

**MANAGEMENT AGREEMENT**  
**Fullerton Municipal Golf Course**

THIS MANAGEMENT AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of December, 2010 (“Effective Date”) by and between the City of Fullerton, a California Municipal Corporation (“City”), and AMERICAN GOLF CORPORATION, a California corporation (“AGC”), with its principal place of business at 2951 28th Street, Santa Monica, California 90405. City and AGC are at times collectively referred to as the “Parties.” This agreement supersedes the Lease Agreement between the CITY and AGC, dated May 15, 1979.

RECITALS

WHEREAS, the City leases that certain real property located in the City of Fullerton, State of California, commonly known as the Brea Dam Flood Control Basin (Lease No. DACW09-1-68-22) from the United States Army Corps of Engineers for public park and recreation purposes, which includes the Fullerton Municipal Golf Course; and

WHEREAS, by Supplemental Agreement No. 4 to the Brea Dam Flood Control Basin Lease dated June 26, 2001, the term of the lease was extended to June 26, 2051; and

WHEREAS, the City entered into a lease agreement (“Prior Lease”) with American Golf Corporation in 1979 for the operation of the Fullerton Municipal Golf Course an 18-hole golf course and amenities including a driving range, clubhouse, cart storage facility, maintenance facility, and other buildings, structures and improvements related thereto located at 2700 N. Harbor Blvd., in the Brea Dam Flood Control Basin, (hereinafter the “Facility”) and more particularly described in Exhibit “A” attached hereto, for the purposes of operating and managing a public golf course; and

WHEREAS, American Golf Corporation, together with its affiliates, is engaged in the ownership, management and operation of golf courses and country clubs throughout the United States; and

WHEREAS, City desires to continue to utilize the services and expertise of AGC in the management, advertising, marketing, promotion and operation of the Facility, and AGC desires to render such services upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Parties mutually agree that it is in the best interest of the Fullerton Municipal Golf Course to operate the golf course consistently with its past operations and in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and the respective and mutual agreements contained herein, said parties hereby agree as follows:

**ARTICLE 1 - DEFINITIONS**

As used in this Agreement, the following terms shall have the respective meanings indicated below:

Agreement means this Management Agreement.

Annual Plan has the meaning set forth in Section 3.2.1.

AGC means American Golf Corporation or any successor to AGC's interest under this Agreement as provided in Section 8.2 of this Agreement.

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

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

City means City of Fullerton, a California Municipality or any successor to City's interest under this Agreement as provided in Section 8.2 of this Agreement.

Commencement Date means the date upon which AGC assumes its obligations under this Agreement to manage and operate the Facility, which date shall be December 1, 2010.

Comparable Facilities means other municipal golf course facilities located in Orange County, charging comparable green fees, with a comparable level of maintenance standards and a comparable quality of improvements and amenities.

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

CPI means The United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers (all items for the Los Angeles-Riverside-Orange County metropolitan area on the basis of 1982 - 1984 equals 100). Notwithstanding the foregoing, if the format or components of the CPI are materially changed after the date hereof, then AGC shall substitute an index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the CPI in effect as of the date hereof. The substitute index shall be used to calculate the increase in the Base Line NOI unless City objects to such index in writing within fifteen (15) days after the date AGC notifies City of AGC's substitute index. If City objects to the substitute index, then AGC and City shall submit the selection of the substitute index for binding arbitration in accordance with the rules and regulations of the American Arbitration Association at its office closest to the Facility. The costs of arbitration shall be borne equally by City and AGC.

Facility has the meaning set forth in the third recital of this Agreement.

Facility Accounts has the meaning set forth in Section 6.1.

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

Impositions means all taxes, assessments, water, sewer or other similar rents, rates and charges, levies, license fees, permit fees, inspection fees and other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Facility or the operation of the Facility (excluding federal and state taxes imposed on the income earned by AGC or its employees hereunder).

Improvements means the buildings, structures (surface and subsurface) and other improvements now or hereafter located on the Land.

Insurance Requirements means all requirements of each insurance policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Facility or the operation of the Facility; this term shall not, however, include recommendations of insurance carriers.

Land means the parcel or parcels of land described in Exhibit "A" attached to this Agreement and incorporated herein by this reference.

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

Major Capital Improvements has the meaning set forth in Article 10.

Management Fee has the meaning set forth in Section 5.1.

Operating Period means the period beginning on the Commencement Date and ending on the earlier to occur of (a) the last day of the term of this Agreement, or (b) if this Agreement is terminated pursuant to Article 7 below, the effective date of such termination ("Last Operating Day").

Operating Inventory means consumable items used in or held in storage for use in the operation of the Facility, including scorecards and cart tickets, driving range balls, professional shop merchandise, food and beverages, paper and plastic ware, fuel, cleaning materials, fertilizers, pesticides, linens, glassware, sanitation supplies and other similar items.

Operating Year means the calendar year, from January 1<sup>st</sup> to December 31<sup>st</sup>, except that (a) the first Operating Year shall be the period beginning on the Commencement Date and ending on the following December 31, and (b) the last Operating Year shall be the period beginning on January 1 of such year and ending on the Last Operating Day.

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

Premises means a collective term for the Land and Improvements and City's interest in the Land and Improvements, and any greater estate or interest hereafter acquired, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or pertaining to the Premises.

Special Services has the meaning set forth in Section 3.4.

## ARTICLE 2 - TERM OF AGREEMENT

2.1 **Term.** The term of this Agreement shall commence on the Effective Date as shown on Page One (1) of this Agreement and remain in effect for a period of fifteen (15) years, unless terminated sooner pursuant to Article 7 of this Agreement.

