

F I L E D
KENNETH E. MARTONE
Clerk of the Superior Court

SEP 27 1993

By: P. BERNSTEIN, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO COUNTY WATER
AUTHORITY, a public entity,

Plaintiff,

v.

AMERICAN GOLF CORPORATION, a
California corporation,
and DOES 1 through 50,
Inclusive,

Defendants.

NO. 650168

STIPULATED JUDGEMENT
IN EMINENT DOMAIN

It appearing to the Court that Plaintiff SAN DIEGO COUNTY WATER AUTHORITY, through its attorneys of record, ASARO & KEAGY, by RICHARD R. FREELAND, and Defendant AMERICAN GOLF CORPORATION, a California corporation, through its attorneys of record, HIGGS, FLETCHER & MACK, by Joe N. Turner, have stipulated that the Judgment as hereinafter set forth may be entered; and it further appearing to be a proper case therefor;

IT IS ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff seeks to take, acquire and condemn the rights, title and interest in

1 real property as described in the Resolution of Necessity shown as Exhibit "A" to Plaintiff's
2 Complaint, to which reference is hereby made and by this reference, said descriptions are made
3 a part hereof as if fully set forth;

4 2. That the condemnation and taking thereof is for the public purposes set forth in
5 the Complaint herein and necessary for such public use;

6
7 3. That payment to Defendant in the amount of \$323,418.00, including interest, for
8 the taking of the real property and interests in real property, shall constitute full and final payment
9 for the condemnation and taking of said real property and interests in real property, and for all
10 damages of every kind and nature Defendant AMERICAN GOLF CORPORATION, a California
11 corporation, has suffered because of the possession, use and taking of the subject property, and
12 extinguishes any and all Defendant's claims which could have been made in this action, including,
13 but not limited to, just compensation, leasehold bonus value, interest, fees, costs, litigation
14 expenses, attorney's fees, precondemnation damages; severance damages, loss of goodwill,
15 damages to business and relocation benefits.

16
17 It is understood and agreed that Defendant AMERICAN GOLF CORPORATION reserves
18 and retains its right to claim compensation for any future unreasonable or substantial interference
19 with the use of the surface of the Easement Area for the operation of a golf course by AMERICAN
20 GOLF CORPORATION, its successors and assigns, pursuant to the terms and conditions of that
21 certain Lease with the City of San Diego, California, filed February 24, 1986, as Document No. RR-
22 265135 in the offices of the City Clerk, San Diego, California, caused by excavations for repairs
23 or the installation of future pipelines by Plaintiff SAN DIEGO COUNTY WATER AUTHORITY while
24 exercising its rights pursuant to the easement granted herein.

25
26 4. That said payment as hereinabove specified shall terminate, cancel, and extinguish
27 all liens, leaseholds, and encumbrances of whatsoever nature on said real property;

28 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED:**

5. That said total sum of \$323,418.00 be paid directly to Defendant AMERICAN GOLF

1 CORPORATION, a California corporation, in care of its attorneys, HIGGS, FLETCHER & MACK.

2 6. That the County Treasurer is herein authorized to issue a warrant to Plaintiff SAN
3 DIEGO COUNTY WATER AUTHORITY for the balance of the principal sum previously deposited
4 with the Court, if any, plus all accrued interest to the date of the withdrawals;

5 7. That Plaintiff seeks to take, acquire, condemn and own the interests in said real
6 property referred to and described herein;

7 8. That possession having been taken by Plaintiff on June 30, 1992, all taxes, penalties,
8 costs, liens, leaseholds, and encumbrances of whatsoever nature which are a lien on said parcel
9 and which are apportioned to that portion of the fiscal year after said date are hereby canceled
10 pursuant to Section 5081, et seq. of the Revenue and Taxation Code.

11 9. That trial, the right to trial, hearing on the issues, the making and filing of a
12 Statement of Decision, the right to move for a new trial or appeal, Notice of Entry of Judgment and
13 Notice of Recording Final Order of Condemnation are waived, and that upon payment of
14 \$323,418.00, that Defendant shall execute the Grant of Easement attached hereto as Exhibit 1, and
15 deliver it to Plaintiff for recording.
16

17 Dated: SEP 27 1993
18

19 ROBERT J. O'NEILL

20 Judge of the Superior Court
21
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After recording, mail to:

San Diego County Water Authority
3211 Fifth Avenue
San Diego, California 92103

=====Space Above For Recorder's Use=====

Document No. 624 & 630

Tax Parcel No.

Title Order No.

**GRANT OF EASEMENT
TO THE
SAN DIEGO COUNTY WATER AUTHORITY**

The City of San Diego is the owner of real property described in Exhibit A ("Property") attached hereto. American Golf Corporation is the lessee of said property. The City of San Diego and American Golf Corporation are hereinafter collectively referred to as "Grantors." For a valuable consideration, receipt of which is hereby acknowledged, Grantors hereby grant to the San Diego County Water Authority (hereinafter "Grantee") an exclusive and permanent easement and right to use and occupy the surface and subsurface of the real property as described in the project plans for Pipeline 4 Extension, Phase I, specifications 421 and 422, and as shown in Exhibit A ("Easement Area") attached hereto and shown on San Diego County Water Authority Lands and Right of Way Map No. SR-237. Said easement and right shall be for all acts necessary for the purpose, including without limitation, of constructing, installing, operating, repairing, maintaining, improving, inspecting, reconstructing, relocating, replacing, and removing, now and in the future, a water pipeline or pipelines, which may parallel each other, together with related appurtenant structures, which may extend above the surface of the Easement Area, including vaults, manholes, flow control and measuring devices, air release and air vacuum valves, blow-offs, pumping wells, power transmission and communication conduits, and cables incidental to the operation and maintenance of the pipelines, underground anodes, anode wells, and related facilities for cathodic protection of pipelines, and all other facilities necessary for the operation and maintenance of water pipeline or pipelines.

EXHIBIT

R-279247

The rights and obligations contained herein shall inure to the benefit of and be binding upon the successors-in-interest, agents, employees, assigns, and transferees of the parties hereto.

