not be refundable.

If a processing fee has been paid by TENANT for another phase of same transaction, a second fee will not be charged.

The amounts specified above for processing fees shall be automatically adjusted for all consents required or requested subsequent to the second year of this Lease. Said adjustment shall be in proportion to the change in the Consumer Price Index for Los Angeles-Anaheim-Riverside, CA (All Urban Consumers-All Items) as promulgated by the Bureau of Labor Statistics of the U. S. Department of Labor, or any replacement index thereto.

Said automatic adjustment shall be calculated by means of the following formula, then rounded to the nearest ten dollar figure:

$$A = B \times \frac{C}{D}$$

Where A = adjusted processing fee

B = \$ \_\_\_\_\_ [the amount inserted in item 5a or 5b above]

C = Monthly index for the fourth month prior to the effective date of the Consent

D = Monthly index for the date this Lease was signed by LESSOR

b. If requested by TENANT, LESSOR agrees to execute its written consent to an assignment of this Lease to a trustee under a trust deed for the benefit of a lender (herein called "Beneficiary"), provided that TENANT has complied with all other provisions of this clause, upon and subject to the following covenants and conditions:

1. Said trust deed and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of LESSOR hereunder, except as herein otherwise provided.

2. In the event of any conflict between the provisions of this Lease and the provisions of any such trust deed, the provisions of this Lease shall control.

3. Upon and immediately after the recording of a trust deed affecting the Premises, TENANT at TENANT's expense, shall cause to be recorded in the office of the Recorder, County of Orange,

California, a written request, executed and acknowledged by LESSOR, for a copy of any notice of default and of any notice of sale under the trust deed provided by the statutes of the State of California relating thereto.

4. At the time of requesting consent to a trust deed, TENANT shall furnish to Director a complete copy of the trust deed and note to be secured thereby, together with the name and address of the holder thereof.

5. LESSOR agrees that it will not terminate this Lease because of a default or breach on the part of TENANT if the Beneficiary under any trust deed to which LESSOR has given its consent, within sixty (60) days after service of written notice on the Beneficiary by LESSOR of its intention to terminate this Lease for such default or breach, shall:

(a) Cure such default or breach if the same can be cured by the payment or expenditure of money required to be paid under the term of this Lease; or if such default or breach is not curable, cause trustee under the trust deed to commence and thereafter diligently pursue to completion steps and proceedings for the exercise of the power of sale under and pursuant to the trust deed in the manner provided by law; and

(b) Keep and perform all of the covenants and conditions of this Lease requiring the payment or expenditure of money by TENANT until such time as the leasehold shall be sold upon foreclosure pursuant to the trust deed or shall be released or reconveyed thereunder; provided, however, that if the Beneficiary shall fail or refuse to comply with any or all of the conditions of this paragraph, then thereupon LESSOR shall be released from the covenant of forbearance.

6. The prior written consent of LESSOR shall not be required:

(a) To a transfer of the leasehold at foreclosure sale pursuant to a trust deed or by judicial foreclosure, or

(b) To any subsequent transfer by the Beneficiary if the Beneficiary is an established bank, savings and loan association, insurance company, retirement trust fund, or other organization that has been approved by LESSOR and such Beneficiary is the purchaser at such foreclosure sale; provided that in either such event, the Beneficiary forthwith gives notice to LESSOR in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer, and the express agreement of the transferee assuming and agreeing to perform all of the obligations under this Lease, and submits to Director a copy of the document by which such transfer was made.

7. The amount of the principal indebtedness to be secured by the proposed trust deed (together with the principal balances secured by any underlying trust deeds encumbering TENANT's leasehold estate) shall not exceed actual construction costs plus normal and customary loan costs. This provision, however, shall not prohibit the addition of accrued but unpaid interest to the principal balance secured by said deed of trust or the trust deed beneficiary's advance of additional funds to protect the value of the security for its trust deed and/or to enforce its rights under its trust deed.

D. A condition for approval by LESSOR of any encumbrance of all or any part of TENANT's interest in this Lease, (including long term subleases) shall be the payment to LESSOR the following fees from the

refinance, hypothecation, sale, or assignment of TENANT's interest in the Lease; provided, such payment shall be waived if TENANT hypothecates the leasehold as security for a loan to finance the cost of the initial development planned or if the encumbrance holder obtains a transfer of the TENANT's interest at foreclosure sale pursuant to a trust deed, by judicial foreclosure, or by an assignment in lieu of foreclosure.

(1). Assignment Fee. In the event of a voluntary sale, assignment or other transfer of all or any portion of TENANT's legal, equitable or beneficial leasehold interest in this Lease or all or any substantial portion of the membership, stock or other interest in TENANT, LESSOR shall receive an assignment fee ("Assignment Fee") equal to fifty percent (50%) for lease years 1 - 10, forty percent (40%) for lease years 11 through 20, thirty percent (30%) for lease years 21 through 30, and twenty percent (20%) thereafter of the net sales proceeds of such transfer or change in ownership of leasehold interest. For purposes of this Clause D, "substantial portion of the membership, stock or other interest in TENANT" shall mean (i) if TENANT is a corporation, unincorporated association, or partnership, an aggregate amount of more than twenty-five percent (25%) of the membership, stock or other interest in TENANT is voluntarily sold, assigned or transferred over any period of twelve (12) consecutive months or (ii) if TENANT is a limited liability company, an aggregate amount of more than twenty-five percent (25%) of the senior class or classes of the membership in TENANT is voluntarily sold, assigned or transferred over any period of twelve (12) consecutive months, where "senior class" is the most senior class and any class whose equity contributions are not subject to repayment by the company.

The Assignment Fee shall be paid concurrently with consummation of the sale, assignment or transfer, or in the case of a sale of membership, stock or other interest in TENANT, concurrently with the sale, assignment or transfer that causes the aggregate amount sold, assigned or transferred in the preceding consecutive period of twelve (12) months to exceed twenty-five percent (25%). The Assignment Fee shall be waived if transfer or change in ownership of leasehold interest or membership, stock or other interest in TENANT results from the initiation of a living trust established for estate planning purposes and is not recognized as a basis for reassessment of taxes by the Orange County's Assessor's Office.

In the event transfer or change in ownership of leasehold interest or membership, stock or other interest in TENANT is made at less than fair market value in the opinion of the Director, the Assignment Fee shall then be based on fair market value. TENANT is prohibited from directly or indirectly transacting incremental sales, assignment or other transfers of leasehold interest or membership, stock or other interest in TENANT or otherwise structuring sales, assignments or other transfers for the purpose of avoiding payment of the Assignment Fee.

For purposes of this Lease, the term "net sales proceeds" shall be defined as follows:

"Net Sales Proceeds" means the gross amount of consideration received or to be received for or on account of the sale, assignment or other transfer of TENANT's leasehold interest under this Lease or membership, stock or other interest in TENANT, less the sum of (i) the actual costs or such larger amounts as LESSOR has agreed in writing represents the actual cost reasonably incurred of capital improvements to the Premises, including the initial and any subsequently constructed capital improvements and including any unexpended and retained debt financing and equity capitalization; (ii) the total of all Assignment Fees and Refinance Fees, as defined below, paid by TENANT to LESSOR in connection with prior transactions, multiplied by 2; and (iii) brokerage commissions and customary reasonable closing costs provided that the maximum aggregate amount of such commissions and costs shall not exceed the actual out-of-pocket costs to TENANT.

Example:	Sales Price	\$10,000,000
	Less:	
	Constructions Costs (i)	\$8,000,000
	Brokerage Commissions (iii)	\$600,000
	Closing Costs (iii)	\$100,000
	Net Sales Proceeds	\$1,300,000
		<u>x.50</u>
	Assignment Fee	\$650,000

(2) Refinance Fee. In the event any leasehold-secured mortgage is refinanced (for this purpose, refinancing shall include any financing subsequent to the original construction, which is secured by a mortgage on the leasehold whether or not the original construction was financed or any outstanding loan balance is being repaid as part of the transaction), TENANT shall pay a refinance fee ("Refinance Fee") equal to fifty percent (50%) of the Net Loan Proceeds, as herein defined.

For purposes of this Lease, the term "net loan proceeds" shall be defined as follows:

"Net Loan Proceeds" means the principal amount of any refinancing, plus the original principal amounts of any other outstanding loans secured by the leasehold which are not being prepaid in the refinancing transaction, less the sum of (i) the actual cost or such larger amount as LESSOR has agreed in writing represents the actual costs incurred of capital improvements to the Premises, including the initial and any subsequently constructed capital improvements and including any unexpended and retained debt financing and equity capitalization; (ii) the total of all Assignment Fees and Refinance Fees paid by TENANT in connection with prior transactions, multiplied by 2, (iii) actual out-of-pocket third party closing costs, including but not limited to loan commitment fees, finance fees, brokerage fees, charges, discounts, points, commissions or rebates; and (iv) all proceeds of the refinancing that will be used to make capital improvements to the Premises.

