

NET LEASE

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Park Hill Golf Course  
Denver, Colorado

L E A S E

THE CLAYTON FOUNDATION,  
as Trustee of the George W. Clayton Trust,  
a Colorado Trust

Lessor

and

AMERICAN GOLF CORPORATION,  
a California corporation

Lessee

Dated December 23, 1998

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## LEASE AGREEMENT

### PARK HILL GOLF COURSE DENVER, COLORADO

This Lease Agreement ("Lease") is entered into this 23<sup>rd</sup> day of December, 1998, by and between THE CLAYTON FOUNDATION, as Trustee of the George W. Clayton Trust, a Colorado Trust ("Lessor"), and AMERICAN GOLF CORPORATION, a California corporation ("Lessee").

1. LEASED PREMISES. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for the term and upon the terms and conditions set forth in this Lease, the following (collectively, the "Leased Premises"):

1.1 Real Property. That certain parcel of land commonly known as the PARK HILL GOLF COURSE, located in the City of Denver, State of Colorado, and described with more specificity in Exhibit "A" which is attached to this Lease and made a part hereof for all purposes, together with all buildings, fixtures and other improvements situated on said land and all easements, covenants, and appurtenant rights.

1.2 Water Rights. All water rights, riparian rights, appropriation rights, water allocations, well rights, and water stock including, without limitation, all of Lessor's rights and interests under the Water Documents (as defined in Section 20.16 below) and the SDC Agreement (defined in Section 20.10 below).

## 2. LIQUOR LICENSE AND LESSOR MORTGAGES.

2.1 Lessor Mortgages. Lessor shall punctually perform all obligations due under any future indebtedness placed on the Leased Premises by Lessor.

2.2 Liquor License Transfer. The liquor license for the Leased Premises is presently held by a third party. Lessor shall use its best efforts to obtain all governmental approvals necessary and required to transfer the existing liquor license to Lessee and shall assist Lessee in transferring such license or obtaining the requisite new license. Lessor and Lessee shall follow all legal procedures and processes to accomplish the liquor license transfer, or issuance of a new license.

### 3. USE OF LEASED PREMISES.

3.1 Use. Lessee shall use the Leased Premises for the operation of a daily fee golf course and other activities customarily associated with or incidental to the operation thereof, including without limitation, sale or rental of golf-related merchandise at a golf professional's shop, furnishing of lessons by a golf professional, operation of a driving range, and sales of food and beverages, including liquor sales. Lessee shall not use the Leased Premises for any unlawful purpose and shall comply with all valid laws, rules and regulations applicable to the Leased Premises or the businesses conducted on the Leased Premises. Lessee shall at all times comply with that certain Conservation Easement between Lessor and the City and County of Denver dated November 4, 1997.

3.2 Lessee's Right to Control Business Operations. Subject to the provisions of Sections 3.3, 3.4 and Article 14, Lessee shall have the exclusive right and authority to operate and manage the Leased Premises as Lessee deems appropriate. Subject to the foregoing, Lessee shall have the right to (a) implement all policies and procedures and to perform any act deemed necessary or desirable for the operation and management of the Leased Premises; (b) to determine all green fees, cart fees, driving range fees and all other charges associated with the operation of the Leased Premises; (c) 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 Leased Premises; (d) to purchase and/or lease all furnishings, equipment, and operating supplies which Lessee deems necessary or desirable for the operation of the Leased Premises; (e) to establish accounting, cash collection and payroll procedures at the Leased Premises; and (f) to establish advertising, sales and promotion plans with respect to the Leased Premises.

3.3 Plan. Lessee will prepare an annual operating budget, annual operating plan (including Junior Golf Program), marketing plan and capital improvement budget for the Leased Premises and will submit the same to Lessor at least sixty (60) days prior to the beginning of each Lease Year (as hereinafter defined). Prior to the beginning of each Lease Year, Lessor and Lessee will meet and confer to discuss the proposed operating budget, annual operating plan (including Junior Golf Program), marketing plan and capital improvement budget, and Lessee shall in good faith take into account Lessor's interests and comments regarding the same prior to adoption. However, it is understood that Lessee shall have final approval rights. Within ninety (90) days after the conclusion of each Lease Year, Lessor and Lessee

shall review the operating results of the prior Lease Year in light of the marketing plan and budget for such Lease Year.

3.4 Certain Programs. Lessee's rights under Section 3.2 are subject to each of the following:

(a) Lessee will use its reasonable efforts to convince the Tiger Woods Foundation to host a "Tiger Woods Clinic" at the Leased Premises so long as Lessee operates such clinics and is entitled to use the Tiger Woods name for such purposes.

(b) Lessee may periodically conduct Adopt-a-Charity and similar charitable functions, the net proceeds of which will be used to defray the costs of the junior golf program set forth in Section 3.4(c).

(c) Lessee shall at all times provide and maintain a high-quality junior golf program for children under the age of eighteen. The program shall be available for at least 300 junior golfers per year from Northeast Denver, which area and program parameters shall be defined by mutual agreement between Lessor and Lessee. Lessee will exercise its reasonable efforts to enroll at least 300 junior golfers in the program, and will make reasonable efforts to respond to the Northeast Denver community's vision of a high quality program. It shall be a comprehensive golf program including instruction, clinics on the rules of golf, practice and playing opportunities, a tournament, uniform shirt and hat, and a membership card that for a defined period of time entitles juniors to play at any American Golf Corporation course in the Denver metropolitan area where the landlord of the course has approved such use for a \$1.00 green fee during certain off-peak times (said \$1.00 amount shall be subject to reasonable periodic increases over the 20-year term of the Lease and the 2 five-year options). The program is intended to teach participants and promote interest in the sport of golf as well as to create a "club" atmosphere to keep juniors interested in the game. Reasonable fees may be charged by Lessee, and such fees will be used to pay the expenses of the program and to help subsidize those underprivileged participants who cannot otherwise afford to pay for their membership. It is anticipated that Adopt-a-Charity and similar events and monies raised from the solicitation of sponsors of such events will underwrite costs of the program. Any additional monies required to fund the programs will be paid by Lessee.

(d) The green fees charged by Lessee shall at all times be competitive with comparable municipal and daily fee golf courses in the Denver metropolitan area.

(e) Lessee will, subject to Section 21, keep the golf course on the Leased Premises open for play at all times consistent with comparable municipal and daily fee golf courses in the Denver metropolitan area.

4. TERM.

4.1 Initial Term. The term of this Lease shall be for twenty (20) full Lease Years (as defined in Section 5 below), beginning on January 1, 1999 ("Commencement Date") and ending December 31, 2018 (the "Initial Term").

4.2 Options to Extend by Lessee. Lessee shall have the right and option to extend the term of this Lease at the end of the Initial Term under all of the terms, covenants, and conditions contained in this Lease for two (2) additional periods of five (5) years each ("Option Periods"). The right to exercise each such option is dependent upon Lessee not being in material default under this Lease (after expiration of any applicable cure periods) on the date upon which the applicable Option Period is to commence. Lessee shall give Lessor written notice of its intention to exercise each such option not less than one hundred eighty (180) days prior to expiration of the Initial Term or the subsisting Option Period as applicable.

4.3 Surrender Upon Lease Expiration. Upon the expiration or earlier termination of this Lease, Lessee shall return the Real Property and Personal Property to Lessor in good condition and repair, ordinary wear and tear excepted.

5. LEASE YEAR DEFINED. The term "Lease Year" means each full calendar year during the term of the Lease. The Lease Year may be changed by written agreement of the parties. Each Lease Year will constitute a separate accounting period for the purpose of computing Participation Rent (as defined below). Gross Revenue and Net Operating Income (as each defined herein) for any Lease Year shall not be carried forward or backward into any other Lease Year. If this Lease expires or is terminated prior to the end of a Lease Year, Guaranteed Rent and Participation Rent shall be subject to appropriate proration.