## ARTICLE 3 - OPERATING RESPONSIBILITIES

3.1 **Grant to AGC.** Except as otherwise expressly provided in this Agreement, City grants to AGC the right to manage and operate the Facility pursuant to the terms of this Agreement, and AGC agrees it will manage and operate the Facility in a manner comparable to and consistent with the management and operational practices of Comparable Facilities. AGC shall perform its services in a timely and diligent manner. Without in any way limiting AGC's right to manage and operate the Facility in accordance with the terms of this Agreement, AGC, with the approval of City and in accordance with the terms of this Agreement, shall have the authority and responsibility to: (a) implement each approved Annual Plan; (b) determine, establish, and implement the policies, standards, and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (c) hire, train, and supervise the general manager, course superintendent, and all Facility employees; (d) supervise and direct all phases of advertising, sales, and business promotion for the Facility; and (e) establish accounting and payroll procedures and functions for the Facility. City agrees it will cooperate with AGC to permit and assist AGC to carry out its duties under this Agreement.

3.2 **Annual Plans.**

3.2.1 **Preparation.** AGC will submit to City at least sixty (60) days in advance of each Operating Year (except for the first Operating Year for which the Annual Plan shall be submitted prior to the Commencement Date) an "Annual Plan" consisting of (a) a budget which shall include for the ensuing year (or portion thereof) estimates covering the projected revenues of the Facility (broken down on a line item basis) and the projected expenditures for (i) property operation and maintenance, (ii) Capital Improvements which constitute normal repairs, replacements, and alterations, (iii) Furnishings and Equipment and Operating Inventory, (iv) advertising, sales, and business promotion and (v) employee Compensation and (b) an operating/business plan for the Facility setting forth in detail a marketing and promotions plan, a schedule of proposed golf charges, an operating schedule (which shall include hours of operation and staffing levels) and a maintenance plan. City acknowledges that the budget will not constitute a guarantee of the actual revenues or expenses of operating the Facility. The parties

understand that, as provided in Section 10.1, budgets for Major Capital Improvements will be treated separately and will not form part of the Annual Plans.

**3.2.2 Approvals.** Each Annual Plan shall be subject to the prior written approval of City, which approval shall not be unreasonably withheld. It is contemplated by the parties that the Annual Plan will be agreed upon by the parties not later than thirty (30) days following delivery of the Annual Plan by AGC to City. If City fails to either approve the Annual Plan within said 30-day period or to advise AGC of its objections to the Annual Plan within such period, then City shall be deemed to have approved the Annual Plan as submitted. In the event of a dispute with regard to an Annual Plan, the parties shall use good faith efforts to resolve such dispute. Pending the resolution of such dispute, AGC shall continue to manage and operate the Facility in accordance with the standards set forth in this Agreement at a level of expenditures comparable to those of the preceding year plus an amount equal to the increase, if any, in the CPI during the prior Operating Year. Once approved, AGC may propose amendments or revisions to the Annual Plan to take into consideration variables or events that did not exist, or could not be anticipated by AGC, at the time the Annual Plan was prepared. Any such proposed amendments or revisions shall be submitted in writing and shall be subject to City's prior approval, which approval shall not be unreasonably withheld or delayed.

**3.2.3 Compliance.** AGC shall comply, to the extent reasonably and commercially practicable, with the applicable Annual Plan, and shall not deviate by more than ten percent (10%) from the Annual Plan without City's prior consent, which consent will not be unreasonably withheld.

**3.2.4 Emergency Expenditures.** It is agreed that the Annual Plan shall contain a line item for emergency expenditures equal to three (3%) percent of all budgeted costs set forth in the Annual Plan. If an emergency occurs which requires funds not otherwise budgeted for in the Annual Plan, AGC shall first attempt to contact City to obtain prior approval for the emergency expenditure. If AGC is unable to contact City, or circumstances require immediate action, then AGC shall be authorized to make reasonable emergency expenditures which in the aggregate do not exceed the amount budgeted therefore in the Annual Plan. Provided that an emergency expenditure was justified, the line item in the Annual Plan for emergency expenditures shall be deemed increased by the amount of the emergency expenditures made by AGC so that at all times, the line item amount for emergency expenditures shall remain at the approved level.

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

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

consultation, construction and design consultation and construction supervision related to Major Capital Improvements (“Special Services”). City shall reimburse AGC for all costs and expenses associated with AGC’s providing such Special Services which shall be the total of (i) the actual cost of labor, (ii) the actual cost of supplies and materials, and (iii) all related travel, subsistence and similar expenses incurred by AGC personnel associated with the performance of the Special Services, but not to exceed the budget approved by the City as set forth in the immediately succeeding sentence. Upon City’s request for the performance of a Special Services project, AGC shall prepare a scope of work and budget and submit to City for review and approval. AGC shall not commence any Special Services project without City’s prior approval.

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

(a) enter into such contracts for the furnishing of utilities and maintenance and other services to the Facility;

(b) make all repairs, decorations, revisions, alterations and improvements to the Facility as shall be reasonably necessary for maintenance of the Facility in good and sanitary order, condition and repair;

(c) incur such expenses as shall be necessary for the operation and maintenance of the Facility to the quality standards contemplated by this Agreement and the Annual Plans, including without limitation incurring lease expenses for Furnishings and Equipment and costs for Operating Inventory;

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

(e) apply for, and use its best efforts to obtain and maintain, all licenses and permits required of AGC in connection with the operation and management of the Facility; and City agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with AGC in the application for, and obtaining and maintenance of, such licenses and permits;

(f) use its best efforts to do, or cause to be done, all such acts and things in and about the Facility as shall be reasonably necessary to comply with all Insurance Requirements and Legal Requirements, and to discharge any lien, encumbrance or other charge on the Facility; and

(g) pay all Impositions and insurance premiums when due, if City requests in writing that AGC assume responsibility on City’s behalf for the payment of such Impositions and insurance premiums.

