

St. Louis City Ordinance 65044

FLOOR SUBSTITUTE
BOARD BILL NO. [00] 117

INTRODUCED BY ALDERMAN LYDIA CREWS

An ordinance relating to Forest Park, recommended by the Board of Public Service and the Board of Estimate and Apportionment; authorizing and directing the execution and delivery of an agreement among the City of St. Louis, the Norman K. Probst Foundation, Inc., a Missouri not-for profit corporation, American Golf Corporation, a California corporation, and Forest Park Forever, Inc., a Missouri not-for-profit corporation, in substantially the form set out in Exhibit I hereto (the "Golf Funding Agreement"); authorizing and directing the execution and delivery of an Amended and Restated Lease Agreement between the City and American Golf Corporation of certain land used for municipal golf courses in Forest Park, in substantially the form set out in Exhibit II hereto (the "Golf Lease"); authorizing the execution of certain other documents; repealing Ordinance 55403 (Section 22. 44.220, Revised Code 1994); designating names of certain facilities in Forest Park; amending Section 22.04.080, Revised Code, 1994; authorizing and directing establishment of a Forest Park Golf Course Reconstruction Fund; authorizing and directing the Board of Public Service to take various actions relating to the design and reconstruction of the municipal golf courses pursuant to the Golf Funding Agreement; providing that such reconstruction shall be carried out in accordance with detailed plans and specifications adopted and approved by the Board of Public Service before bids are advertised therefor; requiring guarantees by contractors of work and materials; estimating the cost of the work of designing and reconstructing the municipal golf courses and constructing a new golf clubhouse to be Twelve Million Five Hundred Thousand Dollars (\$12,500,000) of which the City's share will be One Million Six Hundred Thousand Dollars (\$1, 600, 000) and appropriating Twelve Million Five Hundred Thousand Dollars (\$12,500,000) from the Forest Park Golf Course Reconstruction Fund for the project; authorizing the Comptroller to draw warrants, disburse appropriated funds and receive and disburse funds received under the Golf Funding Agreement and a related Disbursing Agreement; providing requirements for payment of prevailing wages and overtime and compliance with applicable law for

contracts pursuant to this ordinance, and providing that specifications hereunder shall provide for compliance with the Mayor's Executive Orders on Equal Opportunity and MBE/WBE utilization, and that advertisements for bids shall be subject to applicable Missouri law and Charter and ordinance provisions; with an emergency provision.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The provisions of any other ordinance to the contrary notwithstanding, the Mayor and Comptroller are hereby authorized and directed to execute and deliver an agreement among The City of St. Louis, the Norman K. Probst Foundation, Inc., a Missouri not-for-profit corporation, American Golf Corporation, a California corporation, and Forest Park Forever, Inc., a Missouri not-for-profit corporation, in substantially the form set out in Exhibit I hereto (the "Golf Funding Agreement"), incorporated herein by this reference, with revisions thereto which are consistent with this ordinance and approved by the City Counselor.

SECTION TWO. The provisions of any other ordinance to the contrary notwithstanding, the Mayor and Comptroller are hereby authorized and directed to execute and deliver an Amended and Restated Lease Agreement of certain property of the City in Forest Park, between the City and American Golf Corporation, a California corporation, in substantially the form set out in Exhibit II hereto ("the Golf Lease"), incorporated herein by this reference, with revisions thereto which are consistent with this ordinance and approved by the City Counselor.

SECTION THREE. The Mayor and Comptroller are authorized and directed to execute on behalf of the City an escrow agreement, disbursing agreement, and memorandum of agreement as provided for in the Golf Funding Agreement in forms approved by the City Counselor to form and as consistent herewith, and to execute or approve other documents as may be necessary and appropriate to implement this ordinance which are approved by the City Counselor as to form and as consistent herewith.

SECTION FOUR. Ordinance 55403 (Section 22.44.220, City Code) is hereby repealed, effective on the occurrence of the Escrow Release Condition under Article II Section 7(g) of the Golf Funding Agreement.

SECTION FIVE. On and after the date of the occurrence of the Escrow Release Condition under Article II Section 7 (g) of the Golf Funding Agreement, the new Clubhouse to be constructed pursuant to the Golf Funding Agreement, the 18 hole golf course in Forest Park and the 9 hole golf course in Forest Park sometimes referred to as the Forest Park 9 Hole Course are designated and shall be known as The Norman K. Probstein Community Golf Courses and Youth Learning Center in Forest Park. Upon the completion of the reconstruction of the Forest Park municipal golf courses pursuant to the Golf Funding Agreement and the Golf Lease, the three nine hole golf courses then comprising the Norman K. Probstein Community Golf Courses and Learning Center in Forest Park are designated as and shall be known as the Dogwood, Hawthorn and Redbud courses, respectively, as specified by the Golf Funding Agreement. Upon the completion of the new Clubhouse the bar and grille area within the Clubhouse is designated and shall be known as "Ruthie's Caf☞" and the main dining/assembly room within the Clubhouse is designated and shall be known as the "Hall of Champions".

SECTION SIX. Section 22.04.080, City Code, is hereby amended, effective upon the occurrence of the Escrow Release Condition under Article II Section 7 (g) of the Golf Funding Agreement, to be and to read as follows:

The Director of Parks, Recreation and Forestry shall have authority to designate officially certain places in the public parks, places and squares which have been improved by private donations by the name of the donor, and he shall in all such cases file a copy of the articles or stipulations of donation with the register; provided, that the Director of Parks, Recreation and Forestry shall not have such authority within the area of the Norman K. Probstein Community Golf Courses and Learning Center in Forest Park except to the extent permitted by the Golf Funding Agreement authorized by Ordinance ___ (F.S. B.B. #117).

SECTION SEVEN. The Comptroller is hereby authorized and directed to establish a fund to be named the Forest Park Golf Course Reconstruction Fund. Moneys will be provided to this fund pursuant to the Golf Funding Agreement and the disbursing agreement described therein.

SECTION EIGHT. The Board of Public Service is hereby authorized and directed to let contracts, provide for the design, construction, material and equipment, employ labor and consultants, pay salaries, fees and wages, enter into supplemental agreements with utilities and otherwise provide for the design and reconstruction of the Golf Courses as provided for in the Golf Funding Agreement and the Golf Lease. Notwithstanding the provisions of any other ordinance to the contrary, including but not limited to ordinances 64102 and 64103, the Board of Public Service is hereby authorized to hire Hale Irwin Golf Services, Powers-Bowersox Kiku Obata and Company for preparation of the design bid package and specifications as provided in the Golf Funding Agreement, and to pre-qualify construction firms which will receive bid packages for the golf courses construction work as provided by the Golf Funding Agreement. The Board of Public Service is further authorized to pre-qualify prospective construction managers for the golf project consistent with the Golf Funding Agreement and the Golf Lease.

SECTION NINE. The work provided for herein shall be carried out in accordance with detailed plans and specifications to be adopted and approved by the Board of Public Service before bids are advertised therefor.

SECTION TEN. Any contract or contracts shall provide that the contractor or contractors doing said work shall guarantee all of the work and materials used in connection therewith for a term of at least one year, commencing on the date of acceptance of the work by the City.

SECTION ELEVEN. The cost of the design for and reconstruction of the municipal golf courses and construction of a new clubhouse is estimated to be Twelve Million Five Hundred Thousand Dollars (\$12,500,000) of which the City's share under the Golf Funding Agreement is One Million Six Hundred Thousand Dollars (\$1,600,000). Twelve Million Five Hundred Thousand Dollars (\$12,500,000) from the Forest Park Golf Course Reconstruction Fund is hereby appropriated to be used for this project.

SECTION TWELVE. The Comptroller is hereby authorized and directed to draw warrants from time to time and disburse funds appropriated by this ordinance and is further authorized to receive and disburse funds received in accordance with the Funding Agreement and the Disbursing Agreement described therein.

SECTION THIRTEEN. All construction contracts let under authority of this ordinance shall provide that no less than the prevailing hourly rate of wages in the City of St. Louis as determined by Department of Labor and Industrial Relations of the State of Missouri for each craft or type of work needed in the actual labor on the jobs herein, as well as the general prevailing rate of pay for legal holidays and overtime work, shall be paid to all workers. All contracts let in connection with the construction provided for herein shall be subject to and in conformance with all statutes of the State of Missouri and the Charter of the City of St. Louis.

SECTION FOURTEEN. All specifications approved by the The Board of Public Service and contracts let under authority of this ordinance shall provide for compliance with the Mayor's Executive Orders on Equal Opportunity and maximum MBE/WBE utilization.

SECTION FIFTEEN. All advertisement for bids pursuant to this ordinance shall be subject to applicable Missouri law and City Charter and ordinance provisions.

SECTION SIXTEEN. This ordinance being deemed necessary for the immediate preservation of the public peace, health and safety and providing in part for public works and improvements is declared an emergency measure within the meaning of that term as it is used in Sections 19 and 20 of Article IV of the City Charter.

