

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Audree V. Jones Taylor
DATE: April 22, 2008

2008 APR 10 PM 4:40

RE: Resolution Authorizing the City Administrator to Execute (1) The Third Supplemental Agreement to the Lease between the Port and the City and (2) the First Amendment to the Sublease between the City and Oakland Golf LLC, which Both Set Forth the Following Modifications Regarding the Operation of Metropolitan Golf Links: Five Years of Rent Relief in the Projected Amount of \$1 Million, Resulting in a Loss of Anticipated Revenue to the Golf Enterprise Fund of Approximately \$500,000 over the Five Year Period and Other Changes to the Sublease Including Deletion of Real Property to Accommodate the Bay Trail, Hiring, Rent Credits, Use of Facilities by the City, Navigational Aides, and Administrative Dates of the Sublease

SUMMARY

Oakland Golf, LLC (a Limited Liability Company formed by Northern California golf course operator CourseCo, Inc., "Oakland Golf") entered into a sublease with the City of Oakland in 2001 for the operation and management of the Metropolitan Golf Links. Oakland Golf has requested a temporary reduction in its rent for sublease years 6 through 10 in order to continue the economic viability of the enterprise. Staff from the City and Port have developed two documents: (1) the "Third Supplemental Agreement to the Lease between the Port of Oakland and City of Oakland and (2) the "First Amendment to the Sublease and Operating Agreement between the City of Oakland and Oakland Golf, LLC." These documents set forth the proposed modifications to the Lease and Sublease that will provide approximately \$1 million in rent relief to Oakland Golf over the next five years, as well as other changes. Rent from Oakland Golf is split between the City and the Port, and therefore, the impact to the City's Golf Enterprise Fund (3200) will be approximately \$100,000 per year over five years, with the Port experiencing an equal revenue reduction.

Staff have submitted a Council Resolution for approval that describes the proposed amendments to the Lease and Sublease. The proposed amendments contain the following modifications:

- Reduction of the minimum rent paid by Oakland Golf to the City and Port by 50% for the next five years.
- A provision that allows the City to use Metropolitan Golf Links for golf tournaments twice each year and allows the City to use the Club House for a maximum of twelve (12) times each year at no cost to the City.

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- A restatement of Oakland Golf's obligation to actively recruit Oakland residents for Oakland Golf employment as monitored by the City's Contract Compliance Division.
- A realignment of the effective dates in the Sublease such that increases in Minimum Rent shall be effective July 1 of each year.
- A provision for a "Non-Disturbance Clause" for the new Cal Berkeley practice facility, which ensures that the license agreement between the Regents of the University of California and Oakland Golf LLC shall be assumed by the City of Oakland or the new subleasee, in the event that the sublease between the City and Oakland Golf is terminated.
- A provision that allows for use of the new Cal Berkeley practice facility for City of Oakland youth golf programs as performed by Metropolitan Golf Links or agreed upon operator.
- A deletion of a portion of the land in order to accommodate the proposed Bay Trail.
- Acknowledgement of the Federal Aviation Administration's right to enter upon the leased premises to erect, install, maintain and operate airport navigational aids.
- Deletion of the "EBMUD Reclaimed Water Credit" section of the Sublease, which provided certain rent reductions based on the cost of obtaining irrigation water.
- Deletion of the "CIP (Capital Improvement Project) Rent Credit" section of the Sublease and reduction of gross revenue contributed to CIP fund by Metropolitan Golf.

FISCAL IMPACT

The proposed Rent Relief period would result in reduced revenue to the City's Golf Enterprise Fund (3200) of approximately \$500,000 over the five year period. There is no negative impact to the City of Oakland's General Purpose Fund. The loss in revenue will impact the amount of funding available for Metropolitan Golf capital projects.

Under the current agreement, it is anticipated that Oakland Golf LLC will pay annual rent of approximately \$430,000 in calendar year 2008, which is based on a combination of Minimum Rent, Percentage Rent (which includes: green fees, pull carts, power golf carts, and range, food and beverage sales, retail sales, and services -- pro shop, instruction, equipment rentals, pay phones, newspaper racks, and other operations), and allowable Rent Credits. This rent is divided between the Port of Oakland and City of Oakland, such that the City's share would be \$216,000 in calendar year 2008. The proposed amendment would reduce the City's share of rent by approximately \$92,000 in calendar year 2008. Over the proposed 60 month period the City of Oakland rent share would be reduced from a current projected amount of \$1,159,203 to roughly \$676,147 (please see table below). These projections are based on previous years' revenue figures, a 2.5% Consumer Price Index (CPI) increase, and the deletion of the CIP and Reclaimed Water Credits.

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RENT PROJECTION – METROPOLITAN GOLF SUBLEASE

Calendar Year	Total Rent Per Current Sublease (Projected)	City's Share of Current Sublease Rent (Projected)	Total Rent Per Proposed Sublease	City's Share of Proposed Sublease Rent (50%)	Projected Loss to City's (Fund 3200)*
2008	431,776	215,888	247,977	123,988	91,900
2009	454,334	227,167	265,939	132,970	94,197
2010	465,692	232,846	272,588	136,294	96,552
2011	477,335	238,668	279,403	139,701	98,967
2012	489,268	244,634	286,388	143,194	101,440
TOTAL	2,318,405	1,159,203	1,352,295	676,147	483,056

* based on prior year revenues, 2.5% CPI increase and deletion of CIP and reclaimed water credit.

The Sublease amendment includes a “windfall provision” stating that in the event that Rent Relief provided to Oakland Golf exceeds \$1.35 million within this sixty month period, Section 4(A) of the First Amendment will have no further force and effect.

BACKGROUND

The Lew F. Galbraith Golf Course was an 18-hole course constructed in 1966 on Port property adjacent to the Oakland International Airport, over a clay covered landfill. The golf facility was leased to the City of Oakland and operated by the Office of Parks & Recreation for many years before it was subleased by a private operator. In 1994, the Port needed to utilize the golf course property to dispose of dredged material from the deepening of Oakland shipping channels. The golf course was closed in 1994 so that the dredged material could be placed on the site, and the course remained closed for almost 10 years until the new Metropolitan Golf Links construction was complete.

As part of a Request for Proposals (RFP) process and after substantial negotiations, Oakland Golf, LLC (a Limited Liability Company formed by Northern California golf course operator CourseCo, Inc.) was selected to design, develop, construct and operate Metropolitan Golf Links pursuant to the terms and conditions of a Sublease and Operating Agreement. Approximately \$14 million was invested into renovating and improving the course – \$9.5 million from Oakland Golf, and an additional \$4.5 million from the Port and City.

The Sublease with Oakland Golf was negotiated from 1999-2001, and was executed in August 2001. The term of the Sublease is 25 years, with three five-year extensions at the option of Oakland Golf. CourseCo, Inc. operates and manages 12 other golf courses in California.

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KEY ISSUES AND IMPACTS

Oakland Golf overestimated the number of golf rounds that would be played when it prepared its proposal to design, develop, construct and operate the Metropolitan Golf Links. Its proposal was based on its prediction that golf rounds would grow to 70,000 rounds annually within the first five years. In fact, the number of rounds played annually at Metropolitan Golf Links has only grown to 56,000 rounds, and is not expected to grow significantly in the next five years.

The original Sublease states that Minimum Rent (split equally between the City and Port) increases every year. The table below shows how much revenue (including Percentage Rent) Oakland Golf has paid to the City and Port since the course opened.

Calendar Year	2003	2004	2005	2006	2007
Rental Revenue (split between City & Port)	66,664 *	211,302	354,140	359,984	375,631

**Concessionaire paid reduced rent in years 1 and 2 due to higher than anticipated construction costs.*

There are many reasons for Metropolitan Golf Links underperforming its expectations. In the past decade, 108 new holes of golf have been added in Alameda County alone – all in public golf courses. During this same time period, Contra Costa County also added an additional 90 holes of public golf courses. In addition, the greater Bay Area has a very competitive “daily fee” golf market, in which premium golf courses discount their fees heavily through last-minute internet specials. Thus golfers who might normally play at lower fee municipal courses such as Metropolitan Golf Links occasionally travel to play “luxury” rounds. For these reasons, Metropolitan Golf Links has not experienced the revenue that it had hoped when it negotiated the Sublease with the City.

In 2006, Oakland Golf hired the firm Economic Research Associates (ERA) to undertake an evaluation of its Sublease terms. The ERA report concluded that the completion of the Metropolitan Golf Links coincided with the “unanticipated sharp downturn in the Bay Area golf market” due to the expansion of golf supply in the Bay Area, a weakened economy (due to 9/11) and the unanticipated reduction in golf demand due to changing consumer recreational preferences. As a result “the financial burden of the major capital investment at Metropolitan Golf Links has undermined the economic viability of Oakland Golf’s investment.”

The President of CourseCo (Tom Isaak) then met with City (Office of Parks and Recreation) and Port staff to discuss restructuring the Sublease. City and Port staff met and developed a Sublease amendment, which has been accepted by Oakland Golf, and includes the following changes:

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- Establishment of a five year rent “Relief Period,” after which time the Sublease shall revert to the original rent terms, including recapture of annual increases in the Minimum Rent.
 - During the Relief Period, Minimum Rent shall be reduced by 50% (the “Relief Minimum Rent”).
 - During the Relief Period, Percentage Rent shall not be calculated based on the Relief Minimum Rent.
- The date for the annual adjustment of the Minimum Rent shall be moved from May 1st to July 1st (to coincide with the City’s and Port’s fiscal year).
- Elimination of rent credit for Capital Improvement Program Fund (the “CIP fund”). Currently, Oakland Golf deposits 4% percent of its gross revenues into an interest bearing trust account, and then takes one-half of this contribution as a credit against Minimum Rent. During the Relief Period, the mandated contribution by Oakland Golf to the Metropolitan CIP Fund will be reduced from 4% to 2% of gross revenue with no credit against Minimum Rent. For the balance of the sublease term, the CIP Fund contribution shall be 3% of gross revenue and shall no longer be counted as credit against the “Minimum Rent.” With this change, Minimum Rent payable to the City will be an amount certain rather than subject to reduction based on Oakland Golf’s credits to the CIP fund.
- Restatement of obligation to actively recruit diverse Oakland residents for Oakland Golf employment as monitored by the Contract Compliance Division.
- A provision that allows the City to use the golf course twice annually for golf tournaments, and use of the clubhouse 12 times per year for events. Revenue generated from City events under this provision shall accrue to City.
- A provision for a “Non-Disturbance Clause” for the new Cal Berkeley practice facility, which ensures that the license agreement shall not be terminated in the event that the sublease between the City and Oakland Golf is terminated.
- A provision that allows for use of the new Cal Berkeley practice facility for City of Oakland youth golf programs as performed by Metropolitan Golf Links or agreed upon operator.
- Deletion of EBMUD Reclaimed Water Credit section of sublease, which provided certain rent reductions based on the cost of obtaining irrigation water.

Staff calculates that the loss to the City of Oakland’s Golf Fund will not exceed \$500,000 over the five-year Relief Period. The total rent relief to Oakland Golf will be approximately \$1 million over the Relief Period.

If rent relief is not granted to Oakland Golf, the company states that it will need to further reduce expenses, by reducing maintenance levels and laying off additional staff (some staff lay-offs have already occurred). Such reductions may result in Oakland Golf violating certain terms of the Sublease, including mandatory staffing and maintenance standards.

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In addition to the rent reduction-related changes, the Port of Oakland sought to amend the Lease and Sublease to delete a portion of the leased premises in order to efficiently accommodate the proposed Bay Trail. The Bay Trail is a planned pedestrian and bicycle access trail along the edge of the San Francisco Bay. The area needed for the Bay Trail connection is approximately 10,000 square feet, and will not impact play at Metropolitan.

The Port also sought to amend the Lease and Sublease to formally acknowledge that the Federal Aviation Administration (“FAA”) has the right to enter upon the Leased Premises to erect, install, maintain and operate airport navigational aids. The FAA plans to construct and operate (or fund the construction and operation of) an instrument landing system (“ILS”) and medium-density approach lighting system and runway alignment indicator lights (“MALSR”), which will allow precision flight approaches by aircraft to Runway 27 Left at the Airport. As currently planned, the ILS will not be located on the Leased Premises, whereas the MALSR will be located on the Leased Premises. The Port requests that the City agree that it, or Oakland Golf LLC, as the case may be, shall be required to adjust its operations, at no cost to the Port or the FAA, to accommodate the erection, installation, maintenance and operation of airport navigational aids on the Leased Premises, including but not limited to, the proposed ILS and MALSR.

SUSTAINABLE OPPORTUNITIES

Economic: Over 40% of Metropolitan Golf Link’s employees are Oakland residents. Metropolitan Golf Links creates sales tax revenue through green fees, cart rental, food and beverage and by drawing visitors to Oakland who might also make purchases at other nearby businesses.

Environmental: Metropolitan Golf Links is a fully-certified Audubon International Cooperative Sanctuary. CourseCo is the first golf management firm to receive the Governors award for economic and environmental leadership for sustainable practices.

Social Equity: The Metropolitan Golf Link’s Oakland Turfgrass Education Initiative (OTEI) is a nonprofit that exposes 80 -100 Oakland youth each year to turfgrass management with the objective of helping youth create career paths into industries not currently offered to urban youth. In addition, Metropolitan Golf Link’s Junior Golf Program offers free golf equipment and lessons to children ages 6 - 17.

DISABILITY AND SENIOR CITIZEN ACCESS

Metropolitan Golf Links conforms to the requirements of the Americans with Disabilities Act, the Older American Act, and other applicable laws, including having an ADA accessible golf cart available on site.

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RECOMMENDATION AND RATIONALE

Staff recommends that Council approve the resolution to amend Oakland Golf 's Sublease to operate the Metropolitan Golf Links, providing them with Reduced Minimum Rent for a five-year time period, providing alternative compensation to the City over the remainder of the lease term in return for the temporarily reduced rent and other changes as set forth above.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that Council adopt a resolution to authorize the City Administrator to execute the First Amendment to Oakland Golf's Sublease to operate the Metropolitan Golf Links, providing it with Reduced Minimum Rent for the five-year time period and all other changes as set forth above.

Respectfully submitted,



Audree V. Jones-Taylor
Director, Office of Parks & Recreation

Prepared by:
Deborah Spaulding, Administrative & Fiscal Manager

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

Attachments:

- A. First Amendment to Sublease and Operating Agreement between City of Oakland and Oakland Golf LLC
- B. Third Supplemental Agreement to Amended and Restated Galbraith Golf Course Lease
- C. Sublease and Operating Agreement between City of Oakland and Oakland Golf LLC
- D. Amended and Restated Galbraith Golf Course Lease
- E. Explanatory Table: Summary of changes to Sublease

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**FIRST AMENDMENT
TO SUBLEASE AND OPERATING AGREEMENT**

THIS FIRST AMENDMENT, dated for reference purposes as of _____, 2008, is by and between the City of Oakland, a municipal corporation, acting by and through its City Council ("City") and Oakland Golf, LLC("Oakland Golf").

RECITALS

A. The Port of Oakland ("Port") is the lessor and City is the lessee under the Amended and Restated Galbraith Golf Course Lease dated March 16, 1999, as amended by the First Supplemental Agreement and Second Supplemental Agreement (collectively, the "Lease"), which sets forth the terms of leasing the real property (Premises).

B. City subleased the Premises, with Port's consent, to Oakland Golf pursuant to the Sublease and Operating Agreement, dated August 24, 2001 ("Sublease") for the purpose of developing and operating a public golf course ("Course").

C. Metropolitan Golf Links (name change from Galbraith), managed and operated by Oakland Golf, is the 18-hole regulation public golf course developed on the Premises.

D. At the request of Oakland Golf, staff from the City and Port developed this amendment that would provide partial rent relief to Oakland Golf in the amount of approximately \$1 million over five years.

E. Without rent relief, Oakland Golf would be forced to reduce costs, which would lower maintenance standards at the Course.

F. Oakland Golf and the Regents of the University of California entered into an agreement through which UC Berkeley's Campus Intercollegiate Athletics Department (UC Berkeley) has constructed on a portion of the Course a new short-game practice facility, putting green, security fencing, and additional driving-range netting, for the exclusive use by UC Berkeley students, employees and guests during certain periods.

G. The Bay Trail is planned to provide pedestrian and bicycle access along the edge of the San Francisco Bay (the "Bay Trail").

H. A portion of the proposed Bay Trail in the vicinity of the Course requires approximately 10,000 square feet of land which is a portion of the premises currently subleased by the City to Oakland Golf.

I. City, with Port's consent, and Oakland Golf desire to amend the current Sublease to delete certain portions of land from the Sublease. The Parties desire to delete a portion of the land constituting the Subleased Premises from the Sublease in order to efficiently accommodate the proposed Bay Trail; and

J. City and Oakland Golf, with Port's consent, desire to amend additional sections of the current Sublease as specifically set forth below, including hiring, use of the Course by the City, use of the new UC Berkeley short-game practice facility, installation of new FAA lighting, rent credits, and the administrative dates of the Sublease.

NOW THEREFORE, in consideration of their mutual promises, the parties agree as follows:

1. **Subleased Premises.** In reliance on Port's agreement and responsibility to bear all costs as described in the succeeding paragraph, City and Oakland Golf agree to modify the Subleased Premises by deleting approximately 10,000 square feet, as described on Exhibit A-1 and depicted on Exhibit A-2 (both attached hereto and incorporated herein by reference) from the Subleased Premises (the "Deleted Premises").

Pursuant to the Third Supplemental Agreement to the Amended and Restated Lease, (Lease) dated _____, 2008 the Port agrees to bear all costs incurred to delete and remove certain land from the Subleased Premises, including but not limited to, costs of fencing between the Course and the Bay Trail and re-landscaping the Course adjacent to the Deleted Premises. Pursuant to the Third Supplemental Agreement to the Lease, the Port also agrees to be solely responsible for all costs incurred to improve the Deleted Premises, and agrees that neither City nor Oakland Golf will be required to share in the cost of developing or maintaining the Bay Trail on the Deleted Premises.

The modifications to the rental provisions in Section 6 of the current Sublease have not been modified due to the deletion of the Deleted Premises.

2. **Water.** Section 3(d) of the current Sublease authorizes Oakland Golf to take rent credits against costs of obtaining irrigation water, as per the Sublease Exhibit L "Reclaimed Water Agreement". Oakland Golf represented to City that it exercised the right to terminate the Reclaimed Water Agreement on behalf of City effective March 4, 2008.

Oakland Golf and City agree that commencing the first day of the month following the Effective Date of this First Amendment, Section 3(d) and Section 22 of the current Sublease shall be deleted in their entirety.

3. **Golf Tournament Facilities.** Section 3(e) of the current Sublease is amended by adding the following to the end of the section:

Oakland Golf hereby agrees to allow City to use the Course at no cost for golf tournaments to be conducted by or under the auspices of City twice each year. Oakland Golf also agrees that City shall have the right to use the Club House at no cost to City for a maximum of twelve (12) times each year. City and Oakland Golf shall cooperate and make reasonable efforts to designate, and mutually agree upon, the dates of such uses by City."

4. **Minimum Rent.**

(a) Section 6(a) of the current Sublease is amended by the following: For a sixty (60) month period, Minimum Rent shall be reduced to fifty percent (50%) of the Minimum Rent otherwise payable pursuant to Section 6(a) of the Sublease (the "Relief Minimum Rent"). The sixty month period shall commence on the first day of the month following the Effective Date of this First Amendment (the "Relief Period"). Upon the expiration of the Relief Period, the Minimum Rent shall be the amount payable pursuant to Section 6(a) of the current Sublease. Upon the expiration of the Relief Period, this Section 4(a) of this First Amendment is void and will have no force and effect.

(b) Section 6(a)(v) of the current Sublease is amended to change the date for calculating the increase Minimum Rent . The new date, pursuant to the First Amendment is July 1, 2008, and July 1 for the years thereafter.

(c) If at any time during the five years of the Relief Period, Oakland Golf realizes a minimum of \$1.35 million in savings, Section 4(a) of this First Amendment is void and shall have no further force and effect and Section 6 of the current Sublease will govern Oakland Golf's Minimum Rent.

5. **Percentage Rent.**

Section 6 (a) of the current Sublease is amended by the following: to provide that during the Relief Period, references to "Minimum Rent" for purposes of calculation and payment of Percentage Rent shall mean Minimum Rent without reference to Section 4(a) of this First Amendment.

6. **FAA's ILS/MALSR Lights.** Section 3 of the Sublease is hereby amended by adding the following subsection t):

Oakland Golf hereby acknowledges and agrees that the Federal Aviation Administration ("FAA") has the right to enter upon the Subleased Premises to erect, install, maintain and operate airport navigational aids. Oakland Golf further acknowledges that the FAA plans to construct and operate (or fund the construction and operation of) an instrument landing system ("ILS") and medium-density approach lighting system and runway alignment indicator lights ("MALSR"), which will allow precision flight approaches by aircraft to Runway 27 Left at the Airport. As currently planned, the ILS will not be located on the Subleased Premises, whereas the MALSR will be located on the Subleased Premises. Oakland Golf agrees that it shall be required to adjust its operations, at no cost to Port, City or FAA, to accommodate the erection, installation, maintenance and operation of airport navigational aids on the Subleased Premises, including but not limited to, the proposed ILS and MALSR."

7. **CIP Fund.** Section 14 of the current Sublease is amended by adding the following:

(a) During the Relief Period, the percentage of Gross Revenues for each year required to be contributed to the CIP Fund, pursuant to Section 14(a) of the current Sublease, shall be reduced from four percent (4%) to two percent (2%).

(b) Upon the expiration of the Relief Period and for the remaining term of the Sublease thereafter, the percentage of Gross Revenue required to be contributed to the CIP Fund shall be three percent (3%).

(c) In the event that Oakland Golf exercises one or more of its options to extend the term of the Sublease, as provided in Section 4(a) of the current Sublease, the percentage of Gross Revenue required to be contributed to the CIP Fund during any option period shall be four percent (4%).

(d) Section 14(b) of the current Sublease, which provides that one-half of the contribution to the CIP fund shall be credited against rent due is deleted in its entirety.

8. **Hiring and Recruitment**

Section 3 (p) of the current Sublease is amended by adding the following:

(iv) In the recruitment or hiring and retention of employees or subcontractors, Oakland Golf shall undertake non-discriminatory and equal outreach efforts that include outreach to minorities and women and all other segments of Oakland's businesses and communities.

9. **License Agreement for UC Berkeley New Short-Game Practice Facility**

Section 5 (b) (i) of the current Sublease is amended by adding the following:

(a) Regarding the Agreement between the Regents of the University of California as Licensee and Oakland Golf as Licensor for the construction and use of the Short-Game Practice Facility (the "License"), the Regents are subject to Section 6 herein, and to all other provisions of the Lease and this Amendment applicable to Oakland Golf. In the event the underlying Sublease is suspended, terminated or otherwise for any reason deemed invalid or unenforceable at any time prior to the scheduled expiration of the Sublease, so long as Licensee is not then in default pursuant to the License (beyond the expiration of any cure period, after notice), and City remains Lessee under the Amended and Restated Galbraith Golf Course Lease and amendments thereto, the License shall not be barred, terminated, cut off, or foreclosed, nor will the rights of Licensee be disturbed, and City shall assume Licensor's position including Licensor's rights and liabilities, responsibilities and obligations, as though City was the original Licensor. Licensee shall attorn to City, provided that City shall assume the obligations of Licensor hereunder.

(b) City shall have use of the new short-game practice facility for youth program instruction as offered by Metropolitan Golf Links except during the times when the facility is used for Cal Berkeley Team practices, as defined in the Agreement.

10. **Effective Date.** The Effective Date of this First Amendment shall be _____.

11. All capitalized terms used herein and not defined shall have the meaning ascribed to such terms in the Sublease.

12. The modifications of the current Sublease are contained herein. All other sections of the current Sublease not modified or deleted herein are valid and continue to have full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

CITY OF OAKLAND, a municipal corporation, acting by and through its City Council,

Dated: _____

By: _____
Title:

Approved as to form and legality this __ day of _____, 2008.

City Attorney

Dated: _____

OAKLAND GOLF LLC

Dated: _____

By: _____
Title:

This First Amendment is approved by the Port.

By: _____
Executive Director
of the Port of Oakland

Approved as to form and Legality this __ day of _____, 2008.