6. RENT. In consideration of Lessor executing this Lease and granting the rights provided in this Lease, Lessee shall pay to Lessor at the address listed for Lessor in Section 26.6 of this Lease rent for each Lease Year equal to (i) the Guaranteed Rent (as



defined below) payments set forth in Section 6.1 below, plus (ii) Participation Rent as set forth in Section 6.2 below.

6.1 Guaranteed Rent. During the term of this Lease, Lessee shall pay to Lessor guaranteed rent ("Guaranteed Rent") in the amounts set forth below. Guaranteed Rent shall be payable in equal advance monthly installments on the first day of each calendar month. Guaranteed Rent for any partial calendar month shall be prorated.

| Lease Year                                                                                | Guaranteed Rent                                                                                                                                                            |
|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Lease Year 1<br>(calendar year 1999)                                                  | \$500,000 per Lease Year.                                                                                                                                                  |
| (b) Lease Year 2<br>(calendar year 2000)                                                  | \$550,000 per Lease Year.                                                                                                                                                  |
| (c) Lease Year 3<br>(calendar year 2001)                                                  | \$650,000 per Lease Year.                                                                                                                                                  |
| (d) Lease Year 4<br>(calendar year 2002)                                                  | \$700,000 per Lease Year.                                                                                                                                                  |
| (e) Lease Years 5 through 20<br>(calendar years 2003 through 2018) and any Option Periods | The greater of (i) 75% of the average annual Guaranteed and Participation Rent paid for the immediately preceding three (3) Lease Years, or (ii) \$700,000 per Lease Year. |

6.2 Participation Rent. In addition to the payment of Guaranteed Rent, Lessee shall, as provided in Article 8 below, pay to Lessor a portion of the Net Operating Income, if any, generated at the Leased Premises (the "Participation Rent") determined in accordance with the provisions of this Section 6.2. In each Lease Year, Net Operating Income (defined in Section 7.2) after payment of Guaranteed Rent (as referenced in Section 6.1), the capital reserve fund of 2% of Gross Revenues (as referenced in Section 7.3), the Debt Service Payment (as referenced in Section 6.3), the Personal Property Payment (as referenced in Section 6.3) and the Management Fee (as referenced in Section 6.4) shall be allocated 90% to Lessor and 10% to Lessee. All amounts so allocated to

Lessor shall be considered Participation Rent. No Participation Rent shall be payable in any Lease Year unless the Guaranteed Rent, the Debt Service Payment, the Personal Property Payment, and the Management Fee have been paid for the current Lease Year and all previous Lease Years and unless the capital reserve fund has been fully funded for the current Lease Year and all previous Lease Years. For purposes of clarification, even though the Personal Property Payment and capital reserve fund payments are included within the definition of Operating Expenses under Section 7.3 and are likewise mentioned in this Section 6.2, it is not intended that such payments be deducted from Gross Revenue twice in calculating Participation Rent.

6.3 Debt Service Payment and Management Fee Payable to Lessee.

(a) In Lease Years 1 through 15, after all Operating Expenses (defined below) have been paid (including Guaranteed Rent), there shall be paid to Lessee the annual sum of \$121,712 ("Debt Service Payment") which amount is calculated based on \$1 million amortized over 15 years at 9% per annum interest and represents the estimated annual debt service payable with respect to the Work (referenced in Section 13.1), it being agreed that such amount shall be paid to Lessee for transmittal to the appropriate party regardless of the source of financing for the Work.

(b) In all Lease Years, including the Option Periods, there shall be paid to Lessee an annual fee ("Management Fee") equal to \$100,000 which shall increase in each Lease Year beginning in 2000 by the percentage increase in the CPI (defined below) in the twelve (12) month period ending on the last day of October of the immediately preceding Lease Year; provided, however, that in no event shall the Management Fee be reduced by reason of such computation. As used herein, the term "CPI" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items) for the geographical statistical area in which the Leased Premises are located on the basis of 1982-1984=100. If the format or components of the CPI are materially changed after the date hereof, then Lessee shall substitute an index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the CPI in effect as of the date hereof. The substitute index shall be used to calculate the increase in the Management Fee unless Lessor objects to such index in writing within fifteen (15) days after the date Lessee notifies Lessor of Lessee's substitute index. If Lessor objects to the substitute index, then Lessee and Lessor shall submit the selection of the substitute index for binding arbitration by a neutral arbitrator in

accordance with the rules and regulations of the American Arbitration Association at its office closest to the Leased Premises. The costs of arbitration shall be borne equally by Lessor and Lessee.

(c) In Lease Years 1 through 10, inclusive, there shall be paid to Lessee an annual payment of \$47,554 to reimburse Lessee for the cost of the Sold Personal Property pursuant to Article 27 which cost has been fully amortized at six percent (6%) over the first ten (10) Lease Years ("Personal Property Payment");

(d) If, in any Lease Year, the operations at the Leased Premises do not generate Net Operating Income sufficient to pay in full both the Debt Service Payment, the Management Fee and the Personal Property Payment for such Lease Year, then Lessee shall be entitled to receive payments from the first available Net Operating Income thereafter generated at the Leased Premises, in an amount necessary to recoup the deficiency in each Lease Year ("Deficiency"). The amount of the Deficiency shall, for purposes of this Lease and determination of Net Operating Income in future Lease Years, be considered an Operating Expense in the Lease Year(s) recovered by Lessee and shall be paid to Lessee prior to any other distribution of NOI to Lessor or Lessee pursuant to Section 6.2.

(e) To the extent that the actual Net Operating Income in more than one Lease Year during the term of this Lease is not sufficient to pay the Debt Service Payment, the Management Fee, and the Personal Property Payment for the relevant Lease Years, then the provisions of this Section 6.3 shall apply cumulatively with respect to each such Lease Year. For example, if there is a Deficiency of \$25,000 in the first Lease Year, then the \$25,000 Deficiency shall be considered an Operating Expense in the Lease Year(s) recovered by Lessee until the full Deficiency has been recovered. If, with respect to a subsequent Lease Year, after factoring in the \$25,000 Deficiency in the first Lease Year, there is a Deficiency in the subsequent Lease Year, then the Deficiency relating to the subsequent Lease Year shall also become an Operating Expense and treated in a like manner.

(f) Nothing contained in Sections 6.3(d) and (e) affect the obligation of Lessee to pay Guaranteed Rent as provided in Section 6.1.

7. DEFINITIONS RELATING TO PAYMENT OF RENT.

7.1 Gross Revenue. The term "Gross Revenue" means all money received by Lessee as a result of the sales of goods or the provision of services on the Leased Premises after the Commencement Date determined on an accrual basis, but shall not include:

- (1) Cash refunds or credits allowed on returns by customers;
- (2) 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 Lessee to the appropriate taxing authority, whether added to or included in the selling price;
- (3) Fees charged for golf lessons and instruction to the extent that such fees or any portion thereof are retained by the golf professionals giving lessons or instruction (including both instances where the fees, or portions thereof, are paid directly to the golf professionals and where the golf professionals receive bonuses or commissions based on the fees received from lessons or instruction);
- (4) The actual uncollectible amount of any check or bank draft received by Lessee as payment for goods or services and returned to Lessee from a customer's bank as being uncollectible (commonly "non-sufficient funds" checks);
- (5) The actual uncollectible amount of any charge or credit account (commonly "bad debts") incurred by Lessee for the sale of merchandise or services;
- (6) The actual uncollectible amount of any sale of merchandise or services for which Lessee accepted a credit card;
- (7) Sales made by any third party concessionaire or licensee who is not affiliated with Lessee, it being the intention of this Lease that only Lessee's share of the receipts of such concessionaires or licensees, if and to the extent actually received by Lessee, are to be included in the calculation of Lessee's gross revenue;
- (8) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers provided that any credit received must first be applied against any Operating Expense charge previously taken in respect of such item;

(9) The amount of any cash or quantity discounts or rebates received from sellers, suppliers or manufacturers who are not affiliated with Lessee; however, Lessee shall at all times be obligated to purchase at competitive prices;

(10) The amount of any gratuities paid or given by customers to or for employees of Lessee;

(11) The proceeds of the junior golf program referenced in Section 3.4(c), any Adopt-a-Charity or similar event, and any sponsorship revenues to the extent used to defray the costs of the junior golf program.