### 3.6 **Personnel.**

3.6.1 **General.** AGC shall employ all of the employees of the Facility. AGC shall recruit, hire, train, discharge, promote and supervise the management staff of the Facility (i.e., the general manager or course manager, the assistant managers, the course superintendent, department heads and other key personnel), and AGC shall supervise through the management staff the recruiting, hiring, training, discharge, promotion and work of all other employees of the Facility. AGC shall provide any legally mandated training, safety training in accordance with industry standards, and training in AGC's cash handling and inventory control procedures for all AGC employees. Further, AGC will use reasonable efforts to provide a safe work environment for AGC employees and a work place free from illegal harassment or illegal discrimination. For a period of one year after the date of termination of this Agreement pursuant to Section 7.1, City shall not solicit or hire as an independent contractor, consultant or employee any general manager previously employed within 12 months of date of termination by AGC for the Facility. In the event that City is dissatisfied with the performance of any AGC personnel, the following procedure shall be followed: (i) City shall communicate any complaints regarding personnel below the rank of general manager to the general manager and shall communicate complaints regarding the general manager to AGC's regional manager for the Orange County area, and (ii) AGC shall reasonably and promptly investigate and take appropriate action with respect to City's complaints. All employees of the Facility shall be properly qualified for their positions, and the Compensation of such persons shall be comparable to the Compensation of employees at Comparable Facilities. The Compensation of all Facility employees, other than the compensation of the general manager and the course superintendent, shall be an expense of the Facility payable by City in accordance with this Agreement.

3.6.2 **Pension and Benefit Plans.** AGC shall have the right to provide eligible employees of the Facility with pension and other employee retirement benefits and disability, health and welfare benefits and other benefit plan or plans now or hereafter available to employees of Other AGC Facilities and to charge the Facility with its allocable share of such AGC plan or plans.

3.6.3 **Temporary Assignment of Other AGC Personnel.** If AGC shall reasonably deem it advisable, and after City's prior approval, AGC may temporarily assign to the Facility the general manager, the head golf professional and other members of the management staff from the employees of AGC or Affiliates of AGC or from the staff of Other AGC Facilities. During such time as these employees are temporarily assigned to the Facility, all such employees will be paid their regular Compensation, and the pro-rata share of such employees' Compensation equal to the actual time such employees worked at the Facility shall be an expense of the Facility, either payable directly by City or in the event AGC paid such Compensation reimbursed to AGC by City as provided in Section 3.7 below.

3.7 **Reimbursements to AGC.** Within thirty (30) days after written receipt of a written request together with invoices and other appropriate back-up documentation, City shall reimburse AGC for all costs and expenses incurred by AGC as the result of AGC's performance under this Agreement, and allowed under the Annual Plan, including without limitation (a) all costs incurred by AGC pursuant to Sections 3.5 and 3.6 hereof and (b) the deductible amounts

under any worker's compensation or health insurance policies maintained by AGC for its employees pursuant to this Agreement.

### 3.8 **Restrictions on Use of Facility**

(a) The Facility shall be used solely for the operation of an eighteen (18) hole championship golf course, and retail golf shop, bar and restaurant, banquet facility, driving range and such other uses and amenities as may be approved by City and are compatible with the operation of an eighteen (18) hole championship golf course including, by way of illustration, a golf school, a health spa, a sports and entertainment facility and banquet facilities.

(b) AGC agrees not to allow the use of the Facility for, or carry on or permit any dangerous activity or nuisance. Further, AGC agrees not to use the Facility for any purpose which would increase existing rates of insurance or cause cancellation of any insurance policy carried by City or AGC. AGC shall cause the Facility to comply with all Legal Requirements relating to the condition, use and occupancy of the Facility.

## ARTICLE 4 - INSURANCE

### 4.1 **Coverage**

(a) AGC agrees to procure and maintain, at the expense of the Facility payable by City in accordance with this Agreement, at all times during the Operating Period, a minimum of the following insurance:

(i) insurance on the Facility and contents, including without limitation the Furnishings and Equipment and Operating Inventories, against loss or damage by fire, lightning and/or any other perils insurable under the form of "all risk" coverage then available (including specifically irrigation and/or sprinkler system leakage damage, vandalism and malicious mischief, if available), in an amount equal to not less than ninety percent (90%) of the full replacement value of the Improvements and contents and with no co-insurance provisions. **The City of Fullerton shall be named as loss payee on the policy.**

(ii) business interruption insurance covering actual losses sustained due to fire, lightning and other perils insurable under the form of "all risk" coverage then available (including specifically irrigation and/or sprinkler system leakage damage, vandalism and malicious mischief, if available) in an amount equal to the annual business interruption values and with no co-insurance provisions. **The City of Fullerton shall be named as loss payee on the policy.**

(iii) insurance on the Facility and contents, including without limitation the Furnishings and Equipment and Operating Inventories, against loss from accidental damage to, or from the explosion of, boilers, air conditioning systems, refrigeration and heating apparatus, pressure vessels and pressure pipes installed on the Facility (but such coverage shall be required only in the event that there are fired pressure vessels or boilers on the Premises), in an amount not less than one million dollars (\$1,000,000.00) with



respect to any one accident and with no co-insurance provisions. **The City of Fullerton shall be named as loss payee on the policy.**