Port Attorney

Port Ordinance No. ____

P.A. # _____

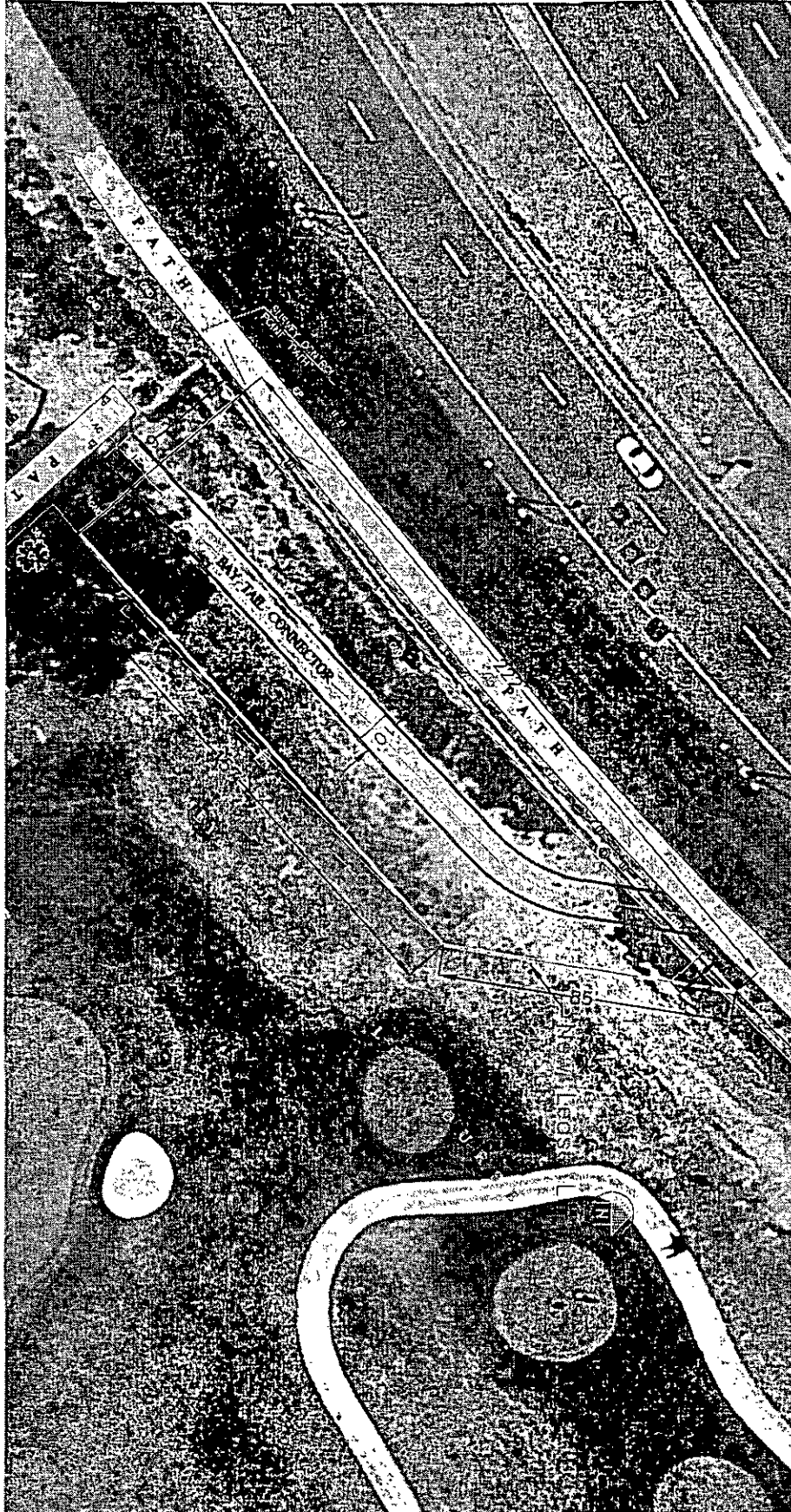
EXHIBIT A-1

Legal Description of Deleted Premises

(Legal description is currently being developed by Port staff and will be complete prior to First Amendment being recorded.)

EXHIBIT A-2

Plat of Deleted Premises



OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT
CODE SECTION 37393, AND ENTITLED TO FREE RECORDATION
UNDER GOVERNMENT CODE SECTION 27383

RECORDED ON BEHALF OF AND
WHEN RECORDED RETURN TO:

David L. Alexander
Port Attorney
Port of Oakland
530 Water Street, 4th Fl.
Oakland, CA 94607

DUPLICATE ORIGINAL
(For Recording)

F I R S T

A M E N D M E N T

(Lease of Real Premises
Located in City of Oakland,
County of Alameda)

Between

CITY OF OAKLAND

And

OAKLAND GOLF, LLC

Dated

_____ **2008**

**THIRD SUPPLEMENTAL AGREEMENT
TO AMENDED AND RESTATED LEASE**

(Galbraith Golf Course)

THIS THIRD SUPPLEMENTAL AGREEMENT, dated for reference purposes as of _____, 2008 is by and between the City of Oakland, a municipal corporation, acting by and through its City Council (the "City") and the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners (the "Port").

RECITALS

WHEREAS, the Port is the lessor and the City is the lessee under that certain Amended and Restated Galbraith Golf Course Lease dated as of March 16, 1999 as amended by the First Supplemental Agreement and Second Supplemental Agreement (collectively, the "Lease"); and

WHEREAS, the City has subleased the Leased Premises with the Port's consent to Oakland Golf LLC ("Oakland Golf") for the purpose of developing and operating a public golf course (the "Course"); and

WHEREAS, the City and Port desire to amend the Lease to delete a portion of the land constituting the Leased Premises from the Lease in order to efficiently accommodate the proposed Bay Trail; and

WHEREAS, the Bay Trail is planned to provide pedestrian and bicycle access along the edge of the San Francisco Bay (the "Bay Trail"); and

WHEREAS, the portion of the proposed Bay Trail in the vicinity of the Course requires approximately 10,000 square feet of land which is currently leased by the Port to the City and subleased by the City to Oakland Golf; and

WHEREAS, the City and Port desire to amend certain additional provisions of the Lease.

NOW THEREFORE, the parties hereto agree as follows:

1. Leased Premises. The Port hereby agrees to bear all costs incurred to delete certain land from the Leased Premises, including but not limited to, costs of fencing between the Course and the Bay Trail and relandscaping the Course adjacent to the Deleted Premises (as hereafter defined). The Port also agrees to be solely responsible for all costs incurred to improve the Deleted Premises, and agrees that neither the City nor Oakland Golf will be required to share in the cost of developing or maintaining the Bay Trail on the Deleted Premises.

In reliance upon the Port's agreement and responsibility to bear all costs as described in the preceding paragraph, the City and the Port hereby agree to modify the Leased Premises by deleting approximately 10,000 square feet, as described on Exhibit A-1 and depicted

on Exhibit A-2 (both attached hereto and incorporated herein by this reference) from the Leased Premises (the "Deleted Premises").

2. Rent Pursuant to Golf Course Agreement. Section 3.1 of the Lease is hereby amended by modifying the last sentence of that section to provide that any payment required to be made by the Port to the City pursuant to the Lease that remains due and unpaid for thirty (30) days after it becomes due and payable shall be subject to the delinquency charge set forth in said sentence.

3. FAA's ILS/MALSR Lights.

"The City hereby acknowledges and agrees that the Federal Aviation Administration (the "FAA") has the right to enter upon the Leased Premises to erect, install, maintain and operate airport navigational aids. The City further acknowledges that the FAA plans to construct and operate (or fund the construction and operation of) an instrument landing system ("ILS") and medium-density approach lighting system and runway alignment indicator lights ("MALSR"), which will allow precision flight approaches by aircraft to Runway 27 Left at the Airport. As currently planned, the ILS will not be located on the Leased Premises, whereas the MALSR will be located on the Leased Premises. The City agrees that it, or its sublessee as the case may be, shall be required to adjust its operations at the course, at no cost to the Port or the FAA, to accommodate the erection, installation, maintenance and operation of airport navigational aids on the Leased Premises, including but not limited to, the proposed ILS and MALSR."

4. Effective Date. The Effective Date of this Third Supplemental Agreement shall be _____.

5. All capitalized terms used herein and not defined shall have the meaning ascribed to such terms in the Lease.

6. The modifications to the original Lease are as contained herein. All other provisions of the original Lease not modified herein are valid and continue to be in full force and effect.

7. In all other respects, said Lease is hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

CITY OF OAKLAND, a municipal corporation, acting by and through its City Council,

Dated: _____

By: _____
Title: _____

Approved as to form and legality this __ day of _____, 2008.

City Attorney

Dated: _____

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

Dated: _____

By: _____
Executive Director

Approved as to form and Legality this __ day of _____, 2008.

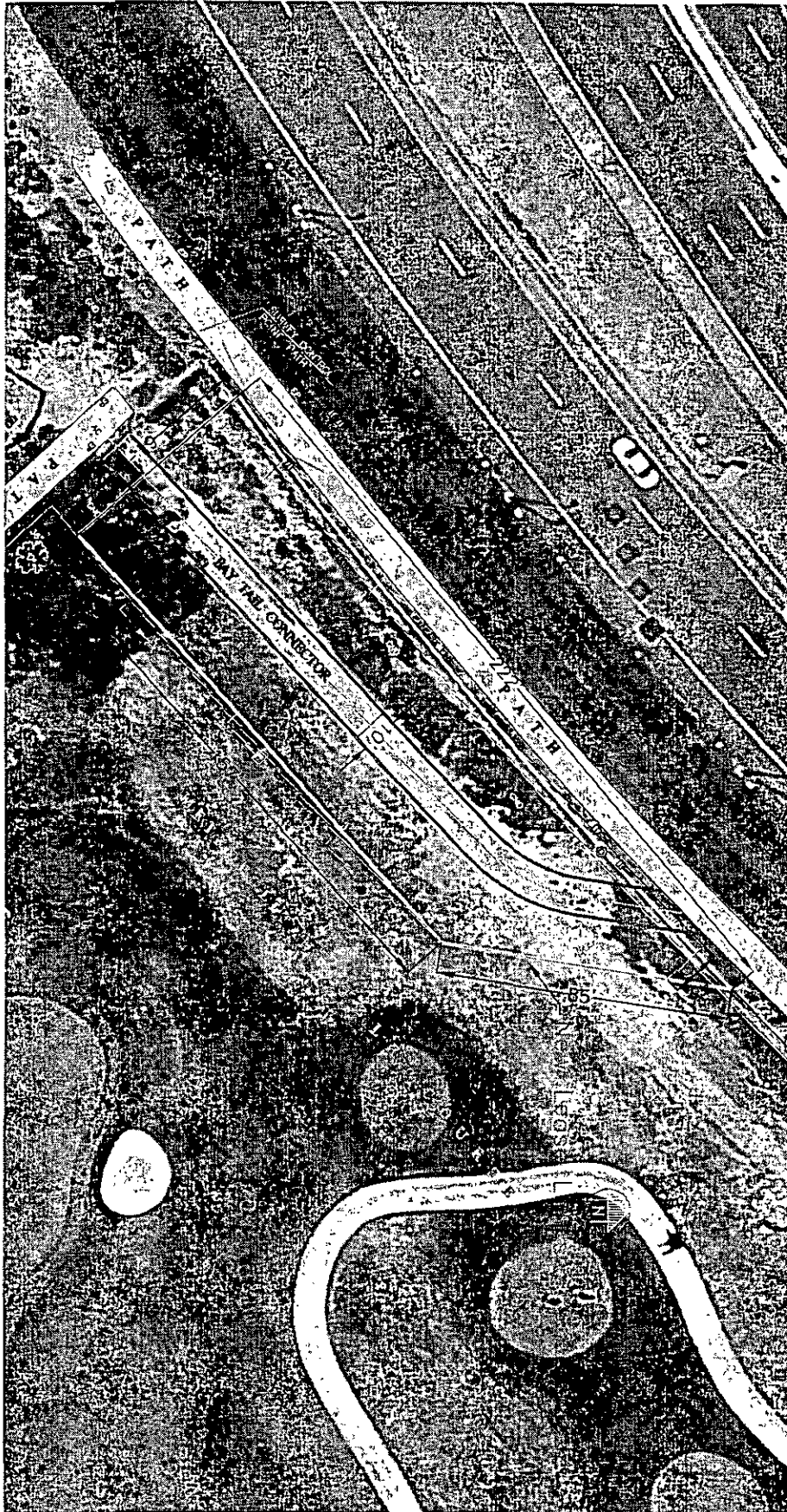
Port Attorney

Port Ordinance No. ____

P.A. # _____

Exhibit A-2

Plat of Deleted Premises



Attachment B

OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT
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Port Attorney
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530 Water Street, 4th Fl.
Oakland, CA 94607

DUPLICATE ORIGINAL
(For Recording)

THIRD

SUPPLEMENTAL AGREEMENT

**(Lease of Real Premises
Located in City of Oakland,
County of Alameda)**

Between

PORT OF OAKLAND

And

THE CITY OF OAKLAND

Dated

_____ **2008**

SUBLEASE AND OPERATING AGREEMENT

BETWEEN

THE CITY OF OAKLAND

and

OAKLAND GOLF, LLC

dated _____, 2001

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SUBLEASE AND OPERATING AGREEMENT

FORMER LEW F. GALBRAITH GOLF COURSE

This Sublease and Operating Agreement ("Sublease") is entered into this ____ day of _____, 2001 by and between THE CITY OF OAKLAND, a Municipal corporation ("Primary Lessee" or "City") and *Oakland Golf, LLC* ("Sub Lessee," or "Oakland Golf").

RECITALS

WHEREAS, the Port of Oakland ("Port") is owner of that certain parcel or parcels of land ("Land") formerly known as the Lew F. Galbraith Golf Course, located in Oakland, California, and described more specifically in Exhibit "A" Property Description, and improvements located thereon, and all easements, covenants, water rights, and other appurtenant rights (collectively, "Appurtenances"); and

WHEREAS, the City is the Primary Lessee, of the Land, as shown in the Lease Agreement (Exhibit "B" Amended And Restated Lease, dated March 16, 1999, and the First and Second Amendments to the Amended and Restated Lease – collectively "the Lease Agreement"); and

WHEREAS, the Land contains a former municipal landfill, on which the original Lew F. Galbraith Golf Course was built in the early 1960s; and

WHEREAS, The City and Port agreed to close the golf course to permit the Port to use the land for a landfill to facilitate the Port's harbor improvements and entered into an agreement to close the golf course, and pursuant to such agreement the golf course was closed in 1994 and the land was used to accommodate the placement of approximately 1.2 million cubic yards of dredged material; and

WHEREAS, The Port agreed to close the landfill on the golf course in an appropriate manner to facilitate the building of a new golf course on the land and to build a first class golf course on the land, and the Port is in the process of closing the landfill in compliance with an approved landfill closure plan, and it is the Port's responsibility to implement the landfill closure plan and deliver the site in a condition to permit the building of a first class municipal golf course; and

WHEREAS, the Port has retained a golf course architecture firm, Johnny Miller Design Ltd., ("JMD") to design a new golf course on the Land; and

WHEREAS, the City and the Port desire to have a new municipal daily fee golf course constructed on the site of the former Lew F. Galbraith Golf Course in accordance with the course layout and plan designed by JMD and new facilities constructed to support the improved golf course; and

WHEREAS, the City and the Port have completed the selection process of obtaining a golf course developer - operator to substantially fund, construct and operate, the new Golf Course and all required related facilities based upon the proposals submitted by such developers including Developer; and

WHEREAS, Oakland Golf is an experienced developer and operator of golf facilities in the San Francisco Bay area; and

WHEREAS, City desires to sublease Premises to Oakland Golf on certain terms and conditions;
and

WHEREAS, City is acting in reliance upon the obligations of Developer hereunder; and

WHEREAS, the City and Oakland Golf, with the Port's approval, have executed a Funding and Development Agreement, attached hereto as Exhibit "C" Funding and Development Agreement ("Development Agreement"); and

WHEREAS, Oakland Golf is acting in reliance upon the obligations of the Port to prepare and deliver the Subleased Premises in accordance with the Site Delivery Specifications set forth in **Exhibit "D"** to the Oakland Golf Course Project Funding and Development Agreement.

NOW, THEREFORE, the parties desire to enter into this Sublease and Operating Agreement ("Sublease") on the terms and conditions set forth below.

1. SUB LEASED PREMISES

City hereby subleases to Oakland Golf and Oakland Golf hereby subleases from City, for the term and upon the terms and conditions set forth in this Sublease, the following "Subleased Premises:"

- a) **Real Property.** The surface of the Land described in **Exhibit "A"**, consisting of the real property together with the Appurtenances. The Land so subleased, together with the Appurtenances and improvements constructed on the Land pursuant to the Development Agreement and Sublease, is collectively referred to as the "Subleased Premises".
- b) **Water Rights.** All of City's water rights, riparian rights, appropriation rights, water allocations, and water stock appurtenant to the Land except as otherwise provided for herein.

2. USE OF SUB LEASED PREMISES

- a) **Use.** Oakland Golf shall fund and construct the Golf Course on the Subleased Premises in accordance with the Sublease and the Development Agreement attached as **Exhibit "C"** and shall otherwise operate and use the Subleased Premises for the operation of a high quality, municipal daily fee golf course and other activities customarily associated with or incidental to the operation of a daily fee golf course, including without limitation, sale or rental of golf-related merchandise at a golf merchandise shop, furnishing of lessons by a golf professional(s), rental of golf carts, operation of a practice (driving) range, conducting and promoting golf tournaments, sales of food and beverages, including liquor sales, and banquet activities. Oakland Golf shall not use the Subleased Premises for any unlawful purpose and shall comply with all valid laws, rules and regulations applicable to the Subleased Premises or the businesses conducted on the Subleased Premises, and the requirements of the Lease Agreement.
- b) **Oakland Golf's Right to Control Business Operations.** Subject only to the limitations contained in this Sublease, the Lease Agreement, and the Development Agreement, Oakland Golf shall have the exclusive right and authority to operate and manage the Subleased Premises as Oakland Golf deems appropriate. In accordance with the above referenced agreements and without limiting the foregoing, Oakland Golf shall have the right to implement all policies and

procedures and to perform any act deemed necessary or desirable for the operation and management of the Subleased Premises;

- i) Except for the provisions regarding Oakland resident green fees on weekdays, contained in **Section 3 o**, Oakland Golf shall have the right to determine all green fees, cart fees, practice (driving) range fees and all other charges associated with the operation of the Subleased Premises; (Weekdays are considered to be Monday, Tuesday, Wednesday and Thursday that are not Holidays. Holidays shall be considered to be those days listed on Exhibit "K". Recognized Holidays attached hereto. In the event a Recognized Holiday falls on a Tuesday, the preceding Monday shall then, for purposes of establishing green fees, be considered a holiday as well.)
 - ii) Except as otherwise expressly provided by this Sublease, Oakland Golf shall have the right to determine all personnel requirements, recruitment schedules and compensation levels and shall employ, train, promote, discharge and supervise all personnel performing services in and about the Subleased Premises.
 - iii) Oakland Golf shall utilize its local and regional marketing and sales resources for the benefit of the Subleased Premises, and shall designate the Subleased Premises as available for tournament play, transient play and local play in Oakland Golf's promotional materials.
- c) **Annual Plan.** In connection with Oakland Golf's operation and management of the Subleased Premises, Oakland Golf shall, on or before the opening of the Golf Course and on or before the first day of each subsequent Sublease Year, submit to City and Port an annual plan for operation of the Golf Course and shall include a sales and marketing plan, with the outline of such elements as shown in Exhibit "D" Annual Sales and Marketing Plan for the Subleased Premises. The initial Marketing Plan shall at a minimum contain the elements set forth in Exhibit "G-1". City and Port shall have the right to comment upon and make suggestions with respect to said sales and marketing plan; provided, however, while Oakland Golf shall consider all of City and Port's suggestions and comments, Oakland Golf shall not be obligated to implement the City or Port's suggestions in the sales and marketing plan. 1/1/04
✓
interim
plan
- d) **City's Representative.** City's representative is the Director of Parks and Recreation who is authorized, on behalf of the City, to administer this Sublease and monitor Oakland Golf's compliance with the terms hereof. Unless otherwise notified by City through its City Manager, Oakland Golf shall deal exclusively by and through the Director of Parks & Recreation or his or her designee and shall have the right to rely upon decisions rendered by the Director of Parks & Recreation who shall be deemed to be the City's authorized representative. Oakland Golf shall consider in good faith the requests and recommendations of the Director of Parks & Recreation to increase play and revenue or to enhance maintenance and operation of the Golf Course.
- (i) Operational Memoranda Of Understanding.** The Parties acknowledge that not all operational considerations can be accurately predicted and memorialized in this Sublease. Accordingly, the Parties through their respective representatives, may from time to time execute side letters or a Memorandum Of Understanding to ensure proper operation of the Golf Course, tournaments, special events, charitable functions, and similar activities.

- e) **Port's Representative.** Port's representative is the Deputy Executive Director of the Port who is authorized to administer this Sublease on behalf of the Port and monitor Oakland Golf's compliance with the terms hereof. Unless otherwise notified by Port, Oakland Golf shall deal exclusively by and through the Deputy Executive Director of the Port or his or her designee and shall have the right to rely upon decisions rendered by the Deputy Executive Director of the Port who shall be deemed to be the Port's authorized representative.

3. LIMITATIONS.

In addition to the limitations required by the Lease Agreement and Development Agreement, Oakland Golf's rights under Section 2 are subject to the following:

- a) **FAA Regulations and Rules.** Oakland Golf shall abide by all FAA Regulations and Rules in regard to the Runway Protection Zone, aircraft navigational aids and all other Federal Statutes or Regulations as described in the Development Agreement or otherwise applicable to the Subleased Premises.
- b) **Prohibition on Non-Golf Uses.** Oakland Golf shall not further develop the Subleased Premises, for uses which are not primarily devoted to or in direct support of golfing.
- c) **Days of Operation.** The Subleased Premises, will be open to the public for golf course play on a from at least dawn until at least dusk every day of the year. Exceptions for opening may be granted by the City during renovation or when other capital improvements dictate closing, adverse weather conditions and the limitations imposed by tournaments or upon written request by Oakland Golf, for any reason approved by the City.
- d) **Water.** Oakland Golf shall be responsible for all costs of water for the Premises. Oakland Golf shall pay for the costs of the EBMUD Water Agreement for reclaimed water as required by the EBMUD Reclaimed Water Agreement (Exhibit "L"). However to the extent that Oakland Golf is unable to use the required amounts of reclaimed water that it is required to pay for under the EBMUD Reclaimed Water Agreement, Oakland Golf may credit such amounts against the rent due under this Sublease, subject to the total rent credit cap as provided for in this Section.

Oakland Golf shall use its reasonable best efforts to explore for, test for, obtain the permits for, construct and operate a ground water well to obtain water suitable for irrigation of the roughs and fairways of the golf course. City shall advance up to the first One Hundred Thousand Dollars (\$100,000) for the cost incurred by Oakland Golf in connection therewith. Oakland Golf shall keep City fully apprised of all efforts in connection therewith including, but not limited to, the results of studies, testing and/or projections of the feasibility and quality of installing and operating such well. At such time as the City and/or Oakland Golf reasonably determine that it is not financially feasible to continue the attempt to locate, obtain permits for and successfully construct the well, such continued effort shall be discontinued and neither the City nor Oakland Golf shall be obligated to pay any further costs or expenses in connection therewith.

Sublessee shall be entitled to a credit against the rent payable hereunder for the Cost of Irrigation Water paid by Sublessee each year in excess of the "Base Amount" as specified herein.

The "Base Amount" shall mean the sum of sixty-five thousand dollars (\$65,000.00) increased by the percentage increase in the per acre foot charge for potable water charged by EBMUD from the date the golf course is first opened for full time public play through the date of computation. The term "Cost of Irrigation Water" in any given year shall mean the sum of the cost of potable water, reclaimed water or any other water purchased from EBMUD or any other water purveyor plus the "Well Water Costs". The term "Well Water Costs" shall mean the sum of the annual pumping costs, maintenance costs and amortization costs (of amounts paid by Oakland Golf excluding amounts reimbursed by City in connection with advance or reimbursement of the \$100,000 described above) as reasonably determined in accordance with normal accounting practices, in connection with the initial construction or subsequent maintenance, reconstruction and operation of the well (including associated facilities).

All rent credits provided for in this Section and elsewhere in this Sublease shall be capped for each year in a total amount not to exceed the following percentages of the total rent due for each such year as follows:

- (1) year 1 of the Sublease – seventy-five percent (75%)
- (2) year 2 of the Sublease – thirty-seven and one-half percent (37.5%)
- (3) year 3 of the Sublease – thirty percent (30%)
- (4) years 4-10 of the Sublease – twenty percent (20%)
- (5) years 11-15 of the Sublease – fifteen percent (15%)
- (6) years 16 –25 (and any option years) – ten percent (10%)

Rent credits available under this section shall not be cumulative and shall not carry over from year to year. The rent credit available for each sublease year shall be calculated independently for each such year of the Sublease.