Example:	Loan Amount	\$10,000,000
	Less:	
	Initial Construction Costs (i)	\$8,000,000
	Loan Fees (iii)	\$200,000
	Closing Costs (iii)	\$100,000
	New Construction (iv)	\$1,000,000
	Net Loan Proceeds	\$700,000
		<u>x.50</u>
	Refinance Fee	\$350,000

For purposes of this Clause D, the term "capital improvement" shall include studies, design, planning, governmental fees for permits and approvals, construction and other standard cost items reasonably related thereto, the costs of which will be included in the itemized statement furnished following construction of such improvements pursuant to the Clause entitled AS BUILT'S PLANS AND CONSTRUCTION COSTS, but excluding any costs attributable to operation, maintenance, repair, expendable items (rolling stock, tools, equipment and fertilizer, etc.) or items with a useful life of five (5) years or less.

## 26. LESSOR'S OPTION TO PURCHASE LEASEHOLD INTEREST (N)

During the last five (5) years of the Lease term, LESSOR reserves and TENANT hereby grants to LESSOR the right to purchase TENANT's leasehold estate and improvements at the Option Price, hereinafter defined, existing on the date such option is exercised. Such option to purchase shall be exercisable by LESSOR delivering to

TENANT one hundred eighty (180) days advance written notice of its exercise of said purchase option at any time within five (5) years prior to the expiration date of the Lease term.

The Option Price for purposes of this Lease shall be calculated on the basis of the then net present value of all net operating income before debt service projected to be realized by TENANT from the Option Date, hereinafter defined, to the expiration date of the Lease Term. All rent paid by TENANT to LESSOR under this Lease during said period from the effective date to the expiration of the Lease term shall be included as an expense for the purposes of calculating said net operating income.

The Option Price, as defined, shall be determined by making the following assumptions:

(1) The net operating income shall be the same annually for the remainder of the Lease term as it is in the year of the buy out corrected by the Consumer Price Index annually, based on the average of the prior three (3) years. The Consumer Price Index shall be for the Los Angeles-Anaheim-Riverside (All Urban consumer-All Items) as promulgated by the Bureau of Labor Statistics of U.S. Department of Labor, or any replacement index thereto.

(2) The discount rate shall be the prime rate, as established for major New York banks, plus five hundred (500) basis points at the time the option is exercised.

Within one hundred eighty (180) days following the written notice to exercise this option by the provisions above the following shall be completed and upon the day of completion shall be deemed the "Option Date": (i) LESSOR shall pay the price, as so determined, to TENANT in cash, and return to TENANT all unexpended security deposits made under the Lease, and (ii) TENANT shall deliver to LESSOR all unexpended security deposits received from subtenants, concessionaires, operators and licensees. LESSOR and TENANT shall execute, acknowledge and deliver such documents and instruments as shall be necessary to assign to LESSOR and for LESSOR to assume the Lease, the leasehold estate and all rights and obligations of TENANT thereunder.

## 27. LESSOR'S FIRST REFUSAL RIGHT (PMF8.1 S)

TENANT grants to LESSOR the exclusive right at LESSOR's option to purchase TENANT's leasehold estate under this Lease upon the same terms and at the same price as any bona fide offer for purchase of said leasehold estate and improvements received by TENANT from any person or entity not affiliated with TENANT and which offer to purchase TENANT desires to accept. Upon receipt of a bona fide offer which is acceptable to TENANT and each time any such offer is received, TENANT shall notify LESSOR in writing of the full details of such offer, including price, terms, length of escrow, etc. and deliver to LESSOR copies of any and all title reports, plans and specifications, rent rolls, subleases and any other documentation relating to TENANT's leasehold estate theretofore delivered or made available to the offeror, whereupon LESSOR shall have forty-five (45) days from receipt in which to elect to exercise LESSOR's prior right to purchase. TENANT shall cause any such offeror to separately state the purchase price for TENANT's leasehold estate under this Lease, in an equitable manner, if the offer includes additional leasehold estates or other real property.

No sale or voluntary transfer of title to said leasehold estate shall be binding on LESSOR unless and until the foregoing requirements are fully complied with. In the event that LESSOR fails to exercise their prior right to purchase as granted herein with respect to any proposed offer, TENANT may accept such offer and thereafter assign this Lease to the offeror pursuant to and in accordance with the terms and provisions of said offer, subject, however, to compliance with the provisions of the clause of this Lease entitled ASSIGNING, SUBLETTING, AND ENCUMBERING, upon all of the terms and provisions of this Lease, including without limitation the provisions of this clause which shall continue in full force and effect. Any material amendment or modification to the terms of said offer shall constitute a new offer for purposes of this clause.

1 28. HAZARDOUS MATERIALS (PMF9.1 S)

2 TENANT shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, or  
 3 used in or about the Premises. Pesticides, herbicides, fertilizers and other materials commonly used in the  
 4 operation of a golf course are acceptable for use provided such use is in compliance with all laws and government  
 5 regulatory agency requirements. If TENANT breaches the obligations stated herein, or if contamination of the  
 6 Premises by Hazardous Materials otherwise occurs for which TENANT is legally liable to LESSOR for damage  
 7 resulting therefrom, then TENANT shall indemnify, defend, and hold LESSOR harmless from any and all claims,  
 8 judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value  
 9 of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the  
 10 Premises, damages arising from any adverse impact on marketing of space in the Premises or portion of any  
 11 building of which the Premises is a part, and sums paid in settlement of claims, attorneys fees, consultant fees,  
 and expert witness fees) which arise during or after the Lease term as a result of such contamination. This  
 indemnification includes without limitation, costs incurred by LESSOR in connection with any investigation of  
 site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or legal  
 governmental entity because of Hazardous Material being present in the soil or ground water or under the  
 Premises. TENANT shall promptly take all actions at its sole cost and expense as are necessary to clean, remove,  
 and restore the Premises to its condition prior to the introduction of such Hazardous Material by TENANT,  
 provided TENANT shall first have obtained LESSOR's approval and the approval of any necessary governmental  
 entities.

12 TENANT acknowledges that LESSOR may become legally liable for the costs of complying with laws relating to  
 13 Hazardous Material which are not the responsibility of LESSOR hereunder, including the following: (i)  
 14 Hazardous Material present in the soil or ground water on the Premises of which LESSOR has no knowledge as  
 15 of the effective date; (ii) a change in laws, statutes, ordinances, and other governmental regulations which relate  
 16 to Hazardous Material which could cause any material now or hereinafter located on the Premises to be deemed  
 17 hazardous, whether known or unknown to LESSOR, or a violation of any such laws; (iii) Hazardous Material that  
 18 migrates, flows, percolates, defuses, or in any way moves on to or under the Premises after the execution and  
 19 delivery of this Lease; (iv) Hazardous Material present on or under the Premises as a result of any discharge,  
 20 dumping, or spilling (whether accidental or otherwise) on the Premises by other lessees of the Premises or their  
 agents, employees, contractors, or invitees, or by others. LESSOR and TENANT agree that the cost of  
 complying with such laws, statutes, ordinances, or governmental regulations relating to such matters for which  
 the LESSOR is or may become legally liable shall be paid by TENANT to LESSOR, within ten (10) days  
 following the receipt by TENANT of a written demand from LESSOR to do so. In the event LESSOR  
 subsequently recovers or is reimbursed from a third party of all or any portion of the sums paid by TENANT,  
 LESSOR shall reimburse TENANT to the extent of any such recovery or reimbursement.

21 As used herein the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which  
 22 is or shall become regulated by any governmental entity, including without limitation, LESSOR acting in its  
 governmental capacity, the State of California or the United States government.

23 29. NOTICES (PMF10.1 S)

24 All notices pursuant to this Lease shall be addressed as set forth below or as either party may hereafter designate  
 25 by written notice and shall be sent through the United States mail in the State of California, duly registered or  
 26 certified, return receipt requested, with postage prepaid. If any notice is sent by registered or certified mail, as  
 27 aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof  
 as above provided. Notwithstanding the above, LESSOR may also provide notices to TENANT by personal  
 delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.



1 TO: LESSOR

2 County of Orange  
3 Public Facilities & Resources Department  
4 Real Property/Acquisition & Management  
5 300 N. Flower Street  
6 P.O. Box 4048  
7 Santa Ana, CA 92702-4048

8 and

9 County of Orange  
10 Public Facilities & Resources Department  
11 Harbors, Beaches & Parks  
12 300 N. Flower Street  
13 P.O. Box 4048  
14 Santa Ana, CA 92702-4048

15 30. ATTACHMENTS TO LEASE (PMF11.1 S)

16 This Lease includes the following, which are attached hereto and made a part hereof:

17 I. GENERAL CONDITIONS

18 II. EXHIBIT A - Legal Description

19 III. EXHIBIT B - Parcel Map

20 IV. EXHIBIT C - Design Criteria; Minimum Specifications and Construction Approval Process for  
21 Mile Square Golf Course

22 V. EXHIBIT D - Golf Course Maintenance Program

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

APPROVED AS TO FORM:

Laurence M. Watson  
County Counsel

By

Dated

7/22/99

TENANT

Mile Square Golf Course, a California limited partnership

By

Kenneth Heuler, General Partner

By

George Barton, General Partner  
Heuler

By

Harold K. Kaemerle, General Partner

By

David Rainville, General Partner

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD

By

Darlene J. Bloom

Clerk of the Board of Supervisors  
Orange County



LESSOR

COUNTY OF ORANGE

By

Charles V. Smith  
Chairman, Board of Supervisors

Dated

6-18-99

1 PR37A-152  
2 Mile Square Regional Park

4 I. GENERAL CONDITIONS (PMGE1.2-25.2 S)

5  
6 and ascertained.