(iv) business interruption insurance covering actual losses sustained due to the explosion of or damage to boilers, air conditioning systems, refrigeration and heating apparatus, pressure vessels and pressure pipes installed on the Facility (but such coverage shall be required only in the event that there are fired pressure vessels or boilers on the Premises), in an amount equal to the annual business interruption values and with no co-insurance provisions. **The City of Fullerton shall be named as loss payee.**

(v) comprehensive public general liability insurance, including without limitation bodily injury, personal injury, property damage, products liability, contractual liability covering the provisions of this Agreement, and liquor liability, in an amount not less than ten million dollars (\$10,000,000.00) single limit per occurrence. The policy shall include or be endorsed to include the City of Fullerton, its elected and appointed officials, officers, employees and volunteers and the United States Army Corps of Engineers shall be named as additional insureds. This insurance shall be primary insurance as respects the City of Fullerton, its elected and appointed officials, officers, employees and volunteers, and the United States Army Corps of Engineers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the CITY, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

(vi) **crime insurance, including without limitation coverage for employee dishonesty, loss inside and outside the Facility and depositors forgery in an amount not less than one million dollars (\$1,000,000) with respect to any one occurrence. The City of Fullerton shall be named a loss payee on this policy.**

(vii) automobile liability in an amount not less than ten million dollars (\$10,000,000.00) single limit per occurrence. The policy shall include or be endorsed to include the City of Fullerton, its elected and appointed officials, officers, employees and volunteers and the United States Army Corps of Engineers as additional insureds. This insurance shall be primary insurance as respects the City of Fullerton, its elected and appointed officials, officers, employees and volunteers, and the United States Army Corps of Engineers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the CITY, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it. The coverage shall contain no special limitations on the scope of its protection afforded to the City of Fullerton, its elected and appointed officials, officers, employees and volunteers or the United States Army Corps of Engineers.

(viii) worker's compensation insurance covering all Facility employees who are AGC's employees (who shall be trained in accordance with Section 3.6.1 above), and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) or as required by law covering all Facility employees who are AGC's employees.

(ix) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY (except for notice relating to non-payment of premiums).

(b) City agrees to procure and maintain, at the expense of the Facility, at any time during the Operating Period during which the City supplements the staffing of the Facility with its own employees, workers compensation insurance covering all Facility employees who are City's employees, and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) or as required by law covering all Facility employees who are City's employees. City shall be entitled to self-insure its insurance requirement set forth in this Section 4.1(b). Any such self-insurance shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Article 4, including, without limitation, a full waiver of subrogation. If City elects to so self-insure, then with respect to any claims which may result from incidents occurring during the term of this Agreement, such self-insurance obligation shall survive the expiration or earlier termination of this Agreement to the same extent as the insurance required would survive.

(c) If City does not receive a certificate of insurance, including evidencing all required endorsements, from AGC's insurance carrier or broker reflecting the effective maintenance of the required policies of insurance as specified in Subsection 4.1(a) above within fifteen (15) days following the Commencement Date or at any time within ten (10) days prior to expiration of any such policy, City may proceed to procure insurance coverage as required in Subsection 4.1(a) with the cost of such insurance to be an expense of the Facility payable by City.

(d) After the prior approval of City (which approval shall not be unreasonably withheld), AGC shall have the right to raise the minimum amount of any insurance to be maintained with respect to the Facility under Subsections 4.1(a) and (b) above to make such coverage comparable to the amount of insurance carried with respect to Other AGC Facilities, taking into account the size, character and location of the Facility. At least sixty (60) days prior to the beginning of each Operating Year, the party procuring such insurance will submit to the other party a schedule setting forth any changes to the insurance to be maintained by the procuring party during the ensuing Operating Year in connection with the Facility.

(e) The types of insurance and the coverage amounts specified in this Section 4.1 are the minimum insurance recommended by AGC in connection with the operation of the Facility. City acknowledges and understands that AGC has made no representations or warranties that such insurance is adequate to protect City. If City believes that any such insurance is insufficient, City shall provide, at City's expense, such additional insurance as City deems adequate. AGC shall not be responsible for any losses, damages, liability, or expenses that may not be covered by any of the insurance specified in this Section 4.1.

#### 4.2 **Policies and Endorsements.**

4.2.1 **Policies.** All insurance coverage provided for under Section 4.1 above shall be secured through policies issued by insurance companies of good reputation and of sound and

adequate financial responsibility having a general policy holder's rating of not less than "A" and a financial rating of not less than Class "X" in the most current edition of Best's Insurance Reports. The party procuring such insurance shall deliver to the other party proof of insurance with respect to all of the policies of insurance so procured, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to renewal policies not less than ten (10) days prior to the respective dates of expiration. City shall be entitled to review complete copies of any policies of insurance AGC is required to maintain under this Agreement, subject to redaction by AGC of information that AGC reasonably considers to be proprietary and/or confidential, within twenty days of City's request.

4.2.2 **Endorsements**. All policies of insurance provided for under this Article 4 shall, to the extent obtainable, have attached an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days prior written notice to City and AGC.

4.2.3 **Blanket Policies**. Any insurance policies provided by City or AGC under this Article 4 may be affected under policies of blanket insurance which cover other properties in addition to the Facility, and in such case an allocable portion of the premiums for such blanket policies of insurance shall be charged to the Facility upon reasonable agreement between the parties of the appropriate allocable portion.