(12) The discounted portion of meals served or provided to employees of Lessee;

(13) The discounted portion of any sales of merchandise discounted to employees;

(14) Fees attributable to membership in the American Golf Club or the American Golf Players' Association (or any similar national or regional program implemented by Lessee), a program that allows members the right to play a limited number of rounds at discounted green fee and cart fee rates, to use the driving range, if any, at a discounted rate, and to receive limited food and beverage and merchandise discounts (however, green fees and other fees paid by such persons and prices paid for food, beverage, and merchandise shall be included in Gross Revenues);

(15) Reservation fees received from Lessee's operation of a regional or national advance reservation system; however the green fees and all other fees charged to persons making such reservations will be included in Gross Revenues; and

(16) Proceeds of any business interruption insurance maintained by Lessee so long as the premiums therefor were not previously charged as an Operating Expense.

7.2 Net Operating Income and NOI. The terms "Net Operating Income" and "NOI" mean Gross Revenue minus Operating Expenses. Lessor and Lessee acknowledge and agree that Net Operating Income in any Lease Year may be a negative number.

7.3 Operating Expenses. The term "Operating Expenses" as used herein means all costs and expenses of every kind and nature paid by Lessee in operating, insuring, repairing, replacing and maintaining the Leased Premises after the Rent Commencement Date. Such costs and expenses shall be determined on an accrual

basis and shall include, but not be limited to, golf course maintenance and repair costs (including, without limitation, major repair costs to the extent not paid out of the capital reserve), the Personal Property Payment referenced in Section 6.3(c), utilities, insurance premiums, costs of goods sold, compensation and expenses of the management staff and other employees directly employed at the Leased Premises, an amount equal to four percent (4%) of Gross Revenues to cover Lessee's expenses (including all direct and indirect costs for Lessee's and American Golf Corporation's offsite supervisory executive, accounting and management personnel), advertising and promotions, real and personal property taxes (including any regular annual increases thereto), assessments against the Leased Premises, the scheduled Guaranteed Rent, without taking into account any reductions or abatements in, or credits or offsets against, the same whether permitted under this Lease or otherwise, all unrecovered Deficiencies paid to Lessee pursuant to Section 6.3 above, uninsured losses, payments of deductible amounts or self-insurance (subject to the limitation in Section 16.2) or self-assumption amounts with regard to insurance policies, costs and expenses related to compliance with orders or directives of government agencies, an annual deduction for capital reserves equal to two percent (2%) of Gross Revenues, Additional Work performed pursuant to Section 13.2 (but only to the extent not previously included as an Operating Expense due to its inclusion in the capital improvement reserve), and any interest on funds borrowed by Lessee for equipment, improvements or any other aspect of the operation of the Leased Premises. Notwithstanding anything to the contrary set forth above, Operating Expenses shall not include costs and expenses incurred by Lessee in connection with any youth or junior program referenced in Section 3.4, it being understood that such costs and expenses shall be offset by Adopt-a-Charity, sponsorship, and other activities permitted by Section 3.4.

8. REPORTING AND PAYMENT OF ADDITIONAL RENT AND PARTICIPATION RENT. On or before March 1 of each Lease Year, or within sixty (60) days after the end of the Lease term, as applicable, Lessee shall submit to Lessor a statement signed by Lessee or a person authorized by Lessee showing in reasonable detail the amount of Net Operating Income, Gross Revenues and Operating Expenses and any Deficiency in accordance with Section 6.3(d) for the preceding Lease Year, and a remittance, if appropriate, of the amount of Participation Rent payable by Lessee to Lessor. Thereafter, Lessor and Lessee shall meet and confer as provided in Section 3.3.

9. MAINTENANCE AND EXAMINATION OF RECORDS. Lessee shall maintain, at its principal offices, its financial records pertaining to Net Operating Income, Gross Revenue and Operating Expenses relating to the Leased Premises for a period of two (2) years after the conclusion of any Lease Year. Further, all financial records pertaining to Net Operating Income, Gross Revenue and Operating Expenses at the Leased Premises shall, upon at least three (3) business days' prior written request from Lessor to Lessee, be open and available to Lessor or Lessor's representative for an examination at all reasonable times during business hours. Lessor shall be entitled at any time within two (2) years after the conclusion of the Partial Year or a Lease Year to question the sufficiency of any rent payments or the accuracy of the report furnished by Lessee.

10. TAXES.

10.1 Real Property Taxes. The Leased Premises are presently exempt from the payment of Real Property Taxes. Should there be a change in such tax-exempt status, Lessor shall pay direct to the appropriate taxing authorities, prior to delinquency (except in the case of contests made in good faith) Real Property Taxes levied against the Leased Premises, if any, during the Lease Term. If Lessor fails to pay such Real Property Taxes on a timely basis, then at Lessee's option, Lessee may pay the full amount of such Real Property Taxes assessed against the Leased Premises, if any, and thereafter Lessee shall receive a credit against the Guaranteed Rent and/or Participation Rent next payable under this Lease equal to the portion of real estate taxes advanced by Lessee on Lessor's behalf.

10.2 Definition of Real Property Taxes. The term "Real Property Taxes" as used herein means any commercial rental tax, assessment, penalty or tax imposed by any taxing authority against the real property constituting a part of the Leased Premises, including any special assessments for improvements made in connection with the construction of improvements to the real property constituting a part of the Leased Premises or any adjacent property owned by Lessor or any affiliate of Lessor, any tax imposed upon this transaction or based upon a reassessment of the Leased Premises due to a change of ownership or other transfer of all or part of Lessor's interest in the real property constituting a part of the Leased Premises.

10.3 Other Taxes. Lessee shall pay all taxes, license fees or other governmental charges assessed or imposed on the Personal Property owned by Lessee located on the Leased Premises or

upon the business operations of Lessee conducted on the Leased Premises.

## 11. UTILITIES.

11.1 Lessee's Obligations. Except for the payment required to be made by Lessor pursuant to Section 20.10, Lessee shall pay before delinquency all charges for utilities, including water, electricity, gas, heating, cooling and telephone, used by Lessee in Lessee's operation of the Leased Premises, including payments due under the contract with Groundwater Appropriators of the South Platte River Basin, Inc. as described in Exhibit "E" ("GASP Contract"). If Lessee fails to pay the same within thirty (30) days after Lessor notifies Lessee of such non-payment pursuant to Section 23.1, Lessor may pay the same in which case Lessee shall be obligated to reimburse Lessor pursuant to Section 23.2(b).