- e) **Golf Tournament Facilities.** Oakland Golf shall provide suitable facilities for golf tournaments and other similar events.
- f) **Appointment and Qualifications of General Manager.** Oakland Golf shall appoint as General Manager one of the following: (i) a Class A member of the PGA; (ii) a Class A member of the LPGA; (iii) a person who has a minimum of three years operating experience at a similar golf course; or (iv) a certified golf course superintendent who is member of the GCSAA.
- g) **Appointment and Qualifications of Grounds Superintendent.** Oakland Golf shall appoint as grounds superintendent a person who is a member of the GCSAA and who has a minimum of five years experience in turf grass management at a similar golf course, or equivalent experience.
- h) **Junior Golf.** Oakland Golf shall provide for junior golf programs and junior discounts during off-peak hours, including but not limited to the possible affiliation with the First Tee Program.
- i) **Use by Non-Profit Organizations.** Oakland Golf shall, on a space available basis, provide meeting space in the clubhouse for Oakland-based non-profit organizations at a discounted rate.

- j) **The NCGA Golf Club.** Oakland Golf acknowledges that there is, in existence the NCGA golf club which was previously associated with the former Lew F. Galbraith Golf Course. Oakland Golf further acknowledges the importance of this NCGA club to the patronage of the course and to City. Accordingly, Oakland Golf will cooperate with the Director of Parks & Recreation to accommodate the tournament needs of this club to the extent commercially practical, as follows:
- i) On twelve weekends per year, a full field (144 players) will be accommodated for a shotgun tournament. The NCGA club will be responsible for filling the field and making all tournament arrangements with the Oakland Golf. Oakland Golf may charge a premium for golf merchandise shop merchandise, prizes, and food and beverage.
- k) **Integrated Pest Management and Chemical Applications Management Program.** Oakland Golf will develop and submit for approval by the City's Department of Parks and Recreation an Integrated Pest Management ("IPM") program and a Chemical Applications Management Program ("CHAMP") to comply with the goal of minimizing the use of chemicals on the Property.
- l) **Environmental Sustainability/Green Buildings.** Any improvements constructed on the Subleased Premises shall be designed to comply with the standards for Environmental Sustainability/Green Buildings – and Lessee shall attempt to meet, at least, the minimum LEED Certified Rating for Construction and Architectural Design in effect at the time of the improvement design.
- m) **Quality Control.** City may establish a Quality Control Program to monitor Lessee's compliance with the requirements of this Sublease concerning quality of golf course maintenance and services. The form and content of the Quality Control Inspections is generally contained in **Exhibit "E" Monthly Inspection Form.** After the construction is complete and prior to the Subleased Premises opening for play, the Director of Parks & Recreation, or his designee will meet with Oakland Golf and the inspection form will be modified to reflect the specifics of the Golf Course operation. Quality Control inspections may be made as frequently as monthly and copies of the inspection reports will be delivered to Oakland Golf. The inspections shall be made by a qualified independent third party who is acceptable to both the City and Oakland Golf. The Director of Parks and Recreation will monitor Oakland Golf's performance using the above inspection reports for identifying deficiencies before the level of performance becomes unsatisfactory. The Director of Parks & Recreation or his designee may meet monthly with Oakland Golf to review all aspects of the Golf Course's operation. The Quality Control Program inspections will include, but are not limited to:
- i) Condition of the Golf Course, including but not limited to fairways, greens, roughs, and tees. The basis for this portion of the review is contained in the Maintenance Standards in **Exhibit "F" Maintenance Standards**
 - ii) Condition of the maintenance facility.
 - iii) Condition of the clubhouse, grounds and entrance.

n) **Oakland Resident Fee Limits.** Oakland Golf shall limit the greens fees charged to all Oakland residents on weekdays, as defined in Section 2 b) i) above. The greens fee limits applicable to Oakland residents shall be determined by a survey of weekday green fees charged at Bay Area golf courses of comparable quality. The survey shall be conducted at least every five years and shall include a wide sampling of publicly owned municipal and privately owned daily fee courses. The pricing for resident and non-residents shall be shown. **Exhibit "M"** provides an example of such a survey and includes a list of the initial courses to be included in the survey. The average of the weekday prices, excluding the highest green fee and lowest green fee, plus 15% will establish the maximum green fees to be charged for weekday play to Oakland residents. No more frequently than annually, the list of courses designated on **Exhibit "M"** may be changed upon the approval of both parties. Either party making a request for a change in the list shall make such request in writing and shall include such information as is reasonably necessary to support a conclusion that the course being added is comparable or the course being deleted is no longer comparable. The parties shall be guided by the standard of reasonableness in determining which courses, if any, shall be added or deleted.

o) **Conflict of Interest**

- i) Oakland Golf certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Sublease or in any benefit arising therefrom.
- ii) Oakland Golf certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii) Oakland Golf shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Oakland Golf.
- iv) Oakland Golf warrants and represents, to the best of its present knowledge, that no public official or employee of City or Port who has been involved in the making of this Sublease, or who is a member of a City or Port board or commission which has been involved in the making of this Sublease whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Sublease in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Oakland Golf shall exercise due diligence to ensure that no such official will receive such an interest.
- v) Oakland Golf further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Oakland Golf to City, that (1) no public official of City or Port who has participated in decision-making concerning this Sublease or has used his or her official position to influence decisions regarding this Sublease, has an economic interest in Oakland Golf or this Agreement, and (2) this Sublease will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this

paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$250 the previous year. Oakland Golf agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Oakland Golf's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi) Oakland Golf understands that in some cases Oakland Golf or persons associated with Oakland Golf may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Oakland Golf further understands that, as a public officer or official, Oakland Golf or persons associated with Oakland Golf may be disqualified from future City contracts to the extent that Oakland Golf is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Sublease.
- vii) Oakland Golf shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Sublease a provision governing conflict of interest in substantially the form as that set forth in this section.
- viii) No Waiver: Nothing herein is intended to, nor does waive, any applicable federal, state or local conflict of interest law or regulation
- ix) Remedies and Sanctions: In addition to the rights and remedies otherwise available to the City under this Sublease and under federal and state law, Oakland Golf understands and agrees that, if the City reasonably determines that Oakland Golf has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Sublease, (2) terminate this Sublease, (3) require reimbursement by Oakland Golf to the City of any amounts disbursed under this Sublease. In addition, the City may suspend payments or terminate this Sublease whether or not Oakland Golf is responsible for the conflict of interest situation.
- p) **Equal Employment Practices.** Oakland Golf shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Sublease, Oakland Golf agrees as follows:
 - i) Oakland Golf and Oakland Golf's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment

advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- ii) Oakland Golf and Oakland Golf's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Oakland Golf that all qualified applicants will receive consideration for employment without regard to gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- iii) If applicable, Oakland Golf will send to each labor union or representative of workers with whom Oakland Golf has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Oakland Golf's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

q) **Living Wage Requirements.**

- i) This Sublease is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Exhibit "N"** and made part of this Sublease, and, unless specific exemptions apply or a waiver is granted, that Oakland Golf provide the following to its employees who perform services under or related to this Sublease:
 - (A) Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$8.65 with health benefits or \$9.95 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.
 - (B) Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Oakland Golf shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
 - (C) Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

(D) Federal Earned Income Credit (EIC) – Oakland Golf shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

(E) Oakland Golf shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

(F) Oakland Golf shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Sublease.

(2) Reporting – Oakland Golf shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Oakland Golf shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Oakland Golf shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

(3) Oakland Golf shall require subcontractors that provide services under or related to this Sublease to comply with the above Living Wage provisions. Oakland Golf shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

r) **Oakland Apprenticeship Workforce Development Partnership System Program.**

The Oakland Apprenticeship Workforce Development Partnership System Program shall apply to all work performed under the terms of this Sublease and Oakland Golf shall require all subcontracts entered into by Oakland Golf to require compliance with the requirements of the program explicitly in the terms of each such agreement.

s) **Employment Resources Development Program.**

Oakland Golf shall cooperate with the Port's Employment Resources Development Program as required and specified in Section 14 of the Lease Agreement.

4. **TERM**

4/16/03

a) **Commencement of Term.** The Term of this Sublease shall commence on the date hereof and shall continue for twenty five (25) years from the first day that the golf course is opened for play following completion of the Construction as provided for in the Development Agreement, and Sub Lessee shall be entitled to three five (5) year extensions at the option of Oakland Golf. Each such extension option shall be exercised by providing written notice to the City and the Port not less than six (6) months prior to the expiration of the then existing term (including option periods). If Oakland Golf does not give notice of exercising any such option at least (1) two (2) years prior to the expiration of the initial twenty-five year term with respect to the first option and

(II) one (1) year prior to the expiration of the term with respect to the second or third options, the City may, by written notice to Oakland Golf, elect to extend the term as follows:

- i) With respect to the first option, the City may extend the term of the Agreement for a period not to exceed eighteen (18) months beyond the date the term was otherwise to end. However, the City may not extend the term beyond the date the term was otherwise to end if notice is given by Oakland Golf that it elects not to exercise the option more than eighteen (18) months before the date the term was otherwise to end, and in no case may the City extend the term to a date that is more than eighteen (18) months after the date that Oakland Golf gives notice to the City that it elects not to exercise the option.
- ii) With respect to the second or third option, the City may extend the term of the Agreement for a period not to exceed six (6) months beyond the date the term was otherwise to end. However, the City may not extend the term beyond the date the term was otherwise to end if notice is given by Oakland Golf that it elects not to exercise the option more than twelve (12) months before the date the term was otherwise to end, and in no case may the City extend the term to a date that is more than twelve (12) months after the date that Oakland Golf gives notice to the City that it elects not to exercise the option.

Failure to timely exercise any option period as provided for herein shall forfeit the right to exercise any other option period.

- b) **Surrender Upon Sublease Expiration or Termination.** Upon the expiration or earlier termination of this Sublease, Oakland Golf shall return the Subleased Premises to City in its then existing condition. City shall have the right to purchase any Personal Property owned by Oakland Golf at a price equal to the fair market value on a going concern basis.
- c) **Sublease Year Defined.** The term "Sublease Year" means each twelve month period beginning on the Commencement Date each year during the Term and terminating on the calendar date one day before the Commencement Date of the following calendar year. The Sublease Year may be changed by written agreement of the Parties. Each Sublease Year will constitute a separate accounting period for the purpose of computing percentage rent. Gross Revenue (as defined below) for any Sublease Year shall not be carried forward or backward into any other Sublease Year. If this Sublease is terminated prior to the end of a Sublease Year, Minimum Rent and Percentage Rent shall be subject to pro-ration.
- d) **Termination of Development Agreement.** In the event the Development Agreement is terminated before commencement of construction, either Oakland Golf or City may terminate this Sublease by written notice to the other party.

5. **ASSIGNMENT.**

Except as otherwise provided below, Oakland Golf shall not assign this Sublease or the rights and entitlement granted hereunder, or sublet all or any portion of the Subleased Premises without the prior written consent of City and Port, which consent shall not be unreasonably withheld. City and Port have undergone a lengthy process to secure an operator with the qualifications, expertise and capacity to operate a municipal golf course in a manner which will reflect well upon the City of Oakland. City

and Port expect to have the same or a greater level of competence in any assignee. Oakland Golf shall notify City and Port of any proposed assignment or subletting at least ninety (90) days prior to the proposed effective date of such assignment or subletting. In the event that any such assignment, other than for the purpose of obtaining debt and/or equity financing, is approved by City and Port, City shall, after execution of the approved assignment or sublease, release Oakland Golf from liability for future obligations under this Sublease.

- a) Oakland Golf shall have the right to assign Oakland Golf's interest in this Sublease to any individual, corporation, partnership or other entity which controls, is controlled by or is under common control with Oakland Golf ("Oakland Golf's Affiliate") so long as the financial security provided by such Oakland Golf's Affiliate is not less than that provided by Oakland Golf. Oakland Golf prior to any such assignment shall provide proof of such continuing financial security to City and Port for City's and Port's review and approval. In case of such assignment, any Oakland Golf's Affiliate shall assume in writing all of Oakland Golf's obligations under this Sublease.
- b) Oakland Golf shall be permitted to enter into subleases or concession agreements for the operation of the golf merchandise shop, food and beverage services and other related activities at the Subleased Premises and such subleases and/or concession agreements shall not be considered assignments for purposes of this Section. However, any such sublease or concession agreement shall be subject to review and approval by the City, which approval shall not be unreasonably withheld. The City shall be paid as required by this agreement for amounts due to the City from Oakland Golf based on the gross sales regardless of the provisions of any such sublease or concession agreement.
- c) Oakland Golf shall be permitted to assign this Sublease in connection with obtaining debt and/or equity financing upon the approval of the City and Port, which approval shall not be unreasonably withheld. Such assignment shall entitle the provider of the debt and/or equity financing to become the Sub Lessee hereunder or to assign Sub Lessee's interest to a third party in connection with enforcement of its rights under loan and/or equity instruments executed by Oakland Golf or Oakland Golf's Affiliate, so long as arrangements are made which are reasonably satisfactory to the City and Port for operation of the golf course by an experienced golf course operator with at least five (5) years successful experience in golf course management satisfactory to the City and Port and to secure the timely and complete fulfillment of all of Oakland Golf's duties and obligations under the terms of the Sublease including, but not limited to the payment of rent and all other amounts due under the Sublease. The assignment shall provide that no settlement or compromise of claims between Oakland Golf and the lender shall be valid if it in any way impairs the City's rights to collect rents or other payments due or past due under the Sublease without the prior written consent of the City. In connection with such assignment, City agrees to execute a "four-party" agreement acceptable to the City entitling the provider of the debt and/or equity financing, notice of any default under this Sublease, an opportunity to cure the default, the right to a new sublease on the same terms and conditions as this Sublease with an operator acceptable to the City and Port in the event the sublease is terminated or rejected in bankruptcy. However, no such new Sublease shall impair the City's right to collect current or past due rent or other

amounts due under the Sublease and such new sublease will provide for the payment of amounts past due or owing under the Sublease on terms and conditions acceptable to the City.

The City, the Port and Oakland Golf have approved the form of a "four party" agreement attached hereto as **Exhibit "Q"**.

- d) The City shall not withhold its approval (pursuant to subparagraph (c) above) of an assignment of this Sublease and/or the Development Agreement to secure a loan which is secured by a first priority Leasehold Mortgage and/or Leasehold Deed of Trust together with other customary assignments and security documents ("First Mortgage"). In the event Oakland Golf requests approval of any further assignment this Sublease and/or the Development Agreement to secure an additional loan (i.e., in addition to the loan secured by the First Mortgage), City shall not be obligated to approve such additional Leasehold Mortgage and/or Leasehold Deed of Trust if, when taken together with the existing First Mortgage, the aggregate principle amount of both loans at the closing of the second loan transaction (including any additional amounts to be disbursed to Borrower after such closing pursuant to such loan documents) exceeds the greater of (i) seventy-five percent (75%) of the appraised fair market value of Oakland Golf's leasehold interest in the premises, or (ii) a sum equal to the average net operating income of Lessee for the three complete sublease years preceding the loan closing (or the number of complete sublease years of operations, if less than three) multiplied by eight (8).

6. RENT.

In consideration of City executing this Sublease and granting the rights provided in this Sublease, Oakland Golf shall pay to City (as directed by City) annual rent in an amount that will be the greater of either (i) the Minimum Rent (as defined in **Section 6 a**) below), or (ii) a rent based upon percentages of Gross Revenue as set forth in **Section 6 b**) below.

City hereby appoints the Port to act as the agent of the City for the receipt of rent (as is specified in the Lease Agreement between City and Port) until such time as the City directs Oakland Golf otherwise.

- a) **Minimum Rent.** Oakland Golf shall pay to City as minimum rent ("Minimum Rent") the following amounts (which shall be payable monthly on the first day of each month during the Term):
- i) For the first twelve (12) months following the Commencement Date (Year 1), \$8,333.33 per Month (\$100,000 per Year)
 - ii) For the thirteenth (13) month through the twenty-fourth (24) month (Year 2), \$25,000.00 per Month (\$300,000 per Year)
 - iii) For the twenty-fifth (25) month through the thirty-sixth (36) month (Year 3), \$33,333.33 per Month (\$400,000 per Year)
 - iv) For the thirty-seventh (37) month through the forty-eighth (48) month (Year 4) \$41,666.66 per Month (\$500,000 per Year)

v) For the forty-ninth (49) month through the end of the Term including any exercised option period (Years 5 – 40) the Minimum Rent shall be the greater of \$500,000 increased annually by the CPI or 80% of the average annual rent paid for the three preceding Sublease Years. Such Minimum Rent shall be proportioned over the twelve month period of each Sublease year and paid in equal monthly installments.

b) **Percentage Rent.** In any Sublease Year, from Years Three (3) through Forty (40), in which the amount of percentage rent set forth below ("**Percentage Rent**"), exceeds the Minimum Rent for such Sublease Year specified in **Section 6 a)** Oakland Golf shall pay Percentage Rent to City as follows:

- i) Oakland Golf shall pay City a percentage rent on all golf related activities including, but not limited to Green Fees, Pull Carts and Power Golf Cars, and Range as specified hereinafter below ("Golf").
- ii) In addition, Oakland Golf shall pay City 4% of all Gross Revenue from Golf instruction, food and beverage sales and ancillary services (such as banquets, facility rentals, etc.) ("F&B") and 4.0% of all Gross Revenue from retail sales and services, including without limitation the operation and sales of the golf professional's shop, golf instruction, rentals of equipment, pay telephones, newspaper racks and any other income derived from the operation of the Subleased Premises ("Merchandise").
- iii) The Percentage Rent shall be in lieu of and not in addition to the Minimum Rent when the amount of Percentage Rent that would be due exceeds the amount of Minimum Rent that would otherwise be due under the terms of this Sublease.

Percentage Rent Table by Years

Years	1 - 2	3 - 5	6 - 10	11 - 15	16 - 20	21 - 25	26 - 40
Golf (Includes Green Fees, Carts Cars & Range)	0%	15%	17.5%	20.0%	22.5%	25.0%	27.5%
F & B	0%	4%	4%	4%	4%	4%	4%
Merchandise	0%	4%	4%	4%	4%	4%	4%

c) **Late Payment Fee and Interest.** If City receives any payment from Sub Lessee later than ten (10) days from the due date, Sub Lessee shall pay City on demand as a Late Payment Fee five per cent (5%) of such overdue amount, limited, however, to the maximum amount allowed by law. In addition to

such Late Payment Fee, any amount owing and unpaid later than ten (10) days from the due date shall bear interest at the rate of ten percent (10%) per annum during the period such payment is owing and unpaid. The provisions of this subparagraph shall not apply to any good faith failure of Oakland Golf to pay rent ultimately determined to be payable under **Section 9 b)** or other good faith disputes concerning payments hereunder.

7. GROSS REVENUE.

For purposes of calculating Percentage Rent, "Gross Revenue" shall mean all money received by Sublessee or the monetary value of all other consideration received by Sub Lessee in lieu of monetary payment as a result of the sales of goods or the provision of services on the Subleased Premises (as described in **Section 6 b)** above), but shall not include:

- a) Cash refunds or credits allowed on returns by customers;
- b) Sales taxes, excise taxes, gross receipts taxes, admissions taxes, use taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid by Oakland Golf to the appropriate taxing authority, whether added to or included in the selling price;
- c) The actual uncollectible amount of any check or bank draft received by Oakland Golf as payment for goods or services and returned to Oakland Golf from a customer's bank as being uncollectible (commonly "non-sufficient funds" checks);
- d) The actual uncollectible amount of any charge or credit account (commonly "bad debts") incurred by Oakland Golf for the sale of merchandise or services;
- e) The actual uncollectible amount of any sale of merchandise or services for which Oakland Golf accepted a credit card;
- f) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- g) The amount of any cash, quantity discounts, or rebates received from sellers, suppliers or manufacturers;
- h) The amount of any gratuities paid or given by customers to or for employees of Oakland Golf;
- i) Receipts from the sales of uniforms or clothing required to be worn by employees;
- j) Amounts attributed to meals served or provided to employees of Oakland Golf;
- k) The amount of any sales of merchandise discounted to employees;
- l) Receipts from the sale of waste or scrap materials resulting from Oakland Golf's operations;
- m) The amount of any cash receipt from Oakland Golf's operation of an advance reservation system for or on behalf of any other golf facility.
 - i) It is the intention of City and Oakland Golf that any affinity program and/or reservation system implemented by Oakland Golf and affecting the Subleased Premises will have the

result of increasing the overall revenues at the Subleased Premises and will not result in the diversion of revenues from the Subleased Premises.

ii) In addition to City and Port's right to audit Oakland Golf's books and records as provided in **Section 9 b)** below, City and Port shall have the right to audit the implementation of any affinity program or advance reservation system to insure that no such diversion of revenues has occurred.

o) Complementary rounds of golf consistent with industry practice.

8. REPORTING AND PAYMENT OF PERCENTAGE RENT.

a) Oakland Golf shall calculate and pay Percentage Rent, if any, on a quarterly basis. Within thirty (30) days after the end of each quarter of a Sublease Year, Oakland Golf will submit to City and Port a statement signed by Oakland Golf or a person authorized by Oakland Golf showing in reasonable detail the amount and types of Gross Revenue for the prior Quarter. In addition, Oakland Golf shall remit to City (in the manner provided for the payment of rent), if appropriate, the amount by which Percentage Rent for the quarter exceeds the Minimum Rent. Once the *Commencement Date has been determined*, the City and Oakland Golf shall agree upon the dates for the end of each quarter.

b) Within sixty (60) days after the end of each Sublease Year, Oakland Golf shall submit to City and Port a statement signed by Oakland Golf or a person authorized by Oakland Golf showing in reasonable detail the amount and types of Gross Revenue for the prior Sublease Year and the amount of the Percentage Rent due. If the Percentage Rent for such Sublease Year exceeds the Percentage Rent relating to such Sublease Year previously paid by Oakland Golf, Oakland Golf shall pay such deficiency to City (in the manner provided for the payment of rent) along with such statement. If the Percentage Rent for such Sublease Year is less than the amount previously paid by Oakland Golf, City shall, at City's option, either (a) remit to Oakland Golf a check in an amount equal to such difference, or (b) grant Oakland Golf a credit against the payment of Minimum Rent and/or Percentage Rent next coming due.

9. MAINTENANCE AND EXAMINATION OF RECORDS.

a) **Oakland Golf's Maintenance of Records.** Oakland Golf shall maintain, at its principal offices, its financial records pertaining to Gross Revenue from the operation of the Subleased Premises for a period of two (2) years after the conclusion of any Sublease Year. Such records shall be maintained in the county of Alameda, Marin, Sonoma, Napa, Contra Costa, San Francisco, or Santa Clara. Oakland Golf shall maintain internal controls on the receipt and recording of Gross Revenue and other operational, financial and accounting controls as are approved by City and Port. Such control will include an electronic cash register with an auditable daily tape, daily reconciliation of cash deposit and sales, issuance of written dated receipts to each golfer, a daily activity report listing the number and specific type of golf rounds¹, total collections, and a monthly summary. Further, all financial records pertaining to Gross Revenue from the operation of the Subleased Premises shall, upon at least three (3) business days' prior written request from

¹ This Green Fee Report must show each type of rate by month, day and period of day.

City or Port to Oakland Golf, be open and available to City and Port and City and Port's representatives for an examination and audit at all reasonable times during business hours. City and Port shall be entitled at any time within two (2) years after the conclusion of a Sublease Year to question the sufficiency of any rent payments or the accuracy of the report furnished by Oakland Golf.

- b) **City and Port's Right to Audit.** City and Port may audit Oakland Golf's accounting procedures, internal controls, and financial systems insofar as they pertain to Gross Revenue. Any such audit will be undertaken at reasonable times and in accordance with generally accepted auditing standards. Oakland Golf shall cooperate fully with any such audit. If any audit reveals any underpayment of Percentage Rent due City, City (or Port as City's agent) shall give written notice thereof to Oakland Golf. If the parties are unable to come to an agreement upon the amount of Percentage Rent due to the City, the matter shall be resolved through arbitration under the jurisdiction and pursuant to the rules of the American Arbitration Association for the Arbitration of Commercial Disputes. Oakland Golf shall pay any amount owing to City within thirty (30) days after the amount owing is determined in accordance with the foregoing. If Oakland Golf fails to make such payment within thirty (30) days, Oakland Golf shall pay interest thereon at the average prime rate listed in the Wall Street Journal for that period, plus five percent; all interest to be compounded monthly, accruing monthly from the date of the notice.