Draft 7/13/00
EXHIBIT I
AGREEMENT

This Agreement ("Agreement") entered into as of the ___ day of _____, 2000 (the "Effective Date"), by and among The City of St. Louis, a Missouri municipal corporation ("City"), the Norman K. Probstein Foundation, Inc., a Missouri not-for-profit corporation ("Probstein Foundation"), American Golf Corporation, a California corporation ("AGC"), and Forest Park Forever, Inc., a Missouri not-for-profit corporation ("FPF").

PREMISES

1. The City is the owner of Forest Park, a park located within the City. Forest Park includes parcels claimed to be owned by, or leased by the City to, various entities. The City represents that it is the sole owner of

the Golf Courses, including the improvements thereon (as hereinafter defined).

2. In Forest Park there are at present two golf courses which are owned by the City and operated on the City's behalf by AGC pursuant to a lease dated March 20, 1987 (the "1987 AGC Lease"). These courses are an eighteen (18) hole course heretofore known as the Eisenhower Memorial Golf Course and a nine (9) hole course heretofore known as the Forest Park 9 Hole Golf Course (collectively the "Golf Courses") and described on Exhibit AA.

3. The City adopted a Master Plan for Forest Park in 1995 (as amended, the "Master Plan"), which calls for various improvements to and reconfigurations of the Golf Courses.

4. The City and FPF are parties to a contract dated September 9, 1997 (the "City-FPF Contract") pursuant to which FPF is endeavoring to raise funds to be utilized in the implementation of the Master Plan.

5. The City, FPF and the Missouri Development Finance Board (the "MDFB") are parties to a contract dated August 18, 1998 (the "Tax Credit Agreement") , pursuant to which the MDFB grants credits against Missouri state income taxes to contributors of funds to be used for implementation of infra-structure projects, as defined in the Tax Credit Agreement, in Forest Park pursuant to the Master Plan.

6. The Probstein Foundation desires to contribute Two Million Dollars (\$2,000,000) to FPF in accordance with the terms of Schedule 1 which is attached hereto (the "Probstein Contribution"). Such funds together with other funds described herein are to be utilized with other funds described herein to (i) reconstruct the Golf Courses consistent with the routing plan dated March 31, 2000, designed by Hale Irwin Golf Services (the "Routing Plan") and hereby approved by the parties hereto (Exhibit A); (ii) construct a new clubhouse and youth learning center consistent with the site plan, elevations and floor plan dated March 31, 2000, designed by Powers-Bowersox (the "Clubhouse Plans") and hereby approved by the parties hereto (Exhibit B); and (iii) construct and erect new signage for said facilities consistent with the graphic specifications dated March 31, 2000, developed by Kiku Obata & Company ("Signage Specifications") and hereby approved by the parties (Exhibit C). (The Routing Plan, Clubhouse Plan and Signage Specifications are hereinafter collectively referred to as "the Project".)

7. Ordinance No. ____ (F.S. B.B. #117) provides that: (i) on and after the date of the Escrow Release Condition (as hereinafter defined) the new Clubhouse to be constructed, the Eisenhower Memorial Golf Course and the Forest Park 9 Hole Golf Course shall be known as the Norman K. Probstein Community Golf Courses and Youth Learning Center in Forest Park; (ii) upon completion of the reconstruction of the golf courses the three nine hole golf courses of the Norman K. Probstein Forest Park Community Golf Courses and Youth Learning Center in Forest Park are designated as the Dogwood, Hawthorn and Redbud courses, as depicted on Exhibit A hereto; and (iii) upon completion of construction of the new Clubhouse a restaurant/bar/grille therein shall be known as "Ruthie's Caf☐" and (iv) the dining/assembly room in the Clubhouse shall be known as the "Hall of Champions".

8. The City and AGC desire to enter into an Amended and Restated Golf Course Lease (the "Amended and Restated Lease"), pursuant to which, inter alia, AGC will contribute One Million Three Hundred Forty Thousand Dollars (\$1,340,000) to the MDFB and Six Hundred Sixty Thousand Dollars (\$660,000) to FPF in accordance with the terms of Schedule 1 attached hereto to be utilized for the Project on certain conditions recited herein.

9. The presently estimated costs of the Project are set forth in Exhibit D (the "Estimated Project Costs"). The aggregate Project Costs shall not exceed \$12,500,000, subject to the provisions of this Agreement. The sources and timing of the funding for the payment of the Project Costs are set out in Schedule 1 attached hereto.

10. The City and FPF are willing to accept the contributions of the Probstein Foundation and AGC and comply with the conditions of the Probstein Foundation and AGC applicable to them, as hereinafter provided.

11. In addition to all of the funds FPF receives, directly or indirectly, from the Probstein Foundation and AGC and in addition to the Two Million Four Hundred Thousand Dollars (\$2,400,00) FPF expects to receive from the Danforth Foundation as a result in part of the contributions from the Probstein Foundation and AGC, FPF is willing to contribute Four Million Five Hundred Thousand Dollars (\$4,500,000) in accordance with the terms of Schedule 1 as hereinafter provided (the "FPF Contribution").

12. The City is willing to contribute One Million Six Hundred Thousand Dollars (\$1,600,000) to be utilized for the Project in accordance with the terms of Schedule 1 as hereinafter provided (the "City Contribution").

13. The execution and delivery by the City of this Agreement and of the Amended and Restated Lease have been authorized by Ordinance No. _____ (F.S. B.B.#117) of the City (the "Ordinance").

14. Given the unique construction and management skills required to construct the Norman K. Probstein Forest Park Community Golf Courses in Forest Park, the City has agreed to pre-qualify golf construction firms that have the experience, qualifications, and personnel to undertake and complete the construction of such golf courses in accordance with the designs, budget and timetable agreed to by the parties. The City will send pre-qualification materials to the construction firms listed on Schedule 2, and to other golf construction firms as it determines to be appropriate and to qualified contractors for non-golf course construction elements of the Project for pre-qualification to bid on the Project.

15. The Danforth Foundation, a Missouri not-for-profit corporation, has advised FPF that it will contribute, on or before March 31, 2001, the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000) to FPF, which FPF will apply to the Project.

16. The Probstein Foundation acknowledge that the promises and undertakings of the other parties, including but not limited to the City's naming of certain facilities as requested by Norman Probstein, constitutes good and valuable legal consideration to Norman Probstein and the Probstein Foundation.

17. FPF is a Missouri not-for-profit corporation which was organized to benefit Forest Park by raising money from private donors. FPF acknowledges that the promises and undertakings of the other parties are in furtherance of FPF's corporate purpose and constitute good and valuable legal consideration to FPF.

18. AGC acknowledges that the Amended and Restated Lease, as well as the promises and undertakings of the other parties to this Agreement, constitute good and valuable legal consideration to AGC for its promises and undertakings in this Agreement.

19. The parties wish to express their respective rights and obligations in this Agreement.

TERMS

For and in consideration of the foregoing Premises, and of their mutual promises and undertakings herein set forth, the parties hereto contract and agree as follows:

ARTICLE I. Contributions.

Section 1. Conditions to Contributions. A Closing will be held as described in Article II below at which the Closing Documents (as defined in Article II) will be signed and delivered into escrow and the other actions completed as described in Article II. Upon the completion of the Closing described in Article II, including satisfaction of the Escrow Release Condition (defined below), the Probstein Foundation, AGC, FPF and the City shall be legally obligated to make the contributions described in this Article I in accordance with the terms of Schedule 1. Except as provided in Article II, no party to this Agreement shall have any obligation to make any contributions described in this Agreement until the conditions to Closing described in Article II are satisfied, and the Escrow Release Conditions are satisfied. Notwithstanding any provision in this Article I to the contrary, until the Escrow Release Conditions are satisfied, all documents and funds that are required to be delivered pursuant to this Article I shall be delivered to Commonwealth Land Title Insurance Company acting as escrow agent under the Escrow Agreement (defined below) ("Escrow Agent") to hold in escrow, rather than being delivered to the recipients designated in Article I.

Section 2. Probstein Foundation Contributions: To Whom and How Made. The Probstein Foundation hereby agrees to contribute Two Million Dollars (\$2,000,000) to FPF for the Project on the dates set forth on Schedule 1 hereto. The Probstein Foundation shall at closing furnish evidence satisfactory to the City and FPF that it has One Million Five Hundred Thousand Dollars (\$1,500,000) which is escrowed with the Escrow Agent and restricted to pay the obligations of the Probstein Foundation under this Agreement in accordance with Schedule 1.

Section 3. AGC Contribution. AGC hereby agrees to contribute One Million Three Hundred Forty Thousand Dollars (\$1,340,000) to MDFB and Six Hundred Sixty Thousand Dollars (\$660,000) to FPF for the Project (the "AGC Contribution") in accordance with Schedule 1.