11.2 Lessor's Obligations. To the extent that costs for water for irrigation of the Leased Premises, including payments on the GASP Contract, exceed the "Maximum Lessee's Cost" (as defined below), Lessor shall pay all such excess costs. As used herein, Maximum Lessee's Costs shall be \$48,000 in 1999 and shall increase by 3% per annum commencing in 2000, so that the Maximum Lessee's Cost shall be \$49,440 in 2000, \$50,923 in 2001, and so forth. Should Lessor fail to pay when due any excess costs payable by it under this Section 11.2, Lessee may at its option and in addition to any other remedies pay the same and offset any such payments together with interest thereon as provided in Section 23.2(b) against the next succeeding payments of Guaranteed Rent and Participation Rent due hereunder.

## 12. COSTS; PRORATION OF INCOME AND EXPENSES.

12.1 Prorations. As of the Commencement Date and the expiration, or earlier termination of this Lease, Lessor and Lessee shall prorate the following items:

(a) All items of income relating to the operation of the Leased Premises including, without limitation, membership dues, locker fees, bag storage fees, deposits for tournaments, deposits for banquets and other functions, deposits for meetings, gift certificates for merchandise in the pro shop, rain checks and other prepaid items.

(b) All items of expense relating to the operation of the Leased Premises including, without limitation, Real Property



Taxes, if any, and other taxes, utilities and any liabilities, if any, under contracts expressly assumed by Lessee relating to the Leased Premises.

At least fifteen (15) days after the Commencement Date, Lessor shall deliver to Lessee a proposed statement of prorations setting forth all items to be prorated in the first Lease Year as of the Commencement Date and supported by all detail reasonably necessary to make such determination. Within ten (10) days after such delivery, Lessor and Lessee shall agree on the actual amount to be prorated.

12.2 Costs. Lessor shall at its sole cost and expense cause any mortgage loans or other encumbrances affecting the Leased Premises or any portion thereof to be paid in full concurrently with the execution hereof.

12.3 Sales Taxes and Legal Fees. Lessor shall be solely responsible for the payment of any sales or use tax due in respect of the transaction contemplated hereby. Each party shall be solely responsible for its own legal fees and incidental expenses.

### 13. CAPITAL IMPROVEMENTS.

13.1 Initial Capital Improvements. Lessee shall construct, or cause to be constructed, the alterations, additions and improvements to the Leased Premises described in Exhibit "C" ("the Work") and in so doing shall expend amounts consistent with the construction budget attached as Exhibit "D." Lessor shall have the right to approve Lessee's plans for the Work which approval shall not be unreasonably withheld or delayed. In performing the Work, Lessee may find it necessary at times to temporarily close portions of the Leased Premises, but such closure shall not affect the obligation of Lessee to pay Guaranteed Rent or Participation Rent due hereunder. Lessee shall complete the Work within eighteen (18) months after the Commencement Date, subject to extension for Force Majeure Events (as defined in Section 21).

13.2 Other Capital Improvements. During the term of the Lease, Lessee shall have the right, subject to Lessor's consent which will not be unreasonably withheld or delayed, to construct other additions and improvements to the Leased Premises as Lessee may deem necessary ("Additional Work"). Lessee shall provide for all foreseeable Additional Work in the annual capital improvement budget submitted to Lessor pursuant to Section 3.3. The parties contemplate that Additional Work will be paid for out of the capital improvement reserve provided for in Section 7.3. In

constructing such improvements and alterations, Lessee may find it necessary to close portions of the Leased Premises which closure shall not affect the obligation of Lessee to pay Guaranteed Rent or Participation Rent due hereunder. If the costs of any Additional Work exceed the amount of the capital improvement reserve provided for in Section 7.3 and if the work is "mandatory" (as defined below), the cost will be amortized with interest at the rate of 9% per annum over the remaining term of the Lease. If the work is not mandatory, the amortization length and rate of interest will be determined by mutual agreement of Lessor and Lessee prior to the commencement of any such work. For purposes hereof, Additional Work will be considered mandatory if it is necessary to bring the Leased Premises within the standard of operation required hereunder (such as replacement of HVAC or sprinkler systems when replacement rather than repair is necessary). In addition, future capital improvement reserves may be used to repay excess costs by mutual agreement of Lessor and Lessee.

13.3 Ownership of Improvements; No Liens. During the term of the Lease, the Work and all Additional Work shall be the property of Lessor, subject to the rights of Lessee under this Lease. Lessee shall not have the right to create or permit the creation of any lien attaching to Lessor's interest in the Leased Premises as a result of any construction of the Work or any improvements. The indemnification set forth in Section 17.1 shall apply to any such lien.

14. MAINTENANCE AND REPAIRS. Except as otherwise provided in this Lease, Lessee shall, at its sole cost, maintain and repair the Leased Premises, and keep the same in good order and in sanitary condition consistent with the comparable daily fee facilities in the Denver metropolitan area mentioned in Section 3.4(e) and shall comply with the maintenance standards set forth in Exhibit "H". In addition, subject to any matters existing as of the Commencement Date, Lessee shall keep and maintain the Leased Premises in compliance with all Laws during the Lease term.

15. LESSOR'S COOPERATION. Lessor recognizes and acknowledges that Lessee will need the assistance and cooperation of Lessor in order to properly perform and fulfill Lessee's covenants and obligations under this Lease. Therefore, Lessor agrees it shall use its best efforts to work with and cooperate with Lessee in securing all permits or licenses that are required in order for Lessee to fulfill its obligations under this Lease. Lessor further agrees it shall designate a specific officer or agent having appropriate experience and authority whose responsibility it is to

work with Lessee in assuring that Lessee obtains the full cooperation and assistance of Lessor, subject to the terms of this Lease and all applicable laws.

16. INSURANCE.

16.1 Insurance Coverage. Lessee shall maintain the following types of insurance coverage relating to the Leased Premises and Lessee's operations of the Leased Premises at all times throughout the Lease term:

(a) Liability Insurance. Lessee shall maintain, at Lessee'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. Lessor shall be named as an additional insured on such policy. Such policy shall be primary as respects all operations arising out of the Leased Premises.

(b) Worker's Compensation. Lessee shall maintain, at Lessee's sole expense, a policy or policies of worker's compensation insurance in compliance with applicable Colorado law.

(c) Fire Insurance. Lessee shall maintain, at Lessee's sole expense, a policy or policies covering loss or damage to the Leased Premises, including all golf course improvements otherwise known as "tee to green" coverage, the clubhouse and related buildings, and all Personal Property, furnishings and equipment at the Leased Premises. Such policy or policies will cover all risks and perils commonly included in extended coverage including but not limited to fire, vandalism, malicious mischief, and sprinkler leakage. Coverage limits shall be not less than the full replacement cost of the Leased Premises. Lessee shall also maintain insurance coverage on, or otherwise assume financial liability for, the Personal Property and the furnishings and equipment owned by Lessee.

(d) Rent Interruption Insurance. At Lessor's request and at Lessor's expense, Lessee shall procure a policy of rent interruption insurance for the Leased Premises containing such coverages as Lessor determines and as are available to Lessee.

16.2 General Provisions. In fulfilling its obligations for the acquisition of insurance coverage under Section 16.1 above, Lessee shall have the right to self-insure up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence (subject to increase by the percentage increase in each Lease Year in the

CPI (as defined above) over the CPI in effect as of the Commencement Date). Lessee shall be solely responsible for any deductible or self-insured retention in excess of \$25,000 per occurrence and the same shall not be considered an Operating Expense. Lessee 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 thirty (30) days' written notice to Lessor. At Lessor's request, Lessee shall submit to Lessor a certificate of coverage and proof of payment of premiums. Any insurance required to be carried under this Lease may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this Lease.