4.3 **Waiver of Subrogation**. Neither AGC nor City shall assert against the other, and AGC and City hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation and maintenance of the Facility, to the extent that the same are covered by the insurance required under this Article 4. City and AGC hereby grant to each other, on behalf of any insurance company providing insurance under this Agreement, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy. City and AGC shall give notice to the insurance companies providing insurance under this Agreement of the mutual waiver of subrogation contained in this Section 4.3, and City and AGC shall cause each such insurance company to provide a written subrogation waiver indicating that such insurance company waives all right of recovery by way of subrogation which such insurance company may acquire against City or AGC (as the case may be) and their insurance companies.

4.4 **Handling of Claims**. AGC shall be responsible for handling all claims for any losses, damages, liability, and expenses (including without limitation personal injury and property damage claims) arising out of the operation, maintenance, repair, or improvement of the Premises, whether or not such claims are covered by the insurance required under this Article 4. Handling such claims shall include without limitation responding to such claims, investigating such claims, and retaining legal counsel or experts to defend such claims. All claims handling responsibilities shall be in accordance with AGC and insurance company requirements, and shall be subject to City's prior written approval, which shall not be unreasonably withheld or delayed. Claims handling responsibilities shall also include negotiation of claims settlements subject to City's prior written approval, which shall not be unreasonably withheld or delayed, and paying any losses, damages and expenses relating to such claims and obtaining fully executed settlement releases on behalf of the City. AGC shall provide City monthly and annual

reports of claims activities on a schedule and in a format reasonably acceptable to the City. City understands and agrees that with respect to all policies of insurance required under this Article 4 (whether such policies are maintained by City or by AGC), the portion of any losses, damages, and expenses paid with respect to such claims which is subject to a deductible amount or a self-insurance or a self-assumption amount shall be the sole responsibility of City. If at any time during the term of this Agreement, City desires to assume responsibility for handling of claims, the parties may amend this provision as provided in Section 11.8, subject to (i) the approval of the applicable insurance companies, and (ii) the reasonable approval of AGC.

## ARTICLE 5 - MANAGEMENT FEES

In addition to the costs and expenses to be reimbursed to AGC pursuant to this Agreement, City shall pay AGC the Management Fee computed and payable as follows:

5.1 **Management Fee.** In consideration of AGC's services during the Operating Period, City shall pay to AGC a "Management Fee." For the first twelve (12) months of the term of this Agreement, the Management Fee shall equal Six Hundred Seventy Thousand Dollars (\$670,000) per annum (i.e., Fifty Five Thousand Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$55,833.33) per month). The Management Fee shall increase on each anniversary of the Effective Date (until termination of this Agreement) by one percent (1%) of the Management Fee in effect immediately prior to the applicable increase. The Management Fee shall be paid to AGC, in equal monthly installments, in accordance with Section 5.2 of this Agreement.

5.2 **Payment Schedule.** If the Commencement Date does not fall on the first day of the month, then the Management Fee for the first partial month of the Operating Period shall be the pro-rata portion of the Management Fee and such amount shall be payable on the Commencement Date. Commencing with the first full month of the Operating Period, City shall pay AGC the Management Fee monthly in advance on the first day of the month to which it pertains.

## ARTICLE 6 - ACCOUNTS; WORKING FUNDS; RECORDS AND REPORTS

6.1 **Bank Accounts.** City shall establish bank accounts for the Facility at a banking institution or institutions reasonably selected by City, (which banking institution or institutions shall have branches located in close proximity to the Facility), such accounts to be in City's name (the "City Accounts"). AGC shall also establish bank accounts for the Facility at a banking institution or institutions reasonably approved by City, (which banking institution or institutions shall have branches located in close proximity to the Facility), such accounts to be in City's name (the "Facility Accounts"). AGC will deposit into the City Accounts all monies received by AGC from the operation of the Facility. City shall deposit all funds required to be furnished by City as working funds under Section 6.3 of this Agreement into the Facility Accounts, and AGC will disburse those monies from the Facility Accounts only for the purposes set forth in Section 6.2. Notwithstanding the provisions of the foregoing, AGC shall be entitled to maintain funds in reasonable amounts in "cash register banks" or in petty cash funds at the Facility.

6.2 **Expenditures.** From the Facility Accounts (or, if appropriate, from “cash register banks” or petty cash funds available at the Facility), AGC is authorized to pay such amounts at such times as are required in connection with the leasehold ownership, operation, maintenance, repair, and improvement of the Facility and related facilities and AGC’s performance under this Agreement, including without limitation the following:

(a) the Compensation and expenses of the management staff and other employees of the Facility (other than the compensation set by AGC for the general manger and the course superintendent, which shall not be an expense of the Facility but instead shall be payable by AGC); and

(b) all costs and expenditures incurred or made in connection with the items described in Section 3.5 and all other expenditures which AGC is permitted or required to make under any other provision of this Agreement;

(c) reimbursements and other amounts due to AGC and Affiliates of AGC under Section 3.7 or under any other provision of this Agreement;

(d) premiums for any insurance maintained by City or AGC in accordance with the provisions of Article 4; and

(e) the Management Fee, computed in accordance with the provisions of Article 5.

Upon request of City from time to time, AGC shall distribute from the Facility Accounts to accounts controlled solely by City such funds which are in excess of the amounts required to maintain working capital needs of the Facility and for AGC to perform pursuant to this Agreement.