7 1. TIME (PMGE1.2 S)

8 Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease.

9 2. SIGNS (PMGE2.2 S)

10 TENANT agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved by Director. Unapproved signs, banners, flags, etc., may be removed by Director without prior notice to  
11 TENANT.

12 3. PERMITS AND LICENSES (PMGE3.2 S)

13 TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder  
14 by LESSOR, in its governmental capacity, shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by LESSOR, as a party to this Lease, be deemed approval as to compliance or  
15 conformance with applicable governmental codes, laws, rules, or regulations.

16 4. CONTROL OF HOURS, PROCEDURES, AND PRICES (PMGE4.2 S)

17 A. General. TENANT shall at all times maintain a written schedule delineating the operating hours and  
18 operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained.

19 Upon written request, TENANT shall furnish the Director a copy of said schedules and procedures. Should  
20 Director, upon review and conference with TENANT, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, TENANT, upon written notice from Director,  
21 shall modify said schedules or procedures to the satisfaction of said Director.

22 Primary consideration shall be given to the public's benefit in implementing this clause. All prices charged  
23 for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the market prices charged by other competing and/or comparable businesses.

24 TENANT agrees to abide by the terms and conditions of the Mile Square Golf Course reservation system approved by the Board of Supervisors Minute Order dated January 3, 1978 for the existing Mile Square golf  
25 course.

26 TENANT agrees that he will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

27 TENANT shall at all times retain active, qualified, competent, and experienced personnel to supervise  
28 TENANT's operation and to represent and act for TENANT.

TENANT shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. TENANT shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

TENANT shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. TENANT shall replace any employee whose conduct is detrimental to the best interests of the public.

B. Greens Fees. TENANT agrees to maintain moderate-priced greens fees for the golf courses comparable to other concessionaire-operated public golf courses charging moderate-priced greens fees throughout the entire term of the Lease. On the fifth (5th) anniversary of the Effective Date of this Lease and every three (3) years thereafter, TENANT shall submit to the Director a report demonstrating that the greens fees for the golf courses are within the range of other moderate-priced concessionaire-operated public golf courses in the Orange County area.

TENANT and LESSOR acknowledge that, while greens fees for both golf courses are to be moderately priced, each course may have a separate pricing structure.

#### 5. LEASE ORGANIZATION (PMGE5.2 S)

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

#### 6. AMENDMENTS (PMGE6.2 S)

This Lease is the sole and only agreement between the parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both parties.

#### 7. UNLAWFUL USE (PMGE7.2 S)

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

#### 8. NONDISCRIMINATION (PMGE8.2 S)

TENANT agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease. TENANT shall make its accommodations and services available to the public on fair and reasonable terms.

#### 9. INSPECTION (PMGE9.2 S)

LESSOR or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine if the provisions of this Lease are being complied with.

#### 10. HOLD HARMLESS (PMGE10.2 S)

TENANT hereby waives all claims and recourse against LESSOR including the right of contribution for loss or damage of persons or property arising from, growing out of or in any way connected with or related to this agreement except claims arising from the concurrent active or sole negligence of LESSOR, its officers, agents, and employees. TENANT hereby agrees to indemnify, hold harmless, and defend LESSOR, its officers, agents, and

employees against any and all claims, loss, demands, damages, cost, expenses or liability costs arising out of the operation or maintenance of the property described herein, and/or TENANT's exercise of the rights under this Lease, except for liability arising out of the concurrent active or sole negligence or willful misconduct of LESSOR, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. In the event LESSOR is named as co-defendant, TENANT shall notify LESSOR of such fact and shall represent LESSOR in such legal action unless LESSOR undertakes to represent itself as co-defendant in such legal action, in which event TENANT shall pay to LESSOR the LESSOR's reasonable litigation costs, expenses and attorney's fees. In the event judgment is entered against LESSOR and TENANT because of the concurrent active negligence of LESSOR and TENANT, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

#### 11. TAXES AND ASSESSMENTS (PMGE11.2 S)

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

#### 12. SUCCESSORS IN INTEREST (PMGE12.2 S)

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

#### 13. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMGE13.2 S)

If LESSOR or TENANT shall be delayed or prevented from the performance of any act required hereunder by reason of Acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

#### 14. PARTIAL INVALIDITY (PMGE14.2 S)

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

#### 15. WAIVER OF RIGHTS (PMGE15.2 S)

The failure of LESSOR or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that LESSOR or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

#### 16. DEFAULT IN TERMS OF THE LEASE BY TENANT (PMGE16.2 S)

The occurrence of any one or more of the following events shall constitute a default hereunder by TENANT:

- (a) The abandonment or vacation of the Premises by TENANT.

(b) The failure by TENANT to make any payment of rent or any other sum payable hereunder by TENANT, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from LESSOR to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq.

(c) The failure or inability by TENANT to observe or perform any of the provisions of this Lease to be observed or performed by TENANT, other than specified in (a) or (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from LESSOR to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq.; provided, further, that if the nature of such failure is such that it can be cured by TENANT but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then TENANT shall not be deemed to be in default if TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by TENANT of any general assignment for the benefit of creditors; (ii) a case is commenced by or against TENANT under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against TENANT, the same is not dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days; or (iv) TENANT's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of TENANT in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the LESSOR hereunder or by law; provided, it shall be lawful for the LESSOR to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and TENANT and its creditors (other than LESSOR) shall have no further claim thereon or hereunder.

In the event of any default by TENANT, then, in addition to any other remedies available to LESSOR at law or in equity, LESSOR may exercise the following remedies:

(A) LESSOR may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that LESSOR shall so elect to terminate this Lease, then LESSOR may recover from TENANT:

(i) The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof;

(ii) The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;

(iv) Any other amount necessary to compensate LESSOR for all the detriment proximately caused by TENANT's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; and

(v) Any other amount which LESSOR may by law hereafter be permitted to recover from TENANT to compensate LESSOR for the detriment caused by TENANT's default.

The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other sums required to be paid by TENANT pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in subparagraphs (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of ten percent (10%) per annum.

(B) Continue this Lease in effect without terminating TENANT's right to possession even though TENANT has breached this Lease and abandoned the Premises and to enforce all of LESSOR's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that LESSOR may at any time thereafter elect to terminate this Lease for such previous breach by notifying TENANT in writing that TENANT's right to possession of the Premises has been terminated.

(C) Nothing in this Section shall be deemed to affect TENANT's indemnity of LESSOR liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

No delay or omission of LESSOR to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by TENANT hereunder. The acceptance of LESSOR of rent or any other sums hereunder shall not be (i) a waiver of any preceding breach or default by TENANT of any provision thereof, other than the failure of TENANT to pay the particular rent or sum accepted, regardless of LESSOR's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (ii) waiver of LESSOR's right to exercise any remedy available to LESSOR by virtue of such breach or default. No act or thing done by LESSOR or LESSOR's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by LESSOR.

Any installment or rent due under this Lease or any other sums not paid to LESSOR when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

All covenants and agreements to be performed by TENANT under any of the terms of this Lease shall be performed by TENANT at TENANT's sole cost and expenses and without any abatement of rent. If TENANT shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein, LESSOR may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by LESSOR on TENANT's behalf shall not give rise to any responsibility of LESSOR to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by LESSOR in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by LESSOR shall be deemed to be additional rent hereunder and shall be paid by TENANT with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

## 17. RESERVATIONS TO LESSOR (PMGE18.2 S)

The Premises are accepted as is and where is by TENANT subject to any and all existing easements and Encumbrances. LESSOR reserves the right to install, lay, construct, maintain, repair, and operate such sanitary



sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. LESSOR also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises. No right reserved by LESSOR in this clause shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

LESSOR agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. LESSOR further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the rental shall be reduced in proportion to the interference with TENANT's use of the Premises.

#### 18. HOLDING OVER (PMGE19.2 S)

In the event TENANT shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

#### 19. CONDITION OF DEMISED PREMISES UPON TERMINATION (PMGE20.2 S)

Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall re-deliver possession of said Premises to LESSOR in substantially the same condition that existed immediately prior to TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. References to the "Termination of the Lease" in this Lease shall include termination by reason of the expiration of the Lease term.

#### 20. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMGE21.2 S)

If TENANT abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such event shall, at LESSOR's option, be deemed to have been transferred to LESSOR. LESSOR shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

#### 21. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMGE22.2 S)

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to LESSOR, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of TENANT in the Premises is quitclaimed to LESSOR. Should TENANT fail or refuse to deliver the required deed to LESSOR, LESSOR may prepare and record a notice reciting the failure of TENANT to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of TENANT or those claiming under TENANT in and to the Premises.

#### 22. LESSOR'S RIGHT TO RE-ENTER (PMGE23.2 S)

TENANT agrees to yield and peaceably deliver possession of the Premises to LESSOR on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to TENANT, LESSOR shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the

1 Premises by LESSOR shall in no way alter or diminish any obligation of TENANT under the lease terms and shall  
2 not constitute an acceptance or surrender.