17. INDEMNITY.

17.1 Lessee's Indemnity. Lessee shall indemnify, protect, defend and hold Lessor harmless from all claims, demands, causes of action, liabilities, damages and costs, including reasonable attorneys' fees, resulting from any of the following:

(a) injury to persons or damage to property sustained on or about the Leased Premises and arising from Lessee's operations or as a proximate result of the acts or omissions of Lessee, its employees or agents; (b) any contracts entered into by Lessee, its employees or agents, relating to any construction or improvement of the Leased Premises and any mechanics liens, notice of intent to file liens, claims or charges related thereto; (c) Lessee's performance of, or failure to perform, its obligations under any labor or employment condition or situation occurring or existing during the term of this Lease; (d) the presence in, on under or about the Leased Premises, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products as defined or regulated under any and all Laws (as defined in Section 20.14) from or through the Leased Premises as a result of the acts of Lessee, its agents, employees, invitees, and contractors; (e) any act or omission constituting negligence or willful misconduct on the part of Lessee, or its employees or agents; (f) any pending or threatened claims, actions, litigation, proceedings or investigations resulting from the act of Lessee; (g) subject to Article 12, any and all federal, state, county and municipal taxes, assessments, penalties and other charges (including without limitations sales taxes) relating to the Leased Premises during the term of the Lease; and (h) any breach of this Lease by Lessee. The foregoing indemnity does not apply, however, to any liability as may be the result of the direct and proximate negligence, act or willful misconduct of Lessor or Lessor's employees or agents.

17.2 Lessor's Indemnity. Lessor shall indemnify, protect, defend and hold harmless Lessee and its owners, officers, directors, shareholders and employees from and against any and all claims, demands, causes of action and liability resulting from any of the following: (a) injury to persons or damage to property sustained on or about the Leased Premises and arising from Lessor's operations or as a proximate result of the acts or omissions of Lessor, its employees, agents, and prior tenants, (b) any contracts entered into by Lessor relating to any construction or improvement of the Leased Premises and any liens, payments or other changes related thereto; (c) Lessor's performance of, or failure to perform, its obligations under any labor or employment condition or situation occurring or existing prior to the Commencement Date; (d) the presence in, on, under or about the Leased Premises, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products (as defined or regulated under any and all Laws) from or through the Leased Premises occurring or existing prior to the Commencement Date as a result of the acts of Lessor, its agents, employees, invitees, and contractors; (e) any act or omission constituting negligence or wilful misconduct on the part of Lessor, or its employees or agents; (f) any pending or threatened claims, actions, litigation, proceedings, governmental investigations as of the Commencement Date resulting from the act of Lessor or any prior tenant; (g) any and all federal, state, county and municipal taxes, assessments, penalties and other charges (including, without limitation, sales taxes) relating to the Leased Premises or the use or operation thereof for the period up to the Commencement Date; and (h) any breach of this Lease by Lessor. The foregoing indemnity does not apply, however, to any liability as may be the result of the direct and proximate negligence, act or willful misconduct of Lessee or Lessee's employees or agents.

18. DAMAGE AND RESTORATION.

18.1 Total Destruction. If the buildings and other improvements on the Leased Premises should be totally destroyed (i.e., damage in excess of partial destruction as defined in Section 18.2) by fire or other casualty or a force majeure occurrence, Lessee shall have the option, to be exercised in writing within sixty (60) days of such destruction, to either (a) terminate this Lease in which event the parties shall have no further obligations hereunder or (b) elect to repair and restore the Leased Premises and thereafter diligently pursue such restoration to completion.

18.2 Partial Destruction. If the buildings or other improvements on the Leased Premises should be partially damaged by fire or other casualty or a force majeure occurrence, then Lessee shall, if Lessee is required by the terms of this Lease to insure against the cause of such damage or destruction or if the cost to repair any uninsured casualty is less than \$10,000, restore the buildings and improvements in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings and improvements existed prior to their damage or destruction. For purposes of this Lease, the term "partially damaged" means (a) damage to the extent of one third or less of the value of the buildings and improvements at the Leased Premises or (b) damage to the extent that no more than nine holes on the golf course at the Leased Premises are rendered unplayable. Any other damage or destruction shall be considered total and the provisions of Section 18.1 shall apply. If Lessee is not required by the terms of this Lease to insure against the cause of such damage or destruction and if the cost to repair any uninsured casualty is more than \$10,000, then Lessee may terminate this Lease upon written notice to Lessor in which event the parties shall have no further liability hereunder. However, if the cost to repair an uninsured casualty is more than \$10,000, Lessor may negate Lessee's election to terminate by notifying Lessor within fifteen (15) days after receipt of Lessee's notice that Lessor agrees to pay all repair costs in excess of \$10,000.

If Lessee fails to terminate, then Lessee shall repair and restore in accordance with the requirements set forth above. In addition, notwithstanding anything in this Section 18.2 to the contrary, if, as a result of the partial destruction of the Leased Premises, Lessee is unable to make full and productive economic use of the Leased Premises and, in Lessee's reasonable determination, the full and complete restoration of the Leased Premises will take in excess of one hundred eighty (180) days, then Lessee may, upon written notice to Lessor within sixty (60) days after the partial destruction occurs, terminate this Lease, in which event the parties shall have no further obligations hereunder.

18.3 Damage During the Last Two Years of the Lease Term. Notwithstanding the provisions of Section 18.2 to the contrary, if during the last two years of the Lease term, the buildings or other improvements on the Leased Premises are damaged to the extent of ten percent (10%) or more of the value of the buildings, improvements and Personal Property at the Leased Premises or more, then Lessee shall have the option, to be exercised within thirty (30) days of such damage or destruction, to either (a) terminate this Lease in which event the parties shall have no further obligations hereunder or (b) elect to repair and restore the Leased Premises in accordance with the provisions of Section 18.2 above.

18.4 Rental Abatement and Term Extension. If Lessee is unable to make full and productive economic use of the Leased Premises during repair, reconstruction or replacement as provided for in this Section, Lessee's rental obligations under Article 6 shall be reduced until such time as Lessee is again fully able to do so. Such reduction shall be in proportion to the degree to which Lessee's use of the Leased Premises is impaired. The Lease term shall also be extended for a period equivalent to the length of time required to restore the Leased Premises and make them available to Lessee for Lessee's use pursuant to Article 2 of this Lease. Lessor shall be entitled to all proceeds of any rent interruption insurance provided under Section 16.1(d).

18.5 Application of Insurance Proceeds Upon Termination. If, after the partial or total destruction of the Leased Premises, this Lease is terminated pursuant to the provisions of this Article 18, then all insurance proceeds made available on account of such destruction shall be paid to Lessor.

19. EMINENT DOMAIN.

19.1 Total Taking. If at any time during the Lease term, use of all or a material portion of the Leased Premises shall be taken by condemnation or by right of eminent domain, this Lease shall terminate on the date of such taking and all rental payments already made shall be apportioned as of the date of the taking. For purposes of this Article, a "material portion" shall be deemed to have been taken if the remaining portion cannot economically be used by Lessee, in Lessee's reasonable judgment, in the manner in which the Leased Premises were used prior to such taking.

19.2 Partial Taking. In the event that use of less than all or a material portion of the Leased Premises is taken by condemnation or by right of eminent domain, this Lease shall not terminate, but the Guaranteed Rent due during the remainder of the Lease term shall be reduced as of the date of such partial taking in a proportion to the reduction in the Gross Revenues of the Leased Premises attributable to such partial taking.

19.3 Condemnation Award. If there is a taking by right of eminent domain, the award shall belong to and be paid to Lessor, except that Lessee shall receive from the award a sum attributable to the value of Lessee's leasehold estate, including improvements.

20. REPRESENTATIONS, WARRANTIES AND COVENANTS.

20.1 Power and Authority. Lessor hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Lease and to fully perform each and all of its obligations under this Lease. Lessee hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Lease and to fully perform each and all of its obligations under this Lease.