Section 4. FPF Contribution. FPF prior to the execution of this Agreement has contracted with Powers-Bowersox for a \$25,000 fee to produce the Clubhouse Plans in order to provide the Probstein Foundation and AGC with the materials necessary to

determine if they will contribute funds for the construction of the Project. The Clubhouse Plans are being used as a basis for the design and construction of the Clubhouse and the \$25,000 paid by FPF shall be credited to FPF's contribution toward the cost of said Project. FPF also agrees to provide the sum of \$4,475,000 in cash for the Project (together with the above referenced \$25,000 fee the "FPF Contribution"). FPF shall at closing furnish evidence satisfactory to the City and the Probst Foundation that it has established and has fully funded a bank account which is restricted to pay the obligations of FPF under this Agreement in accordance with Schedule 1. Furthermore, in addition, if in 2002, AGC does not receive any tax credits from the MDFB as provided in Schedule 1, AGC will pay \$172,848 to FPF in 2002, and FPF shall pay \$115,232 in accordance with Schedule 1. With the exception of the Powers-Bowersox contract, no commitment or expense of any party heretofore made or incurred prior to the execution of this Agreement shall be chargeable against any obligation hereunder of such party, be deductible from any funds payable by such party, or be reimbursable from the funds of any or other party or parties hereto.

Section 5. City Payment. The City agrees to provide the sum of One Million Six Hundred Thousand Dollars (\$1,600,000) for the construction of the Project (the "City Payment") on the dates in Schedule 1. The City Payment shall be retained by the City in a restricted account.

Section 6. FPF Draws. AGC, to the extent provided in Article I, Section 3, will be making some of its contributions directly to MDFB. FPF covenants to draw from MDFB all funds contributed to MDFB by AGC as soon as practicable after such contributions are made and to deliver said funds to the Commonwealth Land Title Insurance Company (hereinafter referred to as Escrow Agent or "Disbursing Agent") to be applied to Project Costs as hereinafter provided.

Section 7. Probst and Danforth Foundation Contribution. FPF agrees that it shall transfer the funds it receives from the Probst Foundation and the Danforth Foundation for the Project to the Escrow or Disbursing Agent within 48 hours after receipt of said funds. Such funds are expected to be received as shown on Schedule 1 and shall be applied to Project Costs as hereinafter provided.

Section 8. Allocation of Tax Credits.

FPF represents and warrants that there are currently available to it from MDFB Missouri tax credits granted by MDFB that will permit FPF to make tax credits available to AGC in 2001 as shown on Schedule 1.

ARTICLE II. Closing in Escrow and Release of Escrow.

Section 1. Closing in Escrow. The parties agree to close in escrow within fourteen (14) days of the City approval of the Ordinance, at a time mutually agreeable to the parties. The closing shall be held at the offices of the Escrow Agent (the "Closing"). At the Closing the parties shall execute the following documents and take the additional actions described below. All documents executed shall be held by the Escrow Agent in escrow pursuant to an escrow agreement which all parties agree to execute at the Closing in a mutually agreeable form (the "Escrow Agreement") until the conditions for releasing the escrow as described in Article II, Section 7 are satisfied. No party shall be legally obligated to make the contributions described in Article I (other than contributions to be made at the Closing pursuant to Schedule 1) and no person may incur expense in reliance on this Agreement until: (i) all items described in this Article II have been signed and delivered to the Escrow Agent, and (ii) the condition in Article II, Section 7 for releasing the escrow is satisfied. All documents and funds to be executed and delivered pursuant to Article II, Sections 1 through 6, are collectively referred to as the "Closing Documents."

Section 2. AGC Closing Items. At the Closing, AGC shall present an executed copy of the Amended and Restated Lease.

Section 3. Probstein Foundation Closing Items. At the Closing, the Probstein Foundation shall present:

- a. Cash in the amount of \$500,000 in accordance with Schedule 1 and
- b. An executed copy of the Escrow Agreement described in Article I Section 2 satisfactory to the other parties hereto (the "Probstein Foundation Escrow Agreement").

Section 4. FPF Closing Items. At the Closing, FPF shall present:

- a. A letter from the Danforth Foundation regarding its \$2,400,000 gift to the project in the form attached as Exhibit E;
- b. A letter from the MDFB regarding the tax credits which FPF has allocated to AGC in the form attached as Exhibit F; and
- c. Cash in the amount of One Million Dollars (\$1,000,000) in accordance with Schedule 1; and
- d. Evidence satisfactory to the City and the Probstein Foundation of the establishment and funding of the restricted bank account as required in Article I Section 4.

Section 5. City Closing Items. At the Closing, the City shall present:

- a. A certificate of the City Register that the Ordinance No. ____ (F.S. B.B.#117) (the ordinance authorizing execution of the AGC Lease and this Agreement) (attached hereto as Exhibit G) is in full force and effect, including a certified copy of the Ordinance;
- b. A letter from the Comptroller of the City stating that the City has funded a restricted account with \$800,000 and will meet its obligations to contribute the remaining City funds to the Project in accordance with Schedule 1; and
- c. The executed Memorandum of Agreement described in Article IV Section 8.

Section 6. Items Involving Multiple Parties.

- a. This Agreement shall be signed by all parties.
- b. The AGC Lease shall be signed by the City and AGC.
- c. All contributions that are required by Schedule 1 to be made on the Closing Date shall be delivered.
- d. An Escrow Agreement as referred to in Article I Section 1 hereof and consistent with Article II hereof shall be executed by all parties thereto.
- e. A Disbursing Agreement providing for payment of Project costs and consistent with Article II Section 7 (i) hereto shall be executed by Commonwealth Land Title Insurance Company, the City, FPF and such other parties, if any, as may be appropriate.
- f. The Probstein Foundation Escrow Agreement shall be signed by the parties thereto.

Section 7. Design and Construction of the Project.

- (a) Once all Closing Documents have been fully signed and all other deliveries required by Article II, Sections 1 through 6 have been made, all the Closing Documents shall be held in escrow by the Escrow Agent on the terms set forth in this section and the Escrow Agreement (the "Escrowed Documents").

(b) As soon as practicable after the Closing, the City shall secure:

(i) A signed contract by and between the City and Hale Irwin Golf Services for golf course design services providing that the golf courses in the Norman K. Probstein Forest Park Community Golf Courses and Youth Center in Forest Park may be referred to as a "Hale Irwin Signature Golf Course". Anything herein to the contrary notwithstanding, if the City is unable to secure a signed contract with Hale Irwin Golf Services to the effect stated within Article II, Section 7(b)(i) or a professional golfer of equivalent stature by May 31, 2001, then all money contributed by the Probstein Foundation shall be returned forthwith to the Probstein Foundation, subject to pro-rationing of expenses as provided in Article VI Section 2.

(ii) A signed contract by and between the City and Powers-Bowersox for Clubhouse design.

(iii) A signed contract by and between the City and Kiku Obata & Company for the Project signage.

(iv) A signed contract or a supplement to an existing contract by and between the City and a construction manager having demonstrable capabilities for a project of the nature of the Project (the "Construction Manager"), selected after review and comment by FPF and AGC on pre-qualification materials and proposals and seven days notice prior to final selection by the City to FPF and AGC. If either FPF or AGC advise the City in writing within such seven days that they believe the City's proposed selected Construction Manager is incapable of performing appropriately on the Project, the City will not formally select until conferring with the objecting party and resolving the matter.

(v) Other contracts deemed necessary and appropriate to support the design of the Project and/or preparation of the Bid Package.

(vi) If the City cannot secure a signed contract with any of the hereinabove named design firms, the parties shall meet

within seven (7) days of notice from the City and discuss design firms of equivalent stature. The City shall solicit and take in to account the views of the parties of such firms and devise a list of pre-qualified design firms based on such views as well as its own and contract with another designer as needed. Upon the signing of such a contract, all references herein shall automatically be amended to reflect the change in design firm.

(c) Immediately following the Closing, the Escrow Agent shall transfer \$1,500,000 of the cash delivered to it by the parties in accordance with Article II to its disbursing department. Said funds are to be used by the City to pay Hale Irwin Golf Services, Powers-Bowersox, Kiku Obata & Company and the Construction Manager the amounts stated in the Project Budget for the preparation of the Project bid package or packages consisting of plans and specifications (the "Plans") that shall be consistent with the Routing Plan, Clubhouse Plan and Signage Specifications and Section 8.B. of the Lease. The Plans shall be provided to the City for approval to FPF, AGC and the Probststein Foundation for their review and comment. The City will base its approval upon whether the Bid Package is substantially in conformance with the Routing Plan, Clubhouse Plans and Signage Package and the Project Budget and good construction practice . Unless within fifteen (15) business days after FPF and AGC have received the proposed Plans, FPF notifies the City that it believes the proposed Bid Package is inconsistent with the Routing Plan, the Clubhouse Plans or the Signage Specifications, or would not result in a Hale Irwin Signature Golf Course, and advises the City with specificity of its reasons, or AGC notifies the City under Section 8.B. of the Lease, the proposed Plans shall be deemed approved by AGC and FPF. If either does so notify the City, the City agrees not to approve the Bid Package until the matter has been resolved. Upon the approval of the Bid Package by the City, the Bid Package shall be provided to the pre-qualified contractors in order to secure bids to construct the Project for an amount not in excess of \$10,000,000, pursuant to one or more contracts using the City's Board of Public Service's standard form for construction projects.