GRANTOR:

CITY OF SAN DIEGO

Executed this _____ day of June 21, 1993.

By: _____

Property Director

AMERICAN GOLF CORPORATION

Executed this _____ day of _____, 19____.

By: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5193

State of California
County of San Diego

On 6/21/93 before me, Marsha L. Alesi Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James L. Spotts
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



OFFICIAL SEAL
MARSHA L. ALESI
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My comm. expires AUG 31, 1993

WITNESS my hand and official seal.

Marsha L. Alesi
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ INDIVIDUAL
☐ CORPORATE OFFICER(S)

TITLE(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

City of San Diego
Property Director

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

OPTIONAL SECTION
TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

Grantors further grant the right of unobstructed ingress and egress across Property to, along, and from the Easement Area, including the right to pass and re-pass over and along said Easement Area and to deposit tools, implements, and other materials on the Easement Area and to utilize construction, automotive, and other equipment thereon when necessary for the purpose of exercising its rights hereunder.

Grantee may remove any buildings, structures, trees, or other objects which are located on the Easement Area at the time of acquisition, and the cost of removal shall be at the sole cost of Grantee. Upon completion of any work for the purposes and uses herein granted, Grantee shall restore, at Grantee's cost, the surface of the Easement Area to a compacted, neat, clean condition substantially the same as prior to such work.

Grantors shall not construct any fences, gates, posts, chains, walls, buildings, structures, or other objects which occupy or physically intrude on the land, or place any toxic or hazardous materials or objects on the Easement Area.

Grantors reserve the right to use the surface of the Easement Area in a manner which does not conflict with or disturb the rights and uses herein granted to Grantee. Grantors may pave with asphalt the surface of the Easement Area and cause or permit the use of said areas for limited access or parking purposes so long as Grantee can gain immediate access to perform such work as necessary for its purposes and uses as herein granted. Grantors shall not cause or permit, by grading or filling, an increase or decrease in the surface elevation of the Easement Area, nor plant any trees or grant any rights to others to use the Easement Area without the prior written consent of Grantee. However, in all cases, prior to exercising any reserved rights or otherwise use the Easement Area, Grantors shall notify Grantee and secure its written consent and obtain an encroachment permit therefor, according to Grantee's established procedures. Grantee shall not establish unreasonable procedures and shall not unreasonably withhold its consent to said reserved uses nor to other uses which are not detrimental to the rights and uses granted it hereunder.

Grantee may remove any earthfill, fences, gates, posts, chains, walls, buildings, structures, trees, toxic or hazardous materials, or objects placed on the Easement Area by Grantors without the consent of Grantee and the cost of removal and of restoring the Easement Area to its prior condition shall be at the sole cost of Grantors.

If litigation is commenced to enforce the rights and obligations hereunder, the prevailing party shall be entitled to recover, in addition to any other legal remedies, all reasonable litigation costs, including attorneys fees.

EXHIBIT A TO GRANT OF EASEMENT

All those portions of Lot 68 of Rancho Mission of San Diego according to the Partition Map of said Rancho filed in the Office of the County Clerk of San Diego County in Action No. 348 in the Superior Court of San Diego County, and those portions of Lots I and of Lots H and J, if any, of the Partition of Rancho Mission of San Diego, according to Referees' Partition Map on file in the Office of said County in Civil Case No. 15191 of said Superior Court, and that portion of Lot 4, Block 7, if any, of the Subdivision of Ex-Mission Lot 69 according to Map thereof No. 600 filed in the Office of the County Recorder of said County, May 3, 1889, all in the City of San Diego, County of San Diego, State of California, described as follows:

Parcels 623 and 624 as a permanent easement:

Beginning at the Westerly terminus of that course designated as "North 75° 35' 40" West, 1652.59 feet," being the centerline of Navajo Road as shown on Sheets 1 and 2 of City of San Diego Engineering Department Drawing No. 10829-1 and 2-D, dated March 4, 1963; thence along said centerline South 75° 35' 34" East (Recorded South 75° 35' 40" East) 489.22 feet; thence leaving said centerline South 14° 24' 26" West 51.00 feet to the TRUE POINT OF BEGINNING, being also a point in the Southerly right-of-way of Navajo Road; thence along said Southerly right-of-way South 75° 35' 34" East (Recorded South 75° 35' 40" East) 109.43 feet; thence leaving said right-of-way South 17° 14' 16" East 58.43 feet; thence South 01° 33' 12" West 420.42 feet to the beginning of a tangent 1070.00 foot radius curve concave Westerly; thence Southerly along said curve through a central angle of 34° 31' 21" an arc distance of 644.71 feet; thence tangent to said curve South 36° 04' 33" West 38.65 feet to the beginning of a tangent 410.00 foot radius curve concave Easterly; thence Southerly along said curve through a central angle of 33° 43' 48" an arc distance of 241.37 feet; thence tangent to said curve South 02° 20' 45" West 169.40 feet; thence South 41° 07' 49" West 71.84 feet; thence South 02° 20' 45" West 107.00 feet to a point in the Northerly right-of-way of Jackson Drive as dedicated per City of San Diego Council Resolution No. 174987, dated March 21, 1963; thence along said Northerly right-of-way North 47° 30' 40" West 71.95 feet; thence leaving said right-of-way North 02° 20' 45" East 286.02 feet to the beginning of a tangent 510.00 foot radius curve concave Easterly; thence Northerly along said curve through a central angle of 33° 43' 48" an arc distance of 300.24 feet; thence tangent to said curve North 36° 04' 33" East 38.65 feet to the beginning of a tangent 970.00 foot radius curve concave Westerly; thence Northerly along said curve through a central angle of 34° 31' 21" an arc distance of 584.46 feet; thence tangent to said curve North 01° 33' 12" East 434.19 feet; thence North 19° 36' 52" West 70.66 feet to the TRUE POINT OF BEGINNING containing 3.83 Acres.