20.2 No Conflict. Lessor represents and warrants that neither this Lease nor the consummation of the transactions contemplated by this Lease will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Lessor or the Leased Premises is bound, nor to the best of Lessor's knowledge will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to Lessor or the Leased Premises. Lessee represents and warrants that neither this Lease nor the consummation of the transactions contemplated by this Lease will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Lessee is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to Lessee.

20.3 Encumbrances. Lessor shall not (a) grant any easements, rights of way, licenses or other similar rights, (b) convey to the public or dedicate to the public all or any portion of the Leased Premises, or (c) consent to the Leased Premises being included as part of an assessment district, or (d) encumber, lien or mortgage its fee interest in the Leased Premises, in each case without obtaining Lessee's prior written consent, which consent shall be granted or withheld in Lessee's reasonable discretion.

20.4 Title to Premises; Compliance with Subdivision Laws. Lessor hereby represents and warrants that it has good and marketable title to the Leased Premises, free and clear of all monetary liens and encumbrances. Lessor further represents and warrants that the Leased Premises are not in violation of any subdivision laws of the State of Colorado.

20.5 Utilities. Lessor hereby represents and warrants that to the best of its knowledge, as of the Commencement Date, all water, sewer, gas, electric, telephone and drainage facilities and all other utilities required by law for the intended use and operation of the Leased Premises (collectively, "Facilities") shall be (i) installed across public property or valid easements or



rights of way to the boundary lines of the Leased Premises; and (ii) connected pursuant to valid permits. Lessor hereby further represents and warrants that, to the best of its knowledge, such Facilities shall, as of the Commencement Date, be adequate to service the Leased Premises (including, without limitation, the eighteen (18) hole daily fee golf course located thereon).

20.6 Zoning: Licenses and Easements. Lessor hereby represents and warrants that the use of the Leased Premises as a golf course and related activities, including the sale of food and alcoholic beverages, complies with the designated zoning of the Leased Premises. Lessor hereby represents and warrants, to the best of its knowledge, that it has obtained all licenses, permits, easements and rights-of-way, including proof of dedication, required from all governmental authorities having jurisdiction over the Leased Premises or from private parties for the intended use and operation of the Leased Premises as a golf course and related activities and to assure vehicular and pedestrian ingress to and egress from the Leased Premises at all access points to be used.

20.7 No Third Party Rights. Lessor hereby represents and warrants that no third party has any right or interest in the Leased Premises that would interfere with Lessee's use and operation of the Leased Premises. Lessor has obtained all necessary approvals from non-governmental third parties in order to enter into this Lease.

20.8 No Hazardous Materials. Lessor hereby represents and warrants that to the best of its knowledge there has been no production, generation, treatment, collection, disposal, discharge or storage on the Leased Premises or in any groundwater or aquifer below the surface of the Leased Premises by Lessor, or to Lessor's best knowledge by any prior owner or occupant of the Leased 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 Colorado or the County of Denver. Lessor has not received any notices from any governmental agency or other third party regarding the existence of any hazardous or toxic substance, material, or waste on the Leased Premises or in the improvements thereon or requiring the removal, clean-up, or

remediation of any environmental condition relating to the Leased Premises. Lessor represents and warrants that the Leased Premises are not subject to any enforcement action by any governmental agency regarding the environmental condition of the Leased Premises and that the Leased Premises have not been assigned an identification number nor are the Leased Premises subject of an environmental report by the State of Colorado or any of its subdivisions. 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 present or future environmental or other similar laws or regulations.

20.9 Labor Matters. Lessor represents and warrants that Lessor has no collective bargaining agreement affecting the Leased Premises. Lessor further represents and warrants that there have been no demands for collective bargaining by any union or labor organization or other organization of Lessor's employees and no arbitration proceedings are pending or to Lessor's knowledge threatened against or affecting Lessor.

20.10 Termination of Contracts; Assignment and Assumption of Surviving Contracts. Lessor has terminated, effective prior to the Commencement Date, all contracts and agreements made by Lessor relating to the Leased Premises except for those contracts identified on Exhibit "E" attached hereto ("Surviving Contracts"). Concurrently with the mutual execution and delivery of this Lease, Lessee and Lessor shall each execute and deliver to the other the Assignment and Assumption of Surviving Contracts in the form of Exhibit "F" attached hereto. Notwithstanding the foregoing, pursuant to that certain "Agreement re System Development Charges" between Lessor and the City and County of Denver dated December 30, 1997 ("SDC Agreement"), Lessor shall be solely responsible for, and shall promptly pay when due, all charges in the approximate amount of \$396,000 owing thereunder. Lessee shall be solely responsible for the performance of all other obligations of Lessor under the SDC Agreement.

20.11 Employees. Lessor will have no employees at the Leased Premises effective as of the Commencement Date.

20.12 Existing Employees. Lessee will make reasonable efforts to employ as many qualified existing employees of the present tenant (Professional Golf Services) at the Leased Premises as possible, subject to Lessee's customary employment practices and policies. Lessee acknowledges that such employees are not the employees or agents of Lessor and Lessor is not responsible for any of the benefits of such employees.

20.13 No Litigation or Reassessment. Lessor represents and warrants that there is no claim, action, litigation, arbitration, or other proceeding pending or, to the best of Lessor's knowledge, threatened against Lessor which relates to the Leased Premises or the transaction contemplated hereby or which could result in the imposition of the lien against the Leased Premises. If Lessor receives notice of any such claim, litigation or proceeding prior to the Commencement Date, Lessor shall promptly notify Lessee of the same in writing. In addition, Lessor represents and warrants that Lessor has no knowledge of any proposed reassessment of the Leased 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 Leased Premises.

20.14 No Violations of Law. Lessor represents and acknowledges that neither the Leased Premises nor Lessor is in violation of, and Lessor has not received any notice of violation of, any law, ordinance, regulation, governmental order or requirement applicable to the Leased Premises (collectively "Laws") including, without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Leased Premises. If Lessor receives such a notice at any time, either prior to or after the Commencement Date, Lessor shall immediately notify Lessee in writing.

20.15 Water Rights. Lessor represents and warrants to Lessee that (a) there is presently available to the Leased Premises an adequate water supply for the continuing operation and maintenance of the golf course, (b) Lessor has delivered to Lessee true, correct and complete copies of all documents, agreements, instruments, certifications, registrations, and permits evidencing Lessor's entitlement to a water supply adequate for the construction, operation and maintenance of the Leased Premises as a high-end daily fee golf course (collectively the "Water Documents"); (c) there are no other agreements or documents concerning the supply of water to irrigate the Leased Premises; (d) there are no amendments, modifications or supplements to the Water Documents except as reflected in those documents delivered to Lessee; (e) Lessor is not in default under or in breach of any of the Water Documents and Lessor is current in any payments that it is obligated to make under any of the Water Documents; and (f) Lessor has not previously assigned or transferred any of its rights or interests under the Water Documents. Lessor further represents and warrants that all of Lessor's rights to water

pursuant to the Water Documents shall be available for Lessee's use without additional charge or consent by any party.

20.16 Correct Documentation. All of the Documents delivered by Lessor to Lessee in connection with this Lease are true and correct.

20.17 No Omissions or Misstatements. All of the representations and warranties contained in this Article 20 are true and correct on the date hereof and will be true and correct as of the Commencement Date, and no representation by Lessor or Lessee 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. Upon Lessee's request therefor, Lessor shall execute a certificate reaffirming that all of the representations and warranties contained in this Article 20 are true and correct as of the Commencement Date. Immediately upon discovering any fact which would render any representation or warranty in this Lease untrue, incorrect or misleading in any respect, Lessor or Lessee, as the case may be, shall immediately notify the other in writing.