(d) If during the preparation of the Plans or after receiving construction bids the City's Board of Public Service determines that no contractor can be secured to construct the Project for an amount not in excess of \$10,000,000 it shall immediately notify all the parties to this Agreement that it must deviate from the Routing Plan, Clubhouse Plan and/or

Signage Specifications. In such event, or if the Plans have been disapproved under subsection (c), above, the parties to this Agreement shall meet as soon as practical with the Construction Manager, Hale Irwin Golf Services, and Powers-Bowersox to determine what changes might be made in the Project design to secure a bid at the Project Budget. The parties shall have thirty (30) days to evaluate such changes and agree on modifications to the Plans. If the City, after review and comment with all parties, cannot agree to proceed with a revised Plan, it shall notify the Escrow Agent. Upon receipt of such notice, the Escrow Agent shall as soon as practical prepare an accounting of the funds spent on outside design and management services in the preparation of the Plans. The Escrow Agent shall then provide a copy of its accounting to the parties, pay all bills received and allocate these costs to the parties using the formula provided in Article VI, Section 2d.

(e) After payment of the Plans expenses, all the remaining escrowed funds shall be returned to the parties in accordance with the formula in Article VI, Section 2d. The remaining Danforth Funds shall be returned to FPF. As of the payment of the remaining funds all other obligations under this Agreement shall be null and void and shall terminate.

(f) Within three (3) days of receipt of the construction bids, the Board of Public Service shall provide copies of said bids to the AGC and FPF for their review. AGC, the City and FPF shall meet to discuss the bids within no more than seven (7) days of receiving the bids. If a bid for a contract to construct the Project in accordance with the Project Budget is received from one or more of the Pre-Qualified Contractors, the City and the Construction Manager shall, as soon as practical, determine whether such contractor or contractors are responsible.

(g) The condition for release of the Escrowed Documents is that the City enter into one or more contracts with contractor(s) to complete all of the Project for a total price less than or equal to the Ten Million Dollars (\$10,000,000) (the "Escrow Release Condition"). Promptly after the contract(s) is negotiated under subsection (e), the City shall provide a written certification to all parties to the Agreement and the Escrow Agent that the City is prepared to accept one or more contracts with contractors to complete the Project for less than or equal to Ten Million Dollars (\$10,000,000) (the "Construction Notice"). The City shall also provide to the Escrow Agent, and to any party that requests a copy, a copy of all contracts for the Construction of the Project. The Escrow Agent shall review the contracts provided and confirm to the parties that

there are contracts to do the Project for a price less than or equal to Ten Million Dollars (\$10,000,000). Once the Escrow Agent and the City make the confirmations described in the preceding sentence, the City shall execute the contract, the Escrow Release Condition shall be deemed satisfied, the parties to this Agreement shall be legally obligated to make the contributions described in Article I in accordance with the timetable in Schedule 1, and the Escrow Agent shall distribute the Escrowed Documents in accordance with the instructions in the Escrow Agreement.

(h) If the Escrow Agent has not received the Construction Notice by May 31, 2001, or if City notifies the parties to this Agreement and the Escrow Agent that the City will not be able to satisfy the Escrow Release Condition, the Escrow Agent shall send a notice to all parties to this Agreement that it appears the Escrow Release Condition cannot be satisfied ("Fund Shortage Notice"). Promptly after the Fund Shortage Notice is given, the parties to this Agreement shall meet and attempt in good faith to resolve any problems so that the Project can be completed. If the Escrow Agent does not receive written notice from all parties by June 30, 2001, or by an Extended Deadline (as hereinafter defined) either that: (i) the Escrow Release Condition has been satisfied, or (ii) the date for satisfying it has been extended by the parties to a new specified deadline (the "Extended Deadline"), the Escrow Agent shall anything herein to the contrary notwithstanding as soon as practicable, (or as soon as practicable following the Extended Deadline) return all Escrowed Documents to the parties that placed them in escrow in accordance with the instructions in the Escrow Agreement, this Agreement shall terminate, and the parties shall not have any further rights or obligations hereunder, except the rights and obligations pursuant to Article VI Section 2.d.

(i) As provided above, once the Escrow Release Condition is satisfied, the construction of the Project shall commence in accordance with the executed construction contract or contracts and the escrowed funds and additional contributions shall be deposited with the Disbursing Agent and be governed thereafter by the Disbursing Agreement. The Disbursing Agreement shall require that all construction draws shall require the prior approval of the Construction Manager and the City's Comptroller.

(j) If the Board of Public Service receives a request for a change order which would result in a substantial change in the design of the Golf

Course and/or Clubhouse it shall, prior to approving such change, secure the approval of the parties to this Agreement. Furthermore, if any change order would increase the cost of the Project by the lesser of 10% of the Project funds remaining as of the date of the change order request or \$50,000, the City and FPF shall endeavor to determine ways to lessen the fiscal impact of such change order provided, however, that if City and FPF cannot agree on such mitigated measures within 10 days, the City shall have the authority to direct the Construction Manager as to the change order. All change order requests shall be dealt with according to Board of Public Service operating procedures.

ARTICLE III. AGC Covenants.

Section 1. AGC shall be obligated by the covenants in this Article III only if the conditions in Article II are satisfied, including the Escrow Release Condition. Any departure from AGC's obligations under this Article III requires the written consent of all the parties to this Agreement.

Section 2. Upon completion of construction, AGC shall not make any change or alteration of the Golf Courses or Clubhouse that would prevent the promotion of the Golf Courses as a Hale Irwin Signature Course. If the Golf Courses cannot be promoted as a Hale Irwin Signature Course for any reason, Lessee agrees to not make any change or alteration of the Golf Courses that would prevent the Golf Courses from being promoted as golf courses of a quality equivalent to or better than that of a Hale Irwin Signature Course.

Section 3. Upon completion of construction, AGC shall operate and maintain the Clubhouse for uses identified in the Clubhouse Plans as defined in Section 8.A. AGC agrees not to make any changes in the Clubhouse after construction is completed which change the design character of the Clubhouse, or make structural alterations, without the prior written consent of the parties to the Funding Agreement.

Section 4. AGC agrees to cause signage to be maintained during the term it is managing the Golf Courses and Clubhouse that complies with the Signage Specifications.

Section 5. AGC agrees to comply with its obligations under the Lease concerning construction and operation of a youth golf learning center and maintenance of the golf courses.

Section 6. AGC agrees to comply with its obligations under the Lease concerning establishing a capital replacement fund for the Golf Courses and Clubhouse.

ARTICLE IV. City Obligations.

Section 1. The City hereby agrees, in consideration of the Probstein Foundation Contributions:

A. To the extent permitted by law, it will cause AGC as its lessee and operator of the Norman K Probstein Community Golf Courses and Youth Learning Center in Forest Park, and any subsequent lessee or operator of the Norman K. Probstein Community Golf Courses and Youth Learning Center in Forest Park, to provide, display and maintain signage indicating the names of the Norman K. Probstein Community Golf Courses and Youth Learning Center in Forest Park, the Dogwood, Hawthorn and Redbud courses, Ruthie's Caf^e, and the Hall of Champions respectively, pursuant to Ordinance No. _____ (F.S. B.B. #117) and in accordance with the Signage Specifications.

B. There shall be placed in the Clubhouse a memorial plaque for the former United States President Dwight D. Eisenhower. The form of the plaque is shown in Exhibit C and its location in the Clubhouse is indicated on Exhibit H hereto.

Section 2. For and in consideration of the Probstein contributions, the City agrees that it will not name and it will not allow any one to name any physical feature on the Golf Courses, or any interior or exterior feature of the Clubhouse, after any person or entity other than the City or any department thereof, AGC, FPF, the Missouri Department of Natural Resources or the Danforth Foundation, or place or construct a sign or plaque of any type that states the name of a person or entity other than as specified in Sections 1 and 2 of this Article IV. However, this provision shall not prevent a plaque or sign to be placed in the Clubhouse to acknowledge the entity that is operating the Golf Courses.

Section 3. In the event that after the construction of the improvements to and reconfiguration of the Norman K. Probstein Forest Park Community Golf Courses (the "New Golf Courses") and the Clubhouse, either the New Golf Courses or the Clubhouse are reconstructed in whole or in part, the names of the New Golf Courses and Clubhouse shall be the names specified in Section 1 of this Article IV, and no other names shall appear on, inside or outside such facilities, except as permitted by this Article IV.

Section 4. Subject to Section 5 of this Article IV, it is the intent of the City and the Probstein Foundation that Sections 1, 2 and 3 of this Article IV shall be in force and effect in perpetuity, provided that the New Golf Courses are in existence and used as

such and that a Clubhouse is in existence and used as such on or adjacent to the New Golf Courses. The City, FPF, AGC and the Probstein Foundation agree that Sections 1, 2 and 3 of this Article IV may be enforced only by actions for injunctive relief. The Probstein Foundation agrees that injunctive relief shall be the sole and exclusive remedy available to it and to Norman K. Probstein and their respective heirs, assigns and successors against the City for violations by the City of Sections 1, 2 and 3 of this Article IV.