3 TENANT waives any and all right of redemption under any existing or future law or statute in the event of  
4 eviction from or dispossession of the Premises for any lawful reason or in the event LESSOR re-enters and takes  
5 possession of the Premises in a lawful manner.

#### 6 23. AUTHORITY OF TENANT (PMGE 24.2 S)

7 If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and  
8 warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance  
9 with the by-laws of said corporation, and that this Lease is binding upon said corporation.

#### 10 24. PUBLIC RECORDS (PMGE25.2 S)

11 Any and all written information submitted to and/or obtained by LESSOR from TENANT or any other person or  
12 entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at  
13 the option of LESSOR, may be treated as a public record open to inspection by the public pursuant to the  
14 California Records Act (Government Code Section 6250 et seq.) as now in force or hereafter amended, or any Act  
15 in substitution thereof, or otherwise made available to the public and TENANT hereby waives, for itself, its  
16 agents, employees, subtenants, and any person claiming by, through or under TENANT, any right or claim that  
17 any such information is not a public record or that the same is a trade secret or confidential information and hereby  
18 agrees to indemnify and hold LESSOR harmless from any and all claims, demands, liabilities, and/or obligations  
19 arising out of or resulting from a claim by TENANT or any third party that such information is a trade secret, or  
20 confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and  
21 costs.

#### 22 25. RELATIONSHIP OF PARTIES (PMGE26.2 S)

23 The relationship of the parties hereto is that of LESSOR and TENANT, and it is expressly understood and agreed  
24 that LESSOR does not in any way or for any purpose become a partner of TENANT in the conduct of TENANT's  
25 business or otherwise, or a joint venturer with TENANT, and the provisions of this Lease and the agreements  
26 relating to rent payable hereunder are included solely for the purpose of providing a method by which rental  
27 payments are to be measured and ascertained.  
28

**LEGAL DESCRIPTION**  
Mile Square Regional Park  
(Golf Course Lease)


**Parcel PR37A-152 (A)**

That portion of Section 20, Township 5 South, Range 10 West, Rancho LasBolsas, in the City of Fountain Valley, County of Orange, State of California, as shown on maps filed in book 51, page 12 of Miscellaneous Maps, described in the Amendment To Golf Course Lease between the County of Orange and Mile Square Golf Course recorded May 20, 1969 in book 8962, page 421 of Official Records.

Containing 145.132 Acres more or less.

See EXHIBIT B attached and by this reference made a part.

APPROVED

  
\_\_\_\_\_  
John D. Pavlik  
Expiration Date:

L.S. 5168  
June 30, 1999

Date: 4.22.99



**EXHIBIT "A"**

Page 1 of 3

J.N. 50716.06  
 N:\50716\MAPS\GOLFCRSE.doc  
 March 19, 1999  
 Revised April 15, 1999  
 Revised April 20, 1999

EXHIBIT "A"  
 MILE SQUARE REGIONAL PARK  
 (GOLF COURSE LEASE)

Parcel PR37A-152(B)

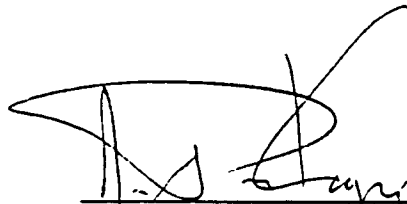
That portion of section 20, Township 5 South, Range 10 West in the Rancho Las Bolsas in the City of Fountain Valley, County of Orange, State of California, as shown on a map filed in Book 51 Page 12 of Miscellaneous Maps in the Office of the County recorder of said County described as follows:

Beginning at the northerly terminus of that certain course describe as "N. 00° 30' 40" W., 1644.94 feet" in that Amendment to Golf Course Lease recorded in Book 8962 Page 421 of Official records in the Office of said County Recorder; thence North 50°42'09" East 303.44 feet; thence North 89°03'56" East 267.25 feet; thence North 49°20'35" East 113.89 feet; thence North 88°11'32" East 213.92 feet; thence North 00°27'31" West 953.25 feet; thence North 33°34'52" West 95.77 feet; thence North 21°51'38" East 58.29 feet to a point in that certain course shown as "N 68°08'22" W 2621.46' " on a Record of Survey filed in Book 88 Page 9 of Records of Surveys in the Office of said County Recorder, said point bears South 68°08'22" East 524.57 feet from the northwesterly terminus thereof; thence along said certain course South 68°08'22" East 1124.32 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 200.00 feet, a radial line through said beginning bears North 84°31'05" West; thence leaving said certain course southeasterly 283.44 feet along said curve through a central angle of 81°11'55"; thence tangent to said curve South 75°43'00" East 110.98 feet to the beginning of a curve concave to the southwest having a radius of 300.00 feet; thence southeasterly 207.58 feet along said curve through a central angle of 39°38'43" to the beginning of a reverse curve concave to the northeast having a radius of 525.00 feet, a radial line through said beginning of reverse curve bears North 53°55'43" East; thence southeasterly 322.56 feet along said curve through a central angle of 35°12'10" to the beginning of a reverse curve concave to the southwest having a radius of 130.00 feet, a radial line through said beginning of reverse curve bears South 18°43'33" West; thence southeasterly 127.15 feet along said curve through a central angle of 56°02'24"; thence tangent to said curve South 15°14'03" East 102.17 feet to the beginning of a curve concave to the northeast having a radius of 120.00 feet; thence southeasterly 117.73 feet along said curve through a central angle of 56°12'41" to a point in that certain course shown as "N44°13'56"E 2911.93' " on said Record of Survey, said point bears South 44°13'56" West 55.08 feet from the northeasterly terminus thereof; thence along said

certain course South 44°13'56" West 330.92 feet; thence leaving said certain course South 12°29'11" West 145.82 feet; thence South 02°59'10" East 452.35 feet; thence South 42°36'44" East 122.75 feet to the southeasterly terminus of that certain course described as "N. 80° 10' 46" W., 643.98 feet" in said Amendment to Golf Course Lease; thence along said Amendment of Golf Course Lease the following courses: North 80°10'46" West 643.98 feet, South 44°13'56" West 1724.00 feet, North 68°08'22" West 720.85 feet and North 00°30'40" West 1644.94 feet to said point of beginning.

Containing 113.60 acres, more or less.

All as more particularly shown on Exhibit "B" attached hereto and by reference made a part hereof.

  
April 20, 2000  
 JOSEPH P. KAPP, R.C.E. 22015      DATE  
 MY REGISTRATION EXPIRES: SEPTEMBER 30, 2001





## EXHIBIT C

### DESIGN CRITERIA; MINIMUM SPECIFICATIONS AND CONSTRUCTION APPROVAL PROCESS FOR MILE SQUARE GOLF COURSE

#### 1. PREAMBLE

The Design Criteria contained herein are intended as an outline of minimum standards and requirements for guidance of the optionee-tenant, referred to hereinafter as "Tenant," in preparing plans for improvements at Mile Square Regional Park. The Design Criteria is in addition to all other Orange County ordinances, codes, rules, and regulations. Lessor recognizes that the basic facilities are to remain and that Tenant shall implement improvements and expansion of the facilities in accordance with the Design Criteria to the extent reasonably possible.

The Lease and the General Conditions attached thereto shall be controlling in the event of an inconsistency between them and these Design Criteria.

All services, labor, materials, and equipment furnished and the performance of all operations in connection with the work necessary for the improvement of the premises shall be in accordance with the Lease and this Design Criteria. Unless otherwise provided, all work and materials shall conform to the specific requirements set forth in applicable portions of the following codes and specifications incorporated herein by reference:

Uniform Building Code, National Electrical Code, Uniform Mechanical Code, Uniform Heating and Ventilating Code, Uniform Plumbing Code, grading and excavation code, all as amended and adopted by the County of Orange.

All fire protection ordinances and rules and regulations of the Orange County Fire Authority.

All applicable ordinances of the County of Orange and codes and specifications of County, State, and Federal Agencies.

#### 2. DESIGN AND CONSTRUCTION APPROVAL PROCESS

##### A. DESIGN REVIEW BOARD

A Design Review Board may be appointed by the Director to review and approve site development and construction plans proposed by Tenant at Mile Square Regional Park. Members of the Design Review Board should be experienced, competent and familiar with requirements for golf course facilities.

##### B. SUBMISSION OF PLANS AND OTHER DATA

###### 1. General

All submittals shall be made to the office of the Director. Caution should be exercised not to proceed with working drawings until such time as proper approvals have been obtained for preliminary submittals of schematic drawings, architectural renderings, plot plans, landscape, and irrigation plans, and parking requirements. The Tenant shall submit a written narrative outline of

the intended improvements with a plot plan, followed by schematic architectural renderings and any other material that will fully inform the Director as to the architectural style planned, uses, and other pertinent data.

After the preliminary submittal has been approved by the Director, the Tenant shall contact the County of Orange's Planning and Development Services Department (P&DSD) to ascertain whether the design, construction, quality of materials, use and occupancy, and location of the buildings and structures, as proposed, will comply with County regulations. Said preliminary approvals prior to the preparation of construction contract documents will eliminate misunderstanding as to the final development.

Upon approval of construction contract documents by the Director, the Tenant shall submit them along with an application for a building permit and the necessary fees to P&DSD for plan checking and subsequent issuance of building permits. Every effort will be made to coordinate the requirements of the Director and P&DSD so that as little inconvenience will be caused the Tenant as possible.