6.3 **Working Fund Requirements.** Within five (5) days after AGC’s written request, City shall provide funds, to be deposited in the Facility Accounts, sufficient at all times to assure the uninterrupted and efficient operation of the Facility, including without limitation sufficient funds to pay all of the items described in Section 6.2 of this Agreement. If AGC is unable to perform any of its agreements or covenants under this Agreement because of the failure on the part of City to provide the funds pursuant to this Section 6.3, such failure of performance on the part of AGC shall not be deemed a default on the part of AGC and shall not give rise to any right of termination, damages or any other remedy against AGC.

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

6.5 **Reports to City.** AGC will deliver, or will cause the accounting firm described in Section 6.7 below to deliver, to City the following forecasts and statements:

(a) at least sixty (60) days in advance of each Operating Year (except the first Operating Year), an estimated profit and loss statement and an estimated cash flow projection for the ensuing Operating Year;

(b) within twenty (20) days after the end of each calendar month, a profit and loss statement showing the results of operation of the Facility for such month and for the year to date; and

(c) within forty-five (45) days after the end of each Operating Year, a profit and loss statement showing the results of operation of the Facility for such year. If requested by City, and at City's expense, the year end financial statements shall be accompanied by an opinion rendered by an independent certified public accounting firm.

6.6 **Payroll.** The parties acknowledge and agree that a payroll processing company will be processing the payroll for the Facility employees. Prior to the date of a payroll payment, AGC will be notified by the payroll processing company of the amount of the payroll payment. On the date of the payroll payment, the payroll processing company will automatically withdraw the amount of the payroll payment from the Facility Accounts and deposit such amount in a central payroll account on which payroll checks will be drawn.

6.7 **Accounting Firm.** AGC shall, if requested by City and at City's expense, hire an independent certified public accounting firm selected by City to audit the financial statements required under this Agreement. AGC shall train the accounting firm with respect to the use and application of AGC's accounting software at the Facility, and AGC shall supervise the work of the accounting firm. All fees and charges of the accounting firm shall be an expense of the Facility payable from the Facility Accounts.

6.8 **AGC Accounting Software.** The parties acknowledge and understand that the accounting software used at the Facility is owned by AGC, and City shall have no rights or interests in such software. Upon the expiration or earlier termination of this Agreement, the accounting software shall be removed from the Facility by AGC.

## ARTICLE 7 - TERMINATION RIGHTS

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

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

(b) (i) AGC applies for or consents to the appointment of a receiver, trustee or liquidator of AGC or of all or a substantial part of its assets; (ii) AGC files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (iii) AGC files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against AGC; (iv) AGC

admits in writing its inability to pay its debts as they come due; (v) AGC makes a general assignment for the benefit of creditors; or (vi) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating AGC a bankrupt or insolvent or approving a petition seeking reorganization of AGC or appointing a receiver, trustee or liquidator of AGC or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

City's right to terminate this Agreement pursuant to this Section 7.1 shall be exercised upon written notice to AGC given at any time after the applicable grace period has expired. City's termination notice shall specify the effective date of such termination, which date shall not be more than sixty (60) days after the date of City's termination notice.

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

(a) City fails to provide funds to be deposited in the Facility Accounts in accordance with the Section 6.3 of this Agreement, and such failure shall continue for a period of ten (10) days after written notice by AGC requesting that such funds be so provided; or

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

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

(d) AGC's right to terminate this Agreement pursuant to this Section 7.2 shall be exercised upon written notice to City given at any time after the applicable grace period has expired. AGC's termination notice shall specify the effective date of such termination, which date shall not be less than thirty (30) days or more than sixty (60) days after the date of AGC's termination notice.

**7.3 Curing Defaults.** Any default by AGC or City under the provisions of Section 7.1 or 7.2, as the case may be, which is susceptible of being cured shall not constitute a basis for termination of this Agreement if the nature of such default shall not permit it to be cured within the grace period allotted; provided that within such grace period the alleged party in default shall

have given notice of its intent to cure, has commenced to cure such default, and is proceeding to complete the cure in good faith and with reasonable diligence.

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

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

7.6 **Indemnification re Future Business.** City shall indemnify and hold harmless AGC and its officers, directors, and employees from all costs, expenses, claims, damages, and liabilities arising or resulting from the failure of City following the expiration or earlier termination (for whatever cause) of this Agreement to provide any of the services contracted for under this Agreement (or contracted for prior to the Commencement Date) relating to the management and operation of the Facility, which services are to be provided after the expiration or termination of this Agreement, including without limitation tournaments, banquets, meetings, and other group functions to be held at the Facility.

## ARTICLE 8 - TITLE MATTERS; ASSIGNMENT

8.1 **Title to Facility.** City covenants that, subject to the terms and conditions of this Article 8, throughout the term of this Agreement it will maintain full leasehold interest in the Facility and good title to the Furnishings and Equipment and all other personal property necessary for the operation and maintenance of the Facility.

8.2 **Assignment.**

8.2.1 **Prohibited Assignments.** Except as provided in Sections 8.2.2 and 8.2.3, neither party shall assign this Agreement without the prior written consent of the other party. Said consent shall not be unreasonably withheld, conditioned or delayed. It is understood and agreed that any consent granted by a party to any such assignment shall not be deemed a waiver of any consent required under this Section 8.2.1 as to any future assignment.

8.2.2 **Permitted Assignment by AGC.** AGC shall have the right, without the consent of City, to assign this Agreement to any Affiliate of AGC or in connection with the sale of all or a substantial portion of AGC's assets provided that the key personnel at the Facility remains substantially intact.

8.2.3 **Permitted Assignment by City.** In connection with the sale or transfer of the Facility by City, City shall have the right, without the consent of AGC, to assign this Agreement provided that the purchaser expressly assumes all of City's obligations hereunder.