Section 5. Upon repayment by the City of the amount of the Probstein Contributions to the charitable organization designated by the Probstein Foundation after receiving notice from the City of the intended repayment to the Probstein Foundation defined below, together with interest from the date of the payment of the Probstein Contribution in full as per Schedule 1, until December 31, 2010, at the rate of 10% per year, thereafter, until December 31, 2018, at the rate of 5%, and thereafter at an interest rate equal to the cost of living increase in the preceding year, Sections 1, 2, 3 and 4 of this Article IV shall be inapplicable and of no force or effect. If the Probstein Foundation is not in existence at the time of any repayment, such repayments shall be made to the St. Louis Community Foundation or similar foundation to establish a fund in the name of Norman Probstein.

Section 6. As long as the New Golf Courses and Clubhouse are in existence and used as such, the City will operate or cause its golf course operator to operate a youth golf learning center and shall use its best efforts to provide funds for the capital maintenance of the New Golf Courses and Clubhouse.

Section 7. All approvals of the design called for under the Master Plan will be obtained. Plans and specifications for construction of the Golf Courses and Clubhouse will be subject to the approval of the City's Board of Public Service.

Section 8. Promptly after this Agreement is signed, the City agrees to execute and record in the real estate records of the City of St. Louis a Memorandum of Agreement relating to the City's obligations under Article IV, sections 1, 2, 3 and 4.

ARTICLE V. Representations and Warranties.

Section 1. Representations and Warranties the of Probstein Foundation

- a. The Probstein Foundation is a Missouri not-for-profit corporation duly organized and in good standing under the laws of the State of Missouri.

b. Execution of this Agreement has been duly authorized by the Board of Trustees and this Agreement is binding and enforceable against the Probstein Foundation.

c. Execution of this Agreement and performance by Probstein Foundation of its obligations under this Agreement does not conflict with any other agreements to which the Probstein Foundation is a party.

d. The Probstein Foundation is not a party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

e. The Probstein Foundation is authorized by Norman K. Probstein to agree in Article IV Section 4 on his behalf concerning injunctive relief as the sole remedy, for certain events.

Section 2. Representations and Warranties of The City.

a. The City is a municipal corporation organized and existing under the constitution and laws of the State of Missouri and its Charter.

b. Execution of this Agreement has been duly authorized by the City and this Agreement is binding and enforceable against the City.

c. Execution of this Agreement and performance by the City of its obligations under this Agreement does not conflict with any other agreements to which the City is party.

d. The City is not a party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

Section 3. Representations and Warranties of AGC.

a. AGC is a corporation duly organized and in good standing under the laws of the State of California and is authorized to do business in the State of Missouri.

b. Execution of this Agreement has been duly authorized by the Board of Directors of AGC and this Agreement is binding and enforceable against AGC.

c. Execution of this Agreement and performance by AGC of its obligations under this Agreement does not conflict with any other agreements to which AGC is a party.

d. AGC is not party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

Section 4. Representations and Warranties of FPF.

a. FPF is a not-for-profit corporation duly organized and in good standing under the laws of the State of Missouri. FPF is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (the "Code"). Contributions to FPF are eligible for federal income tax deductions.

b. FPF is a charitable organization which is described in Sections 170(d)(2)1, 2055(a) and 2522(a) of the Code. The contributions to FPF pursuant to the terms and conditions of this Agreement qualify for the federal gift tax charitable deduction or federal estate tax charitable deduction. If a contribution to FPF does not qualify for the gift tax charitable deduction or the federal estate tax charitable deduction, FPF will return the contribution to the party contributing the funds.

c. FPF has not engaged in any activity or accepted any contributions which would jeopardize its tax-exempt status or otherwise cause contributions to FPF to be ineligible for a federal income tax charitable deduction and federal gift tax charitable deduction or federal estate tax charitable deduction and FPF will not engage in any activity or accept any contributions which would jeopardize its tax-exempt status.

d. Execution of this Agreement has been duly authorized by the Board of Directors of FPF and this Agreement is binding and enforceable against FPF.

e. Execution of this Agreement and performance by FPF of its obligations under this Agreement does not conflict with any other agreements to which FPF is a party.

f. FPF is not party to any pending litigation that concerns the validity of this Agreement or which would impair its ability to perform its obligations hereunder.

Section 5. The foregoing representations and warranties of the parties hereto shall be binding as of the date of execution of this Agreement and shall survive Closing.

ARTICLE VI. Defaults and Remedies.

Section 1. Event of Default. If any party to this Agreement is in default hereunder, including but not limited to payment of its pledges pursuant to schedule 1 hereof, (a "Defaulting Party"), any other party to this Agreement shall give written notice to the Defaulting Party (with copies to all other parties) that such Defaulting Party is in default hereunder with respect to the matters described in such notice and such Defaulting Party has thirty (30) days in which to cure such default. If the Defaulting Party fails to cure such defaults within thirty (30) days after such default has occurred then an "Event of Default" shall be deemed to have occurred.

Section 2. Remedies Following an Event of Default. Following an Event of Default, the nondefaulting parties shall have the following rights, remedies and obligations.

- a. If completing the Project is still feasible, the nondefaulting parties agree to use reasonable efforts to substitute a new party to perform the defaulting party's obligations with the goal of completing the Project in accordance with the terms of this Agreement, and may use any contribution still on hand of the defaulting party for such purpose, or with such changes thereto as may be approved by the nondefaulting parties.
- b. If the Probstein Foundation is the defaulting parties and fails to cure its default within the applicable cure period, the City shall no longer be obligated by the provisions of sections 1, 2, 3 and 4 of Article IV.
- c. If completion of the Project in accordance with the terms of this Agreement (or in accordance with changes approved by the nondefaulting parties) is not feasible, the nondefaulting parties may agree to terminate this Agreement.
- d. If the Project can not be completed, then the Disbursing Agent shall refund to the contributing parties any funds still held by the Disbursing Agent, unless the contributing party gives other directions for payment of such refund in accordance with the calculations provided below:
 - (1) First, the Disbursing Agent shall determine the percentage of the Project Cost for each party by dividing what each party has pledged pursuant to this Agreement to

contribute to the cost of the Project by the total of all pledges for the construction of the Project;

(2) Second, the Disbursing Agent shall determine what each party to the Agreement has actually paid to the Disbursing Agent as of the date of the Event of Default;

(3) Third, the Disbursing Agent shall determine the total amount of funds disbursed from the Project Budget and binding accounts payable as of the date of the Event of Default (collectively the "Billable Costs");

(4) Fourth, the Disbursing Agent shall allocate to each party its percentage share of the Billable Costs as determined above by multiplying the percentage obligation for each party in paragraph (1) above times the total Billable Costs;

(5) Finally, the Disbursing Agent shall for each party subtract the amount paid by each party from the Billable Costs allocated to each party. If a party has already paid its percentage share of the Billable costs, it shall receive a refund for any amounts in excess of its percentage share. If a party has not paid its percentage share of the Billable Costs, it shall within seven (7) days of receipt of notice of its percentage share obligation from the Disbursing Agent, deliver such funds in cash as are necessary to discharge its obligations under this section of the Agreement.

The following example shall illustrate the paragraphs above:

If Project Cost = 12M:

<u>Pledge by Party</u>	<u>Percentage By Party</u>
A 4M	33-1/3%
B 2M	16-2/3%
C <u>6M</u>	<u>50%</u>
12M	100%

Paid as of Event of Default

A = \$1M

B = \$2M

C = \$4M

\$7M

Billable Cost

\$6M

Obligations to Pay Billable Cost

A = 2M

B = 1M

C = 3M

Refund/or Payment Due

A = pay \$1M to Disbursing Agent

B = repayment to B of \$1M

C = repayment to C of \$1M

e. All other provisions of this section notwithstanding; subject to Article IV, Section 4, the parties may exercise all of their rights and remedies available at law or in equity or hereunder, including but not limited to pursuing a claim for damages against the defaulting party and/or seeking specific performance against the defaulting party and reasonable attorneys' fees including but not limited to payment by the defaulting party of its percentage share of the Billable Costs.

ARTICLE VII. Miscellaneous.

Section 1. Entire Contract. This Agreement contains the entire agreement between the parties concerning the subject matter hereof and supersedes all prior pledge letters, and agreements of any kind concerning said subject matter.

Section 2. Missouri Law. This Agreement shall be governed exclusively by and be construed in accordance with the applicable laws of the State of Missouri.

Section 3. Construction Manager Reports. The City shall cause its Construction Manager to furnish FPF and AGC with copies of periodic construction progress reports it furnishes to the City as of the dates it provides such information to the City.

Section 4. Awareness of Defaults; Notice. In the event that any party becomes aware of any default by any other party to this Agreement or by any nonparty that is obligated to perform obligations described in this Agreement, or if a party becomes aware of circumstances that will prevent performance of this Agreement in accordance with its terms, such party agrees to give the other parties to this Agreement prompt written notice of such information.