Unless otherwise indicated, whenever data is submitted for approval, the following number of copies shall be submitted:

- a. Preliminary plans, intermediate plans, construction contract documents:
  - (1) Director - one set of reproducibles, and nine sets of prints.
  - (2) P&DSD - three sets of prints.
- b. All other data, such as calculations, reports, pencil renderings, etc: Nine sets.

The design and preparation of the plans and specifications for construction under the terms of the Lease shall be by engineers, architects, and landscape architects duly licensed under the Business and Professions Code of the State of California.

## 2. Materials for Submission

### a. Preliminary Plans

Preliminary plans shall include a site layout of the premises showing uses, buildings, landscape development, and other features; schematic floor plans of all structures, simple elevations of buildings, architectural theme, and a general description of improvements and methods of operation; and a general outline specification indicating materials and methods of construction and an estimate of the total cost of improvements planned.

### b. Intermediate Plans

Intermediate plans shall consist of the following:

- (1) A detailed site plan for the premises showing all improvements planned for the site. This plan shall include any easements, location of all utilities, drainage plan, grading plan, and grade elevations of all structures.
- (2) Floor plans, elevations, and sections of all structures.
- (3) Landscape development plans with plant palette and irrigation plans for the golf course.



- (4) Draft specifications to cover all phases of the work.
- (5) A detailed cost estimate of all improvements.
- (6) Exterior color scheme.
- (7) Colored rendering or model.

At the conclusion of the intermediate work, plans shall be submitted for approval. Upon approval of the intermediate drawings, the working drawings shall then be prepared.

c. Construction Contract Documents

These shall consist of the following:

- (1) Complete architectural, landscape, and engineering working drawings.
- (2) Complete specifications.
- (3) Construction contract form.
- (4) Construction schedule.

d. Project Record Documents

All project record drawings shall be maintained in a clean, dry and legible condition as specified herein. One copy of the following shall comprise the project record documents:

- (1) Construction drawings
- (2) Supplementary conditions
- (3) Addenda
- (4) Reviewed shop drawings
- (5) Change orders
- (6) Modifications to the construction documents
- (7) Field test records
- (8) Building permit set, unmarked and kept separate from other copies of the construction documents

Tenant shall have on file one set of construction drawings, hereinafter referred to as "Record Drawings," upon which shall be recorded all variations between the work "As Built" and the construction drawings. This shall be supplemented by any detailed sketches as necessary or directed to indicate fully the work "As Built."

(a) Daily Record

Tenant shall provide and keep up to date a complete as-built set of blue line prints, which shall be corrected daily to show every change from the original drawings and

specifications and this set shall be the record set. As-Built entries shall be completed in a neat, clear, professional manner. Upon completion of the work, Tenant shall obtain inspector's signature on the record set verifying information. The prints shall be marked to show equipment, including concealed or embedded piping and conduit. This set shall not be construed as authorization for Tenant to make changes in the layout work without definite instructions in each case and approval by the Director as needed.

(b) Tenant shall submit the record drawings set of blue prints, and the notes to County and shall make such changes and corrections as the County may require for final approval.

(c) Final reproducible submittal of "As-Built" information shall be transmitted to the County. The corrected and approved record drawing set of blue line prints and the notes shall be transmitted to County by Tenant prior to final project permit inspection.

### 3. Future Remodeling:

Plans shall be submitted to the Director for approval, and approval must be granted in advance of any construction, remodeling, alterations, or additions undertaken throughout the term of the Lease. Approval by the Director shall not relieve the Tenant of his obligation to obtain appropriate permits from P&DSD (or other agency with jurisdiction) prior to any work being done.

## D. APPROVAL OF PRELIMINARY PLANS, INTERMEDIATE PLANS, AND CONSTRUCTION CONTRACT DOCUMENTS BY DIRECTOR

The Director shall promptly review plans properly submitted by Tenant and shall grant its approval or require changes. Corrections or modifications required by the Director shall be made and revised drawings re-submitted within thirty (30) days of Director action. The basis of Director approval of plans and specifications will be as follows:

### 1. Permitted Uses

The uses proposed for the development must comply with all ordinances and with the Lease.

### 2. Adequacy of Facilities

Consideration will be given as to how adequately the proposed development will serve the purposes for which it is intended. The following will be among factors considered:

#### a. Functional Adequacy

Facilities shall be properly sized and related for intended uses.

#### b. Circulation and Parking

All driveways, entrances, exits, loading areas, and other parts of the vehicular circulatory system safe, efficient, of adequate dimension and shall be properly signed/marked. Parking areas shall be located close to the activity they serve and in sufficient quantity.

#### c. Compatibility of Design

The proposed design shall reflect the park environment, provide public access, and fit in with surrounding development.

### 3. Architectural Design and Landscape Development

Approval of the architectural design and landscape development by the Director will be based upon the adequacy of the design meeting the requirements listed in Section 3 of this criteria titled "Buildings and Course Design" and Section 4(G) of this criteria titled "Landscape Development." Judgment of the design submitted will be as objective as possible in order to achieve a structure which is sound, efficient, and harmonious with the aesthetic character of Mile Square Regional Park. The purpose of a distinctive character for the Park is to create a total environment in which all aspects, both natural and man-made, are harmonious and will survive the passage of time aesthetically and structurally.

### 4. Miscellaneous Considerations

Easements, setbacks, height limitations, and other physical restrictions shall be in accordance with the existing laws and the Lease.

## E. ISSUANCE OF BUILDING PERMITS BY P&DSD

After the Tenant has received approval of his preliminary plans by the Director, Tenant shall contact P&DSD and the Division of Environmental Health, Orange County Health Department, for a preliminary discussion concerning the proposed occupancy of the building and the type of construction proposed. Such a meeting, prior to the preparation of the final construction documents will minimize possible misunderstandings and be in the best interest of all concerned.

After the Tenant has completed his construction documents, Tenant shall make application to P&DSD for a building permit and shall include sufficient sets of prints of completed drawings to facilitate simultaneous plan checking of all mechanical and electrical systems. The Tenant shall obtain and pay for all permits and plan check fees required under the applicable building codes, including plumbing, electrical, mechanical, grading, or other items of construction as required by County ordinance. All licenses, plan checks, permit, and inspection fees in connection with construction by the Tenant shall be the responsibility of the Tenant or his contractor.

All inspection of work as required by code shall be requested by the contractor to P&DSD and in accordance with normal operating procedures.

## 3. BUILDINGS AND COURSE DESIGN CRITERIA

### A. DESIGN CRITERIA

1. Golf Courses. The existing course shall be refurbished; all greens and tees shall be rebuilt to United States Golf Association (USGA) standards, the ponds shall be drained and rebuilt as necessary and a dual irrigation system shall be installed to provide well water to the greens and tees and reclaimed water to the fairways and rough areas. The rebuilt course shall retain the same play characteristics present on the existing course and difficulty of play shall not be appreciably increased.

The new course shall be different from the existing course. The new course shall be more challenging than the old course and shall be designed to have a slope rating from the back tees not to exceed 130. Construction of greens and tees shall meet USGA standards.

2. Clubhouse Complex and Banquet Facilities. The clubhouse complex shall include a pro shop, snack bar, restaurant, lounge, offices, restrooms, cart storage and banquet facilities to accommodate groups of 350 - 400 (including kitchen capable of serving the maximum capacity). The banquet facility shall have the capability to function as a center for community events.

## B. ARCHITECTURAL THEME

The object of the design of any and all structures at Mile Square Regional Park is to enhance the environment of the park by providing a compatible character, while meeting the needs of the Tenant and providing needed services to the public.

It is the intent of this section to provide guidelines for coordination of design so that the final development plan reflects a unifying theme for development, including plant palette and construction materials, and enhances the existing park setting at Mile Square Regional Park. The elements of design shall be coordinated by the Director. To achieve this character, the following design requirements have been established:

1. The design shall make use of the view created by the golf course and parkland.
2. Materials shall create a self-weathering, low-maintenance structure.
3. The appearance of the structure must be attractive from all angles.
4. All utility and mechanical equipment shall be screened from view. All roof projections such as vents, exhaust fans, ducts, and pipes shall be gathered and grouped together and housed in an enclosed structure.
5. Trash collection centers shall be located on easy to clean concrete surfaces. Said centers are to be kept from public view by use of a screening fence or wall not less than seven feet in height and constructed so as to be easily cleaned. Screen planting will also be required. Service areas shall be so located and designed as to be out of public view.
6. Design must reflect the architectural elements of the developed portions of Mile Square Regional Park.
7. Graphics, street furniture, lighting, paving, plants material, etc., shall follow a uniform theme.
8. The circulation plan shall provide free flow of traffic and pedestrians between parking areas, buildings.
9. The design of facilities shall focus equally inward toward the center of Mile Square Regional Park as well as to the perimeter.

## C. MATERIALS AND FINISHES

A materials palette identifying specific characteristics of texture, color, and durability will be prepared and used for the construction of any improvement that shall take place in Mile Square Regional Park. Once established by the Tenant, any deviation from this palette is subject to approval by the Director. Submittals should indicate manufacturers of these products to be established as standards. Similar products by other manufacturers may be used as long as they match color and texture of materials in accordance with the manufacturers' listed specifications.