10. TAXES.

- a) **Real Property Taxes.** From and after the Commencement Date, Oakland Golf shall pay all real property taxes assessed against the Subleased Premises prior to delinquency (except in the case of contests of such taxation made in good faith). Upon final determination of the real property tax liability after a tax contest, Oakland Golf shall promptly pay the amount of real property taxes owed.
- b) **Definition of Real Property Taxes.** The term "real property taxes" as used herein means any fee, license fee, commercial rental tax, possessory interest tax, assessment, penalty or tax imposed by any taxing authority against the Subleased Premises.
- c) **Other Taxes.** Oakland Golf shall pay all other taxes, license fees or other governmental charges assessed or imposed on the Personal Property owned by Oakland Golf located on the Subleased Premises or upon the business operations of Oakland Golf conducted on the Subleased Premises. Oakland Golf may credit against the rent due hereunder, the amount of any tax imposed by the City where twenty-five (25) percent or more of the aggregate taxes payable by the persons or businesses upon whom the tax is imposed are lessees of the City.

11. UTILITIES.

Oakland Golf shall pay before delinquency all charges for utilities utilized by Oakland Golf, including but not limited to, water, electricity, gas, heating, cooling, CATV, waste and storm water discharge, and telephone.

12. PRORATION OF EXPENSES.

- a) As of the Commencement Date and the expiration or sooner termination of the term of this Sublease, City and Oakland Golf shall prorate the items described on **Exhibit "O"**.
- b) At least ten (10) days prior to the Commencement Date, City shall deliver to Oakland Golf a tentative statement of pro-rations setting forth a preliminary determination of all items to be prorated in the First Sublease Year and supported by all detail reasonably necessary to make such determination. Prior to the Commencement Date, City and Oakland Golf shall agree on the actual amount to be prorated.

13. CONSTRUCTION AND INITIAL CAPITAL IMPROVEMENTS.

- a) **Construction of Golf Course.** Oakland Golf shall perform the Construction to the Subleased Premises contemplated by the description on **Exhibit "G-2"**, and further defined in the Development Agreement (attached as **Exhibit "C"**). The Construction will include the items set forth in the Proposal and Development Agreement, including without limitation:
 - i) construction of the Course,
 - ii) construction of the practice range and practice area,
 - iii) construction of a clubhouse,
 - iv) construction of a maintenance facility, and
 - v) construction of all required and related facilities, including but not limited to parking, entry, signage, security fencing, border landscaping, sidewalks and road improvements if required.

All construction shall be performed in accordance with the plans and specifications approved by the City and Port. Any changes or modifications to the plans and specifications shall be subject to approval by the City and Port, which approval will not be unreasonably withheld or delayed.

- b) **City and Port Obligation.** The City through a deposit in an account by the Port will provide funds to be used towards the costs of the Construction as provided for in the Development Agreement. These funds may be withdrawn from the account by Oakland Golf for the purposes specified in the Development Agreement including funding hard construction costs for construction in accordance with the plans and specifications approved by the City. Oakland Golf may draw down on the deposited funds for hard construction costs at a rate not to exceed Oakland Golf's expenditure of its own funds for hard construction costs; i.e., the deposited funds may not be drawn for more than one-half the incurred hard construction costs. The funds deposited in the account are the sole contribution to be made by the City and Port for the costs of the construction of the golf course improvements contemplated by the Development Agreement.
- c) **Completion.** City recognizes that in order to complete the Construction, Oakland Golf must not only complete construction of the improvements, but also must permit the golf course and practice area to "grow-in" in accordance with usual and customary golf course industry practice in order to attain the qualities ascribed to a golf course characterized as a high quality golf course. Only at such time as, in Oakland Golf's reasonable determination, will improvements have been completed and the golf course is ready for play by the public will the Construction be considered

complete for purposes of this Sublease. Oakland Golf acknowledges that it has been advised that the Golf Course is expected to be completed, ready for play and opened to the public by September 1, 2002.

- d) **Ownership of Improvements; No Liens.** During the Term, all improvements shall be the property of Oakland Golf. All improvements shall become the property of City upon termination of this Sublease unless otherwise agreed by City in writing. Oakland Golf shall not have the right to create or permit the creation of any lien attaching to City's interest in the Subleased Premises as a result of any construction of any improvements.

14. ESTABLISHMENT OF CAPITAL IMPROVEMENT FUND.

Beginning with the commencement of the second Sublease Year (month thirteen), the Parties will establish a Capital Improvement Program and Fund ("CIP Fund"). The purpose of the CIP Fund will be to refurbish and improve (and not to maintain) the Golf Course and to pay for certain capital expenses and costs of the golf course as agreed by City and Oakland Golf. Such CIP Fund shall be held as an interest bearing trust account approved by the City with Oakland Golf as the Trustee for the City.

- a) **Percentage Contributions.** Oakland Golf will deposit into the fund the percentage of Gross Revenue for each Sublease Year during the term as follows:
- i) Years 1 - 2, None;
 - ii) Years 3 - 4, two percent (2%);
 - iii) Years 5 - 25, four percent (4%);
 - iv) During the option terms, four percent (4%).
- b) **Rent Credit.** One-half of such amount deposited by Oakland Golf shall be credited against the rent otherwise payable hereunder.
- c) **CIP Fund Limits.** When the total in the CIP Fund reaches Five Hundred Thousand Dollars (\$500,000), as adjusted annually for increases in the Consumer Price Index on January first of each year that this Sublease is in effect, or such greater amount as is required for the five-year capital improvement program approved by the Parties, Oakland Golf may elect not to make any further deposits until the CIP Fund is reduced to below the amount of Five Hundred Thousand Dollars (\$500,000) or the amount required for the approved five-year capital improvement plan whichever is greater. When the amount in the CIP Fund falls below Five Hundred Thousand Dollars (\$500,000) or the amount required for the approved five-year capital improvement plan whichever is greater, deposits into the CIP Fund account by Oakland Golf will resume until the total again reaches Five Hundred Thousand Dollars (\$500,000) or such greater amount as is required by the five-year capital improvement program approved by the parties.

If, prior to or during the last five years of the term of the Sublease (excluding the option periods), Oakland Golf notifies City that it relinquishes its rights to exercise the option periods provided for herein, then during the last five years of the term or such shorter portion of the last five years of the term as remains, the aggregate amount deposited in the CIP Fund for such period

shall not exceed one-half of the amount of CIP Funds spent during the preceding ten (10) (as each such previous amount spent is increased by the consumer price index from the date such amount was spent through the date of calculation under this Paragraph) prorated by the portion of the five year period remaining..

- d) **CIP Fund Budget and Expenditures.** Oakland Golf will prepare a five-year capital improvement program and budget ("CIP Budget") for major capital improvements, refurbishment and enhancements for the Subleased Premises, based on the estimated life of capital improvements and costs of replacement, repair or refurbishment. Expenditures from the CIP Fund may be made only for capital improvement projects costing more than \$5,000 and approved by City. The CIP Budget shall be updated and submitted annually to the City for its approval. The City shall not unreasonably withhold or delay its approval. Sub Lessee shall be entitled to be reimbursed from the CIP Fund for any expense incurred by Sub Lessee prior to the accumulation of funds for such expenses in the CIP Fund if, and to the extent, that such expenses otherwise meet the provisions of this Section 14 and would have been appropriate to be approved for inclusion in the CIP Budget if there had been sufficient funds in the CIP Fund at the time such expenditures were made. Commencing with the fifth (5th) Sublease Year, Oakland Golf may reimburse itself from the CIP fund for fifty percent (50%) of the costs for leasing or purchase of maintenance equipment required for maintenance of the golf course. Unspent CIP Funds remaining at the conclusion of the Sublease will remain with the Subleased Premises and, at the direction of the City, be transferred to the City or its delegee.
- e) **Other Capital Improvement Projects and Expenses.** Apart from the Construction and apart from capital improvements authorized pursuant to this Sublease, Oakland Golf will have the right, subject to City's approval and consent, which will not be unreasonably withheld or delayed, to construct, at Oakland Golf's sole cost, such alterations, additions and improvements to the Subleased Premises that Oakland Golf deems necessary and appropriate.

15. MAINTENANCE AND REPAIRS.

- a) **Oakland Golf's Obligations.** Subject to the express obligations of the City and the Port hereunder and under the Development Agreement and the Lease Agreement, Oakland Golf shall, at its sole cost, maintain and repair the Subleased Premises and keep the Subleased Premises in good order and condition and shall at all times comply with the maintenance standards set forth in **Exhibit "F"**. Oakland Golf shall keep and maintain the Subleased Premises in compliance with all Laws during the Sublease Term.
- b) **City's Environmental Indemnities.** City shall defend, indemnify, and hold Oakland Golf and its successors and assigns hereunder and under the Development Agreement and their owners, officers, directors, shareholders and employees harmless from and against any claims, demands, administrative actions, litigation, liabilities, losses (excluding lost profits) investigative costs, response costs, remediation costs and penalties, including costs of legal proceedings and reasonable attorney's fees, that Oakland Golf may incur as a consequence of the existence of any Hazardous Materials existing on or about the Premises and/or Land (including the Existing Cover

Material as defined in the Development Agreement) prior to the execution of this Sublease, including but not limited to the exacerbation of any Hazardous Materials existing on the Subleased Premises prior to Oakland Golf's taking possession of the Subleased Premises pursuant to the Sublease. "Exacerbation" shall mean any increase in the amount of existing contamination, any expansion of the boundaries of existing contamination, and/or any increase in the costs or remediation or removal of existing contamination. The provisions of this **Section** are independent and severable from the provisions herein and shall survive termination of this Sublease.

- c) **Oakland Golf's Environmental Indemnities.** Oakland Golf shall defend, indemnify, and hold City and Port and their council members, board members, officers, agents, and employees harmless from and against any claims, demands, administrative actions, litigation, liabilities, losses (excluding lost profits), investigative costs, response costs, remediation costs and penalties, including costs of legal proceedings and reasonable attorney's fees, that City or Port may incur as a consequence of the release of any Hazardous Materials onto or from the Subleased Premises by or on behalf of Oakland Golf. The provisions of this **Section** are independent and severable from the provisions herein and shall survive termination of this Sublease.
- d) **Hazardous Materials.** From and following execution of this Sublease, neither Oakland Golf, nor any Agent of Oakland Golf, nor any authorized user, occupant, or sub-lessee of the Subleased Premises shall use the Subleased Premises or allow the Subleased Premises to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials.
- e) **Landfill.** Oakland Golf acknowledges that, prior to the execution of this Sublease, it has been afforded the opportunity to conduct any additional studies or tests, including soils analysis and hazardous materials investigation, which Oakland Golf deems appropriate in connection with the Subleased Premises. Oakland Golf has been provided the opportunity to review copies of the reports and/or documents listed on **Exhibit "H"** attached hereto. Oakland Golf shall promptly provide to City and Port copies of all tests, studies, reports and investigations prepared by or on behalf of Oakland Golf with respect to the environmental or other physical condition of the Subleased Premises. Oakland Golf acknowledges the existence of the closed Landfill. Oakland Golf shall have no obligations with respect to the Landfill, except to construct and operate the golf course and other improvements subleased to Oakland Golf within the performance standards expressly and specifically set forth in this Sublease. Provided, however, Oakland Golf shall exercise due care to avoid penetrating the Cap without permission from the City and Port.

16. CITY'S COOPERATION.

- a) City recognizes and acknowledges that Oakland Golf will benefit from the assistance and cooperation of City in order to properly perform and fulfill Oakland Golf's covenants and obligations under this Sublease. Therefore, City agrees that the City shall provide assistance to Oakland Golf to help Oakland Golf secure the permits or licenses that are required in order for Oakland Golf to fulfill its obligations under this Sublease. City further agrees it shall designate a specific officer or agent having appropriate experience and authority whose responsibility it is to work with Oakland Golf in assisting Oakland Golf in obtaining such permits and /or licenses.

17. INSURANCE.

- a) Oakland Golf shall maintain the following types of insurance coverage relating to the Subleased Premises and Oakland Golf's operation of the Subleased Premises at all times throughout the Sublease Term:
- b) **Liability Insurance.** Oakland Golf shall maintain, at Oakland Golf's sole expense, a policy or policies of comprehensive general liability insurance, with coverage of not less than five million dollars (\$5,000,000.00) combined single limit for bodily injury and property damage. City and Port shall be named as an additional insureds on such policy. Oakland Golf's liability insurance shall comply with the requirements of **Exhibit "I"** and with the requirements of the Lease Agreement with regard to comprehensive General or Commercial Liability Insurance (**Exhibit "B"**). All references to "Contractor" in such Exhibit will be deemed references to Oakland Golf.
- c) **Worker's Compensation and Employer's Liability Insurance.** Oakland Golf shall maintain, at Oakland Golf sole expense, a policy or policies of worker's compensation and employer's Liability Insurance in compliance with applicable California law and the Lease Agreement (**Exhibit "B"**). Oakland Golf's worker's compensation insurance shall comply with **Exhibit "I"**.
- d) **Fire Insurance.** Oakland Golf shall maintain, at Oakland Golf's sole expense, a standard form policy or policies of fire and extended coverage insurance on the Subleased Premises, including the clubhouse and related buildings and all Personal Property, furnishings and equipment at the Subleased Premises with coverage limits not less than ninety percent (90%) of the full replacement cost of the Subleased Premises. Oakland Golf shall also maintain insurance coverage on, or otherwise assume financial liability for, the Personal Property and the furnishings and equipment owned by Oakland Golf. Oakland Golf shall comply with the requirements of the Lease Agreement relating to such insurance and the required notifications to the Port (**Exhibit "B"**).
- e) **General Provisions.** Oakland Golf shall make diligent efforts to assure that the policies of insurance to be maintained by it shall not be subject to cancellation except upon at least ten (10) days' written notice to City and Port or such other requirements regarding notice and cancellation as are provided for in the Lease Agreement, whichever is greater (**Exhibit "B"**). At City or Port's request, Oakland Golf shall submit to the requesting party a certificate of coverage and proof of payment of premiums. Any insurance required to be carried under this Sublease may be included as part of any blanket or other policy or policies of insurance, subject to such blanket policy or other policy meeting the requirements of the provisions of this Sublease.

18. INDEMNITY.

- a) **Oakland Golf's Indemnity.** Oakland Golf shall indemnify, protect, defend and hold City and Port, their council members, board members, officers, agents, and employees harmless from all claims, demands, causes of action and liability resulting from injury to persons or damage to property sustained on or about the Subleased Premises and arising from Oakland Golf's operations or as a proximate result of the acts or omissions of Oakland Golf or its employees or agents. This foregoing indemnity does not apply, however, to any such liability for which City is responsible pursuant to section 15 b) or as may be the result of the direct and proximate

negligence or willful misconduct of City or Port, or City or Port's employees or agents. Additionally, Oakland Golf shall Indemnify and hold harmless the Port as required in the Lease Agreement Section 14 (**Exhibit "B"**)

- b) **City's Indemnity**. City shall indemnify, protect, defend and hold harmless Oakland Golf and its owners, officers, directors, shareholders and employees from and against any and all claims, demands, causes of action and liability resulting from injury to persons or damage to property sustained on or about the Subleased Premises and arising from City's operations or as a proximate result of the acts or omissions of City or its employees or agents. This foregoing indemnity does not apply, however, to any such liability for which Oakland Golf is responsible pursuant to section 15 c) or as may be the result of the direct and proximate negligence or willful misconduct of Oakland Golf or Oakland Golf's employees or agents.

19. DAMAGE AND RESTORATION.

- a) **Total Destruction**. If the Subleased Premises should be totally destroyed (i.e., damage in excess of partial destruction as defined in **Section 19 b)**, through no fault of Oakland Golf, by fire or other casualty or a force majeure occurrence, Oakland Golf shall have the option, to be exercised in writing within one-hundred and eighty (180) days of such destruction, to either (i) terminate this Sublease in which event, except as expressly provided herein, the parties shall have no further obligations hereunder or (ii) elect to repair and restore the Subleased Premises and thereafter diligently pursue such restoration to completion.
- b) **Partial Destruction**. If the Subleased Premises should be partially damaged by fire or other casualty or a force majeure event, then Oakland Golf shall restore the buildings, improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their damage or destruction. It is understood and agreed that Oakland Golf shall have no obligation to repair or restore any portion of the Subleased Premises if Oakland Golf has maintained the amount of insurance required to be maintained by this Sublease and, through no fault of Oakland Golf, the insurance proceeds are not available to fully restore the same, unless such partial damage is the fault of Oakland Golf. For purposes of this Sublease, the term "partially damaged" means (a) damage to the extent of one third or less of the value of the buildings, improvements and Personal Property at the Subleased Premises or (b) damage to the extent that no more than nine holes on the golf course at the Subleased Premises are rendered unplayable. If Oakland Golf has maintained the amount of insurance required to be maintained by this Sublease and the insurance proceeds available to Oakland Golf are not sufficient to fully restore the Subleased Premises, then Oakland Golf may terminate this Sublease upon written notice to City in which event the parties, except as otherwise provided for in the Sublease, shall have no further liability under the Sublease for obligations accruing after the effective date of such termination. In addition, notwithstanding anything in this Section to the contrary, if, as a result of the partial destruction of the Subleased Premises, Oakland Golf, through no fault of Oakland Golf, is unable to make economically productive use of the Subleased Premises and, in Oakland Golf's

reasonable determination, the full and complete restoration of the Subleased Premises will take in excess of one hundred eighty (180) days, then Oakland Golf may, upon written notice to City within sixty (60) days after the partial destruction occurs, terminate this Sublease, in which event the parties shall have no further duties under the Sublease for obligations accruing after the effective date of such termination.

- c) **Rental Abatement and Term Extension.** If, through no fault of Oakland Golf, Oakland Golf is unable to make full and productive economic use of the Subleased Premises during repair, reconstruction or replacement as provided for in this Section, Oakland Golf's rental obligations under **Section 6** shall be abated in proportion to the reduction in the Gross Revenue of the Subleased Premises attributable to such repair, reconstruction or replacement until such time as Oakland Golf is able to fully make use of the Subleased Premises again. If rent is entirely abated pursuant to this Section, then the Sublease term shall be extended for a period equivalent to the length of time required to restore the Subleased Premises and make them available to Oakland Golf for Oakland Golf's use pursuant to this Section. If rent is only partially abated pursuant to this section, then the Term of this Sublease shall not be extended except as agreed by the City and Oakland Golf. The City and Oakland Golf agree to make a reasonable accommodation in the length of the Term should such partial abatement occur. If agreement on extending the Term cannot be reached, this issue shall be subject to arbitration as provided for in this agreement in Section 9 b).
- d) **Application of Insurance Proceeds Upon Termination.** If, after the partial or total destruction of the Subleased Premises, this Sublease is terminated pursuant to the provisions of this Section, then all insurance proceeds made available on account of such destruction shall first be paid to Oakland Golf to reimburse Oakland Golf for the proportioned cost of any and all improvements made to the Subleased Premises by Oakland Golf through the expenditure of its own funds prior to such destruction until such time as Oakland Golf has received full reimbursement for all such costs and; second, to City until such time as City has received full reimbursement for the funds contributed by the City and Port and for any diminishment in the value of the Subleased Premises as it existed as of the first day of the Sublease Term. The balance, if any, shall be paid to Oakland Golf.
- e) **Use of CIP Fund.** In the event of a total or partial destruction of the Subleased Premises in accordance with subparagraphs a) and/or b) above, and if the insurance proceeds, through no fault of Oakland Golf, are not sufficient to pay for the cost of repair in connection with such destruction, Oakland Golf may use the funds in the CIP Fund for such purposes. In addition, upon Oakland Golf's written request and City's reasonable approval, the amount payable into the CIP Fund following any such repair or restoration of the Subleased Premises may be increased to a percentage of Gross Revenue not exceeding ten percent (10%) for the period of time requested by Oakland Golf and reasonably approved by City to pay for the cost of such repair and restoration of the Subleased Premises not covered by insurance.

20. EMINENT DOMAIN.

- a) **Total Taking.** If at any time during the Sublease Term, use of all or a material portion of the Subleased Premises shall be taken by condemnation or by right of eminent domain, this Sublease shall terminate on the date of such taking. Any rental payments already made or due and owing shall be apportioned as of the date of the taking. For purposes of this Section, a "Material Portion" shall be deemed to have been taken if the remaining portion would reasonably be expected to result in a reduction in Gross Revenue of more than 20% from the preceding Sublease Year.
- b) **Partial Taking.** In the event that use of less than a material portion of the Subleased Premises is taken by condemnation or by right of eminent domain, this Sublease shall not terminate, but the Minimum Rent due during the remainder of the Sublease term shall be reduced as of the date of such partial taking in a proportion to the reduction in the Gross Revenues of the Subleased Premises attributable to such partial taking.
- c) **Condemnation Award.** If there is a taking by right of eminent domain, the award shall be proportioned amongst the Port, City and Oakland Golf in proportion to the interests of each in the Subleased Premises as determined in the eminent domain proceedings.
- d) **Eminent Domain.** For purposes of this Sublease, the provisions set forth in subparagraph a), b) and c) above shall only apply if the right of eminent domain is exercised by an agency other than City, (or any other agency which is controlled by the City). Any condemnation or eminent domain proceeding initiated by the City, (or any other agency under the control of the City), which has the effect of taking all or a Material Portion of the Sublease Premises, shall be governed by this subparagraph d). In such event, Oakland Golf shall be entitled to be paid the greater of (i) the amount to which Oakland Golf would be entitled under subparagraph c) above, or (ii) the amount to which Oakland Golf would be entitled under applicable law for breach of its Sublease (with the eminent domain proceeding, for these purposes, being treated as a breach of the Sublease by the City).

21. REPRESENTATIONS, WARRANTIES AND COVENANTS.

- a) **Power and Authority.** City represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Sublease and to fully perform each and all of its obligations under this Sublease. Oakland Golf represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Sublease and to fully perform each and all of its obligations under this Sublease.
- b) **No Conflict.** City represents and warrants that neither this Sublease nor the consummation of the transactions contemplated by this Sublease will result in a breach of or constitute a default under any other agreement, commitment or obligation to which City or the Subleased Premises is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to City or the Subleased Premises. Oakland Golf represents and warrants that neither this Sublease nor the consummation of the transactions contemplated by this Sublease will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Oakland Golf is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to Oakland Golf.

- c) **Encumbrances.** City shall not (i) grant any easements, rights of way, licenses or other similar rights, or (ii) consent to the Subleased Premises being included as part of an assessment district, without obtaining Oakland Golf's prior written consent, which consent shall be granted or withheld in Oakland Golf's sole discretion.
- d) **Title to Premises; Separate Legal Parcel.** City represents and warrants that it has good and marketable leasehold interest in the Subleased Premises, free and clear of all monetary liens and encumbrances. City covenants to perform all of its obligations under the Lease Agreement and to maintain the Lease Agreement in full force and effect during the full term of this Sublease and any extensions thereof. City further represents and warrants that the Subleased Premises constitutes a separate legal parcel of real property and complies with all subdivision laws of the State of California.
- e) **Utilities.** City represents and warrants that (i) all water, sewer, gas, electric, telephone and drainage facilities and all other utilities (collectively, "Utilities") for the intended use and operation of the Subleased Premises have access across public property or have valid easements or rights of way to the boundary lines of the Subleased Premises; and (ii) the Utilities are connected to the Subleased Premises pursuant to valid permits. Oakland Golf acknowledges and agrees that there are certain regulations of the State of California governing the use of potable water for irrigation and maintenance of golf courses. In the event that during a water shortage emergency or as a result of regulatory actions by others, alternate sources of irrigation water or reductions in water consumption are ordered, City shall not be deemed in default hereof.
- f) **Zoning; Licenses and Easements.** City represents and warrants that (i) the use of the Subleased Premises as a golf course and related activities, including the sale of food and alcoholic beverages, complies with the designated zoning of the Subleased Premises; (ii) there is vehicular and pedestrian ingress to and egress from the Subleased Premises at all access points anticipated to be used with the exception of Eden Road with regard to which the City and Oakland Golf agree that they will cooperate in obtaining the necessary right of access required to service the planned maintenance facility; and (iii) there are adequate easements benefiting the Subleased Premises to accommodate water run-off and drainage from the Subleased Premises, including without limitation easements for the use of water lines, pipes, ditches, drainage channels or other drainage facilities which are located outside of the Subleased Premises and are connected to any storm drain or other water run-off facility located within the Subleased Premises.
- g) **No Third Party Rights Other Than Lessor.** City represents and warrants that, except as noted in the Lease Agreement, Development Agreement, Water Documents, and the Title Documents provided to Oakland Golf, no third party has any right or interest in the Subleased Premises that would interfere with Oakland Golf's use and operation of the Subleased Premises.
- h) **No Hazardous Materials.** City represents and warrants that there has been no production, generation, treatment, collection, disposal, discharge or storage on the Subleased Premises or in any groundwater or aquifer below the surface of the Subleased Premises by City, or to City's best knowledge by any prior owner or occupant of the Subleased Premises or any other person, of any hazardous or toxic substance, material or waste in violation of any applicable federal, state or local environmental laws, ordinances, restrictions, licenses or regulations, including, but not

limited to, the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), and other similar statutes of the State of California or the County of Alameda which has not been disclosed by the City to Oakland Golf. City has not received notice from any governmental agency or other third party regarding the existence of any hazardous or toxic substance, material, or waste on the Subleased Premises or in the improvements thereon or requiring the removal, clean-up, or remediation of any environmental condition relating to the Subleased Premises. City represents and warrants that the Subleased Premises is not subject to any enforcement action by any governmental agency regarding the environmental condition of the Subleased Premises and that the Subleased Premises has not been assigned an identification number nor is the Subleased Premises subject of an environmental report by the State of California or any of its subdivisions. City further represents and warrants that there are no underground or above-ground storage tanks, other than those used for water, located on the Subleased Premises. As used herein, the terms "toxic" or "hazardous" wastes, substances or materials shall include, without limitation, all those so designated and all those in any way regulated by any of the above-cited laws or regulations, or any other environmental or other similar laws or regulations.