Portion of Parcel 624, as temporary easement:

Beginning at the TRUE POINT OF BEGINNING of Parcel 624, described above; thence along the Southerly right-of-way of Navajo Road North 75° 35' 34" West (Recorded North 75° 35' 40" West) 13.00 feet; thence leaving said right-of-way South 14° 24' 26" West 100.00 feet; thence South 75° 35' 34" East 160.00 feet; thence North 14° 24' 26" East 100.00 feet to said Southerly right-of-way of Navajo Road; thence along said right-of-way North 75° 35' 34" West 147.00 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM the permanent easement of Parcel 624, described above containing 5,503 Square Feet (0.13 Acres).

Portion of Parcel 624, as temporary easement:

Beginning at the intersection of the Westerly line of Parcel 624 as described above, with the Northerly right-of-way of Jackson Drive; thence along said right-of-way North 47° 30' 40" West 115.00 feet; thence leaving said right-of-way, North 42° 29' 20" East 136.36 feet to said Westerly line of Parcel 624; thence along said Westerly line South 02° 20' 45" West 178.38 feet to the Point of Beginning, containing 7,841 Square Feet (0.18 Acres).

The above Temporary Parcels are portions of Parcel 624 and are of a temporary nature only, for the right of use for purposes incidental to construction within said Parcel 624 and the right to use said temporary easements shall terminate upon completion of construction.

Those portions of Lots 19, 67 and 68 of Rancho Mission of San Diego, according to Referees' Partition Map made in Superior Court Civil Case No. 15191, on file in the Office of the County Clerk of the County of San Diego, and portions of Lots 155, 156, 157, 158, 195 and 196 of La Mesa Colony according to Map thereof No. 346 on file in the Office of the County Recorder of said County, all in the City of San Diego, County of San Diego, State of California described as follows:

Parcels 625, 626, 627, 628, 629, and 630 as a permanent easement: Beginning at the intersection of the Northerly right-of-way of Kiowa Drive with the Northwesterly boundary of Lago II P.R.D., Map thereof No. 8907 as filed in the Office of the County Recorder of said County, said Northwesterly boundary being also the common boundary between the City of San Diego and the City of La Mesa; thence along said Northerly right-of-way, and its Westerly prolongation, South 89° 14' 10" West (Recorded South 88° 57' 40" West per Map No. 8907) 107.02 feet; thence North 00° 20' 28" West 23.93 feet; thence North 38° 32' 09" East 104.21 feet; thence North 50° 24' 42" East 393.18 feet to the beginning of a tangent 810.00 foot radius curve concave Northwesterly thence Northeasterly along said curve through a central angle of 32° 20.08" an arc distance of 457.13 feet; thence tangent to said curve North 18° 04' 35" East

36.24 feet to the beginning of a tangent 2670.00 foot radius curve concave Southeasterly; thence Northeasterly along said curve through a central angle of $11^{\circ} 37' 15''$ an arc distance of 541.53 feet; thence tangent to said curve North $29^{\circ} 41' 50''$ East 286.72 feet to the beginning of a tangent 490.00 foot radius curve concave Westerly; thence Northwesterly along said curve through a central angle of $57^{\circ} 38' 00''$ an arc distance of 492.89 feet; thence tangent to said curve North $27^{\circ} 56' 10''$ West 812.44 feet to the beginning of a tangent 630.00 foot radius curve concave Easterly; thence Northeasterly along said curve through a central angle of $42^{\circ} 52' 34''$ an arc distance of 471.45 feet; thence tangent to said curve North $14^{\circ} 56' 24''$ East 1067.63 feet to the beginning of a tangent 2530.00 foot radius curve concave Westerly; thence Northerly along said curve through a central angle of $09^{\circ} 20' 38''$ an arc distance of 412.60 feet; thence tangent to said curve North $05^{\circ} 35' 46''$ East 172.91 feet to the beginning of a tangent 2670.00 foot radius curve concave Easterly; thence Northerly along said curve through a central angle of $09^{\circ} 41' 22''$ an arc distance of 451.53 feet; thence tangent to said curve North $15^{\circ} 17' 08''$ East 499.98 feet to the beginning of a tangent 650.00 foot radius curve concave Northwesterly; thence Northerly along said curve through a central angle of $12^{\circ} 56' 23''$ an arc distance of 146.80 feet; thence along a nontangent line South $87^{\circ} 39' 15''$ East 30.00 feet; thence North $02^{\circ} 20' 45''$ East 253.57 feet to a point in the Southerly right-of-way of Jackson Drive as dedicated per City of San Diego Council Resolution No. 174987, dated March 21, 1953; thence along said right-of-way South $47^{\circ} 30' 40''$ East 91.57 feet; thence leaving said right-of-way South $02^{\circ} 20' 45''$ West 194.53 feet to the beginning of a tangent 750.00 foot radius curve concave Westerly; thence Southerly along said curve through a central angle of $12^{\circ} 56' 23''$ an arc distance of 169.38 feet; thence tangent to said curve South $15^{\circ} 17' 08''$ West 499.98 feet to the beginning of a tangent 2570.00 foot radius curve concave Southeasterly; thence Southerly along said curve through a central angle of $09^{\circ} 41' 22''$ an arc distance of 434.62 feet; thence tangent to said curve South $05^{\circ} 35' 46''$ West 172.91 feet to the beginning of a tangent 2630.00 foot radius curve concave Westerly; thence Southerly along said curve through a central angle of $09^{\circ} 20' 38''$ an arc distance of 428.90 feet; thence tangent to said curve South $14^{\circ} 56' 24''$ West 1067.63 feet to the beginning of a tangent 530.00 foot radius curve concave Easterly; thence Southerly along said curve through a central angle of $42^{\circ} 52' 34''$ an arc distance of 396.61 feet; thence tangent to said curve South $27^{\circ} 56' 10''$ East 812.44 feet to the beginning of a tangent 590.00 foot radius curve concave Westerly; thence Southerly along said curve through a central angle of $57^{\circ} 38' 00''$ an arc distance of 593.48 feet; thence tangent to said curve South $29^{\circ} 41' 50''$ West 286.72 feet to the beginning of a tangent 2570.00 foot radius curve concave Southeasterly; thence Southwesterly along said curve through a central angle of $11^{\circ} 37' 15''$ an arc distance of 521.25 feet; thence tangent to said curve South $18^{\circ} 04' 35''$ West 36.24 feet to the beginning of a tangent 910.00 foot radius curve