## 4. SITE WORK AND SPECIFICATIONS

### A. GENERAL

Site work includes paving, walks, landscaping, drainage features, lighting, signs, rest rooms, and street furniture. It is essential that all of these features be harmonious with the general appearance of the park. Unattractive things, such as trash collection centers, shall be screened from view. Signs, light

standards, and similar items must be unobtrusive and tastefully designed and located. Textures and finishes must complement the overall aesthetic quality of the park environment.

## 1. CULTURAL/SCIENTIFIC RESOURCES

No known cultural/scientific resources (i.e., archaeological, paleontological burial grounds or remains, ceremonial objects, petroglyphs, or other artifacts of a like nature) are known to exist within the premises.

In the event the Tenant's development uncover or Tenant agents/employees find any burial grounds, or remains, ceremonial objects, petroglyph, and archaeological or paleontological or other artifacts of like nature within the construction area, Tenant shall immediately notify Director of Tenant's findings and shall modify construction operations so as not to disturb the findings pending receipt of notification as to determination of the final disposition of such findings from Director.

Any findings of a cultural/scientific resource nature shall remain the property of the County and do not become the property of the person or persons making the discovery.

## 2. SOUND CONTROL REQUIREMENTS

The Tenant shall ensure that Tenant or Tenant's contractor shall comply with all County and local sound control and noise level rules, regulations and ordinances which apply to any Work performed on the premises, and shall make every effort to control any undue noise resulting from the construction operation.

Each internal combustion engine used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

The noise level from the construction operations between the hours of 8 p.m. and 7 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, shall be in accordance with the County ordinance covering "Noise Control". The noise level from the Contractor's operations during the above-specified times shall not exceed 85 DBA at a distance of 50 feet. This requirement in no way relieves the Tenant or his contractor from responsibility for complying with local ordinances regulating noise level.

Said noise level requirement shall apply to all equipment on the premises or related to the premises, including but not limited to trucks transit mixers or transient equipment that may or may not be owned by the Tenant or his contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

## B. PAVED AREAS

### 1. General

Parking areas and vehicle access ways shall be clearly defined and identified, completely paved and graded for drainage. Parking stalls shall be clearly marked with painted striping.

### 2. Parking and Vehicle Access Ways

Parking stalls shall, at least, have minimum dimensions to meet current County codes. Vehicle access ways shall have a minimum width of 12 feet. Parking area layouts will be judged on their adequacy to provide parking facilities for the intended purposes. Wheel bumpers, where used, shall be a concrete bumper approved by the Director.

The parking areas shall be plainly marked for vehicular parking stalls, access ways, and pedestrian walkways. The stalls shall be hairpin-striped. The stripes shall be four inches wide, and painted with a non-reflective type of white traffic paint.

The parking lot shall include sufficient landscape treatment including trees, shrubs and ground cover to be aesthetically pleasing.

### 3. Materials

The entire parking area except landscaped areas including all access ways shall be paved with a bituminous surface course over a prepared base course where needed. Reference Orange County Standard Plans 804 and 805.

The bituminous surface course shall conform to the applicable provisions of the Standard Specifications of the APWA and Orange County Standard Plans, as amended, for Asphalt Concrete.

Base course shall conform to the applicable provisions of the Standard Specifications of the APWA and Orange County Standard Plans, as amended, for Aggregate Bases.

The thickness of any paved area shall be designed for a minimum of a 4,000-pound wheel load, but in all instances the minimum thickness of the bituminous surface course shall be three inches.

### 4. Grading

All vertical control within the premise areas shall be tied to the level net grade established by the Tenant and approved by the Director.

The entire paved area shall be graded to provide adequate surface drainage. The transverse slope of a paved area shall be toward the curb and gutter and shall be a minimum of one percent. Low points shall not be located in marked pedestrian walkways.

## C. CURBS AND GUTTERS

Curbs and gutters shall be a concrete combined curb and gutter conforming to the details shown for Type A or Type D in the Orange County Standard Plans, as revised. Curbs and gutters shall have a minimum longitudinal slope of 0.25 percent.

## D. WALKWAYS

All walkway areas, except golf paths, within the premises where buildings are located shall be paved. Walkway areas shall be defined as walks and those areas of courts, patios, plazas, arcades, landings, terraces, and porches which will carry foot traffic.

Mixing the use of various paving materials is encouraged. The surface treatment of concrete will provide for textures such as salt rock, broom finish, and exposed aggregate. Score lines shall be a maximum of four feet in any direction. The color and type of all paving materials is subject to Director approval.

Unobstructed width of walkways for main building entrances shall be a minimum of five feet, and walks leading to secondary entrances of buildings may be a minimum width of four feet. Ramps may not exceed 10 percent in grade. Surfaces or ramps shall have a rough broom finish. All walkways must be adequately drained and lighted.

## E. DRAINAGE FACILITIES

All paved areas shall drain toward the curb and gutters and the drainage waters shall be picked up by means of a side inlet catch basin or a grated inlet catch basin adjacent to the curb. A preliminary drainage plan shall be submitted for approval. No drainage waters shall flow over public sidewalks.

All catch basins shall be designed in accordance with Orange County Standard Plans, as revised. Complete hydrological and hydraulic calculations substantiating the design shall be submitted for approval.

## F. AREA LIGHTING

The design objective for area lighting is to light landscape areas, walls, structures, and buildings for utilitarian and/or decorative purposes. The light must not dominate above the buildings and landscapes, but blend in as an integral part of the area. The public must view the park improvements as seeing the building(s) and landscape plantings first and noticing the brightness of a light source last, thereby creating a complimentary impression to the overall appearance.

The lighting shall not constitute a hazard by either its location or type. All lighting shall be shielded from adjoining properties when it would create an annoyance. In particular, lighting shall take into account consistency and compatibility between the various improvements and facilities of the overall areas within Mile Square Regional Park.

Lighting standards shall be protected from automobile damage by the use of curbs or by mounting the standards upon reinforced concrete pedestals. Height of pedestals shall be a minimum of thirty (30) inches. Concrete pedestal reinforcement shall have a minimum three-inch coverage. Where feasible, light standards should be designed as part of a planter area.

All lighting standards and fixtures are to be of non-corrosive materials or treated with a corrosion-proof material.

## G. LANDSCAPE DEVELOPMENT

Landscape development plans should be prepared by a landscape architect licensed in the State of California. On a site composed of a variety of uses ranging from clubhouse, golf course, to open recreation areas, the landscape development shall function as a unifying element, integrating all areas into a comprehensive and orderly whole. To achieve this end, certain controls have been established to serve as guidelines for the designer. Working within these design guidelines, using materials and processes selected with a purpose, it is planned that the landscape development will complement and enhance the basic concept and character of the park.

The landscape plans shall blend the major improvements and facilities into a consistent and harmonious pattern, including compatibility with the surrounding bicycle/pedestrian pathway and related public improvements.

The scope of the landscape design shall include a planting program, an irrigation plan, treatment of paving, the designation of street furniture (golf course) and the planning of related amenities.

### 1. Extent of Landscape Development

The total land area within the parking lot shall be sufficiently landscaped.

### 2. Design Criteria and Requirements

a. Shrubs, Vines, and Ground Cover

(1) All chain link fencing that may be allowed shall have vines, shrubs, or trees in espalier form, planted on and against them. This requirement shall not apply to the practice range protective fencing.

(2) Flowering vines shall be used for color and for softening effect.

b. Trees

(1) Trees shall be planted within the premises.

(2) The Tenant shall propose the basic planting pattern and use tree varieties specified in item 3 of this section titled "Planting Plan." The specific location and variety of trees to be planted to fulfill the requirements of said plan shall be proposed by the Tenant and approved by the Director. Trees equal in design aspects to those listed may be substituted provided prior written approval of the Director has been obtained.

(3) Trees in patios, plazas, and in proximity to the buildings shall be selected for sculptural qualities of their structure.

(4) Sculptural character of trees shall be emphasized through supervised pruning.

(5) Consideration shall be given to the skyline effect of trees.

(7) Tree wells in paved parking areas shall be a minimum of 12 square feet in size and shall be curb lined or otherwise protected from vehicular traffic.

c. Paving

(1) Paving shall serve as a connecting, unifying element (See Section 3.D., Walks.)

(2) The total landscape development of the parcel shall involve material other than plants, i.e., concrete, wood, stone, gravel, sand, etc.

(3) Paved areas intended for parking or vehicular access shall not be considered a part of the landscape development.

3. Planting Plan

Preliminary planting plans shall be reviewed and approved by the Director. Preliminary planting plans shall identify type, size and location of all plant material, and any other construction materials (i.e., stone). Selection of plant material shall be made in accordance with existing park plant palette, climate and soil conditions as well as the overall theme of the proposed landscape. Use of native and drought resistant plants adaptable to the environmental conditions are highly encouraged. Selection of street trees shall be made from the Orange County approved street tree list (Orange County Standard Plan #700). Slow growing trees should not be less than 15 gallons in size and slow growing shrubs not less than five gallons in size to provide adequate landscape.