Section 5. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Notices. All notices required to be given hereunder shall be given by certified mail, personal delivery or telefax (with a hard copy sent by first class mail) to the following addresses:

If to City: Director, Department
of Parks, Recreation & Forestry
5600 Clayton Avenue
St. Louis, MO 63110
Facsimile Number: (314)

with a copy to: City Counselor
314 City Hall
1200 Market Street
St. Louis MO 63103
Facsimile Number: (314) 622-
4956

If to FPF: Forest Park
Foreve5595 Grand Drive
St. Louis MO 63112
Attn: Executive Director
Facsimile Number: (314) 367-
7622

with a copy to: S. Jerome Pratter,
Esq.
The Stolar Partnership
911 Washington Avenue
St. Louis, MO 63101
Facsimile Number: (314) 436-
8400

If to AGC: Scott Beasley
American Golf

Facsimile Number: (630) 904-
4008

with a copy to:

Facsimile Number: (314) _____

If to the Probstein Mr. Norman K. Probstein

Foundation: Madesco Investment Company
4630 Lindell Blvd.
St. Louis, Missouri 63108
Facsimile Number: (314) 367-1371

with a copy to: Richard B.
Rothman, Esq.
Blitz, Bardgett & Deutsch, P.C.
120 So. Central, Suite 750
St. Louis, Missouri 63105
Facsimile Number: (314) 863-
1877

or to such alternate address as any party designates by notice given in accordance herewith. All notices delivered or delivered by fax shall be deemed received on the day delivered or faxed. All documents sent by certified mail shall be deemed received two (2) business days after placement in the mail.

Section 6. Approvals per Master Plan: List and/or Exhibit. The City will use its best efforts to obtain all required City approvals for the Project and will promptly notify the other parties in writing if it is unable to obtain such approvals.

Section 7. Probstein Foundation's Consents and Approvals. The Probstein Foundation hereby irrevocably assigns to Norman K. Probstein and to his successors designated in this section the right to make all decisions under this Agreement that require the approval of the Probstein Foundation, including but not limited to decisions concerning approval of design plans for the Project, approvals of changes to design plans previously approved, and amendments to this Agreement. In the event of the death or incapacity of Norman K. Probstein, all consents and approvals required from the Probstein Foundation under this Agreement shall be given by James Nathaniel

Probstein and Richard B. Rothman acting by unanimous consent. In the event that either James Nathaniel Probstein or Richard B. Rothman is unable to act by reason of death or incapacity, or either is unwilling to act on behalf of the Probstein Foundation pursuant to this Agreement, then J. Ben Miller, III, shall substitute for the person who is unable or unwilling to act. If two members of the group consisting of James Nathaniel Probstein, Richard B. Rothman and J. Ben Miller, III, are unable to act by reason of death or incapacity or are unwilling to act on behalf of the Probstein Foundation, the single remaining member of the group who is willing and able to act may give all consents and approvals on behalf of the Probstein Foundation pursuant to this Agreement. If no members of the group consisting of James Nathaniel Probstein, Richard B. Rothman and J. Ben Miller, III are able or willing to act pursuant to this section, then the successors for giving all consents and approvals required from the Probstein Foundation under this Agreement are the following entities in the following order of succession: (i) first, the Probstein Foundation, (ii) second, if the Probstein Foundation has ceased to exist, but has delivered the balance of its assets to a community foundation, then such community foundation, and (iii) third, if the preceding clause is not applicable or such community foundation has ceased to exist, then the Attorney General of the State of Missouri.

Section 8. Enforcement of Agreement. The Probstein Foundation shall have the right to enforce this Agreement, and if such Probstein Foundation ceases to exist, then the Attorney General of the State of Missouri shall also have the right to enforce this Agreement.

Section 9. Probstein Foundation; Recipient of Funds. If the Probstein Foundation is no longer in existence at the time it would be entitled to receive money pursuant to this Agreement, then such money shall be paid to the St. Louis Community Foundation to be used for one or more of the charitable purposes for which the Probstein Foundation was organized, or if the St. Louis Community Foundation is not then in existence, as determined by FPF.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed to its respective name and behalf and its official seal to be hereunto affixed and attested by duly authorized officers, all as of the date first above written.

By: _____

CITY OF ST. LOUIS, MISSOURI

By: _____

Clarence Harmon
Mayor

By: _____

Darlene Green
Comptroller

ATTEST:

By: _____

Rita M. Krapf
Register

Approved as to Form:

Thomas J. Ray
City Counselor

FOREST PARK FOREVER, INC.

By: _____

Title: _____

THE NORMAN K. PROBSTEIN FOUNDATION

By: _____

Title: _____

AMERICAN GOLF CORPORATION

By: _____

Title: _____

SCHEDULE 1

Contribution and Tax Credit Schedule

FPF

Closing	\$1M
1-7-2001	\$1.75M
1-7-2002	<u>\$1.75M</u>
	\$4.5M

AG Corp.

	Payment	Tax Credits
Closing	<u>0</u>	<u>0</u>
1-7-2001	\$1,051,920	525,960
1-7-2002	\$ 288,080	144,040
1-7-2003	\$ 660,000	0

Probstein

		<u>Tax Credits</u>
Closing	\$500,000	0
1-7-2001	\$500,000	0
1-7-2002	\$500,000	0
1-7-2003	<u>\$500,000</u>	0
	\$2M	

Danforth Foundation

Closing	0
1-7-2001	\$2.4M
1-7-2002	<u>0</u>
	\$2.4M

City of St. Louis

Closing	\$800,000
1-7-2001	\$800,000
1-7-2002	<u>0</u>
	\$1.6M

TOTAL \$12.5M

SCHEDULE 2

Landscapes Unlimited (Nebraska) (402) 423-6653

Wadsworth (Illinois) (815) 436-8400

Sellenriek (St. Louis, MO) (636) 532-3500

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EXHIBIT II

DRAFT 7/13/00

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement ("this Lease") is entered into this _____ day of _____, 2000, by and between THE CITY OF SAINT LOUIS, MISSOURI, a municipal corporation ("Lessor" or the "City") and AMERICAN GOLF CORPORATION, a California corporation ("Lessee").

PREMISES

1. Lessor and Lessee are parties to a certain Lease Agreement dated March 20, 1987 (the "1987 Lease"), pursuant to which Lessee operates an 18 hole golf course and a 9 hole golf course owned by the City (the "Golf Courses") in the City's Forest Park.
2. The City wishes to have the Golf Courses reconstructed and a new Clubhouse (as hereinafter defined) constructed on a portion of the Golf Courses.
3. Simultaneously with the execution of this Lease, Lessor, Lessee, Forest Park Forever, Inc., a Missouri not-for-profit corporation ("FPF"),

and the Norman K. Probstein Foundation, a Missouri not-for-profit corporation ("Probstein Foundation") are executing an agreement (the "Funding Agreement") pursuant to which Lessor, Lessee, FPF and the Probstein Foundation agree to make certain contributions and take certain actions to cause there to be available the sum of \$12,500,000 (the "Golf Funds") for the reconstruction of the Golf Courses, and construction of a new Clubhouse on a portion of the Golf Courses. A copy of the Funding Agreement is attached hereto as Exhibit A.

4. The execution and delivery by the City of the Funding Agreement and this Lease have been authorized by Ordinance _____ (F.S. B.B. 117).

5. The parties wish to amend, restate in its entirety and extend the 1987 Lease as hereinafter provided.

6. All procedures and approvals required by Ch. 22.42 of the City Code relative to this Lease have been conducted and obtained. Except as expressly provided herein, this Lease is consistent in all respects with Ch. 22.42 of the City Code.

Now Therefore, in consideration of the Premises and of their respective undertakings hereinafter set forth, the parties agree as follows:

1. Effective Date. This Lease is effective upon the occurrence of the "Escrow Release Condition" as that term is defined in Article II, Section 7 (g) of the Funding Agreement, Exhibit A hereto (the "Effective Date"). The City shall, upon Lessee's request, deliver a certification of the date of the occurrence of such Escrow Release condition. Unless and until such Escrow Release Condition occurs, the 1987 Lease shall remain in force and effect according to its terms. If the Escrow Release Condition fails to occur by June 30, 2001, AGC shall have the right to notify the City that this Lease shall not become effective, unless AGC has agreed to an Extended Deadline as defined in Article II Section 7 (g) of the Funding Agreement. In no event shall this Lease become effective if Lessee is in default of its obligations under the Funding Agreement or if Lessee is in default of the 1987 Lease after notice and expiration of any applicable cure period and is not contesting a claim of default in good faith.