8.2.4 **Remedies.** Any assignment by either party of this Agreement in violation of the provisions of this Section 8.2 shall be null and void and shall result in a termination of this



Agreement. In addition to any other remedies available to the parties, the provisions of this Section 8.2 shall be enforceable by injunctive proceeding or by a suit for specific performance.

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

## **ARTICLE 9 - DAMAGE OR DESTRUCTION; EMINENT DOMAIN**

9.1 **Damage or Destruction.** Should the Facility be destroyed or substantially damaged by fire, flood or other casualty, City, by written notice to AGC given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section 9.1, the Facility shall be deemed to have been substantially damaged if, in the reasonable opinion of City, full and productive economic use of the Facility cannot be made and the estimated length of time required to restore the Facility substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months. If this Agreement is not terminated in the event of damage to the Facility because the damage does not amount to substantial damage as described above, then City shall proceed with all due diligence to commence and complete restoration of the Facility to its condition and character just prior to the occurrence of such casualty.

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

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

## **ARTICLE 11 - GENERAL PROVISIONS**

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

AGC in connection with purchasing or leasing related to all Other AGC Facilities) shall accrue to the benefit of City.

11.2 **Purchases from AGC Affiliates.** If any purchases of goods or services for the Facility are made from or through an Affiliate of AGC, the charges to the Facility for such goods or services shall be on the same terms as those made to Other AGC Facilities, and such charges shall not exceed the market prices for such goods and services. AGC shall disclose to City the prices paid by its Affiliates for any such goods and services.

11.3 **Indemnities.**

11.3.1 **AGC's Indemnity.** AGC agrees to indemnify, protect, defend and hold harmless City and the United States Army Corps of Engineers and their respective elected officials, officers, employees, agents and volunteers, (collectively "Indemnitees") from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(a) which result from any act or omission constituting gross negligence or willful misconduct by AGC or any officer, director, or employee of AGC in connection with AGC's performance under this Agreement; or

(b) which result from any action taken by AGC relating to the Facility (i) that is expressly prohibited by this Agreement, or (ii) that is not within AGC's delegated authority under this Agreement.

AGC's indemnity obligations under this Section 11.3.1 shall not apply to any acts or omissions taken (or in the case of omissions, not taken) at the direction of City.

11.3.2 **City's Indemnity.** City agrees to indemnify, protect, defend, and hold harmless AGC and its officers, directors, and employees from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs and expenses:

(a) which result from any event, condition, or activity occurring or existing prior to May 9, 1979; or

(b) which relate to or arise from the presence in, on, under or about the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products (as defined or regulated under any and all applicable federal, state and local environmental, health or safety laws, ordinances and regulations) from or through the Premises, including without limitation any and all costs of any required or necessary repair, cleanup, remediation or decontamination of the Premises, and the preparation and implementation of any closure, remedial or other required plans occurring between May 9, 1979 and the Commencement Date for which AGC was responsible pursuant to the Prior Lease; or

(c) which result from any act or omission by AGC in connection with the management and operation of the Facility (i) that is expressly authorized by this Agreement, or

(ii) that is within the scope of AGC's duties under this Agreement, or (iii) that is within AGC's delegated authority under this Agreement, or (iv) that was either at the direction of City; unless such act or omission constitutes gross negligence or willful misconduct on the part of any employee of AGC (and was neither at the direction of City nor with the approval of City) in which event AGC shall not be indemnified under this Section 11.3.2; or

(d) which results from any act or omission constituting gross negligence or willful misconduct on the part of any management employee of City.

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

**11.5 Notices.** All notices and communications pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (c) by deposit with an overnight express delivery service. Such notices and communications shall be deemed effective when actually delivered.

CITY

Parks and Recreation Department  
City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832

AGC

American Golf Corporation  
2951 28th Street  
Santa Monica, CA 90405  
Attention: Legal Department

(714) 738-6575

Facsimile: (310) 664-6165

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

11.6 **Attachments**. This Agreement includes the following, which are attached hereto and made a part hereof:

Exhibit A – Facility Map

11.7 **No Partnership or Joint Venture**. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between City and its successors and assigns, on the one part, and AGC and its successors and assigns, on the other part.

11.8 **Modification and Changes**. This Agreement may be amended or modified in writing and any such amendment shall be properly executed by both parties.

11.9 **Understandings and Agreements**. This Agreement constitutes all of the understandings and agreements of whatever nature or kind existing between the parties with respect to AGC's management and operation of the Facility.

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

11.11 **Consents**. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified. Similarly, each party agrees that any provision of this Agreement which permits such party to make requests of the other party shall not be construed to permit the making of unreasonable requests.

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

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

11.14 **Waivers**. No failure by AGC or City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach of this Agreement shall constitute a waiver of any such breach or any subsequent breach of the same covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach of this Agreement shall be waived, altered or modified except by a written instrument. A waiver of any breach of this Agreement shall only affect this Agreement to the extent of the specific waiver, and all

covenants, agreements, terms and conditions of this Agreement shall continue in full force and effect.

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

11.16 **No Presumption Regarding Drafter.** City and AGC acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between City and AGC, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem either City or AGC to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

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

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

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

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

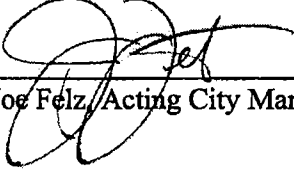
11.21 **Gender and Number.** Whenever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain gender shall be deemed to include either of both of the other genders.