4. Irrigation Plan

The irrigation system shall be automatic. Plans shall identify size and location of all lines as well as type and location of all irrigation hardware, including manufacturer, model number and hydrology data. Irrigation systems shall be designed to eliminate overspray of all hardscapes and to fully



utilize water conservation techniques. Exposed impact heads or shrub heads or risers shall not be used adjacent to walkways or other areas where they constitute a personal hazard or may be subject to vandalism. Backflow preventers shall be of the reduced pressure type to provide positive cross connections control. Irrigation controllers shall in all cases be enclosed in a vandal resistant and weatherproof security enclosure and be sited to avoid visual prominence. Electrical conductors passing under a paved area shall be installed in a rigid non-metallic conduit.

## H. REST ROOM FACILITIES

Rest room facilities for all structures shall be the best quality and conform to the requirements of the Uniform Plumbing Code and the Uniform Building Code. Rest room facilities shall be designed to be available and easily accessible to the public.

## I. SIGNS

Signage shall be planned, designed, and developed to be consistent among the facilities shall be carried out with a compatible and consistent design theme, using similar materials and similar scale. Course signs shall have consistent theme but may be constructed of different and more weather resistant materials.

### 1. Objectives

- a. To provide sign criteria as a standard to be used by the Tenant for his sign submittal, and by the Director for its administration of these submittals;
- b. To provide adequate signing direction and information as to where the activity is, and what is available when one arrives on the scene;
- c. To architecturally maintain the theme of Mile Square Regional Park as it pertains to signs;
- d. To assist the individual concessionaires and tenants in identifying their activities.

### 2. Two Types of Signing (Permanent and Temporary)

#### a. Permanent Signs (Informational and Business Operations)

##### (1) Informational - Where and What

(A) Directional Signs that may be provided by the State, County of Orange, or the City of Fountain Valley to direct the public to Mile Square Regional Park; to identify the park; and to direct the public to the various activities within the park.

(B) Functional or Parcel Identification Signs - provided by the Tenant to identify their parcel and present the activities of their tenants.

(i) Location shall be recommended by Tenant and approved by Director.

(ii) Dimensions and color to be approved by the Director.

(C) Tenant Identification Signs - located at the place of business.

##### (2) Other Signs

Activity identification, such as Bicycle Trail, Parking, No Parking, One Way, Pedestrian Crossing, etc., will be left to the discretion of the Director.

**b. Temporary Signs**

**(1) Community and Public Interest Signs**

(A) Example - YMCA Pancake Breakfast, Veterans Day, etc.

(B) Point of display left to the discretion of the Tenant (Parcel information directory or displayed in store window)

**(2) Special Occasion**

(A) Example - Grand Opening, Special Event

(i) Tenant may display a banner with the words "Grand Opening" or other appropriate words when construction is completed.

(ii) Individual tenants may participate with Grand Opening signs on display in their windows. (Signs to be professionally laid out and approved by the Director.)

(iii) Maximum time limit for this type of sign display is fourteen (14) days.

(B) For Rent or Recognition Before a Permanent Sign is Approved

(i) Signs shall be displayed on a three-legged easel or hung on a wire inside the glass line of completed space.

(ii) Sign must be professionally done.

(iii) Credit signs for Contractors/Architects and Designers

(a) Standard office or company sign may be used.

(b) Maximum size to be four (4) feet by eight (8) feet.

**c. Construction Requirements and Permits**

(1) All exterior bolts, fastenings, and clips of all types to be hot-dipped galvanized iron, stainless steel, or brass.

(2) Location of all openings for conduit in signs or building walls to be approved by architect responsible for design of building or complex.

(3) Signs with interior lighting shall bear the U. L. label, and their installation must comply with all legal building and electrical codes.

(4) All exterior individual letters shall be mounted at least 3/4 inch from the wall to permit proper dirt and water drainage.

(5) All permits for the sign and its installation shall be obtained by the Tenant or his contractor.

d. Restrictions

- (1) No signs of any type other than those described in the foregoing shall be allowed to become attached to, or permanently placed within the display windows of any store, or attached to the outside walls of any store, or placed in a hanging position either parallel or perpendicular to a storefront, or free standing, without first being approved by the Director.
- (2) No flashing or animated signs.
- (3) No revolving or oscillating signs.
- (4) No exposed neon or "can-type" fluorescent signs.

e. Approval of Signs

- (1) Two copies of all sign documents being proposed shall be submitted to the office of the Director at least two weeks in advance of the next Director meeting.
- (2) The following items will be specified:
  - (A) A picture or sketch of the proposed sign
  - (B) A color designation
  - (C) Sign layout, including dimensions and size of lettering and logo
  - (D) Graphics
  - (E) Location on the building; or in the case of architectural structure, the location on the parcel
  - (F) Materials used for construction
- (3) Both copies of sign documents are to be approved by the Tenant and stamped and dated accordingly.
- (4) Any sign(s) installed without the approval of the Director will be taken down immediately upon notification of the Tenant. All expenses incurred in this sign removal will be borne by the party responsible for installation of the sign.

**EXHIBIT D****GOLF COURSE MAINTENANCE PROGRAM**

Lessor and Tenant agree that the Golf Course Maintenance Program delineated below is the minimum maintenance schedule required for the maintenance of the golf courses ("Golf Courses") covered under this lease, and that such criteria shall not limit Lessor from requiring a more extensive maintenance program if such revised program becomes necessary. Lessor acknowledges, however, that the frequency of performance of any function by Tenant may be delayed or temporarily suspended to the extent Tenant is hindered or prevented from performance by acts of God, or adverse weather. Lessor recognizes that the source of water for the golf course is reclaimed water and that there is a potential for adverse turf conditions due to the use of reclaimed water.

Subject to the provisions set forth above, Tenant agrees to maintain the Golf Courses and perform its obligations as outlined below:

**PUTTING GREENS**

<b>FUNCTION</b>	<b>FREQUENCY</b>	<b>DETAIL</b>
Mowing	Twice a week year-round except when weather and Maintenance Practices prohibit mowing.	Height 5/32' to 1/4" with a self-propelled greens mower. Always remove clippings.
Irrigation	Apr.-Sept. Daily or as necessary. Oct.-March 0-5 times per week dependent on weather conditions.	Application of water must be matched with penetration rate so that excessive leaching or runoff are avoided.
Fertilization	As required by soil and plant tissue analysis.	General application of N-P-K fertilizer with minor elements per tissue analysis.
Pest Control	A combination of preventative and curative on an as needed basis.	An environmentally sensitive program of Insecticides, Fungicides, and Herbicides for preventative along with a curative program to minimize chemical application to be applied as required.
Verticutting/ Grooming	Monthly as needed.	Greens verticut or groomed lightly to eliminate thatch and grain for a quality putting surface.
Aerification	Bi-annually.	Machine capable of minimum penetration to 3" depth, topdress with original greens mix soil structure. Additional aerification as needed according to traffic and compaction to keep turf in excellent condition.

Turf Damage	As needed.	Reseed or sod damaged areas with same turf and soil structure.
Cup Relocation	Daily as required.	Pin placement to be varied to minimize turf wear.
Green Collar	Mowed 1-3 times per week.	Mow from 3/8" to 1/2" height.
Sand Traps	Raked daily or as required.	Sufficient sand to provide excellent playability (minimum 4" depth). Traps to be weed free and edged properly.

## TEES

FUNCTION	FREQUENCY	DETAIL
Mowing	1-3 times per week.	Mow 3/8" to 1/2" height.
Irrigation	Apr.-Sept. Daily or as weather permits. Oct.-March 0-5 times per week dependent on weather conditions.	1" of water $\pm$ , application of water must be matched with penetration rate to avoid run-off. Excessive leaching may be required due to reclaimed water.
Fertilization	Monthly or as per tissue and soil analysis.	Application of balanced N-P-K fertilizer with minor elements.
Aerification	Bi-annually.	Topdress as required.
Tee Marker Relocation	Daily or as required.	Tee markers should be moved in a systematic routine manner as to spread traffic and wear throughout all useable teeing surface.

## FAIRWAYS

FUNCTION	FREQUENCY	DETAIL
Mowing	Once a week May-Sept. Oct.-Apr. as required.	Height 1/2" to 3/4.
Irrigation	Apr.-Sept. daily or as per weather permits. Oct.-March 0-5 times per week.	Application of water must be matched with penetration rate so that excessive leaching and run-off are avoided.
Fertilization	As per soil and tissue requirements.	Application of balanced N-P-K, as per analysis, fertilizer.

Pest Control	As needed.	An environmentally sensitive program of Insecticides, Fungicides, and Herbicides preventative along with a curative program to minimize chemical application to be applied as required.
Aerification	Annually or as required.	3" Dept. Use fairway aerifier and drag in cores.
Overseeding	As needed.	The need for overseeding is subject to evaluation by Tenant.
Weed Control	Curative.	Spray for Broadleaves as needed.
Re-sodding/ Stolonizing	As needed.	Resod/Stolonize damaged areas, smooth soil, sod, roll, fertilized and topdress.

### ROUGHS

FUNCTION	FREQUENCY	DETAIL
Mowing	As needed.	Height 1" to 1 3/4"
Irrigation	May-Sept. Daily or as per weather conditions. Oct.-April 0-5 times per week dependent on weather.	Application of water must be matched with penetration rate so that excessive leaching or run-off are avoided.
Fertilization	As needed per tissue and soil analysis.	Balanced N-P-K fertilizer with minor elements to provide 1 lb. actual nitrogen per 1,000 sq. ft. per application.
Pest Control	As needed.	An environmentally sensitive program of Insecticides, Fungicides, and Herbicides preventative along with a curative program to minimize chemical application to be applied as required.
Trees	As needed.	Turf around trees and other interferences to be trimmed as needed.