concave Northwesterly; thence Southwesterly along said curve through a central angle of $32^{\circ} 20' 08''$ an arc distance of 513.57 feet; thence tangent to said curve South $50^{\circ} 24' 43''$ West 335.66 feet to a point in the Northerly boundary of said Map No. 8907; thence along the boundary of said Map North $84^{\circ} 29' 43''$ West (Record North $84^{\circ} 48' 28''$ West per Map No. 8907) 3.75 feet and South $44^{\circ} 08' 55''$ West 89.15 feet (Recorded South $43^{\circ} 52' 25''$ West 89.14 feet per Map No. 8907) to the Point of Beginning.

EXCEPTING THEREFROM those easements granted to the San Diego County Water Authority for pipeline purposes recorded January 29, 1959, in Book 7468, Page 449, Official Records, and recorded May 28, 1959, in Book 7688, Page 144, Official Records, and recorded September 16, 1976 as File No. 76-303961, Official Records containing 11.69 acres.

(R-86-1214)

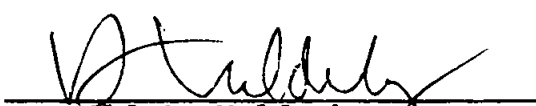
RESOLUTION NUMBER R- 265135

ADOPTED ON FEB 24 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 35-year lease agreement with AMERICAN GOLF CORPORATION, a California corporation, for the operation of the 147-acre Navajo Canyon Golf Course, at an initial minimum rent of \$25,500 against specified percentages of gross income, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 265135.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
12/23/85
Or.Dept:Prop.
Job:218430
R-85-1214
Form=r.none

FEB 24 1988

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SAN DIEGO, CALIF.

LEASE OUTLINE

<u>PAGE</u>	<u>SECTION</u>	<u>PARAGRAPH</u>
	SECTION 1:	USES
1	1.01	Premises
1	1.02	Uses
1	1.03	Related Council Actions
2	1.04	Quiet Possession
2	1.05	Easements and Reservations
2	1.06	Competent Management
	SECTION 2:	TERM
3	2.01	Commencement
3	2.02	Holdover
3	2.03	Surrender of Premises
	SECTION 3:	RENT
3	3.01	Place of Payment
4	3.02	Rent
6	3.03	Payment Procedure
7	3.04	Gross Income
8	3.05	Inspection of Records
10	3.06	Delinquent Rent and Audit Fees
10	3.07	Unauthorized Use Charge

<u>PAGE</u>	<u>SECTION</u>	<u>PARAGRAPH</u>
	SECTION 4:	ASSIGNMENT
11	4.01	Time is of Essence; Provisions Binding on Successors
11	4.02	Assignment and Subletting
11	4.03	Encumbrance
12	4.04	Defaults and Remedies
15	4.05	Eminent Domain
	SECTION 5:	INSURANCE RISKS/SECURITY
16	5.01	Indemnity
17	5.02	Insurance
18	5.03	Waste, Damage or Destruction
	SECTION 6:	IMPROVEMENTS/ALTERATIONS/REPAIRS
19	6.01	Acceptance of Premises
19	6.02	Entry and Inspection
19	6.03	Maintenance
19	6.04	Improvements/Alterations
20	6.05	Utilities
20	6.06	Construction Bond
20	6.07	Liens
21	6.08	Taxes
21	6.09	Signs
21	6.10	Ownership of Improvements and Personal Property
22	6.11	Unavoidable Delay
22	6.12	Development Plan

PAGE

SECTION

PARAGRAPH

SECTION 7: GENERAL PROVISIONS

23	7.01	Notices
23	7.02	Compliance with Law
23	7.03	CITY Approval
23	7.04	Nondiscrimination
24	7.05	Equal Opportunity
24	7.06	Partial Invalidity
24	7.07	Legal Fees
24	7.08	Number and Gender
24	7.09	Captions
24	7.10	Entire Understanding
25	7.11	CITY Employee Participation Policy

SPECIAL PROVISIONS

25	7.12	Corporate Authority
25	7.13	CITY Option to Purchase
25	7.14	Operation of Facilities and Standard of Employees
26	7.15	Supersedure
26	7.16	Warranty
26	7.17	Protection of Lake Murray
26	7.18	Default for Failure to Pay Utility Bills

SECTION 8: SIGNATURES

27	8.01	Signature Page
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PAGE

SECTION

PARAGRAPH

SECTION 9: EXHIBITS

28	9.01	Parcel Maps - Exhibit "A"
30	9.02	Legal Description - Exhibit "B"
33	9.03	General Development Plan
34	9.04	Corporate Name

CITY OF SAN DIEGO

PERCENTAGE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AMERICAN GOLF CORPORATION, a California corporation, hereinafter called "LESSEE."

SECTION 1. USES.

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, as shown on Exhibit "A" and described in Exhibit "B," both of which are attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a regulation 18-hole golf course open for public play, clubhouse, pro shop, golf driving range, restaurant, cocktail lounge, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use of the premises for purposes not expressly authorized herein, shall be grounds for termination by CITY, unless such failure shall be the result of a force majeure occurrence and outside the control of LESSEE.

1.03 Related Council Actions. By the granting of this lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this lease agreement LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a public golf course and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be thirty-five (35) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge and deliver to the CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the leasehold premises. The premises shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

- 3.01 Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Minimum Rent. The annual minimum rent established for the first five years following the effective date of this lease is Twenty-Five Thousand Five Hundred Dollars (\$25,500), which is Two Thousand One Hundred Twenty-Five Dollars (\$2,125) on a monthly installment basis.

If the minimum rent is greater than the percentage rent, on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.03.