- i) **Labor Matters.** City represents and warrants that City has no collective bargaining agreement which prevents execution of and performance under this Sublease. City further represents and warrants that there have been no demands for collective bargaining by any union or labor organization or other organization of City's employees and no arbitration proceedings are pending or to City's knowledge threatened against or affecting City with regard to the Subleased Premises.
- j) **Termination of Contracts.** City has terminated, effective prior to the Commencement Date, all contracts and agreements relating to the Subleased Premises, other than the Port of Oakland Lease Agreement and the Water Agreements with EBMUD, which contracts shall continue in effect with Oakland Golf performing the obligations thereunder relating to the period, and first arising, after the Commencement Date.
- k) **No Litigation or Reassessment.** City represents and warrants that there is no claim, action, litigation, arbitration, or other proceeding pending or, to the best of City's knowledge, threatened against City which relates to the Subleased Premises or the transaction contemplated hereby or which could result in the imposition of the lien against the Subleased Premises. If City receives notice of any such claim, litigation or proceeding prior to the Commencement Date, City shall promptly notify Oakland Golf of the same in writing. In addition, City represents and warrants that City has no knowledge of any proposed reassessment of the Subleased Premises by the local taxing agencies and has no knowledge that there is any pending or threatened special assessment district or other action which would increase real property taxes or assessments against the Subleased Premises.
- l) **No Violations of Law.** City represents and acknowledges that neither the Subleased Premises nor City is in violation of, and City has not received any notice of violation of, any law,

ordinance, regulation, order or requirement applicable to the Subleased Premises including, without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Subleased Premises. If City receives such a notice at any time, either prior to or after the Commencement Date, City shall immediately notify Oakland Golf in writing.

22. EBMUD AGREEMENT - RECLAIMED WATER RIGHTS

City and Oakland Golf understand that there is available to the Subleased Premises reclaimed water pursuant to an Agreement with EBMUD. City and Oakland Golf understand that, because of the capped nature of the Land, reclaimed water has limited or no use for operation of the golf course. City and Oakland Golf agree that City may attempt to terminate or substantially modify (by reducing the obligations of City and Oakland Golf thereunder) the Agreement with EBMUD regarding such reclaimed water. To the extent that reclaimed water remains available to the Premises pursuant to the EBMUD Agreement or through modifications of the EBMUD Agreement, Oakland Golf may make use of the reclaimed water at its own expense (including the costs of such reclaimed water as Oakland Golf does use), subject to the provisions of Section 3(d) concerning rent credits in respect of such costs and expenses. However City retains the right to terminate or modify (by reducing the obligations of City and Oakland Golf thereunder) the agreement with EBMUD at any time.

23. CORRECT AND COMPLETE DOCUMENTATION.

All of the Documents delivered by City to Oakland Golf in connection with this Sublease are true, correct and complete.

- a) **No Omissions or Misstatements.** All of the representations and warranties contained in this Section are true and correct on the date hereof, and no representation by City or Oakland Golf or in any statement or exhibit required to be furnished hereunder misstates, omits or shall misstate or omit, a fact necessary to make the statement thereon not misleading. Immediately upon discovering any fact which would render any representation or warranty in this Sublease untrue, incorrect or misleading in any respect, City or Oakland Golf, as the case may be, shall immediately notify the other in writing.

24. NON-DISTURBANCE AND ATTORNMENT AGREEMENT.

The obligations of City and Oakland Golf hereunder and under the Development Agreement are conditioned upon the execution, delivery, and acknowledgment of the Non-Disturbance and Attornment Agreement and the Four-Party Agreement (attached hereto as **Exhibits "P" and "Q"** respectively) by City, Port and Oakland Golf, the execution, delivery and acknowledgment of this Sublease and the Development Agreement by the Port, and the approvals of the Oakland City Council and Board of Port Commissioners.

25. BREACH AND DEFAULT.

The following conditions will constitute a breach of this Sublease and a default thereunder:

- i) If Oakland Golf fails to pay rent or fulfill any other monetary obligation of Oakland Golf to City, and Oakland Golf fails to cure such monetary default within fifteen (15) days after written notice from City (or Port as City's agent) to Oakland Golf of such monetary default.
- ii) Notwithstanding **Section 2 b)** to the contrary, should Oakland Golf breach its obligations to maintain the Subleased Premises in accordance with the standards set forth in **Exhibit F**, and (i) Oakland Golf fails to cure such default within fifteen (15) days after written notice from City, and (ii) as a result of such breach City determines in its reasonable discretion that there is an imminent threat to the greens, fairway and trees, and that such threat is due to the gross negligence of Oakland Golf, City shall have the unconditional right to enter the Subleased Premises, operate and maintain the Golf Facilities in accordance with the Standards in **Exhibit "F"** and to recover the expenses thereof against Oakland Golf.
- iii) If Oakland Golf fails to perform or breaches any of its duties or obligations under the Development Agreement and does not cure the failure or breach as provided for in the Development Agreement.

26. REMEDIES.

- a) If any of the conditions identified in **Section 25** above should occur and the party in default does not cure the default within the period provided for herein, the non-defaulting party may elect
 - i) to terminate this Sublease immediately and seek all remedies as provided below, or under law and equity;
 - ii) in the case of City only, to maintain Oakland Golf's right to possession and seek all remedies as provided under law and equity (including, without limitation, the right to collect Minimum Rent and other sums as they become due hereunder); or
 - iii) pursue any other right or remedy now or hereafter available to City hereunder or at law or in equity including, but not limited to, the City's taking immediate possession of the Subleased Premises for the purpose of operating the golf course.
- b) If City exercises its remedy set forth in clause a) above, City shall be entitled to recover from Oakland Golf:
 - i) the worth at the time of the award of the unpaid Minimum Rent and Percentage Rent which had been earned or was payable at the time of termination;
 - ii) the worth at the time of the award of the amount by which the unpaid Minimum Rent and Percentage Rent which City would have earned after termination until the time of the award exceeds the amount of such rental loss that could have been reasonably avoided;
 - iii) the worth at the time of the award of the amount by which the unpaid Minimum Rent and Percentage Rent which Oakland Golf would have paid for the balance of the Term after the time of award exceeds the amount of such rental loss that could have been reasonably avoided; and
 - iv) any other amount necessary to compensate City for all detriment proximately caused by Oakland Golf's failure to perform its obligations under the Sublease. As used in subparts (i)

and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of ten percent (10%) per annum. As used in subparagraph (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

- c) If Oakland Golf's default is one that causes the integrity of the improvements located on the Subleased Premises to be in imminent danger, then, upon the expiration of Oakland Golf's cure period set forth in **Section 25** above, City shall have the right to enter the Subleased Premises at any time and make such repairs as are necessary to prevent injury to the Subleased Premises.
- d) If either party at any time by reason of the other party's default pays any sum or does any act that requires payment of any sum, the sum paid by the non-defaulting party shall be immediately due and owing by the defaulting party to the non-defaulting party at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by the non-defaulting party until the non-defaulting party is reimbursed by the defaulting party.
- e) No remedy or election hereunder or at law or in equity shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies or elections.

27. QUIET ENJOYMENT.

Subject only to the terms of this Sublease and the Lease Agreement, City shall secure to Oakland Golf the quiet and peaceful enjoyment of the Subleased Premises and the sole and exclusive possession of the Subleased Premises without objection or interference from City or any party claiming under City.

28. GENERAL PROVISIONS.

- a) **Entire Agreement.** This Sublease contains all of the agreements of the Parties with respect to the matters covered by this Sublease, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Sublease. The provisions of this Sublease shall not be amended or altered except by an agreement in writing signed by both of the parties.
- b) **Waiver.** Waiver by either City or Oakland Golf of any breach by the other of any covenant, condition or obligation contained in this Sublease or failure by either City or Oakland Golf to exercise any right of remedy in respect of any such breach shall not constitute a waiver of any such breach or of any subsequent breach of any covenant, condition or obligation, nor bar any right or remedy of City or Oakland Golf in respect of any such subsequent breach.
- c) **Memorandum of Sublease.** Concurrently with the execution of this Sublease, City and Oakland Golf agree to execute and deliver a short form memorandum of this Sublease in the form of **Exhibit "J"** hereto which Oakland Golf shall record in the Official Records of the County of Alameda, State of California. The parties further agree, however, that the memorandum shall in

no way be deemed or interpreted to amend, change, define, explain or add to the provisions of this Sublease.

- d) **Time is of the Essence.** Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Sublease.
- e) **Brokers.** City and Oakland Golf represent to each other that they are not obligated to any broker or finders in connection with this Sublease and each party agrees to defend, indemnify and hold the other harmless from any claim, suit or demand made upon the other by any person, firm or corporation for brokerage fees or commissions or other similar compensation with respect to this Sublease.
- f) **Notices and Addresses.** All notices, demands, requests or replies provided for or permitted by this Sublease shall be in writing and may be delivered by any one of the following methods: (i) by personal delivery with receipt acknowledged in writing; (ii) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (iii) by deposit with an overnight express delivery service with receipt acknowledged in writing. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (iv) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("fax"); provided, however, that in order for a fax notice to be deemed effective, the party giving notice by fax shall provide a "hard copy" of the faxed notice thereafter to the other party pursuant to one of the three (3) methods of "hard copy" delivery specified in this Section.

For purposes of notice, demand, request, reply or payment, the address of City shall be:

City of Oakland
Attn.: City Manager
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland CA 94612
Fax: (510) 577-3340

The address of Port shall be:

Port of Oakland
Attn: Deputy Executive Director
530 Water Street
Oakland, CA 94607

With copies to:

One Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: City Attorney
Fax: (510) 238-6500

530 Water Street

Oakland, CA 94607
Attn: Port Attorney

The address of Oakland Golf shall be:

Oakland Golf, LLC
Attn: Tom Isaak, President
PO Box 1019
Petaluma, CA 94953

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.

- g) **Governing Law; Partial Invalidity.** This Sublease and the rights and liabilities of the parties to the Sublease shall be governed by the laws of the State of California. If any term or provision of this Sublease or application of the Sublease to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Sublease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability, and each term and provision of this Sublease shall be valid and be enforced to the fullest extent permitted by law.
- h) **Leasehold Mortgages.** Oakland Golf shall have the right, at any time, to subject all or a portion of Oakland Golf's leasehold interest under this Sublease to one or more mortgages, deeds of trust or like instruments ("Leasehold Mortgages"), with City's consent, which consent shall not be unreasonably withheld or delayed. At Oakland Golf's request, City shall, at the time City gives any notice, demand or other communication to Oakland Golf under this Sublease, give a copy of such notice, demand, or other communication to each leasehold mortgagee under a Leasehold Mortgage at any address which has been previously designated by such leasehold mortgagee by written notice to City. City shall reasonably cooperate with Oakland Golf in connection with Oakland Golf's efforts to obtain one or more Leasehold Mortgages and shall, among other things, execute such documents as are usual and customary in connection with the granting of a Leasehold Mortgage such as documents allowing the leasehold mortgagee to cure defaults by Oakland Golf and documents defining the relationship between a leasehold mortgagee and City after the foreclosure of a Leasehold Mortgage, subject to the terms, conditions, and limitations contained in Section 5 of the Sublease relating to debt and/or equity financing.
- i) **Holding Over.** If Oakland Golf does not vacate the Subleased Premises upon the expiration or earlier termination of the Sublease, City shall have the option, in its sole discretion, to treat Oakland Golf's occupancy of the Subleased Premises as a "month-to-month" tenancy, subject to all the terms of this Sublease.
- j) **Estoppel Certificates.** Upon City's or Oakland Golf's written request, the other party shall execute, acknowledge and deliver to the requesting party and for the benefit of others specified by the requesting party, an estoppel certificate (i) certifying that none of the terms or provisions of this Sublease have changed (or if they have been changed, stating how they have been changed); that this Sublease has not been cancelled or terminated; the last date of payment of the Minimum

Rent and other charges and the time period covered by such payments; and that the other party is not, to the best of the certifying party's knowledge, in default under this Sublease (or, if the other party is claimed to be in default, stating why) and (ii) such other provisions as may be customary in connection with the circumstances of the request for the estoppel certificate. Such party shall deliver such statement to the requesting party within ten (10) days after the requesting party's request. Any such statement may be given by the requesting party to any prospective purchaser or encumbrancer of City or Oakland Golf's interest in this Sublease.

- k) **Captions.** Captions in this Sublease are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Sublease or any of its provisions.
- l) **Exhibits.** The Exhibits referred to below and attached to this Sublease are incorporated herein as if set forth in full:

Exhibit "A" Property Description

Exhibit "B" Amended And Restated Lease, dated as March 16, 1999, and the First Amendment to the Amended and Restated Lease, dated July __, 2000

Exhibit "C" Funding and Development Agreement

Exhibit "D" Elements of the Annual Sales and Marketing Plan

Exhibit "E" Monthly Inspection Form

Exhibit "F" Maintenance Standards

Exhibit "G-1" Marketing Plan Elements

Exhibit "G-2" Description of Construction Elements

Exhibit "H" List of Environmental Reports

Exhibit "I" Insurance Requirements

Exhibit "J" Memorandum of Lease

Exhibit "K" Holiday List

Exhibit "L" EBMUD Agreement

Exhibit "M" Golf Course Survey

Exhibit "N" Living Wage Declaration

Exhibit "O" Prorations

Exhibit "P" Non-Disturbance Agreement

Exhibit "Q" Four-Party Agreement

- m) **Further Assurances.** City and Oakland Golf agree that at any time or from time to time after the execution of this Sublease, they shall, upon request of the other, execute and deliver such further documents and do such further acts and things as may be reasonable requested in order to fully effect the purpose of this Sublease.

- n) **No Joint Venture.** Nothing contained in this Sublease shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, a partnership or joint ventures between City and Oakland Golf. It is understood and agreed that neither any provisions contained in this Sublease nor any acts of City or Oakland Golf shall be deemed to create any relationship between City and Oakland Golf other than the relationship of landlord and tenant.
- o) **Reasonable Approvals.** Whenever the approval or consent (or other similar words or phrases) of the City, Port or Oakland Golf is required hereunder, such approval or consent shall not be unreasonably withheld or delayed. Where the consent or approval of the City, Port or Oakland Golf is required, such consent or approval shall be deemed given if written notice requesting such consent is provided to the entity required to give the consent or approval in the manner required hereunder and with the following legend prominently appearing on the first page of such request and if the party receiving the request fails to give written notice withholding or deferring its approval or consent within fifteen (15) days following receipt of such request for consent or approval:

THIS NOTICE IS GIVEN PURSUANT TO THAT CERTAIN "SUBLEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF OAKLAND AND OAKLAND GOLF, LLC". FAILURE TO RESPOND WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THIS NOTICE SHALL CONSTITUTE CONSENT OR APPROVAL TO THE MATTER HEREIN REQUESTED.

However, such notice provision and time limit shall not apply to any requested amendment hereto or any request or matter except under circumstances where this Sublease expressly provides for or requires approval or consent (or other similar words or phrases) of the City, Port or Oakland Golf.

IN WITNESS WHEREOF, this Sublease has been executed as of the date first set forth above.

CITY OF OAKLAND,
a Municipal corporation

By: _____

Print Name: _____

Title: _____

Attest:

, City Clerk

Approved as to form and Legality:

, City Attorney

"Oakland Golf"

Oakland Golf, LLC a California limited liability company

By: _____

Print Name: _____

Title: _____

This Agreement is approved, accepted and (to the extent of the terms, covenants, conditions and other provisions applicable to the Port) agreed to by the Port.

By: _____

Executive Director of the Port of Oakland

Approved as to form and Legality:

Port Attorney

SS #21726 - VON:mj (4/23/99)

AMENDED AND RESTATED

LEASE

Between

PORT OF OAKLAND

And

CITY OF OAKLAND
(Galbraith Golf Course)

Dated

March 16, 1999

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AMENDED AND RESTATED
GALBRAITH GOLF COURSE
LEASE

THIS AMENDED AND RESTATED LEASE, dated March 16, 1999, by and between the CITY OF OAKLAND a municipal corporation, acting by and through its Board of Port Commissioners (herein called the "Port" or "Lessor"), and the CITY OF OAKLAND, a municipal corporation, acting by and through its City Council (herein called the "City" or "Lessee"),

W I T N E S S E T H

WHEREAS, the hereinafter described real property (herein called the "Leased Premises"), owned by the City and under the control and jurisdiction of the Port, was acquired for the purpose of protecting the approaches to the runways at Metropolitan Oakland International Airport; and

WHEREAS, the Port leased the Leased Premises to the City for a 50-year term commencing July 1, 1965, and pursuant to said lease, as amended, (herein called the "Original Lease") the Port provided for construction of a golf course, known as the Lew F. Galbraith Municipal Golf Course, and the City thereafter operated and managed the golf course; and

WHEREAS, in order to implement the Oakland Harbor Deepening Project, which is critical to maintain the viability of the Port of Oakland as one of the major economic resources of Oakland and the East Bay Region, the Port required an upland dredge material disposal site; and

WHEREAS, the parties determined that through the use of the Leased Premises as a dredged material disposal site, a new and first-class golf course could be developed on the Leased Premises which would serve the Oakland community far into the next century; and

WHEREAS, the Port and the City agreed to terminate the Original Lease, pursuant to that certain Lease Termination Agreement dated as of July 26, 1994 (the "Lease Termination Agreement"), so that the Port could use the Lew F. Galbraith

Municipal Golf Course as a dredged material disposal site for the Oakland Harbor Deepening Project; and

WHEREAS, the Port and the City entered into that certain Lease dated as of July 26, 1994 (the "Prior Lease") pursuant to which the parties agreed to terms and conditions to become effective on the effective date of the Lease Termination Agreement, and that the term of the Prior Lease would commence upon the date that the Port completes construction of a new golf course (herein called the "Course") and delivers possession of the Course to the City, following the completion of the Port's use of the Lew F. Galbraith Municipal Golf Course as a dredged material disposal site; and

WHEREAS, the use of the Leased Premises as and for a new golf course is compatible and not inconsistent with the said purpose for which the Leased Premises was acquired; and

WHEREAS, the Port and the City desire to amend and restate the Prior Lease in its entirety to provide for a new process for the design, construction and operation of the Course; and

WHEREAS, the agreements hereinafter set forth are for the better promotion of commerce and navigation and the development of the Port of Oakland and the Metropolitan Oakland International Airport;

NOW, THEREFORE, the parties hereto agree as follows:

1. **Lease of Course:** The Port does by these presents lease and demise unto the City and the City does by these presents lease hire and take from the Port the Leased Premises, located in the City of Oakland, in Alameda County, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof.

The boundaries of the Leased Premises may be modified in accordance with Section 4 hereof.

2. **Effective Date; Term:**

(a) **Effective Date:** This Lease shall become effective when it is fully-executed by the parties, but in no event earlier than 30 days from and after final approval of the Port and the City ordinances authorizing this Lease.

(b) Term: The term of this lease (herein called the "Term") shall be sixty-six (66) years. The Term shall commence upon the date of the Port's delivery to the City of possession of the Course. The date of the Port's delivery of possession shall be (1) the earlier of (a) thirty (30) calendar days after the City's receipt of the Port's written notice of tender of possession to the City and (b) the date the City takes possession of the Course or (2) such earlier or later date that the Port and City mutually agree upon in writing signed by each of them. The Port and the City agree upon the request of the other promptly to execute a recordable document setting forth the date of commencement of the Term which either party may record. The Port agrees to give written notice of tender of possession to the City, and the City agrees to accept possession, when the improvements for the Course are substantially complete and operational, subject only to completion of customary punch-list items in the ordinary course.

The Port in cooperation with the U.S. Army Corps of Engineers has completed the 42' Oakland Harbor Dredging Project, including the deposit of dredged material in the Leased Premises. The Port agrees reasonably and in good faith to complete drying of dredged material in the Leased Premises and to provide for the construction of the improvements for the Course after the dredged material drying process is complete as herein provided. When the improvements are substantially complete the Port shall tender possession of the Course to the City.

It is the intention of the Port and the City that within 7 years after the Lease Termination Date, as defined in the Lease Termination Agreement, the Port will tender possession of the Course to the City. This 7-year period is herein called the "Interruption Period." The Interruption Period shall be extended by [six months] in order for the City and the Port to select an entity to design, build and operate the Course as hereafter provided. In the event that said operator has not been selected by [June 1, 1999,] the City and the Port agree that the Interruption Period shall be extended by the number of days between [June 1, 1999] and the date said operator is selected. In addition, the Interruption Period may be extended if the Port is unable to deliver possession of the Course within the Interruption Period for other reasons ("Other Delays"). Each such Other Delays extension shall be for a period of 3 months. The Port shall provide the City, before commencement of any Other Delays extension, a detailed statement of the reasons that an Other Delays extension is required. If the Port and the City are unable to agree whether an Other Delays extension is required for reasons beyond the Port's control, within 30 days after the Port provides

to the City its detailed statement of reasons, the City may give the Port written notice of intention to commence an Arbitration proceeding (as Arbitration is defined in Paragraph 26 hereof). The City shall commence Arbitration under the AAA Rules within 30 days after the City's receipt of the Port's written notice of tender of possession. If the City fails to commence Arbitration within 30 calendar days after receiving the Port's statement of reasons, the Other Delays extension shall be deemed to be required for reasons beyond the Port's control. It shall not be necessary for a determination that an Other Delays extension is required for reasons beyond the control of the Port that the Port pay premium contract rates in order to expedite construction of the improvements, to complete the placement and/or drying of dredged material on the Leased Premises, or to accomplish other actions necessary to complete the improvements. The ordinary negligence of the Port shall be considered beyond the control of the Port. Delays caused by the City shall be considered beyond the control of the Port.

3. Rental:

3.1 Rent Pursuant to Golf Course Agreements: ~~The City and the Port intend to jointly approve one or more agreements for the design, construction and operation of the Course (the "Golf Course Agreements"). The Port and the City agree to share equally all revenue derived under the Golf Course Agreements (the "Golf Course Revenue"). The Port shall collect all Golf Course Revenue derived under the Golf Course Agreements and shall forward fifty percent (50%) of such revenue to the City within 30 days of receipt by the Port. Any payment required to be made by the Port to the City under this Lease that remains due and unpaid under the terms of this Lease for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge for violation of this Lease and as liquidated damages, of 10% interest per annum on such delinquent payment for each day from the date such payment became due and payable until payment has been received by the City.~~

3.2 Rent Upon Expiration or Termination of Golf Course Agreement: (a) The City and the Port anticipate that the Golf Course Agreements pursuant to which Contractor (as hereafter defined) is selected will provide that the Contractor will operate the Golf Course pursuant to an operating agreement between the City and the Contractor (the "Operating Agreement"). It is anticipated that the term of Operating Agreement will be significantly less than the Term of this Lease. Therefore, the City and the Port desire to provide for payment of rent by the City to the Port upon the expiration or earlier termination of

the Operating Agreement as follows: The City shall pay to the Port as rent for the Leased Premises, a monthly amount of \$5,000 (the "Base Rent") throughout the remaining term of this Lease adjusted by the percentage increase in the CPI between the first July 1 after the Term commences to the July 1 immediately preceding the expiration or termination of the Operating Agreement. Thereafter the Base Rent effective each subsequent July 1 of the Term shall be the Base Rent effective the immediately preceding June 30 adjusted by the percentage increase in the CPI between the last CPI reported before the immediately preceding July 1 and the last CPI reported before the July 1 in question. In addition to the Base Rent, the City shall pay to the Port an additional annual rent if and to the extent an amount equal to Fifty Percent (50%) of the annual Net Revenues realized from the Golf Course Operations (as that term is defined in subsection 3(b)(2) below) during a City fiscal year exceeds the Base Rent paid for such fiscal year. The amount of such excess, if any, shall be referred to as the "Percentage Rent." For example, if the Net Revenues in a fiscal year is \$250,000, 50% of the Net Revenues would be \$125,000. The extent to which \$125,000 exceeds the annual Base Rent paid (assuming no CPI increases) is \$65,000. Therefore, the City would pay the Port an additional Percentage Rent of \$65,000. On the other hand, if the Net Revenues for a fiscal year were \$110,000, 50% of the Net Revenues would be \$55,000. The extent to which \$55,000 exceeds the annual Base Rent is zero. Therefore, under this scenario, the City pays no additional Percentage Rent to the Port. For purposes of this Lease, and except as the Lease may otherwise provide, the following definitions shall govern:

(1) "Net Revenues" means an amount equal to the difference between (i) the total amount of fees, charges, rents and any other revenues collected by the City during a fiscal year from the Golf Course Operations conducted within the Leased Premises ("Gross Revenues") and (ii) the total amount of Capital Expenditures and other Deductible Items for the Leased Premises during the same fiscal year. Gross Revenues shall mean the gross receipts of the City from the operation of the Course, and without limiting the generality of the foregoing, shall include receipts from the sale of food, beverages, goods and merchandise and all fees and charges for the use of the Course, and the provision of all services and facilities upon the Course, including vending machines. The term Gross Revenues shall also include the fair market value of any consideration received by the City in addition to or in lieu of cash for any of the foregoing and the proper amount of any charge or fee or any of the foregoing which the City does not assess, charge or collect. Gross Revenues shall not

include, however, direct taxes collected by the City in connection with the operation of the Course.