21. FRUSTRATION OF PURPOSE. At any time during the Lease term, (i) if the governing body of any political subdivision having competent jurisdiction over the Leased Premises should enact any valid zoning or other ordinance, law or regulation (collectively, "Use Law") which prohibits the use of the whole or a substantial part of the Leased Premises for the purposes as provided in Section 3.1 of this Lease; (ii) if an event of force majeure (collectively, "Force Majeure Event") occurs, including without limitation, declared or undeclared war, sabotage, riot or other acts of civil disobedience, acts or omissions of government, fires, explosions, floods, earthquakes, or other acts of God, and such Force Majeure Event is not a cause against which Lessee is required to insure under this Lease and such Force Majeure Event substantially prevents Lessee's use of the Leased Premises as provided for in Section 3.1 of this Lease; or (iii) if Facilities become unavailable or inadequate so as to substantially prevent Lessee's use of the Leased Premises as provided in Section 3.1 of this Lease, it is agreed that Lessee may elect, within one hundred twenty (120) days after the effective date of such Use Law or the occurrence of the Force Majeure Event, or the date Facilities become unavailable or inadequate, to cancel this Lease and surrender possession of the Leased Premises. Any such cancellation and surrender shall act to release and discharge Lessee from any further obligation under this Lease. In addition, it is agreed that during the period of any Force Majeure Event; during the

period that Facilities are unavailable or inadequate (and any inadequacy substantially interferes with Lessee's use of the Leased Premises); and/or during any period that any defect in the Leased Premises substantially interferes with Lessee's use of the Leased Premises as provided in Section 3.1 of this Lease, except for the respective obligations of Lessor and Lessee under Article 17 above, Lessor and Lessee shall be excused from performing their respective obligations under this Lease whether or not Lessee exercises its right to terminate as provided herein. Notwithstanding anything to the contrary set forth above, normal and ordinary breakage including, but not limited to, the sprinkler system not resulting from casualty or an extraordinary event shall not be considered a Force Majeure Event.

22. ASSIGNMENT. Except as otherwise provided below, Lessee shall not assign this Lease or sublet all of the Leased Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee shall notify Lessor of any proposed assignment or subletting at least thirty (30) days prior to the proposed effective date of such assignment or subletting. In the event that any such assignment or subletting is approved by Lessor, Lessee and Guarantor shall nevertheless remain liable under this Lease. Lessor's consent shall not be required for any assignment or sublease of all or any portion of Lessee's interest in this Lease to (i) a joint venture or general partnership, the partners of which are Lessee and Stacey Hart, or (ii) any corporation, partnership or other entity which controls, is controlled by or is under common control with Lessee or David G. Price, to any corporation resulting from the merger of or consolidation with Lessee, or in connection with the sale of all or a substantial portion of Lessee's assets or the stock of Lessee ("Lessee's Affiliate"). In the event of an assignment pursuant to the preceding sentence, any Lessee's Affiliate shall assume in writing all of Lessee's obligations under this Lease, but Lessee and Guarantor shall remain liable under this Lease. Lessee shall be permitted to enter into subleases or concession agreements for the operation of the pro shop, food and beverage services, golf course maintenance, and other related activities at the Leased Premises with the prior written consent of Lessor, which consent will not be unreasonably withheld or delayed.

23. BREACH AND REMEDIES. The following conditions will constitute a breach of this Lease and a default thereunder:

23.1 Conditions of Default.

(a) If Lessee fails to pay rent or fulfill any other monetary obligation of Lessee to Lessor, and Lessee fails to cure such monetary default within thirty (30) days after written notice from Lessor to Lessee of such monetary default.

(b) If either party fails to perform any of its other non-monetary obligations under this Lease when due or called for, and the party in default fails to cure such non-monetary default within sixty (60) days after written notice from the non-defaulting party of such non-monetary default; provided, however, that if the nature of the non-monetary default is of a nature such that it cannot be fully cured within that sixty (60) day period, the party in default shall have such additional time as is reasonably necessary to cure the default so long as the party in default is proceeding diligently to complete the necessary cure after service of notice by the non-defaulting party.

23.2 Remedies.

(a) If any of the conditions identified in Section 23.1 above should occur and the party in default does not cure the default, the non-defaulting party may elect to terminate this Lease immediately and seek all remedies as provided under law and equity.

(b) 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.

(c) If either Lessor or Lessee should bring an action in a court of law to enforce any of its rights or remedies under this Lease, both parties agree that the prevailing party in any such litigation shall be entitled to a recovery of reasonable attorneys' fees and costs incurred by way of such action.

### 23.3 Limited Arbitration.

Lessor and Lessor understand and agree that should any controversy arise as to the interpretation of certain provisions under this Lease and if the amount of any such dispute is \$100,000 or less, said controversy shall be submitted for binding arbitration to a neutral arbitrator in accordance with the rules and regulations of the American Arbitration Association at its office closest to the Leased Premises. Lessor and Lessee covenant and agree to amicably choose the arbitrator and to diligently pursue all such matters to a speedy conclusion. The costs of arbitration shall be advanced equally by the parties, but the arbitrator may award reimbursement of such costs and attorneys' fees to the prevailing party. The arbitrator may only award monetary damages, and no other relief. The arbitrator's decision may be submitted by either party to the District Court in and for the City and County of Denver for enforcement. Those matters subject to arbitration are as follows:

(a) Junior golf program issues relating to the interpretation and implementation of the provisions of Section 3.4(c).

(b) Calculation and payment of Participation Rent in accordance with Section 6.2(c).

(c) Matters regarding calculation of Gross Revenue (Section 7.1), Net Operating Income (Section 7.2), and Operating Expenses (Section 7.3).

(d) Capital improvement issues in accordance with Article 13.

(e) Maintenance and repair issues in accordance with Article 14.

(f) Rental abatement matters in accordance with Section 18.4 and Article 6.

The intent of the parties is to resolve quickly and expeditiously by arbitration any disputes arising out of the above-listed matters where the amount in dispute does not exceed \$100,000. All other matters, including but not limited to controversies where the amount in dispute is \$100,000 or more, disputes where a remedy other than damages is sought, defaults, indemnities, representations and warranties, frustration of purpose, and general provisions, shall be subject to the Section 23.2 remedies provision.

24. RIGHT OF FIRST REFUSAL. If Lessor solicits or receives a "bona fide offer" (as defined below) to purchase Lessor's fee interest in the Leased Premises from a third party, before accepting such offer, Lessor shall notify Lessee of the terms and conditions of such offer and shall identify the proposed purchaser. An offer is considered a "bona fide offer," for purposes of this Article 24, if the offer complies with the following minimum requirements and does not contain additional provisions to the contrary: (a) the offer must be in writing and must be an offer to purchase the entire Leased Premises, and, if accepted by Lessor, must constitute a legal, valid and binding obligation of the purchaser; (b) the offer must be by a party who is unaffiliated with Lessor (i.e., is not controlled by, under common control with, or does not control any individual or entity constituting Lessor); and (c) the offer must provide for a minimum of \$50,000 in cash to be deposited into escrow upon the acceptance of the offer by Lessor, which deposit may be refundable pursuant to the terms of the offer. Thereafter, Lessee (or an affiliate of Lessee, including, without limitation, National Golf Properties, Inc., a Delaware corporation ("NGP") and any partnership in which NGP is a partner) shall have a period of thirty (30) days from receipt of Lessor's written notice within which to agree to purchase Lessor's fee interest in the Leased Premises on the terms and conditions set forth in such offer. If Lessee fails to provide Lessor with written notice of its intent to purchase within thirty (30) days, then Lessor may sell its fee interest in the Leased Premises to the proposed purchaser provided, however, if such sale is not consummated within one hundred eighty (180) days after the expiration of Lessee's thirty (30) day response period or pursuant to negotiations with a bona fide purchaser, Lessor agrees to a sale which is less favorable to Lessor (for example, among other things, Lessor agrees to a lower purchase price or a combination of a lower cash payment and a correspondingly higher level of purchase money financing), then prior to accepting a bona fide offer and selling its fee interest in the Leased Premises, Lessor must once again notify Lessee of any pending offers (including any offers that Lessee has previously rejected) and the procedures set forth in this Article 24 shall once again apply. If Lessee gives timely notice of its acceptance of a bona fide offer, Lessor and Lessee shall promptly enter into an agreement on the terms and conditions set forth in the offer and such other terms and conditions as agreed to by Lessor and Lessee. For purposes hereof, an offer to purchase shares constituting a controlling interest in Lessor shall be deemed to be an offer which triggers the provisions of this Article 24. During the term of this Lease, Lessor may not accept an offer which is not a bona fide offer. Without limiting the foregoing, Lessor may not accept an offer which covers less than