Provided, however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed the required annual minimum rent for that year, then, for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus percentage rents paid exceeds the annual minimum rent and also exceeds the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the annual minimum rent shall be credited against the next payable rent as it becomes due. It is the intent of this provision that the LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term shall prevail on an annual basis.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth lease year of this lease and at the beginning of each two and one-half-year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the two years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within 30 days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

<u>Percentages</u>	<u>Business Activities</u>
Twenty-Five Percent (25%)	Of commissions or any other compensation paid to LESSEE or its sublessees, permittees, or licensees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, including telephones, or 10% of the gross income of any such coin-operated machines or devices owned, rented, or leased by LESSEE, whether such machines are maintained and operated by LESSEE or by sublessees for use on the premises.
One Percent (1%)	Of all gross income earned by the golf pro and his assistants from golfing royalties; participation in testimonials, tournaments, or exhibitions; and golf instruction.
Ten and One-Half Percent (10-1/2%)	Of gross income derived from all other activities and operations conducted on or from the leased premises, including but not limited to golf course, driving range, clubhouse, pro shop, restaurant, and cocktail lounge.

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.07, UNAUTHORIZED USE CHARGE, hereof.

- d. Percentage Rate Adjustment. Effective upon the first day of the sixth year of the term of this agreement and at each five-year interval thereafter, the percentage rate of LESSEE'S gross income under the category of "all other activities" in Paragraph c. above to be paid CITY for the succeeding five-year period shall be increased to the rates in the following schedule:

<u>Year</u>	<u>Percentage</u>
1991	Eleven and One-Half Percent (11-1/2%)
1996	Twelve Percent (12%)
2001	Thirteen Percent (13%)
2006	Thirteen and One-Half Percent (13-1/2%)
2011	Fourteen and One-Half Percent (14-1/2%)
2016	Fifteen Percent (15%)

Effective upon the first day of the eleventh year of the term of this agreement and at the subsequent ten-year interval, the percentage rate of LESSEE'S gross income under the category of "golf pro and his assistants" in Paragraph c. above to be paid CITY for the succeeding period of years shall be increased to the rates in the following schedule:

<u>Year</u>	<u>Percentage</u>
1996	One and One-Quarter Percent (1-1/4%)
2006	One and One-Half Percent (1-1/2%)

The percentage rates under the category of "coin-operated machines" in Paragraph c. above will remain unchanged during the term of this agreement.

- 3.03 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE will provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.

- c. The percentage rental due the CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts: One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by the CITY as required by this lease, and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.04 Gross Income. "Gross income or receipts" as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee or their agents and all gross income received by any sublessee, permittee, licensee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.05 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activity conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under a. Records will be kept for at least five years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

On CITY'S request, LESSEE will promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of the CITY'S audits will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit.

- (1) The audit reveals an underpayment of more than five percent (5%), or more than \$10,000 whichever is less between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit; or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with the Inspection of Records section.

LESSEE shall pay any deficiency determined by the audit plus interest on such amount as defined in the Delinquent Rent provision of this lease within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.06 Delinquent Rent and Audit Fees. If the LESSEE fails to pay the rent when due, the LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, the LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event the CITY audit discloses that the unpaid rent is less than five percent of the total rent, then in the event LESSEE fails to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.07 Unauthorized Use Charge. LESSEE will pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease and any interest herein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

4.03 Encumbrance. Subject to prior consent by the CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of the LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with the section hereof entitled Development Plan; however, a reasonable portion of the loan proceeds may be

disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval, in writing, of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said development plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

In the event any such approved deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease.

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or

- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Paragraph a. (1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within 30 days, to commence to cure the default(s) and diligently pursue such cure to completion. The 30-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:

- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

- (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable cost incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including, but not limited to, the right to recover the rent as it becomes due, plus damages.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY'S delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of the CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of the CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

- d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to receive from such award (i) a sum attributable to the value of LESSEE'S leasehold estate, including improvements, and (ii) a sum attributable to the loss of goodwill.
- e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

The indemnification contained in this section shall not apply to any such liability as may result from the direct and proximate negligence or willful misconduct of CITY or CITY'S employees or agents acting within the scope of their employment or agency.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report should contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or at the CITY'S option LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days' written notice to LESSEE, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with the Development Plan described in Section 6.12 hereof and with all applicable laws.
- 6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager and such approval shall

not be unreasonably withheld. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE will, at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

- 6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the premises including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever, erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to the payment of taxes levied on such interest and that LESSEE shall pay all such possessory interest taxes. LESSEE shall not be required to pay such real property taxes prior to delinquency in the event that LESSEE elects to contest in good faith the validity or amount of real property taxes. Any such contest shall be accomplished by means of appropriate proceedings diligently pursued at LESSEE'S sole expense. LESSEE agrees that, upon final determination of liability, it will promptly pay the amount of taxes found owing, along with any interest, penalties or cost that may result from LESSEE'S contest. CITY will cooperate with LESSEE in any such contest of the validity or amount of real property taxes, provided that CITY is not required to incur any cost or expense as a result of such cooperation. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.
- 6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of the CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY or CITY may thereupon remove the item at LESSEE'S cost.
- 6.10 Ownership of Improvements and Personal Property.
- a. All and any improvements, trade fixtures, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
 - b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE 30 days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the development plan are described in Section 9.03 hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee or beneficiary, as applicable at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

- 7.05 Equal Opportunity. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on its own examination of the premises, advice from its own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

SPECIAL PROVISIONS

- 7.12 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that the LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.13 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.14 Operation of Facilities and Standard of Employees. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public. Such schedule shall be subject to the approval of the City Manager. The LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego. The type and quality of service furnished by LESSEE shall qualify for the conditions and requirements of the "A" Card issued by the Department of Health to operators of food handling establishments.
- LESSEE shall engage a full-time qualified Class "A", P.G.A. golf professional and an adequate number and quality of personnel as necessary to diligently and creditably provide a high standard of services in the opinion of the City Manager.