(2) "Golf Course Operations" means the operations of the golf course, driving range, restaurant, pro shop and any other activities on the Leased Premises.

(3) "Capital Expenditures" means an amount equal to the sum of (i) the amount of annual premiums for all insurance required under this Lease, (ii) an amount equal to four percent (4%) of the Gross Revenues for the immediately preceding fiscal year, which amount is allocated by the City from current Gross Revenues as a reserve for the payment of approved Capital Improvements (the "Capital Reserve"), and (iii) the amount by which the total cost of approved Capital Improvements made during such Fiscal Year exceeds the total amount of the available Capital Reserve for such Fiscal Year and for previous Fiscal Years to the extent unexpended in previous Fiscal Years. Funds in the Capital Reserve, including all interest thereon, shall be restricted for use only for capital improvements on the Leased Premises. If the total cost of approved Capital Improvements exceeds the total amount of available Capital Reserve, the difference shall be amortized over the useful life of the improvements involved.

(4) "Capital Improvements" means all replacements, construction and reconstruction (not generally considered routine maintenance) including, but not limited to, the costs of replacing, constructing or reconstructing (i) the electrical, lighting, or irrigation systems that service the Leased Premises, (ii) the fairways, greens, and other landscaped areas of the Leased Premises, (iii) the clubhouse and all other structures on the Leased Premises (including without limitation the ventilation, air conditioning, electrical, lighting, gas and plumbing systems, fire protection and security systems, signage, structural supports, foundations, roofs, walls, and walkways associated with such structures), and (iv) the parking lot, walkways, driveways, fences, bridges, and storage and maintenance facilities on the Leased Premises.

(5) "Deductible Items" means (i) all costs of maintaining the Course as set forth in Section 7 of the Lease, (ii) all utility charges for the Course as set forth in Section 9 of the Lease, (iii) any taxes and assessments as set forth in Section 10, (iv) all costs of insurance as set forth in Section 13, (v) all costs of the annual audit set forth in Section 3(c) of this Lease, (vi) the cost of all goods, merchandise, and services needed for the operation of the Course, (vii) all costs of maintenance and replacement of all personal property needed or

used in the operation of the Course, (viii) salary costs and fringe benefits of any City employees directly related to the operation of the Course, (ix) City overhead and administrative costs directly related to the operation of the Course (excluding, however any City Central Services Overhead charges), (x) legal fees and related legal costs (including in connection therewith all attorneys' fees and costs of settlement, judgments and damages awarded against the City and payments in lieu thereof) together with any damages awarded against the City arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to the Leased Premises (excluding, however, such costs incurred in any arbitration or litigation in which the Port and City are adverse parties and the Port is a prevailing party), (xi) advertising and promotional expenditures for the Leased Premises, and costs of signs in or on the Leased Premises identifying the Course, and (xii) the annual Base Rent.

(b) Payment of Base Rent: The Base Rent shall be payable on or before the first day of each calendar month of the Term after the expiration or termination of the Operating Agreement unless otherwise stated herein. The Base Rent payable for any partial month shall be determined by multiplying the Base Rent by a fraction, the numerator of which is the number of days in such month and the denominator of which is the total days in such month.

(c) Payment of Percentage Rent: Within 30 days prior to the close of each City fiscal year during the remaining Term, the Port shall provide to the City a list of three independent certified public accounting firms ("CPA Firms"). Within 30 days after the close of each City fiscal year, the City shall contract with one of the CPA Firms to perform an audit for the preceding fiscal year of net income, including all Gross Revenues, Capital Expenditures and Deductible Items that the City claims are appropriate under the Lease for calculating Net Revenues. If the Port fails to provide the list to the City, the City shall use as the CPA Firm the independent certified public accounting firm with whom the City contracts to audit its General Fund. Lessee shall keep or cause to be kept true and accurate books and records showing all of such Gross Revenues, Capital Expenditures, and Deductible Items, including without limitation business transactions of all Subtenants, and the Port shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to the City, to inspect such books and records, and the City hereby agrees to make or cause to be made such books and records available to the Port or its authorized representatives upon request. Said books and

records shall be retained for at least 4 years after occurrence of the transactions to which they relate. The City and Port agree that the CPA Firm's decision shall be final and conclusive so long as it is consistent with the provisions of this Lease. The cost of the CPA Firm's audit shall be a Deductible Item; provided, however, that any special costs of the audit due to the City's failure to maintain records in accordance with this Lease or generally accepted accounting principles shall not be a Deductible Item and shall be at the City's sole cost. The City shall pay to the Port Fifty Percent (50%) of the amount of Net Revenues for the preceding City fiscal year determined to be payable by the CPA Firm's audit decision less the amount of the annual Base Rent paid for such Fiscal Year. If 50% of Net Revenues is less than the total amount of annual Base Rent paid by the City for the Port for said fiscal year, the Port shall receive no additional rent payment from the City for such fiscal year. All rent shall be payable in lawful money of the United States to the Port at 530 Water Street, Oakland, California or at such other place as the Port may designate in writing. Any net losses from prior fiscal years may be carried over into succeeding fiscal years as Deductible Items for purposes of determining Net Revenue.

(d) Rent Delinquency: Any payment required to be made by the City under this Lease (all such payments are hereby agreed to be rent) that remains due and unpaid under the terms of this Lease for a period of 10 days after it becomes due and payable shall be subject to a delinquency charge, for violation of this Lease and as liquidated damages, of 10% interest per annum on such delinquent payment for each day from the date such payment became due and payable until payment has been received by the Port. Unpaid delinquency charges that accrue shall be compounded monthly. The delinquency charges provided by this paragraph are in addition to all other remedies that the Port may have that are provided by this Lease or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

(e) Budget Process: On or before April 1 of each year throughout the remaining Term, the City Manager shall prepare and submit to the Port's Executive Director a proposed City budget for the operation and management of the golf course (the "Golf Course Budget") for the period July 1 of that year through June 30 of the immediately following year. For the first fiscal year subject to the terms of this Section 3.2 the City Manager shall prepare and submit to the Port a proposed Golf Course Budget within 30 days after the expiration or termination of the Operating Agreement. The Golf Course Budget shall be a detailed budget in a form reasonably satisfactory to the Port. The Golf Course Budget will set forth all Gross Revenues and all

Deductible Items and Capital Expenditures allowed under this Lease as a deduction from Gross Revenues in determining Net Revenue. The Port and the City agree reasonably to cooperate in designing a budget format before the term of the Operating Agreement terminates, to the extent practicable. The City Manager and the Port's Executive Director also agree to meet and confer during the 90 days before the beginning of each new fiscal year (or, for the first fiscal year, as soon as possible after the Golf Course Budget is submitted) in a reasonable and good faith effort to explain, understand and agree on the budget. If the City Manager and the Port's Executive Director are unable to reach agreement within 45 days, the proposed Golf Course Budget shall be referred to the Golf Course Committee established pursuant to Section 4 hereof and the Golf Course Committee shall make a recommendation to the City Council who shall be responsible for approving a final Golf Course Budget. Total costs of Deductible Items in any fiscal year that exceed by 10% the total amount for the Deductible Items in the Port-approved Golf Course Budget (the "Deductible Limit") shall not be allowed as a deduction from gross receipts in determining net income unless (1) the City gives the Port written notice that such an excess may occur during the fiscal year, together with a detailed statement of all of the reasons the excess is anticipated and why the City cannot avoid the excess, prior to the City's incurring obligations that result in the excess and (2) the City's incurring of such obligations that result in the excess is beyond the City's control. Prior to exceeding the Deductible Limit the City shall provide the Port a detailed statement of the reasons that an extension is required. If the City and the Port are unable to agree whether exceeding the Deductible limit is required for reasons beyond the City's control, the matter shall be determined by Arbitration and within 30 days after the City provides to the Port the City's detailed statement of reasons the Port may give the City written notice of intention to commence Arbitration. If the Port fails to commence Arbitration within 30 calendar days after receiving the City's written notice, the amount of such excess shall be deemed to be beyond the City's control and therefore shall be a Deductible Item.

(f) Subtenancy Agreements: The City agrees that no Subtenancy Agreement entered into, approved or consented to by the City shall provide for compensation thereunder on the basis of net revenues, net income or any similar net basis. Each such agreement which provides that any compensation is based on the amount of gross income, revenues, receipts or similar gross basis shall contain the following covenants and conditions: The other party (hereinafter called "the Subtenant") shall maintain or cause to be maintained adequate accounting systems and controls to

insure that all such gross amounts are recorded on an accrual basis. Within 15 days after the close of each calendar month during the term of the agreement, the Subtenant shall render to the City, in a form reasonably satisfactory to the City, an accounting for the preceding month of all transactions that generate such gross amounts, setting forth in particular for said month all gross amounts. The Subtenant shall keep or cause to be kept true and accurate books and records showing all of such transactions, and the City or the Port shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to the Subtenant, to inspect such books and records, including City business tax records and State of California sales tax return records, and the Subtenant agrees to make or cause to be made such books and records available to the City, the Port, or its authorized representatives upon request. Said books and records shall be retained for at least 4 years after occurrence of the transactions to which they relate. The Subtenant shall make such books and records available to the City's current CPA Firm and the Port for inspection and audit at a location within the City of Oakland. Either the City or the Port may require that a Subtenant's records be audited. If the Port wishes to have an audit performed, the Port shall so notify the City and the City promptly shall have the City's current CPA Firm perform the audit. If the CPA Firm's audit reveals that for any one year period the gross amounts reported in the Subtenant's monthly accounting to the City were 3% or more less than the gross amounts required to be reported pursuant to the agreement, the Subtenant shall pay all of the CPA Firm's reasonable and actual costs in auditing such books and records. The Subtenant, the City and the Port agree that the CPA's decision shall be final and conclusive so long as it is consistent with the Subtenancy Agreement. If the Subtenant is not required or fails to pay the CPA Firm's costs of an audit, said cost shall be a Deductible Item.

The City acknowledges that a substantial portion of the consideration for this Lease is the rental to be paid by the City to the Port, and it is therefore a condition of this Lease and the City hereby covenants and agrees that the City reasonably and in good faith shall at all times diligently operate and maintain the Course, and take all reasonable actions necessary to enforce all Subtenant agreements, so as to produce at all times the maximum Net Revenue possible consistent with the terms and conditions of this Lease.

3.3 Modification of Leased Premises;

Indemnification: The foregoing rental provisions shall not be changed on account of any modification of the boundaries of the

Leased Premises pursuant to Section 4 (e) hereof. The City agrees to indemnify and hold harmless the Port from and against all claims, liabilities, costs and expenses arising out of actions by any governmental agency (including without limitation, the United States of America) on account of the City's failure to pay the rent required to be paid under this Lease, provided that:

(a) The Port promptly provides the City with true and correct copies of all written notices, claims, communications, or other materials from any such governmental agencies which may be relevant to any defense that the City may assert; and

(b) The Port grants to the City the right to meet and confer with any such governmental agencies, review any and all records and other materials in the Port's possession (except attorney-client privileged and attorney work-product protected documents) that the City deems relevant to any defense that the Port may assert against such governmental agencies, and the right to a full opportunity to participate and to assert any legal defense to or appeal of any action or decision of such governmental agencies that may be available to the Port.

4. Procedure for Course Design, Construction and Operation: Under the MOU and the Prior Lease the Port and the City established an advisory Golf Course Design Committee (the "Golf Course Committee"), and established a procedure by which the Port would hire a nationally respected golf course architect to prepare development criteria for the Course in cooperation and coordination with the Golf Course Committee. The Prior Lease required the Port, at the Port's sole cost, and together with the golf course architect, to prepare plans and specifications for the improvements to the Course after completion of the design process. The Prior Lease also required the Port to contract for construction of the Course following the Port and City reaching agreement on the plans and specifications for the Course. Under the Prior Lease, the City was obligated to obtain all personal property necessary to furnish and equip the improvements to the Course and to maintain the personal property in good repair.

The parties now desire to modify their respective design, construction and operational obligations by establishing a joint process by which one or more agreements will be entered into with a nationally recognized golf course developer and operator (the "Contractor") for the design, construction and operation of the Course.

(a) **Request for Proposals:** The City and the Port agree to jointly issue a Request for Proposals seeking a

Contractor to design, construct and operate the Course (the "RFP"). The RFP shall be approved by the Golf Course Committee.

The RFP shall be distributed to prospective proposers in accordance with a procedure approved by the Golf Course Committee. Responses to the RFP shall be evaluated by the Golf Course Committee, and the Golf Course Committee shall select a Contractor to be recommended to the City Council and the Board of Port Commissioners.

In addition to such additional criteria as the Golf Course Committee shall require, the RFP shall provide the following:

(i) The Port will contribute the sum of \$5,000,000 in cash toward the cost of designing and constructing the Course (the "Port Cash Contribution"). The Port and the City agree that the payment of the Port Cash Contribution shall satisfy the Port's obligation to pay for the design and construction of the Course. The balance of moneys required to design, construct, equip and operate the Course shall be provided by the Contractor. The City shall not be obligated to contribute funds toward the design, construction, equipment or operation of the Course. The City shall have the right to elect to withdraw up to \$2,500,000 of the Port Cash Contribution to be used by the City to design, renovate, equip and/or operate the City owned Chabot Golf Course. The Port and the City agree to adopt a mutually acceptable mechanism to provide for the Port's deposit of the Port Cash Contribution and for the distribution of the Port Cash Contribution to the Contractor and the City.

(ii) The Contractor will be required to comply with the requirements of the MOU and this Lease to cooperate and coordinate with the Golf Course Committee's work products review procedures and to provide copies of design work to the Golf Course Committee in a timely manner that allows for meaningful review and comment by the Golf Course Committee.

(iii) The Port will enter into one or more contracts with the Contractor for design and construction of the Course in accordance with this Lease (the "Design/Construction Agreement") which shall be subject to approval by the City.

(iv) The City will enter into an Operating Agreement which will obligate the Contractor to equip and operate the Course as a public golf course in accordance with the terms and conditions of this Lease, which shall be subject to approval by the Port.

(b) The Port hereby delegates to the Executive Director of the Port (or his designee) the authority to approve the Operating Agreement on behalf of the Port, and the City hereby delegates to the City Manager (or his designee) the authority to approve the Design/Construction Agreement on behalf of the City. The Port agrees promptly to provide the City with copies of each agreement comprising the Design/Construction Agreement and any amendments thereto that the Port enters into with the golf course Contractor. The City agrees promptly to provide the Port with copies of each agreement comprising the Operating Agreement and of any contracts and any amendments thereto that the City enters into with any person or entity for the purpose of review of the work of the golf course Contractor for the purpose of providing the City with any information or advice regarding the business plan, design, construction, operation or maintenance of the new golf course or any portion thereof. The provisions of Section 5, pages 7 and 8 of Exhibit "A" to the City-Port MOU, which relate to the advisory Golf Course Design Committee (herein renamed the "Golf Course Committee"), are incorporated herein by reference. The City and the Port agree to act expeditiously, reasonably, cooperatively and in good faith to issue the RFP and to execute contracts with the Contractor as contemplated by this Lease. The Port and the City also agree to act expeditiously, reasonably and in good faith to complete all of the steps comprising the process described in Exhibit "A" to the City-Port MOU, including the approval of an amendment to this Lease to incorporate the results of such process as necessary.

It is agreed that the golf course architect to be hired by the Port shall be selected through the RFP process including recommendation by the Golf Course Committee and approved by the Board of Port Commissioners. ~~It also is agreed that the Golf Course Committee shall adopt a procedure for reviewing the work products of the golf course Consultant.~~

The Golf Course Committee members appointed separately by the City Manager or the Port's Executive Director may be replaced any time at the election of the person who appointed them. Except for their first jointly-appointed member whose term shall be 3 years, the members that they appoint jointly shall serve a term of 1 year, and upon expiration of a jointly-appointed member's term that member's incumbency automatically shall terminate unless the City Manager and Executive Director mutually agree to extend said member's term. It is the parties' intention that the Golf Course Committee continue to exist throughout the Term.

(c) It is understood and agreed that the Port and the City currently are seeking to negotiate the terms and conditions of a cooperative arrangement to implement the Airport Roadway Project approved for funding in November 1986 by the Alameda County voters' approval of Measure B.

The Airport Roadway Project provides traffic benefits for air passengers and businesses at the Metropolitan Oakland International Airport and industrial areas in the City of Oakland to the east of the Airport. The Airport Roadway Project may require that portions of the Leased Premises contiguous to Airport Drive be deleted from the Leased Premises and used for right-of-way purposes. The currently proposed portions of the Leased Premises necessary for the Airport Roadway Project are shown on Exhibit "C" attached hereto and by this reference incorporated herein and are called the "Primary Area." Exhibit "C" also shows an additional area called "Potential Additional Area." The City and the Port agree that the design of the Course shall incorporate the potential use of the Primary Area and the Potential Additional Area, or such lesser areas as the Port may later agree, as part of the Airport Roadway Project. The parties hereby agree that in the event that, in addition to the Primary Area and Potential Additional Area, a portion of the Leased Premises is deleted for the Airport Roadway Project prior to the commencement of construction of the new golf course, the Port shall cause to be performed all work as needed, including work by the golf course architect, to adjust for the reduction in the Leased Premises and with the primary objective of designing and developing a first-class golf course. In the event that a portion of the Leased Premises, in addition to the Primary Area and the Potential Additional Area, is deleted for the Airport Roadway Project after completion of the construction of the new golf course, the Port shall pay for all costs necessary for the restoration, repair and replacement of the new golf course caused by the deletion of said additional portion of the Leased Premises, including without limitation, the costs of redesigning the golf course. Any final agreement on any deletion of portions of the Leased Premises for right-of-way purposes will be made as a result of the City and Port negotiations concerning the Airport Roadway Project.

(d) It is understood and agreed that as a condition of regulatory agency approval for the Port to use the Leased Premises for disposal of dredged material and to fill currently existing wetlands on the Leased Premises, the Port will establish and maintain an approximately 3-acre wetland mitigation site on the Leased Premises generally in the area shown on Exhibit "D" attached hereto and by this reference incorporated herein. The

Port and the City agree to cooperate fully to assure that interference with golfing and related activities from maintenance of the mitigation site, and interference with the mitigation site by the City's operations, are minimized to the maximum extent possible.

(e) In addition, the City agrees promptly and in good faith to cooperate with the Port in seeking to design the Course so that approximately 30 acres of the Leased Premises will be excluded from the Leased Premises and returned to the Port for use as automobile parking or other airport uses compatible with the Course, provided that the primary objective and consideration of designing a first-class golf course can be achieved on less than all of the Leased Premises. The City's and the Port's final agreements regarding exclusion from the Leased Premises of excess land not needed for the Course shall be incorporated into the amendment to the Lease which incorporates the results of the parties' design process for the Course. Nothing in this Lease is intended to supersede the General Plan amendment process that the City is currently undertaking or in any way to legally obligate the City to amend its General Plan to allow for the non-golf course uses referred to hereinabove.

(f) The agreement between the Port and the Contractor shall require the golf course architect to prepare plans and specifications for the improvements to the Course, consistent with the amendment to the Lease to be entered into by the Port and the City after completion of the design process. The agreement between the Port and the Contractor shall require the golf course architect to provide a draft of these plans and specifications to the City at least four months before the Port's best estimate of the date that construction can commence on the dried dredged material on the Leased Premises. Within 60 days after the City receives the draft plans and specifications, the City shall provide to the Port the City's detailed written comments on the plans and specifications. The Port and the City thereafter promptly and reasonably shall meet together as necessary to come to agreement on a final set of plans and specifications. After final agreement between the Port and City is reached on the plans and specifications, the agreement between the Port and the Contractor shall require the Contractor to commence construction of the Course without cost to the City, and except as hereinafter specified, proceed with and complete the construction of the Course on the Leased Premises. [The agreement between the Port and the Contractor shall provide that no changes or modifications in the plans and specifications shall be made without the prior approval of the City; provided, that the City shall not unreasonably delay or withhold its approval.

(g) The City agrees to enter into an Operating Agreement with the Contractor to provide for obtaining all personal property necessary to furnish and equip the improvements to the Course immediately upon completion of construction thereof and to maintain the personal property in good repair throughout the Term.

5. Use of Course:

(a) The Course shall be operated by the Contractor under the Operating Agreement between the Contractor and the City during the term of the Operating Agreement, or by the City upon the expiration or termination of the Operating Agreement. In either event, the Course shall be maintained and operated as a public golf course and for other uses incidental thereto. Neither the City nor the Contractor shall use or permit the Course to be used in whole or in part during the Term for any purpose other than as hereinabove set forth, except with the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners, nor for any use in violation of any present or future law or regulation, including without limitation any ordinance, resolution, general rule or regulation at any time applicable thereto of the said Board of Port Commissioners, relating to sanitation or the public health, safety or welfare, and City hereby expressly agrees at all times during the Term, at its own cost, to maintain and operate the Course in a clean, wholesome and sanitary condition.

It is expressly understood and agreed that at all times during the Term the use of the Course shall comply with all requirements of the Federal Aviation Administration of the United States of America with respect to Metropolitan Oakland International Airport, including but not limited to, criteria relating to clear zones and approach zones, and with all requirements of the Port, the United States Weather Bureau and of any other public agency having jurisdiction over the Course. In the event that at any time any improvements, as that term is used in this Lease, placed upon the Course by or with the consent of the City do not comply with the then current and existing requirements of and as determined by said Federal Aviation Administration, United States Weather Bureau or other public agency having jurisdiction over the Leased Premises, such improvements shall be removed, relocated or so altered as to bring them into compliance with such requirements; at the expense of the City. The Port, Federal Aviation Administration, United States Weather Bureau or other public agency having such jurisdiction, or their successors, are hereby granted and shall have the right to

enter upon the Course from time to time and to erect, install, maintain and operate thereon any navigation aids, landing aids, lighting aids or other airport instrumentation which may be required in the judgment of any of such agencies for the proper functioning and operation of said Airport. It is agreed, however, that except for the Course and improvements related thereto the Port shall not construct or erect or cause to be constructed or erected any building or structure upon said real property except as required by the Federal Aviation Administration, United States Weather Bureau, or other public agency having such jurisdiction.

(b) The City shall maintain and operate the Course and provide all other services and facilities offered in connection therewith in an efficient manner and shall furnish and maintain a standard of service at least equal to that of the better class of public golf courses in the San Francisco Bay Area during the entire Term, at reasonable prices comparable to those prevailing for similar services and facilities in said area and without discrimination. Within these limitations, the prices charged by City for any of the services and facilities offered and for any food or other goods and merchandise sold upon the Course, shall be fixed by the City. The City shall at all times hold open and provide the Course and the facilities and services thereof to such members of the public who shall conform to reasonable rules and regulations adopted by the City applicable to all users without discrimination.

(c) Any improvements, alterations or additions (including, without limitation, any placement of fill material or excavation on the Course and any modifications to any wetland, water area or other topographical feature) to the Course by the City, the Contractor or by any Subtenant or contractor of any Subtenant after the completion of construction and all improvements in personal property shall be subject to the prior approval of the Port. Full and complete plans and specifications shall be submitted to and must receive the approval of the City and the Port before any work or construction is begun. In the event of a breach of the preceding provisions of this paragraph, the City hereby agrees to indemnify, protect, defend and hold harmless the Port and its officers, agents, and employees from and against any and all losses (excluding any loss of revenues or profits or other consequential damages), claims, liabilities, damages, injunctive relief, injuries to persons, property or natural resources, fines, penalties, costs, expenses, including, without limitation, attorneys' fees, expenditures, expenses and court costs, actions, administrative investigations and/or proceedings, and causes of action, arising out of such breach, including without limitation, those arising out of any and all

Hazardous Substances discovered as a result of the activity involved. The Port and the City shall require standards of design and construction in conformity with the Course for all such improvements, alterations or additions.