2. Leased Premises. a) On and after the Effective Date, Lessor hereby leases, lets and rents to Lessee, and Lessee hereby leases, lets, and rents from Lessor, subject to all the provisions of this Lease:

i) the real property described in Exhibit B-1 hereto, comprising an 18 hole golf course located in Forest Park, St. Louis, now known as the Eisenhower Memorial Golf Course and sometimes referred to herein as "the 18 hole course" and a 9 hole golf course located in Forest Park, St. Louis, known as the Forest Park 9 Hole Golf Course and sometimes referred to herein as "the 9 hole course";

ii) that certain building located in Forest Park, St. Louis, known as the Lindell Pavilion;

iii) all buildings, fixtures and other improvements located on the 18 hole course and the 9 hole course, all more fully described in Exhibit B-1 hereto, and all collectively hereinafter referred to as "the Leased Premises."

b. There are excepted and reserved from the Leased Premises all minerals, mineral rights and objects of every kind or nature lying below the surface of the Leased Premises. This Lease shall confer no rights in Lessee to the subsurfaces of the Leased Premises. Lessor shall have the right, at its option, to remove, at its cost, objects or artifacts found beneath the surface of the Leased Premises. Lessee shall notify City's Director of Parks, Recreation and Forestry concerning any unusual objects found or located beneath the surface of the Leased Premises.

After the completion of the reconstruction of the golf courses, the City shall use the least disruptive means of removal of such objects or artifacts and, unless such removal is required by State or Federal law, shall reimburse Lessee for any and all damages including loss of golf revenue demonstrably caused by such removal. The City will notify AGC of its intent to exercise its rights under this subsection b. at least five (5) business days prior to doing so, which notice shall specify the details of such removal, unless such prior notice is expressly waived by AGC.

c. The Leased Premises are subject to easements, rights of way, restrictions or covenants of record, if any.

d. The Leased Premises include any lakes, ponds and waterways, or parts thereof, within the Leased Premises.

e. Upon the completion of Phase I of the Project as defined in Section 8.D., the Leased Premises shall hereby be amended to include that area north of the north curb line of Lagoon Drive and its prolongation to the intersection of Forsyth Avenue and Skinker Boulevard described and depicted as Parcel A of the "Forest Park Golf Lease Boundary by David Mason & Associates, Inc., dated 8/21/97 and revised 1/25/00," depicted and described in Exhibit B-2 hereto.

f. Upon the completion of Phase II of the Project as defined in Section 8.c., the Leased Premises shall hereby be amended to include only those areas described and depicted as Parcels A, B and C of the "Forest Park Golf Lease Boundary by David Mason & Associates, Inc., dated 8/21/97 and revised 1/25/00," depicted and described in Exhibit B-2 hereto. Provided, Lessor and Lessee may agree that such amendment shall occur prior to the completion of Phase II.

g. It is the intent of the parties that the Leased Premises will include an area sufficient for three nine hole golf courses and a clubhouse as indicated on Exhibits B-2 and B-3, and that in the event a survey determines that there are errors or omissions in those Exhibits, this Lease will be amended accordingly.

h. Upon completion of the construction of the Clubhouse and its occupancy by Lessee, the Lindell Pavilion is removed from the Leased Premises. The City hereby agrees to accept Lindell Pavilion in its "as is" condition as of the Effective Date, ordinary wear and tear excepted.

i. Upon the completion of the reconstruction of the Golf Courses, Lessee shall operate the golf courses as three returning 9 hole golf courses, as depicted in Exhibit B-3 hereto, to be known as the Dogwood, Hawthorn and Redbud courses.

j. Upon the completion of the Project, the City will provide AGC or cause AGC to be provided with an "as built" survey of the Leased Premises.

3. Leased Premises Accepted As Is. Subject to the Lessor's obligations under Section 8, Lessee acknowledges it is leasing the Leased Premises in their current, "as is" condition, and Lessee hereby releases Lessor from any and all claims with respect to the current condition of the Leased Premises.

4. Use of the Leased Premises. The Leased Premises shall be used by Lessee for the following purposes and no other, subject to the provisions of this Lease: the operation of public golf courses and other activities customarily associated with the operation of public golf courses; sale or rental of golf-related merchandise in a golf professional's shop, to be located in the Lindell Pavilion until the Clubhouse is completed, and thereafter in the Clubhouse; furnishing of lessons by a golf professional; sales of food and beverages, including liquor sales, subject to Lessee's procuring of all necessary licenses and permits at its sole cost and expense; and operation of a Youth Learning program as provided in Exhibit C hereto. Lessee shall have no obligation to provide license or permits for the City's construction activities under Section 8.

Lessee acknowledges that the Leased Premises shall continue to be public golf courses and facilities belonging to the City of St. Louis, which shall not be appropriated to any private use or purposes not specifically contemplated by the terms of this Lease, nor contemplated by necessary implication from the terms of this Lease.

5. Lessee's Obligations - Operations. Lessee shall maintain and manage the Leased Premises at all times in a professional manner in accordance with industry standards and as provided by this Lease. As part of its operations hereunder, Lessee:

(a) shall at all times comply with all requirements of Ordinance 60284 at the Lindell Pavilion until the Clubhouse is opened and thereafter at the Clubhouse:

1. shall operate a food service facility;

2. shall operate a golf professional's shop;

(b) shall provide men's and women's locker room and shower facilities in the Lindell Pavilion.

(c) acknowledges that the Lindell Pavilion is a public facility used by a variety of users, including golfers, handball players, joggers, and casual visitors; accordingly, while Lessee occupies the Lindell Pavilion, Lessee shall provide the locker and shower facilities to the public on a first-come first-served or other random basis which does not discriminate in favor of golfers; Lessee further

acknowledges that the Clubhouse will be a public facility used by a variety of park users; provided, however, that Lessee may restrict the use of off-street parking facilities adjacent to the Clubhouse for golf or Clubhouse related users, but shall not charge a fee for such use; and provided further that Lessee may rent all or a portion of the Clubhouse for private functions on an hourly basis.

(d) acknowledges that its charges for locker and shower facilities shall not be changed without the prior written approval of Lessor's Director of Parks, Recreation and Forestry ("the Director").

(e) shall use its best efforts to market and promote the use of the Golf Courses.

(f) shall, after the completion of the reconstruction of the Golf Courses, operate a youth golf learning center and programs, as provided in Exhibit C hereto.

(g) shall conduct at least one golf tournament at its sole cost and expense per year for the benefit of the Youth Learning Center and programs, as described in Exhibit C hereto.

(h) Upon completion of construction, Lessee shall not make any change or alteration of the Golf Courses that would prevent the promotion of the Golf Courses as a Hale Irwin Signature Course. If the Golf Courses cannot be promoted as a Hale Irwin Signature Course for any reason, Lessee agrees to not to make any change or alteration of the Golf Courses that would prevent the Golf Courses from being promoted as golf courses of a quality equivalent to or better than that of a Hale Irwin Signature Course.

(i) Upon completion of construction, Lessee shall operate and maintain the Clubhouse for the uses identified in the Clubhouse Plans as defined in Section 8.A. Lessee agrees not to make any changes in the Clubhouse after construction is completed which change the design character of the Clubhouse, or make structural alterations,

without the prior written consent of the parties to the Funding Agreement.

(j) Lessee shall cause signage to be maintained during the term it is managing the Golf Courses and Clubhouse that complies with the Signage Specifications as defined in Section 8.A.

(k) Lessee shall provide, display and maintain signage indicating the names of the Norman K. Probststein Forest Park Community Golf Courses and Youth Learning Center in Forest Park, the Dogwood, Hawthorn and Redbud courses, Ruthie's Caf☐, and the Champions Hall respectively, pursuant to Ordinance No. _____ (F.S. B.B. #117) and in accordance with the Signage Specifications.

(l) AGC shall maintain in the Clubhouse a memorial plaque for the former United States President Dwight D. Eisenhower. The form of the plaque is indicated in the Funding Agreement.

(m) Lessee shall maintain the golf course pursuant to a maintenance plan, as detailed in Exhibit D hereto. In addition, Lessee shall apply for certification for the Golf Courses as an Audubon Sanctuary Course and shall take all reasonable steps to obtain and maintain such certification according to a schedule approved by the Director.

(n) Lessee shall, at the City's request, provide maturation services to the golf courses on a time and materials basis, pursuant to a separate agreement which shall provide that Lessee's billings will be subject to audit by the City.

After the completion of the Project and the City's fulfillment of its obligation under Section 8, all costs of construction or work in connection with any work on the Leased Premises requested by Lessee and agreed to by Lessor shall be borne solely by Lessee, in addition to any other cost, expense, or monetary obligation of Lessee under this Lease.

6. Quiet Enjoyment. Subject to each and every provision of this Lease, and so long as Lessee complies with its obligations hereunder, 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.

7. Term a) Subject to the occurrences of the Effective Date under Section 1, the Term of this lease shall be for thirty-four years and one month, beginning as of March 1, 1987, and ending March 31, 2021, unless earlier terminated or extended pursuant hereto.

b) Unless this Lease has been earlier terminated prior to the expiration of the full term hereof as set out in subparagraph (a) of this Section 7, Lessor hereby grants Lessee an option to extend this Lease for a period of five (5) years, beginning April 1, 2021 and ending March 31, 2026. Such option shall be exercised by Lessee by written notice from Lessee to Lessor given between January 1, 2020 and May 31, 2021.

c) If Lessee exercises the option to extend this Lease granted to it in subparagraph (b) of this Section 7, unless this Lease has been earlier terminated prior to the expiration of the extension then, this Lease may be extended by mutual agreement of the parties for an additional period of five (5) years, beginning April 1, 2026 and ending March 31, 2031. An agreement for such extension must be authorized by the City by ordinance effective not later than July 1, 2025, otherwise no extension pursuant to this subparagraph shall occur.