Prices of merchandise, equipment and services shall be generally comparable with other similar public golf courses in Southern California. The City Manager shall have the right to require by written notice that a schedule of prices and charges be submitted by LESSEE for approval by CITY, in which event, no changes shall be made in said schedule without the prior written approval of the City Manager; provided, however, that LESSEE shall not be required to operate the leased premises at a loss. LESSEE shall secure and maintain golf course memberships in the United States Golf Association and the San Diego Golf Association.

- 7.15 Supersedure. It is mutually agreed that this lease, upon commencement, supersedes and annuls that certain lease dated August 15, 1974, and executed by the City Manager on October 1, 1974, with James C. Pagni and John T. Worcester, a general partnership, Document No. 748573, and assigned as of December 18, 1981, to California Golf . Tennis, Inc., a California corporation, which lease is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.16 Warranty. The CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.
- 7.17 Protection of Lake Murray. LESSEE acknowledges that Lake Murray, extending to Contour 529 City Datum and as shown lying below the "100' Contour" line on City of San Diego Engineering Department Drawing 3935-B, dated March 1950, is a water impounding area and, therefore, agrees to conduct the operation of the leased premises in such a manner so as not to cause contamination of the impounded waters. LESSEE further agrees to comply with all rules and regulations adopted by any official body of competent jurisdiction relating to the protection of the lake from introduction of impurities or pollution.
- 7.18 Default for Failure to Pay Utility Bills. LESSEE agrees to pay for all water and other utilities furnished to the leased premises. Failure to pay any or all charges for such utilities when due shall constitute a material default under this lease and shall be cause for termination by CITY in accordance with the provisions of Section 4.04, DEFAULTS AND REMEDIES, hereof.

SECTION 8: SIGNATURES

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date FEB 24 1986

By *Daryl Hingdy*
ASSISTANT TO THE City Manager

LESSEE: AMERICAN GOLF CORPORATION

Date 22 July 1985

By *E. L. Burns*

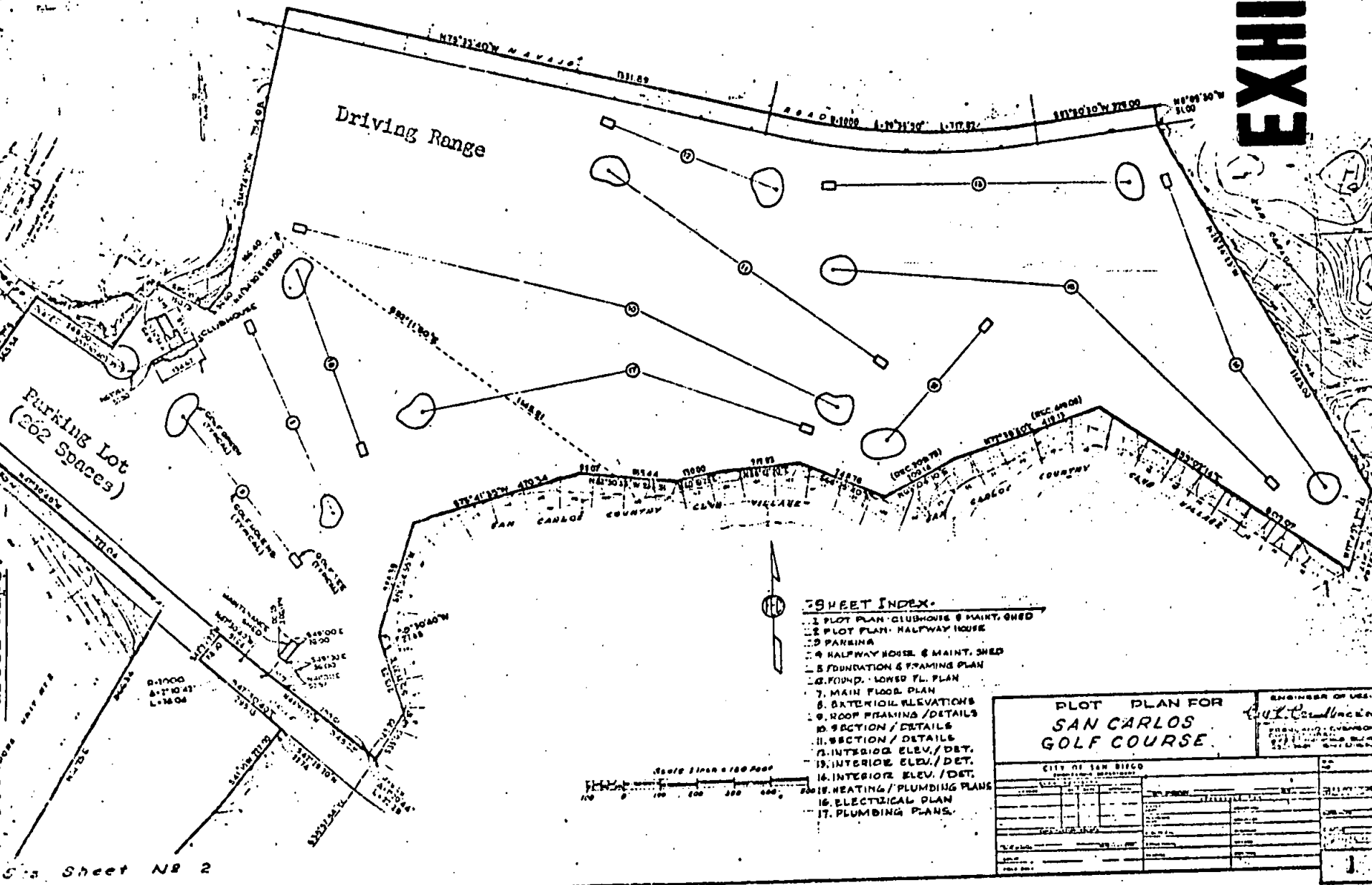
By *Stephen R. Hoff*

APPROVED as to form and legality this 6 day of March, 1986.