(d) The Port reserves the right to enter upon the Leased Premises from time to time to maintain any wetland mitigation area established by the Port in accordance with permit conditions for use of the Leased Premises for disposal of dredged materials. (See Section 4(c) hereof.) In maintaining such wetland mitigation areas, the Port shall use reasonable efforts to minimize any disruption or interference with any golf course activities occurring on the Leased Premises.

(e) The Port and the City agree that the City's obligations under this section may be satisfied by the Contractor under an Operating Agreement entered into by the City pursuant to the process described in Section 4 of this Lease.

6. ~~Title to Improvements and Equipment: (a) Title to all improvements to the Course constructed by the Contractor during the Term shall be and remain in the Contractor, as shall be set forth in the Golf Course Agreements between the Port, City and the Contractor, subject to this Lease.~~

(b) Upon termination of this Lease, the City shall remove from the Leased Premises and dispose of off of Port property all furnishings, equipment and other personal property on the Leased Premises.

(c) ~~All improvements to the Course shall remain upon and be surrendered with the Course as part thereof upon termination of this Lease, whether by expiration of the Term, cancellation, forfeiture or otherwise.~~ The City agrees that at the request of the Port the City shall at its own expense remove all structural improvements, and all improvements installed or constructed by the City on the Course, from the Course upon termination of this Lease and make such disposition of such improvements as is directed by the Port. In the event that the City does not remove said improvements upon such request within a reasonable time after written notice of such request has been given to the City by the Port, the Port may remove such improvements at the expense of and for the account of the City, and the City agrees to reimburse the Port therefor. Nothing herein shall be construed to require the City to store or maintain said improvements after the Term unless the Port agrees to pay the City the reasonable costs of such storage or maintenance.

7. **Maintenance of Course:** The City covenants and agrees, at its sole cost and expense to maintain and operate the Course to keep and maintain the Course, including all improvements thereon, regardless of when the same may have been placed thereon, in a state of good order and repair and in tenantable condition, including replacement of glass in all buildings and structures, and on a regular and frequent basis to remove from the Leased Premises and dispose of off of Port property all trash and debris; and upon failure of the City to keep the Course in such state of good order and repair and tenantable condition, the Port may, after first giving the City ten (10) days' prior written notice of its intention so to do, repair or perform any required maintenance on the same at the cost and expense of the City, and the City agrees to promptly reimburse the Port for the cost thereof. The City shall not be required to reimburse the Port for the cost of any repair or maintenance work performed by the Port hereunder if on or before the tenth (10th) day after receiving the Port's written notice the City gives the Port written notice of the City's intention to seek Arbitration as to whether any such repair or maintenance work is necessary to maintain the Course in a state of good order and repair and in tenantable condition, the City timely initiates Arbitration and the result of Arbitration is that a cost is not required to be reimbursed. If the City gives the Port a written notice of Arbitration, the City shall initiate Arbitration within forty-five (45) days after giving the Port such written notice or waive any objections to reimbursing the Port for such repair or maintenance work. The City shall maintain at its own cost and to the satisfaction of the Port any drainage lines and/or ditches serving the Course. The City hereby expressly waives the right to make such repairs at the expense of the Port and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto. The Port shall not be obligated to perform any maintenance upon the Course during the Term, except for the maintenance of Port facilities. The City's cost and expense of maintenance hereunder shall be Deductible Items.

It is understood and agreed that the City may satisfy its obligations under this section through the Operating Agreement with the Contractor.

8. **Signs:** No signs or placards shall be painted, inscribed or placed in or on the Course or any building or structure located thereon without the prior written consent of the Executive Director of the Port. The City agrees to remove promptly and to the satisfaction of the Port, at the cost and expense of the City, upon the expiration of the Term or the

earlier termination of this lease, any and all signs and placards placed by it upon the Course.

9. **Utility Charges:** The City shall pay for all light, heat, water, gas or other utility services (collectively referred to as "Utility Charges") required by it in connection with its use of the Course after the Term commences.

10. **Taxes and Assessments:** The City agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, County, City, or any tax or assessment levying body upon any interest in this lease or any possessory right which the City may have in or to the Course or said real property by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Course (all of which are collectively referred to as "Taxes and Assessments"). The cost of all such Taxes and Assessments shall be Deductible Items; provided, however, that any Taxes and Assessments imposed by the City that are not imposed uniformly City-wide, that do not apply to activities other than golfing or golfing related activities, or that apply only to the Leased Premises (either alone or together with adjacent property) shall not be Deductible Items and shall not be deductible by any Subtenant in computing any amount owed to the City under any Subtenancy Agreement.

The City at no cost to the Port reasonably may contest the legal validity or amount of any such taxes, assessments, or charges for which the City is responsible hereunder, and institute such proceedings as the City considers necessary; provided, however, that the City shall at all times defend and indemnify the Port against any and all losses and costs resulting therefrom, and protect the Port and the Leased Premises from foreclosure of any lien, and that the Port shall not be required to join in any proceeding or contest brought by the City.

11. **Hazardous Substances:** No goods, merchandise or material shall be kept, stored or sold in or on the Course which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on the Course, other than as is provided for in Section 5 of this lease, which will increase the rate of or suspend the insurance upon the Course or other structures of the Port; and no machinery or apparatus shall be used or operated on the Course which will in any way injure the Course or adjacent buildings, provided, however, that nothing in this Section contained shall preclude the City from bringing,

keeping or using on or about the Course such materials, supplies, equipment and machinery as are appropriate or customary in maintaining and operating the Course, and do not interfere with the operation of Port facilities.

In addition to the foregoing, the City and the Port agree as follows:

a. Except for matters covered by subparagraph c below, the City shall be fully responsible for, and shall hold harmless, defend and indemnify the Port with regard to, all Hazardous Substances or materials on the Leased Premises as a result of any act or activity by City or by any City Subtenant of any tier, or their agents or contractors, whenever such act or activity may have occurred, whether before or after the effective date of this Lease.

b. Except for matters covered by subparagraph c below, the Port shall be fully responsible for, and shall hold harmless and indemnify the City with regard to, all other Hazardous Substances or materials on the Leased Premises.

c. The parties acknowledge that some time prior to the effective date of this lease, some part or all of the Leased Premises was used as a dump site. Notwithstanding the foregoing, if it is shown that the presence of any Hazardous Substance on the Leased Premises is caused by the prior use of the Leased Premises as a dump site, any liability or responsibility for such Hazardous Substances as between the City and the Port shall be determined in accordance with the appropriate federal, state, or local laws as they may exist at the time of any such discovery of such Hazardous Substances.

12. ~~Contracting Programs, Employment Resources Development Program:~~

12.1 ~~Contracting Programs:~~ ~~The Port and the City agree that the City's contracting programs and policies shall be included in the Design/Construction Agreement.~~

12.1. ~~Employment Resources Development Program:~~ It is expressly understood and agreed with respect to the Lessee's activities on the Leased Premises, and to the extent consistent with laws and regulations applicable to Lessee, including but not limited to the Charter of the City of Oakland and Civil Service regulations:

a. ~~That Lessee shall cooperate with the Port's Employment Resources Development Program ("ERDP").~~ Lessee understands the Port's ERDP seeks to serve the needs of Port tenants for a qualified workforce and address the needs of Oakland's chronically unemployed and underemployed, by identifying employment opportunities, by identifying employment training and counseling resources for persons seeking such opportunities and by facilitating the employment of those persons qualified to fill jobs identified;

b. That the Lessee will notify ERDP of job opportunities open with the Lessee at the Leased Premises, either informally, or by providing copies of all advertisements or solicitations by or on behalf of the Lessee, to the Port's Employment Resources Development Program Coordinator, so that this office may assist the Lessee by providing pre-screened, qualified residents of Oakland and others seeking employment through the Port's ERDP, including minorities, women, disabled persons and veterans.

c. That the Lessee shall consider ERDP referrals for employment as required by this Section and by relevant state or federal equal employment opportunity law. Lessee retains and at all times shall have the right, consistent with the Lessee's obligations pursuant to its affirmative action program both to determine the qualifications of all applicants for employment and, in its sole discretion, to select the applicant it deems best qualified.

13. Insurance:

(a) The City at its own expense agrees to carry fire insurance with standard extended coverage endorsements on any improvements upon the Course in an amount not less than ninety per cent (90%) of the actual cash value thereof, naming the Port as an insured or an additional insured as its interests may appear. The proceeds of such insurance may be made payable to the City and the City agrees that said proceeds shall be used to rebuild or repair said improvements. A certificate that such insurance has been obtained shall be filed with the Secretary of the Board of Port Commissioners upon commencement of the Term. Said certificate shall provide that such insurance will not be canceled or reduced without at least ten (10) days' written notice to said Secretary. At least ten (10) days prior to the expiration of any such policy, a certificate that such insurance has been renewed or replaced shall be filed with said Secretary. The City's cash expenditures for insurance purchased from third party

carriers pursuant to this subsection (a) shall be Deductible items. Self-insurance shall not be a Deductible Item.

(b) The City shall maintain in force during the Term comprehensive general or commercial liability insurance, including bodily injury and property damage insurance, with such types of coverage and minimum coverage amounts as may be reasonably requested by the Port from time to time, but in no event for less than the sum of Five Million Dollars (\$5,000,000.00) (and for owned, nonowned and hired automobiles, and for fire legal liability, the sums specified respectively in items 5 and 9 below) combined single limit per occurrence and in no event with less than the following coverages:

1. Premises or Operations Liability
2. Completed Operations Liability
3. Products Liability
4. Blanket Contractual Liability
5. Owned, Nonowned and Hired Automobiles Liability (\$1,000,000.00)
6. Personal Injury Liability
7. Broad Form Property Damage Liability
8. Fire Legal Liability (\$100,000.00)
9. Independent Contractors Liability
10. Advertising Liability

The City's cash expenditures for insurance purchased from third party carriers pursuant to this subsection (b) shall be Deductible Items. Self-insurance shall not be a Deductible Item.

(c) Each policy of insurance maintained pursuant to this Section shall provide the following:

(1) The Board of Port Commissioners and each of its Commissioners, officers, employees and agents named by endorsement as additional insureds;

(2) Coverage shall not be canceled, reduced or non-renewed without at least 30 days prior written notice to the Port.

(3) Coverage shall be primary and non-contributory. The Port's insurance and/or self-insurance shall not be called upon to contribute in the event of loss.

(4) A severability of interest or cross-liability endorsement, reading generally as follows:

Cross-Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

Lessee also shall maintain in force during the term of this Lease, and provide to the Port evidence that it does maintain, the following, both with a subrogation waiver endorsement in favor of the Port:

1. Statutory workers compensation insurance coverage under California law; and

2. Employer's liability coverage in the amount of not less than One Million Dollars (\$1,000,000.00).

Notwithstanding the foregoing, the City may elect to be partially self-insured, and said principal amounts shall be excess coverage.

A certificate that such insurance has been obtained shall be filed with the Secretary of the Board of Port Commissioners on or before the Term commences. At least thirty (30) days prior to the expiration of any such policy, a certificate that such insurance has been renewed, extended, or replaced shall be filed with said Secretary.

~~(d) During the construction of and until the completion of construction of the Course, the Port shall obtain and maintain in force such insurance as may be required to insure the completion of the Course. In addition, the Port and the City shall require as a condition of any contracts for the construction of the Course performance bonds and labor and material bonds in amounts equal to 100% of the amount of each contract for the construction of the Course or any part thereof.~~

14. **Hold Harmless Agreement and Liability Insurance:** It is an express condition of this Lease that, as except as otherwise set forth below, the City, members of the Council of the City, and their officers, agents and employees, from the date of termination of the Original Lease and until the commencement of the Term of this Lease, shall be free from any and all liabilities and claims for damages and or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever whether the person or property

of the City, its agents or employees, or third persons, from any cause or causes whatsoever, while in or upon the Leased Premises or any part thereof during the construction of the Course, and the Port hereby covenants and agrees to indemnify and to save harmless the City, members of the Council of the City, and their officers, agents and employees, from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

It is a further express condition of this lease that except as otherwise set forth below the Port, members of the Board of Port Commissioners, and its officers, agents and employees after the commencement of the Term of this Lease shall be free from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever, whether the person or property of the City, its agents or employees, or third persons, from any cause or causes whatsoever while in or upon the Leased Premises or any part thereof during the Term which is occasioned by the occupancy or use of the Course or any activity carried on by the City in connection therewith, and the City covenants and agrees to indemnify and to save harmless the Port, members of the Board of Port Commissioners, and its officers, agents and employees, from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any such death or deaths, injury or injuries, liabilities, claims, suits or losses however occurring or damages growing out of same.

The City hereby agrees to indemnify, protect, defend and hold harmless the Port and its officers, agents, and employees from and against any and all losses (excluding any loss of revenues or profits or other consequential damages), claims, liabilities, damages, injunctive relief, injuries to persons, property or natural resources, fines, penalties, costs, expenses, including, without limitation, attorneys' fees, expenditures, expenses and court costs, actions, administrative investigations and/or proceedings, and causes of action, to the extent that they arise directly or indirectly, in whole or in part from:

a. The City's negligence in operating, maintaining, or improving the Leased Premises, or from the negligence of any of its employees, agents, contractors or subcontractors in carrying out those activities; and

b. The City's negligence with respect to any wetlands facilities, air navigation or aviation operations, or from the

negligence of any of its employees, agents, contractors or subcontractors in carrying out those activities; and

c. Any violation of any law or regulation (whether or not caused by the negligence of the City or any of its employees, agents, contractors or subcontractors), including laws and regulations pertaining to aviation operations, wetlands or hazardous substances, resulting from any conduct of the City or any employee, agent, contractor, or subcontractor of the City or of any person or entity on the Leased Premises other than the Port.

Throughout the Term of this Lease, the Port hereby agrees to indemnify, protect, defend and hold harmless the City and its officers, agents, and employees from and against any and all losses (excluding any loss of revenues or profits or other consequential damages), claims, liabilities, damages, injunctive relief, injuries to persons, property or natural resources, fines, penalties, costs, expenses, including, without limitation, attorneys' fees, expenditures, expenses and court costs, actions, administrative investigations and/or proceedings, and causes of action, to the extent that they arise directly or indirectly, in whole or in part from:

a. ~~The Port's negligence in conducting or overseeing (including without limitation any site preparation work) the dredge disposal and treatment on the Leased Premises, or from the negligence of any of its employees, agents, contractors or subcontractors in carrying out those activities; and~~

b. ~~The Port's negligence in conducting or overseeing any environmental mitigation measures (including without limitation the expansion or maintenance of any wetlands in, on, or around the Leased Premises) associated with the dredge disposal and treatment on the Leased Premises, or from the negligence of any of its employees, agents, contractors or subcontractors in carrying out those activities; and~~

c. Any other inadequacies (whether or not caused by the negligence of the Port or any of its employees, agents, contractors or subcontractors) in the preparation, treatment, or disposal of the dredge materials on the Leased Premises determined to exist at any time by any regulatory agency with jurisdictional authority over the use of the Leased Premises.

~~The City shall include provisions in each Subtenancy Agreement that the City enters into with respect to the Leased Premises that (1) the Subtenant agrees to indemnify and~~

hold harmless the Port, members of the Board of Port Commissioners, and its officers, agents and employees in the same manner as the City agrees to indemnify and hold harmless the Port in accordance with this Section, and (2) the Subtenant agrees to maintain at all times during the term of the Subtenancy Agreement liability insurance with the coverages described in Section 13 hereof, in an amount not less than \$1,000,000.00 combined single limit, and which names the Port an additional insured; provided, that the Port reasonably may require additional coverages, and increased amounts, as a condition to consent to a sublease and from time-to-time thereafter.

15. **No Liens:** The Port shall pay for all labor utilized or materials furnished in the development or improvement of the Course by the Port, and the City after commencement of the Term shall pay for all labor utilized or materials furnished in the future repair or replacement of facilities of the Course and shall keep the Course and the City's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever, including any financial indebtedness lien or encumbrance, created by the City's act or omission. The Port agrees to keep the Leased Premises free from any financial indebtedness liens or encumbrances and, except as required by the Federal Aviation Administration or any successor agency, not to grant easements or other rights in the Leased Premises that interfere with the City's use of the Leased Premises hereunder.

No alterations, additions or improvements shall be made without the prior written consent of the Port.

16. **Assignment and Subletting:** The City shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this lease or any interest therein, or sublet the whole or any part of the Course, or license or grant a concession for the use of same in whole or in part, or allow, approve or consent to any subassignment, subtransfer, sublease, sublicense, subconcession, or submanagement agreement or arrangement at any tier without the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners, which consent shall not be unreasonably withheld. Neither this lease or any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against the City, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against the City or by any process of law, and possession of the whole or any part of the Course shall not be divested from the City in such proceedings or by any process of law, without written consent of the Port, and any

breach of the provisions of this paragraph shall cause this lease to terminate immediately at the option of the Port.

17. Defaults; Remedies:

17.1. **Defaults:** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Leased Premises by Lessee.

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of 10 days after written notice thereof from Port to Lessee. In the event that Port serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this paragraph (b).

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice hereof from Port to Lessee; provided, however that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this paragraph (d) is contrary to any applicable law, such provision shall be of no force or effect.

17.2. Remedies: In the event of any such material default or breach by Lessee, Port may at any time thereafter, with or without notice or demand and without limiting Port in the exercise of any right or remedy which Port may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Port. In such event Port shall be entitled to recover from Lessee all damages incurred by Port by reason of Lessee's default including, but not limited to,

(i) The worth at the time of award of the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(iv) Any other amounts permitted by law to compensate the Port for detriment proximately caused by Lessee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Leased Premises, (B) in cleaning and making repairs of and alterations to the Leased Premises reasonably necessary to return the Leased Premises to good condition for uses permitted by this Lease and in otherwise preparing the Leased Premises for reletting, (C) in removing, transporting, and storing any of Lessee's property left at the Leased Premises although the Port shall have no obligation to remove, transport, or store any of such property, and (D) in reletting the Leased Premises, including, but not limited to, brokerage commissions, advertising costs, and attorneys' fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

(c) In case of abandonment or vacating of the Leased Premises by Lessee, if the Port elects not to terminate the Lease, Lessee hereby irrevocably appoints the Port the agent of Lessee to enter upon the Leased Premises and remove any and all persons and/or property whatsoever situated upon the Leased Premises, and place all or any portion of said property in storage for account of and at expense of Lessee. In such case the Port may relet the Leased Premises upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying all expenses enumerated in items A, B, C and D in paragraph (a)(iv) of this Subsection 17.2 and collecting to satisfy the rent and other sums herein agreed to be paid, Lessee agrees to satisfy and pay any deficiency, and to pay such expenses. Lessee hereby exempts and agrees to save harmless the Port from any cost, loss or damage arising out of or caused (except to the extent caused by the active negligence of the Port or its agents or contractors) by any such entry or re-entry upon said Leased Premises and/or the removal of persons and/or property and storage of such property by the Port or its agents.

(d) Pursue any other remedy now or hereafter available to Port under the laws or judicial decision of the State of California.

18. Waivers: No waiver by the Port at any time of any of the terms, conditions covenants or agreements of this lease shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by the City. No delay, failure or omission of the Port to re-enter the Course or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such

default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence hereof after waiver by the Port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

19. ~~Inspection of Course:~~ The Port or its duly authorized representatives, or agents and other persons for it, may enter upon the Course, at any and all reasonable times during the term of this lease for the purpose of determining whether or not the City is complying with the terms and conditions hereof or for any other purpose incidental to rights of the Port.

20. **Condition of Premises Upon Surrender:** The City covenants and agrees that at the expiration of the term of this lease, or upon its earlier termination, it will quit and surrender the Course in a good state of repair, and that upon such expiration or termination the Port shall have the right to enter upon and take possession of all of the Course in the event the improvements thereon are not removed as provided for in Section 6 of this lease.

21. **Holding Over:** Should the City with the Port's consent hold over the Course after this lease has terminated in any manner such holding over shall be deemed merely a tenancy from month to month and at a rental to be fixed by negotiation, payable monthly in advance, but otherwise on the same terms and conditions as herein provided.

22. **Waiver of Claims:** The City hereby waives any claim against the Board of Port Commissioners and its officers agents or employees, for damage or loss caused by any suit or proceedings directly or indirectly attacking the validity of this lease, or any part thereof, or by any judgment or award in any suit or proceeding declaring this lease null, void or voidable, or delaying the same, or any part thereof, from being carried out.

The Port hereby waives any claim against the City Council and its officers, agents or employees, for damage or loss caused by any suit or proceedings directly or indirectly attacking the validity of this lease, or any part thereof, or by any

judgment or award in any suit or proceeding declaring this lease null, void or voidable, or delaying the same, or any part thereof, from being carried out.

23. **Terms Binding on Successors:** All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinbefore set forth.

24. **Eminent Domain Proceedings:** It is expressly understood and agreed that in the event the Leased Premises or any portion thereof which materially interferes with the use of the premises for the Course and related facilities, shall be taken by paramount governmental authority in eminent domain proceedings at any time during the Term, this lease shall cease and terminate.

In the event the whole or any part of the Leased Premises shall be taken under the exercise of the power of eminent domain at any time during the Term and the facilities taken are not relocated or rebuilt, the Port and the City shall share in the award as follows: Any part of the award attributable to the value of the land shall be payable to the Port, regardless of the time when said taking occurs. The part of the award attributable to the value of the improvements and for damages on account of the taking thereof, shall be paid to the party who paid for the construction of installation of such improvement. Such sums received by the parties for the value of the improvements shall be used by the Port to relocate or rebuild to the extent possible such facilities as were taken. Any balance of said sums remaining for the value of the improvements shall be paid to the parties in the same proportion as the proportion of their respective awards for improvements.

Provided, however, that in the event the restaurant and cocktail lounge is taken by the exercise of eminent domain within the first 25 years of this lease and said facilities have been constructed at no expense to the Port or the City, the part of the award attributable to the value of the building and trade fixtures of the restaurant and cocktail lounge shall be paid to the person entitled thereto.

Any balance remaining from the amount attributable to the value of the buildings and improvements after the foregoing has been paid shall be paid to the Port. All amounts received for trade fixtures or other similar costs for which compensation is received and which were installed by the City at the City's

expense or are otherwise payable to the City pursuant to law shall be paid to the City.

25. Termination or Expiration of Operating Agreement:

Notwithstanding anything in this Lease to the contrary, it is understood and agreed that upon the expiration or termination of the Operating Agreement, all obligations imposed by this Lease on the Contractor relating to rent and operation and maintenance of the Course shall become obligations of the City until such time as the City and the Port shall agree in writing on a new agreement providing for the operation and maintenance of the Course by another entity.

26. Time of Essence: Time is hereby expressly declared to be of the essence of this lease and of all essential terms, covenants, agreements, obligations and conditions expressed herein.

27. Definitions: Unless the context otherwise requires the following words and phrases shall have the meanings herein specified, the following definitions to be equally applicable to the singular and plural forms of any of the terms herein defined:

Arbitration: Arbitration proceedings conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Lease and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in the Arbitration Rules which would deprive a party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Lease. Any arbitration provided for herein shall be conducted in the Oakland offices of the party who initiated the arbitration. Disputes under this Lease shall be subject to Arbitration only to the extent expressly provided for in other Sections of this Lease.

City-Port MOU: The term "City-Port MOU" shall mean the Memorandum of Understanding Regarding Improvement of Galbraith Golf Course Through Its Use as a Dredged Material Disposal Site, dated November 16, 1993, between the Port and the City.

Consumer Price Index or CPI: The Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor

Statistics of the United States Department of Labor, or the official successor of said Index. If said Index is changed so that the base year differs from the base year used in the last index published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised; provided, that in the event the parties are unable to agree upon such other government index or computation, it shall be selected by Arbitration.

Course: The term "Course" shall mean the real property described in Exhibit "A" attached hereto, the improvements, and the personal property.

Hazardous Substances: The term "Hazardous Substances" shall mean and include: (i) substances that are toxic, corrosive, inflammable or ignitable; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, toxic substances or related hazardous materials; and (iv) substances defined by applicable local, state or federal law as "hazardous substances," "hazardous materials," "reproductive toxins," or "toxic substances," including those so defined in any of the following statutes: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); California Health & Safety Code Section 25100, et seq. (Hazardous Waste Control); Section 25300, et seq. (the Hazardous Substance Account Act); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); and the regulations adopted and promulgated pursuant to such statutes, and any regulations adopted pursuant to these statutes after the date of this Agreement, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air,

surface waters, ground water, soil or other media contaminated with such substances.

Improvements: The term "improvements" shall mean the (a) rough grading, (b) underground utilities, including irrigation system, sewers, drain pipes and conduits, (c) Landscaping, including provision of (i) top soil and planting of turf and (ii) shrubs and trees and (d) construction of a club house, but shall not include the personal property.