## DRIVING RANGE & SURROUNDING AREAS

FUNCTION	FREQUENCY	DETAIL
Driving Range	Once per week mowing.	Maintained as per fairways on the golf course.
Driving Range Tees	Mats only.	Replace mats as needed.
Clean Restrooms	Daily.	Clean and service daily.

## GENERAL

1. Any depression on the Golf Courses capable of holding "casual water" exceeding twenty-four (24) hours will be filled with topdressing and reseeded. In areas where topdressing will not eliminate the problem a perforated drain pipe system will be installed in these areas.
2. All trimmings, clippings, etc. will be placed daily in an acceptable refuse container. Greens clippings will be scattered in rough areas.
3. All departments will be staffed with experienced supervisory personnel.
6. Electric golf cart paths will be maintained in an acceptable condition by Tenant.
7. Electric golf carts will be maintained to permit a complete contract without breakdown (emergencies excepted).
8. Miscellaneous:
  - a. Ball washers serviced daily. Clean water twice per week, and towels as required.
  - b. The Premises will be maintained free of visible trash at all times.
  - c. Trash containers to be provided on Golf Courses as needed, and emptied on a routine basis.
9. All areas within the Golf Courses boundaries will be maintained. All areas under irrigation will require mowing, fertilization, etc., as per this program.
10. Pumping plants will be maintained per the manufacturer's recommendations.
11. All lakes will be maintained at acceptable levels. Algae, weeds and pests will be controlled by environmentally sound methods conforming to environmental and safety regulations established by governmental agencies.

## Real Property Conveyance Questionnaire\* for ASR

1. What property interest is being considered for conveyance (e.g. fee, Lease, license, easement)?  
**Leasehold estate.**
  - a) Why is this property being considered for Lease, license, sale or other conveyance?  
**This Leasehold is currently leased to the existing Tenant on a 40 year term, which will expire June 30, 2039. This Lease has been renegotiated to encompass the findings of an internal audit.**
  - b) How and who identified this property as a potential conveyance?  
**The Leasehold was identified when the County's Internal Auditor performed an audit of the Lease estate.**
  - c) What factors are key in recommending this property for conveyance?  
**This Leasehold will remain until the Lease term has expired, which is June 30, 2039. Real location of the demised Leased Premise is a key factor in amending this Lease conveyance.**
  - d) How does the proposed conveyance fit into the County's/District's strategic or general plan?  
**This Leasehold is in full effect and will remain until the Lease term expires. The Leasehold is already a part of OC Parks strategic and general plan.**
  - e) What are the short and long term anticipated uses of the property?  
**Both short and long term use of the revised Premise is an 18-hole golf course.**
  - f) Are there any limitations on the use of the property in the conveyance documents?  
**Any use must be for public benefit as recreational use.**
2. What analysis has been performed as to whether to convey the proposed real property interest?  
**No analysis performed to convey a proposed interest, since the Leasehold interest is already in effect and will remain until it expires on June 30, 2039.**
  - a) Have there been any internally or externally prepared reports regarding this property conveyance?  
**Since this Leasehold is already in effect, no reports were prepared internally or externally regarding this property conveyance.**
  - b) Who performed the analysis?  
**All rental analysis was performed by CEO/Real Estate.**
  - c) Provide details about the analysis and cost/benefit comparison.  
**Rental income analysis was performed by CEO/Real Estate.**
3. How was the conveyance price, or Lease/license rent, determined?  
**A comparative market analysis of similar Leaseholds was performed to determine fair market values.**
  - a) Who performed the appraisal or market study and what certifications do they possess?  
**CEO/Real Estate performed rental analysis.**
  - b) How does the price/rent compare with comparable properties?  
**The amended minimum annual rent and percentage rent are within reasonable range with comparable Leaseholds.**
  - c) Does the setting of the price/rent follow industry standards and best practices?  
**Yes.**
  - d) What are the specific maintenance requirements and other costs within the agreement and who is responsible? Provide an estimate of the costs to the County/District if applicable  
**All maintenance will remain Tenant's obligation.**
4. What additional post-conveyance remodeling or upgrade costs will be needed for the property to meet its intended use?  
**Tenant to submit OC Parks for review and approval, a conceptual plan as to reconfiguring the 36-hole golf course to an 18-hole course.**
  - a) Will any of the upgrades be required to meet County, ADA, or other standards and requirements?  
**All upgrades must meet County requirements.**
  - c) Include estimates of the costs.



## Attachment E

All cost to be the responsibility of Tenant. Tenant must secure a construction completion bond and provide said bond to the County.

- d) What entity will be responsible for the costs?

All cost and expense are the sole responsibility of Tenant.

5. Can the County terminate the sale/easement, Lease/license?

No. Unless the Tenant defaults in any provision of the Lease or First Amendment to Lease agreements.

- a) What would be necessary to terminate the agreement and when can it be terminated?

Default in any Lease and/or First Amendment provision.

- b) Are there penalties to terminate the sale/easement, Lease/license?

No.

6. What entity will be responsible for the payment(s)?

Tenant to pay all expenses for construction from a 36-hole course to an 18-hole course.

- a) How will the funds received be used or applied?

Rent payments will be deposited into OC Parks general fund.

- b) What fund number will the funds from the conveyance ultimately be deposited into?

Rent payments will be deposited into OC Parks general fund.

- c) If restricted funds might be created or supplemented, check with the Auditor Controller's General Accounting Unit and Counsel if you have questions about whether restricted funds are involved.)

No restricted funds involved.

- d) If restricted funds might be created or supplemented, has County Counsel advised that the destination fund for the payment(s) is properly restricted?

No restricted funds created or supplemented.

7. Does the proposed sale/easement, Lease/license agreement comply with the CEO Real Estate standard language?

Yes. All non-standard clauses have been reviewed by County Counsel.

- a) List any modified clauses and reasons for modification.

1. Definitions

Reason: Add Director of Internal Audit and Director of OC Parks;

2. Premise

Reason: Reallocate from a 36-hole golf course to an 18-hole golf course.

3. Required and Optional Services and Uses

Reason: One 36-hole course to one 18-hole course, driving range, pro shop, equipment rental, club house and restaurant.

4. Term.

Reason: Add one (1) ten (10) year option to extend.

5. Rent

Reason: Reduce the minimum annual rent and percentage rent to what comparable Leasehold interest currently pay. Tenant does have percentage rent escalators beginning in month 35 and beginning of 10 year extension, if exercised by Tenant.

6. Revision of Rent

Reason: Remove CPI adjustment.

7. Definition of Gross Receipts

Reason: Remove pay phone language

8. Initial Construction and Timing

Reason: Insert language to convert 36-hole golf course to an 18-hole golf course

9. Mechanic Liens or Stop Notices

Reason: Delete clause from the Lease agreement

10. Maintenance Obligation

Reason: Add Exhibit D-1

## Attachment E

11. Indemnification  
Reason: Add County standard indemnification clause.
12. Insurance  
Reason: Replace with revised and updated language per CEO/Risk Management
13. Lessor's Option to Purchase Leasehold Interest  
Reason: Revise language
14. Notices  
Reason: Update contact information
15. Attachments to Lease  
Reason: Add Exhibits A-1, B-1, C-1 and D-1
16. General Conditions  
Control of Hours, Procedures and Prices  
Reason: Insert language regarding Tenant to provide report on comparable golf courses and green fees to the County.
17. Condition of Demised Premise  
Reason: Added to reiterate 36-hole golf course to an 18-hole golf course

If this is a Lease, is it a straight Lease, an operating agreement, a Lease with an option to purchase, or a capital Lease (see details below)? **This is a straight Lease.**

**Capital Lease Determination:** At the inception of any *potential* capital Lease, it is important to contact the Auditor-Controller's Capital Asset Unit for further guidance to ensure proper classification and accounting for the Lease occurs. There are specialized accounting rules and required forms for capital Leases. See further details in the County's Accounting Manual, Policy No. FA-1: *Accounting for Lease Purchases (Capital Leases)*, located on the intranet. For accounting purposes only, a capital Lease exists if ANY one (1) of the following four (4) criteria is met:

- i) Lease transfers ownership to another party by the end of the term.
- ii) Lease contains an option for the other party to purchase the property by the end of the term for a price lower than the expected fair market value of the property? (For example \$1 or \$1,000, and based on this option price, for accounting purposes only, the ultimate purchase of the property is deemed reasonably assured at the inception of the Lease.)
- iii) Lease term is equal to 75% or more of the remaining estimated useful life of the Leased property.\*
- iv) Present value of the minimum Lease payments is equal to 90% or more of the fair value of the property at the inception of the Lease.\*

\*Criteria iii) and iv) don't apply if the Lease term begins in the last 25% of a property's estimated useful life.

To validate whether a Lease is a capital Lease for accounting purposes, please contact the Auditor-Controller's Capital Asset Unit at [capitalassets@ac.ocgov.com](mailto:capitalassets@ac.ocgov.com).