By *[Signature]*
Deputy City Attorney

PTC:jw(6)C9
7-12-85

R- 265135



PARCEL I

Those portions of Lots 67 and 68 of RANCHO MISSION of San Diego in the City of San Diego, County of San Diego, State of California, according to Partition Map of said Rancho made in Action entitled "Juan M. Luco et al vs. The Commercial Bank of San Diego et al," Superior Court Case No. 348 filed in the office of the County Clerk of said County, described as follows:

Beginning at the most Southerly corner of Lake Shore Unit No. 7, according to Map thereof No. 5206 filed in the office of the County Recorder of said County; thence along the boundary of said Lake Shore Unit No. 7, North 40°53'45" East 44.40 feet, North 36°29'20" East 365.54 feet, South 53°30'40" East 248.00 feet, and North 36°29'20" East 212.59 feet; thence leaving said boundary, South 60°10'40" East 150.75 feet; thence North 41°54'20" East 283.00 feet; thence South 52°11'50" East 1145.21 feet to a point in the Northwesterly boundary of San Carlos Country Club Village Unit No. 2, according to Map thereof No. 4844 filed in the office of said County Recorder; thence along the Northwesterly and Westerly boundary of said San Carlos Country Club Village Unit No. 2, North 82°50'35" West 98.07 feet to the most Northerly corner of Lot 116 thereof, South 75°41'35" West 470.34 feet, South 19°54'55" West 288.39 feet, South 9°30'40" West 27.88 feet, South 15°21'37" East 213.23 feet, and South 33°05'49" West 52.01 feet to the Southwesterly corner of Lot 106 of said San Carlos Country Club Village Unit No. 2, being also the Northwesterly corner of Lot 14 of Lake View Country Club Village Unit No. 1 according to Map thereof No. 4874 filed in the office of said County Recorder; thence along the Westerly boundary of said Lake View Country Club Village Unit No. 1, South 33°05'49" West 91.19 feet to the Northeasterly line of Jackson Drive as dedicated by deed recorded September 28, 1962 at File/page No. 107995, Series 3, Book 1962, being a point in a 949 foot radius curve concave Northeasterly, a radial line of said curve bearing South 38°57'54" West to said point; thence along said Northeasterly line of Jackson Drive, Northwesterly along said curve, through an angle of 1°20'44" a distance of 22.29 feet; thence tangent to said curve, along said Northeasterly line, North 49°41'22" West 348.33 feet to the beginning of a tangent 2000 foot radius curve concave Northeasterly; thence Northwesterly along said curve, and along said Northeasterly line, through an angle of 2°10'42" a distance of 76.04 feet; thence tangent to said curve, along said Northeasterly line, North 47°30'40" West 91.64 feet; thence leaving said Northeasterly line, South 42°29'20" West 88.00 feet to a point in the Southwesterly line of said Jackson Drive; thence along said Southwesterly line, South 47°30'40" East 295.13 feet; thence leaving said Southwesterly line, South 42°29'20" West 22.74 feet; thence South 41°10'00" West 222.00 feet; thence South 45°10'00" West 299.03 feet; thence South 26°39'00" West 104.45 feet; thence South 10°34'00" West 101.95 feet; thence South 49°56'30" West 192.33 feet to an angle point in the centerline of the San Carlos - Lake Murray Drain Interceptor Ditch as shown on Engineer's Drawing 7935-A-D, filed in the office of the City Engineer of said San Diego; thence along said centerline South 30°14'20" West 395.80 feet, South 23°40'04" West 302.92 feet, and South 42°14'00" West 301.60 feet; thence leaving said centerline North 50°05'00" West 60.00 feet; thence North 30°48'00" West 92.50 feet; thence South 13°07'00" East 151.96 feet; thence South 22°34'00" East 201.88 feet; thence South 15°09'00" West 187.00 feet; thence South 24°14'00" West 263.00 feet; thence South 28°18'00" West 295.00 feet; thence South 38°51'00" West 120.00 feet; thence South 45°22'00" West 112.00 feet; thence South 41°05'00" West 290.00 feet; thence South 48°12'00" West 127.00 feet; thence South 35°33'00" West 77.00 feet; thence South 56°02'00" West 183.00 feet; thence South 69°23'00" West 100.00 feet; thence South 41°52'00" West 117.00 feet; thence

EXHIBIT B

South 86°50'00" West 142.00 feet; thence North 75°22'00" West 58.99 feet; thence North 13°36'10" West 164.80 feet; thence North 03°43'10" West 884.00 feet to a point in a 1200 foot radius curve concave Northwesterly, a radial line of said curve bearing South 16°42'00" East to said point; thence Northeasterly along said curve through an angle of 86°40'50" a distance of 1815.43 feet to the beginning of a tangent reverse curve concave Easterly, being also the South-easterly corner of Lake Shore Unit No. 3 according to Map thereof No. 5097 filed in the office of said County Recorder; thence along the Easterly boundary of said Lake Shore Unit No. 3, Northerly along said curve, through an angle of 27°48'20" a distance of 606.62 feet; thence continuing along said boundary North 50°26'30" East 149.16 feet to the most Easterly corner of Lot 126 of said Lake Shore Unit No 3; thence leaving said boundary, South 33°56'40" East 313.41 feet; thence South 46°39'10" East 409.01 feet; thence East a distance of 241.03 feet; thence North a distance of 116.73 feet; thence North 32°25'00" East 966.34 feet; thence North 47°30'40" West 722.04 feet to the beginning of a tangent 1000 foot radius curve concave Southwesterly; thence Northwesterly along said curve through an angle of 01°35'35" a distance of 27.80 feet to the Point of Beginning.

Containing an area of 90.060 acres.