Personal Property: The term "personal property" shall mean those items of equipment and furnishings or other personal property necessary from time to time to operate the Course in accordance with this Lease.

Subtenant: The term "Subtenant" shall mean any sublessee, licensee, concessionaire, transferee, or third party manager or operator of the City, or at any tier below the City, relating to the Leased Premises.

Subtenancy Agreement: The term "Subtenancy Agreement" shall mean any agreement between the City and a Subtenant or between Subtenants relating to the Leased Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port commissioners,

By J. A. Salita
Executive Director

CITY OF OAKLAND, a municipal corporation, acting by and through its City Council,

By _____
City Manager

D-1
FINANCE & MANAGEMENT CMTE.

JUN 26 2001

SSN #28412

PORT OF OAKLAND - OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT
CODE SECTION 37393, AND ENTITLED TO FREE RECORDATION
UNDER GOVERNMENT CODE SECTION 27383

RECORDED ON BEHALF OF AND
WHEN RECORDED RETURN TO:

David L. Alexander
Port Attorney
Port of Oakland
530 Water Street, 4th Fl.
Oakland, CA 94607

FIRST SUPPLEMENTAL AGREEMENT

THIS FIRST SUPPLEMENTAL AGREEMENT, dated as of this 1st day of July, 2000, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (herein called the "Port" or "Lessor"), and the CITY OF OAKLAND, a municipal corporation, acting by and through its City Council (herein called the "City" or "Lessee"),

WITNESSETH:

WHEREAS, the Port as Lessor and the City as Lessee are parties to that certain Amended and Restated Galbraith Golf Course Lease dated March 16, 1999, recorded on September 14, 1999, as Document No. 99351400 (the "Lease"); and

WHEREAS, pursuant to Section 4(e) of the Lease, the parties agreed to promptly and in good faith seek to design the Course so that a portion of the Leased Premises would be returned to the Port for use as automobile parking or other airport uses compatible with the Course, provided that a first-class golf course can be designed on less than all of the Leased Premised; and

WHEREAS, the Course has been substantially designed in a manner which permits the release of approximately four (4) acres of the Leased Premises to the Port (the "Released Premises"); and

WHEREAS, the Port and the City now desire to amend the Lease to set forth their agreement concerning the return of the Released Premises to the Port;

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FINANCE & MANAGEMENT CMTE.
JUN 26 2001

NOW THEREFORE THE PORT AND THE CITY AGREE AS FOLLOWS:

1. Amendment to Leased Premises

The Leased Premises covered by the Lease as described in Exhibit A is hereby amended to delete therefrom the Released Premises. The Released Premises are described in Exhibit A-2 and depicted in Exhibit B-2 both attached hereto and incorporated herein. The Leased Premises, as hereby modified, are described in Exhibit A-1 and depicted on Exhibit B-1, both attached hereto and incorporated herein, from the Leased Premises.

2. The Port hereby agrees to pay, and the City hereby agrees to accept, the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) as consideration for the Released Premises.

3. All capitalized terms used in this Agreement shall have the meaning ascribed to such terms in the Lease unless otherwise indicated in this Agreement.

4. This First Supplemental Agreement shall take effect on July 1, 2000.

5. Except as provided in this First Supplemental Agreement, the Lease is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

PORT

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners

Dated: _____

By _____
Executive Director

CITY

CITY OF OAKLAND, a municipal corporation, acting by and through its City Council

By _____

Dated: _____

Approved as to form and legality this ___ day of _____, 2000.

Port Attorney

Port Resolution No. _____

P.A. # _____

D-1
FINANCE & MANAGEMENT CMTE

JUN 26 2001

4/11/01 VON:mj

PORT OF OAKLAND - OFFICIAL BUSINESS
DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT
CODE SECTION 37393, AND ENTITLED TO FREE RECORDATION
UNDER GOVERNMENT CODE SECTION 27383

RECORDED ON BEHALF OF AND
WHEN RECORDED RETURN TO:

David L. Alexander
Port Attorney
Port of Oakland
530 Water Street, 4th Fl.
Oakland, CA 94607

SECOND SUPPLEMENTAL AGREEMENT

THIS SECOND SUPPLEMENTAL AGREEMENT, dated as of this 1st day of _____, 2001, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (herein called the "Port" or "Lessor"), and the CITY OF OAKLAND, a municipal corporation, acting by and through its City Council (herein called the "City" or "Lessee"),

WITNESSETH:

WHEREAS, the Port as Lessor and the City as Lessee are parties to that certain Amended and Restated Galbraith Golf Course Lease dated March 16, 1999, recorded on September 14, 1999, as Document No. 99351400, amended by that certain First Supplemental Agreement, dated as of July 1, 2000 (together, the "Lease"); and

WHEREAS, the Port has retained a golf course architecture firm, Johnny Miller Design, Ltd. ("JMD") to design a new golf course on the Property; and

WHEREAS, the City has entered into negotiations with Oakland Golf, LLC ("Oakland Golf") for the funding, development and operation of a new golf course to be constructed in accordance with the course layout designed by JMD and new facilities to be constructed to support the improved golf course; and

WHEREAS, JMD has completed preliminary design of the golf course; and

WHEREAS, Oakland Golf's investigation and analysis of the Property determined that additional material will have to be

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JUN 26 2001

imported to the site and that design modifications will be required to properly irrigate and drain the site, which will result in additional development costs; and

WHEREAS, the Port and the City now desire to amend the Lease to provide for additional City and Port funding of the cost of developing the golf course and to provide for the City's entering into an agreement with the Oakland Golf to carry out funding, developing and operating the golf course; and

WHEREAS, with the Port's approval, the City and Oakland Golf have executed a Sublease and Operating Agreement, attached as Exhibit A (the "Sublease"); and

WHEREAS, the Port and the City now desire to amend the Lease to set forth their agreement concerning funding and development of the golf course;

NOW THEREFORE THE PORT AND THE CITY AGREE AS FOLLOWS:

1. Contributions toward costs of design, development and construction:

A new Section 4(g) is hereby added to read as follows:

Notwithstanding anything in the Lease to the contrary, the Port Contribution shall be increased to the sum of \$6,000,000, and the City hereby agrees to contribute the sum of \$1,000,000 toward the cost of designing and constructing the Course (the "City Cash Contribution"). The disbursement of the Port Contribution shall be as described and provided for in the letter from Charles W. Foster to Robert C. Bobb dated May 14, 2001, a copy of which is attached hereto as Exhibit 1.

The City agrees to enter into the Design/Construction Agreement with the Contractor, and hereby accepts assignment of the Design Contract, a copy of which is attached hereto as Exhibit 2. The Design/Construction Agreement between the City and Contractor shall provide that no changes or modifications in the plans and specifications for the Course shall be made

without the prior approval of the Port; provided that the Port shall not unreasonably delay or withhold its approval.

The City shall have no obligation to contribute any moneys toward the cost of the Course in excess of the City Cash Contribution and the Port shall have no obligation to contribute any moneys toward the cost of the Course in excess of the Port Contribution.

In consideration of the Port's payment to the City of the Port Contribution, the City hereby releases the Port from any and all obligations to design, construct or deliver a Golf Course except as provided for in this Second Supplemental Agreement, and the City hereby agrees to use its best efforts to cause the Golf Course to be constructed and to open for play by September 1, 2002, subject to extension for force majeure or as otherwise extended pursuant to this Lease or mutual agreement of the Port and the City.

2. Definitions:

Section 27 is amended by adding the following provisions to the end of said section:

The Project: The Project consists of development of a regulation length 18 hole golf course, lighted practice range of at least 30 stalls, practice putting green, practice pitching area, club house of at least 6,000 square feet, golf cart barn, maintenance barn and yard, and two course restrooms (the "Project"). Golf Course architecture for the Project is being performed by Johnny Miller Design, Ltd. ("JMD") with Fred Bliss, ASGCA as the design associate (the "Golf Course Design") pursuant to that certain Contract for Professional Services, between the Port and JMD (the "Design Contract"). Architecture for the clubhouse and other facilities for the golf course Project are being performed by Y. H.

Yee Associates, and other design professionals to be selected by Oakland Golf and approved by the City and Port, under contracts with Oakland Golf (the "Facilities Design Contract").

Landfill: Landfill is the prism of fill material from various waste streams deposited on the Property comprised of construction demolition debris and other waste material which has been spread on the Property.

Cap: Cap is one or more impermeable materials located between the Landfill and the Cover. The Cap consists of either a minimum one foot clay liner, a geosynthetic clay liner or high density polyethylene geomembrane or geotextile, as further described in the Site Closure Plan.

Commencement of Construction: Commencement of Construction means the time that Oakland Golf, or a contractor of Oakland Golf, mobilizes equipment on the Property, and begins substantial physical work on the Property pursuant to approved Final Construction Plans.

Site Closure Plan: Site Closure Plan is the Port of Oakland Galbraith Dredged Sediment Disposal Site Final Closure and Post-Closure Maintenance Plan filed with the San Francisco Bay Regional Water Quality Control Board, File No. 2199.9305(GWB).

Cover: Cover is the fill material approved by the San Francisco Bay Regional Water Quality Control Board and placed over the Cap which provides a protective layer for the Cap and establishes contour features for the Golf Course.

3. **Golf Course Design Contract:**

A new section 4A is added as follows:

"4A. GOLF COURSE DESIGN CONTRACT

The City shall cause the Project to be constructed in accordance with the Golf Course Design, and the Plans and Specifications as provided for in the schedule in the Funding and Development Agreement. The Port and City agree that sums paid by the Port to JMD under the Design Contract will be credited against the Port's obligation to provide \$6,000,000 financing toward Project construction costs as further described in Section 4(g) below. The amount payable to JMD by the Port under the Design Contract shall not exceed \$335,000 plus a contingency amount of up to \$80,000. The Port agrees to provide such evidence of payment to JMD as City shall reasonably require.

SECTION B. CONSTRUCTION OF PROJECT

Condition of Property; Site Delivery:

The Port shall prepare the Property and deliver it to City and Developer in full compliance with the Site Delivery Specifications, on or about July 31, 2001, subject to delays caused by weather conditions. The Port shall give the City and Oakland Golf written notice of the exact date upon which the Landfill closure and preparation of the Property in accordance with the Landfill Closure Plan and Site Delivery Specifications will be completed (the "Site Delivery Date") approximately thirty (30) days prior to the Site Delivery Date. Oakland Golf shall be entitled to access to the Property prior to the Site Delivery Date as needed to prepare the site for the Project, subject to the reasonable approval of the Port which shall not be withheld so long as such access does not materially interfere with the completion of the work of the Port with respect to the Property prior to the Site Delivery Date.

The Port agrees to deliver possession of the Property to the City, and it is agreed that the City intends to deliver possession of the surface of the Property to Oakland Golf on the Site Delivery Date for purposes of Construction of the Project. It is understood that Oakland Golf will enter into the Sublease with the City for the purpose of taking possession of the surface of the Property to operate the golf course.

4. Security:

The City agrees to provide copies of any evidence of security and financing plans received from Oakland Golf relating to the Course.

5. Construction of Project:

The City shall require Oakland Golf to enter into a contract or contracts for the Construction of the Project with

licensed and reputable contractors meeting the employment obligations contained in the City's Sublease. The contract(s) shall provide for the Project to be constructed for fixed and specified maximum amounts pursuant to the approved Final Construction Plans. Not less than ten (10) days prior to the date for Commencement of Construction of the Project as specified herein (or such other date as the parties hereto shall agree to in writing), the City shall require Contractor to submit copies of the contract(s) to be executed for Construction of the Project to the Port and the City for the purpose of determining that the amount of the cost of Constructing the Project has been clearly fixed and determined, that no major changes to the Project will be made without prior consent of the Port and the City and that the employment obligations in the Sublease have been met.

Construction of the Project shall be performed in accordance with Plans and Specifications approved by the Port, which approval shall not be unreasonably withheld or delayed.

The City shall submit to the Port the Final Construction Plans for construction of the Project for the Port's review and approvals. The term "Final Construction Plans" means all construction documentation upon which the City or its contractor will rely in constructing the Project and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans, specifications, and a schedule for construction. Any material change to the approved Final Construction Plans (other than customary on-site shaping and like modifications) must be submitted to and approved by the City. Within ten (10) days following completion of Construction of the Project, the City or its contractor shall submit a complete set of "as builts" for the Project to the Port.

5. **FAA Approvals:** It is anticipated that construction of certain portions of the Project will require approval from the Federal Aviation Administration ("FAA"). Obtaining FAA approval shall be the City's Sublessee's responsibility. The Port agrees to work cooperatively with City's Sublessee to obtain any required FAA approvals.

The existing MASL/R Tower lights (the "Tower Lights") must remain operational and accessible by the FAA during construction and operation of the Golf Course. The City's Sublessees shall be required to comply with all applicable FAA

requirements for operation and access to the Tower Lights. In the event that FAA requires relocation of the Tower Lights, the City's Sublessee shall be required to adjust the operation of the no expense to the Port to accommodate the relocation of and access to the Tower Lights by the FAA. The Port shall, at its expense, relocate the Tower lights.

6. **Hazardous Materials:** For purposes of this Agreement, the term "Hazardous Materials" shall mean any substances that are toxic, corrosive, inflammable, or ignitable, petroleum and petroleum byproducts, lead, any hazardous wastes, and any other substances that have been defined as "Hazardous Substances", "hazardous materials," "hazardous wastes," "Toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601, et seq., U.S.C. section 1251, et seq., 42 U.S.C. section 6901, et seq. (RCRA), 42 U.S.C. section 7401, et seq., 42 U.S.C. section 9601, et seq. (CERCLA), 49 U.S.C. section 1801, et seq. (HMTA); or California statutes beginning at California Health and Safety Code section 25100, et seq., section 25249.5, et seq., and 25300, et seq. and California Water Code section 13000, et seq., the regulations and publications adopted and promulgated pursuant to such statutes and any similar statutes and regulations adopted hereafter.

The Port hereby gives notice to the City that, to the best of its knowledge and relying on analysis performed by its environmental consultants, there are no Hazardous Materials present on or beneath the Property other than those set forth in the Environmental Reports.

The Port shall not be responsible for remediating contamination of soils and groundwater by Hazardous Materials on the Property required for construction of the Project ("Remediation Work"). For purposes of this Agreement, Remediation Work shall include all work associated with investigation, removal, cleanup, treatment, transportation, disposal, and monitoring of Hazardous Materials as required by applicable law or regulation.

7. **Landfill:** The Port is solely responsible at its own expense for Closing and Capping the Landfill in accordance with the Landfill Closure Plan. For purposes of this Lease, Landfill Closure shall include all work associated with closure of the Landfill on the Property. The Port has supervised the performance of the Landfill Closure. The Port shall diligently

seek, and shall provide the City and Oakland Golf with, written acknowledgement from applicable governmental agencies, including the Regional Water Quality Control Board, stating that the Landfill Closure is complete.

The Port makes no warranty, express or implied, or other representation to the City or its Sublessee other than those expressed within this Agreement, including the Site Delivery Specifications, as to the fitness or condition of the Property.

8. This Second Supplemental Agreement shall take effect on July 9, 2001, provided that it has been signed by the parties and approved by the Port Attorney and City Attorney.

9. Except as provided in this Second Supplemental Agreement, the Lease is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

PORT

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners

Dated: _____

By _____
Executive Director

CITY

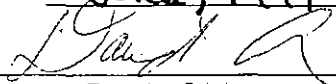
CITY OF OAKLAND, a municipal corporation, acting by and through its City Council

Dated: _____

By _____

Approved as to form and

Approved as to form and
legality this 29th day
of JUNE, 1999.

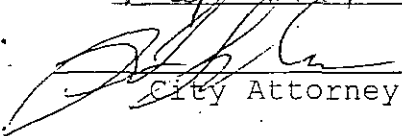


Port Attorney

Port Ordinance No. 3490

P.A. #99-171

Approved as to form and
legality this 11th day
of May, 1999.



City Attorney

Council Ordinance No. 11737 C.M.S.
And Council Ordinance No. 12121 C.M.S: dated March 16, 1999

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

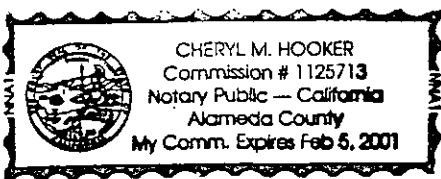
7-0 3907

State of California
County of Alameda

On September 7, 1999 before me, Cheryl M. Hooker Notary
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared Robert C. Bobb
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.



WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

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

DESCRIPTION OF ATTACHED DOCUMENT

Amended and Restated Lease Between Port + City of Oakland

TITLE OR TYPE OF DOCUMENT
(Galbraith Golf Course)
35
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
City of Oakland

SIGNER(S) OTHER THAN NAMED ABOVE

**SUMMARY OF PROPOSED CHANGES TO SUBLEASE BETWEEN CITY
OF OAKLAND AND OAKLAND GOLF, LLC**

Sublease Page and Section	Existing Sublease	Amended Sublease	Additional Explanation
Page 2, Section 1 <i>Premises</i>	Entire Subleased property as contained in Exhibit A to original Lease	Deletes approximately 10,000 sq. ft of property from corner of Premises	Deleted premises are illustrated in Exhibit A-2 of the First Amendment to Sublease
Page 4, Section 3d <i>Water</i> and page 28, section 22 <i>EBMUD Agreement</i>	Oakland Golf may credit the cost of unused reclaimed water (as per the EBMUD Reclaimed Water Agreement) against rent due to the City and Port.	Deletes Sections 3(d) and Section 22	Eliminates rent credit
Page 5, Section 3e <i>Golf Tournament Facilities</i>	No specific privileged use of the course and clubhouse by the City.	City shall have the right to utilize the course at no cost for two tournaments per year, and the clubhouse for 12 events per year	Revenues from the two tournaments and 12 clubhouse events shall accrue to the City of Oakland, Office of Parks & Recreation
Page 13, Section 6 (a) <i>Minimum Rent</i>	Oakland Golf pays rent an amount that is the greater of either Minimum Rent, or Percentage Rent	During the five year "Rent Relief" period, the Minimum Rent amount is reduced by one half.	Lost rent to the City is estimated at \$100,000 per year over five years, for a total projected loss of \$500,000. Savings to Oakland Golf is estimated at \$1 million.
Page 13, Section 6 (a) (v) <i>Date of Annual Rent Increase</i>	Increase in minimum rent shall occur annually, based on the date that the sublease took effect (May 1)	Increase in minimum rent shall occur annually on July 1, to coincide with the City's fiscal year	This simplifies contract management for City and Port staff.
Page 13, Section 6 <i>Rent Windfall Provision</i>	N/A	Should "Rent Relief" exceed \$1.35 million at any time during this five years, the Reduced Minimum Rent shall be void	Ensures that if the golf industry and Oakland Golf revenues improve significantly during this time period, the City and Port will limit their losses.
Page 2, Section 3 (a) <i>FAA ILS / MALSRS Lights</i>	Requires that Oakland Golf abide by all FAA Regulations and Rules regarding airport navigational aides	Further clarifies that the FAA has the right to install, maintain and operate specific navigational lighting on the Premises, at no cost to Oakland Golf LLC	

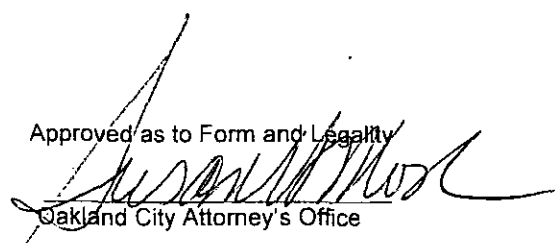
Attachment E

Sublease Page and Section	Current Sublease	Amended Sublease	Additional Explanation
Page 19, Section 14 <i>CIP Fund</i>	Oakland Golf deposits 4% of gross revenue into a Capital Improvement Project (CIP) Fund. One half of this amount is credited against the rent otherwise payable	Permanently eliminates rent credit for CIP Fund. During the five year Rent Relief period, reduces percentage payable into the CIP fund to 2%. CIP Fund increases to 3% thereafter.	With this change, the Minimum Rent paid by Oakland Golf shall be an amount certain rather than subject to reduction based on Oakland Golf's credits to the CIP fund.
Page 9, Section 3 (p) <i>Equal Employment</i>	Oakland Golf shall not discriminate or permit discrimination in hiring and contracting.	Specifically mandates that Oakland Golf shall reach out to minorities, women, and all segments of Oakland population in hiring and contracting.	To be monitored through mandated reporting to the City's Contract Compliance Division.
Page 11, Section 5 (b) <i>Assignment</i>	N/A	a "Non-Disturbance Clause" for the new Cal Berkeley practice facility.	Ensures that the license agreement between the UC Berkeley and Oakland Golf LLC shall be assumed by the new sublessee, in the event that the Sublease is terminated.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 APR 10 PM 4:41

Approved as to Form and Legality



Susan M. Wood
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE (1) THE THIRD SUPPLEMENTAL AGREEMENT TO THE LEASE BETWEEN THE PORT AND THE CITY AND (2) THE FIRST AMENDMENT TO THE SUBLEASE, BETWEEN THE CITY AND OAKLAND GOLF LLC, WHICH BOTH SET FORTH THE FOLLOWING MODIFICATIONS REGARDING THE OPERATION OF METROPOLITAN GOLF LINKS: FIVE YEARS OF RENT RELIEF IN THE PROJECTED AMOUNT OF \$1 MILLION, RESULTING IN A LOSS OF ANTICIPATED REVENUE TO THE GOLF ENTERPRISE FUND OF APPROXIMATELY \$500,000 OVER THE FIVE YEAR PERIOD AND OTHER CHANGES TO THE SUBLEASE INCLUDING DELETION OF REAL PROPERTY TO ACCOMMODATE THE BAY TRAIL, HIRING, RENT CREDITS, USE OF FACILITIES BY CITY, NAVIGATIONAL AIDES, AND ADMINISTRATIVE DATES OF SUBLEASE.

WHEREAS, Metropolitan Golf Links is an 18-hole regulation public golf course developed on property owned by the adjoining Oakland International Airport and was designed on the site of the former City of Oakland Galbraith Municipal Golf Course("Premises"); and

WHEREAS, the Port of Oakland ("Port") is the lessor of that real property, and the City of Oakland ("City") is the lessee pursuant to the Amended and Restated Galbraith Golf Course Lease dated March 16, 1999 as amended by the First Supplemental Agreement and the Second Supplemental Agreement ("Lease") and

WHEREAS, the City, with the Port's consent, in 2001, subleased the Premises to Oakland Golf LLC in an agreement entitled "Sublease and Operating Agreement" ("Sublease") for the purpose of operating and managing the Metropolitan Golf Links; and

WHEREAS, between 2001 and 2003, Oakland Golf LLC completed a \$14 million capital improvement project at Metropolitan Golf Course; \$9.5 million of which was funded by Oakland Golf LLC, and \$4.5 million of which was funded by the Port and the City; and

WHEREAS, Oakland Golf LLC has requested a temporary reduction in its rent for Sublease years 6 through 10 in the total amount of approximately \$1 million over the next five years in order to continue the economic viability of the enterprise; and

WHEREAS, without rent relief, Oakland Golf LLC would be forced to cut costs, which would lower maintenance standards at the course, and

WHEREAS, to accomplish the desired rent relief, it was necessary for the staff from the City and Port to modify and amend two separate documents: 1) the Third Supplemental Agreement to the Amended and Restated Lease between the Port and the City, and 2) the First Amendment to the Sublease and Operating Agreement between the City and Oakland Golf LLC, both of which are presented to the City Council for approval; and

WHEREAS, the City and Port desire to amend the Lease to delete a portion of the land constituting the Leased Premises from the Lease in order to efficiently accommodate the proposed Bay Trail; and

WHEREAS, the Bay Trail is planned to provide pedestrian and bicycle access along the edge of the San Francisco Bay; and

WHEREAS, the portion of the proposed Bay Trail in the vicinity of the Course requires approximately 10,000 square feet of land which is currently leased by the Port to the City and subleased by the City to Oakland Golf; and

WHEREAS, the City and Oakland Golf LLC, with the Port's consent, desire to amend additional provisions of the Sublease, including hiring, use of the golf course by the City, use and responsibility for the new UC Berkeley short-game practice facility, rent credits, installation of navigational aides for the Oakland International Airport on golf course property, and the administrative dates of the sublease; now therefore be it

RESOLVED, that the City Council accepts and approves the Third Supplemental Agreement to the Amended and Restated Ground Lease, between the Port of Oakland and City, as presented to the City Council; and be it

FURTHER RESOLVED, that the City Council accepts and approves the First Amendment to the Sublease and Operating Agreement, between the City of Oakland and Oakland Golf LLC, as presented to the City Council; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution as to form and legality and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California