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

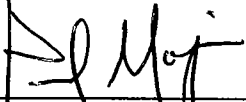
11.23 **Waiver of Jury Trial.** The parties hereby waive trial by jury and any action, proceeding, or counterclaim brought by either of the parties hereto on any matter whatsoever arising out of or in any way connected with this Agreement.

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

CITY OF FULLERTON

  
\_\_\_\_\_  
Joe Felz, Acting City Manager

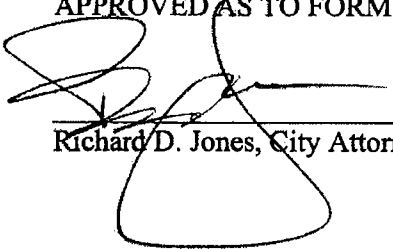
AMERICAN GOLF CORPORATION

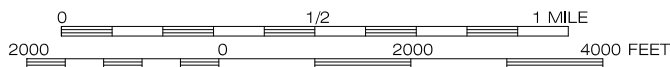
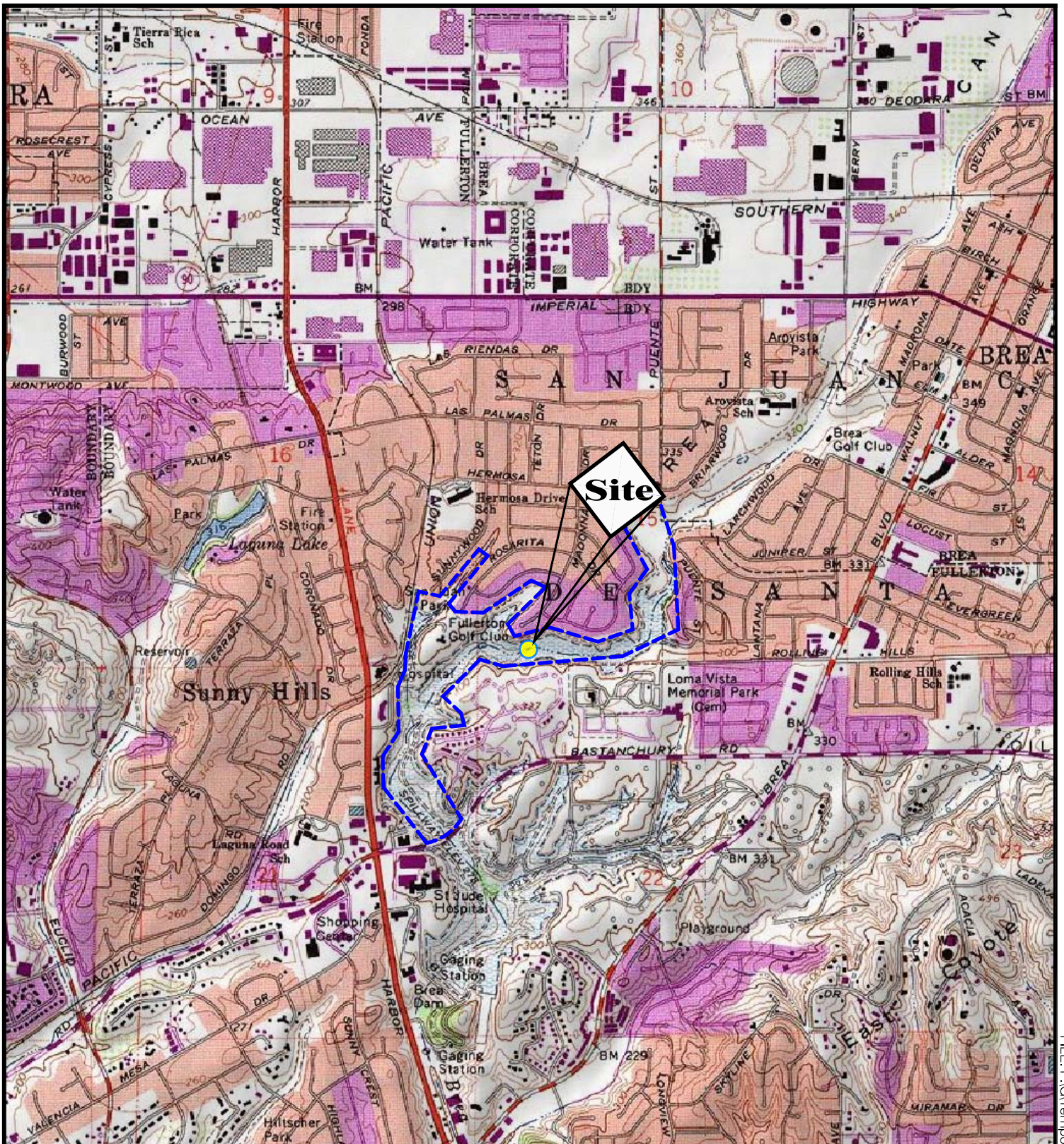
By:   
\_\_\_\_\_  
Name: Paul Major  
Its: President & CEO

ATTEST

  
\_\_\_\_\_  
Beverley White, City Clerk

APPROVED AS TO FORM

  
\_\_\_\_\_  
Richard D. Jones, City Attorney



SOURCE:  
U.S.G.S. 7.5 minute series (topographic)  
La Habra Quadrangle, CA, current as of 1981

CONTOUR INTERVAL 40 FEET  
DOTTED LINES REPRESENT 10-FOOT CONTOURS  
NATIONAL GEODETIC VERTICAL DATUM OF 1929  
SCALE 1:24000