the entire Leased Premises. Any attempt to accept an offer which is not a bona fide offer shall be a breach of Lessor's obligations hereunder and, at Lessee's election, shall be null and void. If Lessor sells its fee interest in the Leased Premises in accordance with the provisions hereof, Lessor may concurrently with the transfer terminate this Lease by written notice given to Lessee at least ninety (90) days prior to the effective date of termination as determined by Lessor. Such termination shall not be effective unless Lessor pays to Lessee at termination an amount equal to the unamortized value of any capital improvements made by Lessee, except those capital improvements paid for by the 2% capital reserve established in accordance with Section 7.3. If Lessor does not timely terminate, then this Lease (except for the provisions of this Article 24) shall thereafter remain in full force and effect and shall be binding on Lessor's successor and Lessor shall be released from any liability accruing under this Lease from and after Lessor's transfer of the Leased Premises. The provisions of this Article 24 apply only to a sale or transfer by Lessor and shall not apply to any sale or transfer by any successor in interest to Lessor. Unless Lessor has properly and timely terminated this Lease pursuant to this Article 24, this Lease (except for the provisions of this Article shall 24) shall inure to the benefit of, and be binding upon, such successor and all of its successors and assigns.

25. QUIET ENJOYMENT. Subject only to the terms of this Lease, so long as Lessee complies with its obligations under this Lease, Lessor shall secure to Lessee the quiet and peaceful enjoyment of the Leased Premises and the sole and exclusive possession of the Leased Premises without objection or interference from Lessor or any party claiming under Lessor.

26. GENERAL PROVISIONS.

26.1 Entire Agreement. This Lease contains all of the agreements of the parties with respect to the matters covered by this Lease, 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 Lease. The provisions of this Lease shall not be amended or altered except by an agreement in writing signed by both of the parties.

26.2 Waiver. Waiver by either Lessor or Lessee of any breach by the other of any covenant, condition or obligation contained in this Lease or failure by either Lessor or Lessee to

exercise any right or 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 Lessor or Lessee in respect of any such subsequent breach.

26.3 Memorandum of Lease. Concurrently with the execution of this Lease, Lessor and Lessee agree to execute and deliver a short form memorandum of this Lease in the form of Exhibit "G" hereto which Lessee shall record in the Official Records of the County of Denver, State of Colorado. 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 Lease.

26.4 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 Lease.

26.5 Brokers. Lessor and Lessee represent to each other that they are not obligated to any broker or finders in connection with this Lease except for Real Estate Capital Corporation (whose fee Lessor agreed to pay). 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 Lease.

26.6 Notices and Addresses. All notices, demands, requests or replies provided for or permitted by this Lease shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery with receipt acknowledged in writing; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (3) 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 (3) 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 Lessor shall be:

Clayton Foundation  
3801 Martin Luther King Blvd.  
Denver, Colorado 80205  
Fax: ~~(310)~~ 331-0248  
(303)

The address of Lessee shall be:

American Golf Corporation  
2951 28th Street, Suite 3000  
Santa Monica, California 90405  
Attention: Legal Department  
Fax: (310) 664-6165

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

26.7 Governing Law; Partial Invalidity. This Lease and the rights and liabilities of the parties to the Lease shall be governed by the laws of the State of Colorado. If any term or provision of this Lease or application of the Lease to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

26.8 Holding Over. If Lessee does not vacate the Leased Premises upon the expiration or earlier termination of the Lease, Lessee's occupancy of the Leased Premises shall be a "month-to-month" tenancy, subject to all the terms of this Lease applicable to a month-to-month tenancy, except the Guaranteed Rent shall increase to an amount equal to 150% of the Guaranteed Rent payable immediately prior to such holding over.

26.9 Estoppel Certificates. Upon Lessor's or Lessee's written request, the other party shall execute, acknowledge and deliver to the requesting party, a written statement certifying: (a) that none of the terms or provisions of this Lease have changed (or if they have been changed, stating how they have been changed); (b) that this Lease has not been cancelled or terminated; (c) the last date of payment of the Guaranteed Rent and other charges and the time period covered by such payments; and (d) that the other

party is not, to the best of the certifying party's knowledge, in default under this Lease (or, if the other party is claimed to be in default, stating why). 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 Lessor or Lessee's interest in this Lease.

26.10 Captions. Captions in this Lease are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

26.11 Exhibits. The Exhibits referred to below and attached to this Lease are incorporated herein as if set forth in full:

|             |    |                                                        |
|-------------|----|--------------------------------------------------------|
| Exhibit "A" | -- | Legal Description of Golf Course.                      |
| Exhibit "B" | -- | Intentionally Omitted.                                 |
| Exhibit "C" | -- | Schedule of Capital Improvements to be Made by Lessee. |
| Exhibit "D" | -- | Construction Budget.                                   |
| Exhibit "E" | -- | Schedule of Surviving Contracts.                       |
| Exhibit "F" | -- | Assignment and Assumption of Surviving Contracts.      |
| Exhibit "G" | -- | Memorandum of Lease.                                   |
| Exhibit "H" | -- | Maintenance Standards                                  |
| Exhibit "I" | -- | Personal Property and Equipment to be Acquired         |

26.12 Further Assurances. Lessor and Lessee agree that at any time or from time to time after the execution of this Lease, they shall, upon request of the other, execute and deliver such further documents and do such further acts and things as may be reasonably requested in order to fully effect the purpose of this Lease.

26.13 No Joint Venture. Nothing contained in this Lease 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 Lessor and Lessee. It is understood and agreed that neither any provisions contained in this Lease nor any acts of Lessor or Lessee shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

26.14 No Interpretation Against Draftsman. Lessor and Lessee hereby agree that no provision of this Lease shall be construed against either Lessee or Lessor on the basis that the provision was drafted by such party or such party's counsel.

27. ACQUISITION OF CERTAIN PERSONAL PROPERTY. On the Commencement Date, Lessee will purchase for cash from Lessor that certain personal property and equipment ("Sold Personal Property") described in Exhibit "I" for a price equal to \$350,000. Lessor will execute and deliver to Lessee a bill of sale to the Sold Personal Property on the Commencement Date in form and substance reasonably acceptable to Lessee.

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

"Lessor"

THE CLAYTON FOUNDATION, as Trustee  
of the George W. Clayton Trust,  
a Colorado Trust

By: [Signature]  
Its: CHAIRMAN

By: [Signature]  
Its: PRESIDENT

"Lessee"

AMERICAN GOLF CORPORATION,  
a California corporation

By: [Signature]  
Its: Theodore F. Kahan  
Secretary and General Counsel