PARCEL II

All that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

That portion of Lot 67 of RANCHO MISSION of San Diego according to Partition Map thereof on file in the office of the County Clerk of said County, in Action No. 348 of the Superior Court of said County entitled "Juan M. Luco et al vs. The Commercial Bank of San Diego et al"; that portion of the Subdivision of Lot 69 of Rancho Ex-Mission according to Map thereof No. 600 filed in the office of the County Recorder of said County, and all that portion of the Subdivision of a portion of Lot 70 of Rancho Mission of San Diego according to Referee's Partition Map in an action entitled "San Diego Realty Company, a corporation, vs. Maria Y Olvera de Toro, et al" (Superior Court Civil Case No. 15191) filed in the office of said County Clerk, described as a whole as follows:

Beginning at a point in the Northerly boundary of San Carlos Country Club Village Unit No. 2 according to Map thereof No. 4844 filed in the office of said County Recorder, distant thereon South 82°50'35" East 98.07 feet from the most Northerly corner of Lot 116 of said San Carlos Country Club Village Unit No. 2; thence along said Northerly boundary South 82°50'35" East 155.44 feet; thence North 80°10'25" East 130.00 feet; thence North 86°12'20" East 212.93 feet; thence South 66°25'40" East 248.76 feet; thence North 63°04'10" East 209.14 feet (record 209.75 feet) to an angle point in the North line of Lot 22, San Carlos Country Club Village Unit No. 1, according to Map thereof No. 4824 filed in the office of said County Recorder, said angle point also lying on the Northerly boundary line of said Map No. 4824; thence along said boundary line North 72°38'50" East a distance of 419.13 feet (record 419.08 feet) to the most Northerly point of Lot 18 of said Map No. 4824; thence South 55°02'14" East a

EXHIBIT B

distance of 802.07 feet to an angle point in Lot 573, San Carlos Unit No. 7 according to Map thereof No. 4927 filed in said office of the County Recorder; thence North 17°40'00" East a distance of 221.41 feet to an angle point in Lot 659, San Carlos Unit No. 9 according to Map thereof No. 4890 filed in the office of said County Recorder; said angle point also lying on the Westerly boundary line of said Map No. 4890; thence along said Westerly boundary North 28°24'23" West 1145.00 feet; thence North 06°09'30" West a distance of 51.00 feet to the most Westerly point of said Map No. 4890, said Westerly point also lying on the centerline of Navajo Road as shown on said Map No. 4890 and as shown on City of San Diego Drawing No. 9808-A-D; thence along said centerline of Navajo Road South 83°50'30" West a distance of 325.00 feet to the beginning of a tangent curve concave to the North and having a radius of 2000.00 feet; thence along said curve in a Westerly direction, through an angle of 20°33'50" a distance of 717.82 feet to the end of said curve; thence continuing along the centerline of said Navajo Road North 75°35'40" West 1331.89 feet; thence leaving said centerline South 14°24'20" West 754.68 feet; thence North 41°54'20" East 186.40 feet; thence South 52°11'50" East 1145.21 feet to the Point of Beginning.

Containing an area of 57.049 acres.

EXHIBIT B

9.03 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

and is filed in the Office of the City Clerk referenced to this lease.

American Golf Corporation
CORPORATE NAME

I, Stephen R. Hofer, Certify that I am the Secretary of the corporation named in the attached agreement; that E.C. Burns and ^{were} ~~was~~ Stephen R. Hofer who signed this agreement on behalf of the corporation, ~~was~~ then Vice President and Secretary, respectively of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on 22 July, 1985 and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of said corporation.

CORPORATE SEAL

By

Stephen R. Hofer

NAME David G. Price
TITLE Chairman of the Board of Directors
and Chief Executive Officer

NAME Robert H. Williams
TITLE Member of the Board of Directors
and President

NAME Ernest Chase Burns
TITLE Member of the Board of Directors
and Vice President/Acquisitions

NAME Joan Stewart
TITLE Member of the Board of Directors
and Vice President/Training

PTC:jw(6)C9
7-12-85

DEVELOPMENT PLAN

Lessee agrees to spend an average of \$80,000 per calendar year over a five-year period, beginning January 1, 1986 and ending December 31, 1990, for major capital improvements and work connected therewith, all in the total amount of \$400,000.

All work and improvements shall be mutually agreed upon by the Lessee and by the City acting through its City Manager.

The improvements shall be planned and engineered to meet good workmanlike standards in accordance with the generally accepted practices and customs of the golfing industry.

Further, all work and improvements shall be accomplished to the satisfaction of the City Manager who shall not arbitrarily or unreasonably withhold his approval.

Any funds not expended in any calendar year shall, with the approval of the City Manager, be carried forward to the following year or future years.

As a part of the above agreed Development Plan, the following improvements will be completed within the year 1986:

1. Drainage

a. Correction of golf course main channel which connects with the terminus of the 60-inch street storm drain from Cowles Mountain Road. \$ 5,000

Correct the existing channel to eliminate the standing water at the mouth of the drain.

b. Construct a spillway just easterly of Jackson Drive, connecting the existing channel to the access tunnel. Spillway must be of sufficient width to control excess water from the channel during storm periods. Channel shall be graded and sodded and maintained to the satisfaction of the City Manager. 3,000

2. Driving Range

a. Fence along Navajo Road, 30' high	\$15,000
b. Grade and construct new tee	5,000
c. Irrigation	2,000
d. Trees at end of driving range	1,000
e. Engineering	500

3. Number 4 tee

a. Protective fence at tee, 20' high, 80' long	4,000
b. Grade and construct new tee	2,000
c. Irrigation	1,000
d. Cart path	2,000
e. Trees along left of fairway	2,000
f. Engineering	500

4. Irrigation system 15,000

a. Replace valves, heads, rewire and decks

5. Cart paths 15,000

a. Complete greens to tees

6. Halfway snack shack 6,000

7. Name change to Mission Trails Golf Course 25,000
\$104,000

APPROVED AND ACCEPTED:

THE CITY OF SAN DIEGO

DATE FEB 24 1986

BY:

Daryl Gandy
ASSISTANT TO THE CITY MANAGER

R-265135

LESSEE: AMERICAN GOLF CORPORATION

DATE: Dec 13, 1985

BY: *David R. Linc*

BY: C. E. O.

APPROVED AS TO FORM AND LEGALITY

THIS 6 DAY OF March, 1986

BY: *J. A. Alderley*

Robert City Attorney

DC/sc
12/2/85