8. Reconstruction of Golf Courses; Construction of New Clubhouse.

A. The City intends to utilize the funds available to it pursuant to the Funding Agreement to undertake in accordance with the Plans and as provided herein i) a reconstruction in a good and workmanlike manner of the Golf Courses consistent with the routing plan dated March 31, 2000, designed by Hale Irwin Golf Services (the "Routing Plan"); ii) construction in a good and workmanlike manner of a new golf clubhouse and youth golf learning center consistent with the site plan, elevations and floor plan dated March 31, 2000, designed by Powers-Bowersox (the "Clubhouse Plans"), and iii) design and installation in a good and workmanlike manner of new signage for said facilities consistent with the graphic specifications dated March 31, 2000, developed by Kiku

Obata & Company (the "Signage Specifications") (collectively, the "Project").

B. The Project shall be undertaken pursuant to detailed plans and specifications therefor developed in a manner consistent with the Funding Agreement and this Section 8 and approved by Lessor's Board of Public Service (the "Plans"). The Plans shall include detailed plans and specifications for all three golf courses and all related improvements, including the Clubhouse, any cart facility, any maintenance facility, driveways, drainage, grading, irrigation, landscaping, utilities, and the like, The Plans shall include the following with respect to the Clubhouse: (a) a space plan showing the size and configuration of the interior of the Clubhouse, (b) a "finish schedule" detailing all interior finishes, (c) all information necessary for preparation of mechanical, electrical and engineering drawings, (d) a detailed schedule consistent with the Project Budget of the furniture, fixtures and equipment that the City will deliver, (which schedule will include all items necessary to completely furnish and equip the Clubhouse, including, without limitation, restaurant equipment, smallware, tables, chairs, office furniture, security system, artwork pro shop fixtures, and pro shop countertop) and (e) sufficient detail to show locations, types and requirements of all power and plumbing, exhaust requirements, regular and special HVAC needs, telephone communications, computer cabling, telephone and electrical outlets, lighting, light fixtures and related power, and electrical and telephone switches. The Plans shall include the following with respect to each of the three golf courses: (f) grading plans, (g) drainage plans, (h) irrigation plans (including water supply calculations), (i) cart routing plan, and (j) grassing plan.

Prior to final approval of the proposed Plans by Lessor's Board of Public Service, the City will submit the proposed Plans to Lessee for review and comment and to FPF and the Probststein Foundation for review and comment under Article II Section 7(c) of the Funding Agreement. Unless within fifteen (15) business days after Lessee has received the proposed Plans, Lessee notifies Lessor that it believes the proposed Plans are i) inconsistent with this subsection or ii) inconsistent with the Routing Plan, the Clubhouse Plans or the Signage Specifications, or iii) would not result in a Hale Irwin Signature Golf Course, or iv) are substantially inconsistent with the Project Budget so as to substantially reduce the quality of the Project; provided, this item iv) shall not be

construed to preclude cost savings or to require wasteful spending, and advises the City with specificity of its reasons, the proposed Plans shall be deemed approved by AGC. If Lessee does so notify the City, the City agrees not to finally approve the Plans until the matter has been resolved.

C. The City shall at its sole cost and expense obtain all such permits and authorizations as may be required from any governmental agency with jurisdiction in connection with the Project.

D. "Completion" as used herein shall with respect to each Phase mean the following: (i) the Golf Course, Clubhouse and all related improvements reflected in the Plans for such Phase have been completed, (ii) the City has obtained a certificate of occupancy for all such improvements for which a certificate of occupancy is required pursuant to applicable law, (iii) the City has obtained and stored and/or installed, as appropriate, all personal property included in the improvements for such Phase, (iv) the City has allowed the golf course improvements in connection with such Phase to "mature" in accordance with the usual and customary golf course industry practice in order to attain the qualities ascribed to a golf course characterized as a championship golf course, and (v) the City has provided Lessee with a physical soil analysis report not dated earlier than ten (10) days prior to the date of completion confirming that the infiltration rates, partical sizes and chemical makeup of the soil under the greens on the golf courses to conform to USGA specifications. Only at such time as, in Lessee's reasonable determination, in accordance with accepted golf course construction industry standards, all golf courses and golf course related improvements and the remainder of the improvements contemplated in connection with such Phase have been constructed and the golf course is sufficiently matured to be considered ready for at least 30,000 annual rounds of play by the public shall the golf course constituting a portion of either Phase be considered completed for purposes of the Lease. The Lessor may, at any time, engage Hale Irwin or another individual of comparable golf course expertise to make the determinations required in the preceding sentence. The parties shall be bound by the reasonable determinations of such individual.

E. If the City determines after the start of construction of the Project, that the Project as provided in the Plans cannot be completed with the Funds available, the City will, after consultation with Lessee and the other parties to the Funding Agreement, complete reconstruction of the Golf Courses and construction of the Clubhouse in such manner as the

available funds permit. In such event, the City shall notify Lessee when the City has devised the plans it intends to use (the "Revised Plans"), following which Lessor and Lessee shall endeavor for a period of thirty days to agree on an appropriate rental for the remainder of the term of this Lease. This rental shall be subject to approval by the City's Board of Estimate and Apportionment. If the parties fail to reach agreement on the rental to be charged, the rental shall be determined by majority vote of a three-person panel. Such determinations shall be binding on the parties. One member of the panel shall be appointed by each party and the two members so appointed shall jointly appoint a third member. All members shall have at least ten years' experience in financial analysis and/or appraisal of golf course properties.

F. Certain actions to be taken and procedures to be followed in connection with the design of, preparation of the bid package for, and review of and execution of construction contracts for the Project are set forth in Article II, Section 7, subparagraphs (a) through (h) of the Funding Agreement, Exhibit A hereto.

G. If the Escrow Release Condition as defined Article II, Section 7 (g) of the Funding Agreement is met, Lessor and Lessee presently anticipate that the construction of the Project will begin in July, 2001. The Project will be carried out in two phases. Phase I will close the existing 9 hole course from or before July, 2001 until October, 2002. During that period, the existing 18 hole course will remain open; the existing 9 hole course will be reconstructed; and the Clubhouse, the major portion of the new water feature and new holes 14, 17 and 18 will be constructed, consistent with the Routing Plan and as generally depicted in Exhibit B-3 hereto. Phase II will commence immediately after completion of Phase I and is estimated to be concluded by October, 2003. During Phase II, the newly reconstructed 9 hole course and the Clubhouse will be open; the existing 18 hole course will be closed; the remaining holes of the Golf Courses will be reconstructed; and the final portion of the water feature will be constructed. Following the completion of Phase II, the golf courses will be three returning nine hole golf courses.

H. During Phase I, the City will cause its contractors not to unreasonably disrupt Lessee's use of that portion of the existing golf courses which will not be reconstructed during Phase I. During Phase II, the City will cause its contractors not to unreasonably disrupt Lessee's use of either that portion of the golf courses which was reconstructed during Phase I or the new Clubhouse.

I. The golf course reconstruction elements of the Project shall be constructed by an experienced, reputable golf course contractor whose performance will be supervised by a full time construction manager. The City shall for a period ending one year after completion of each Phase require its contractors to guarantee that all improvements constituting such Phase (including without limitation to the extent applicable, the Clubhouse, any cart storage facility, any maintenance facility, any golf course shoulders and restrooms, any entryways, any driveways and parking lots) are properly constructed and in proper working order. Specifically, without limitation, the City will require its contractors, at its or their sole expense, promptly to (i) repair any defects caused by defective or improper construction or installation of any improvement, (ii) perform such repairs as are required in order to cause the heating, ventilating, air conditioning, electrical, plumbing and other systems constituting a part of the improvements of each Phase to be in good and proper working order, (iii) replace and replant, as necessary, any grass on the tees, greens, and/or fairways that do not survive in proper condition after initial maturation of each golf course, (iv) correct any drainage problems which become apparent during such period, any of which are attributable to defective or improper construction or installation. Nothing contained in item iii) in the foregoing sentence will be deemed to relieve Lessee of its obligations under a maturation contract with the City. This subsection shall not be applicable to any defect or condition caused by the failure of Lessee to properly maintain, or caused by Lessee's negligent action or omission causing damage to, any improvement constituting part of the golf courses or the Clubhouse. Lessee shall comply with any and all conditions, requirements and specifications of any contractor, manufacturer or maker of improvements on the golf courses and Clubhouse for continuation of any warranty or guarantee. The City shall inform Lessee of such applicable conditions, requirements and specifications at the time Lessee assumes control of the golf course or Clubhouse. If as a result of any of the matters described in this Section 8F, Lessee is unable to make full use of the Leased Premises, Lessee shall be entitled to an abatement of rent pursuant to Section 11C designed to compensate Lessee for its loss of income attributable to the period Lessee is unable fully and productively to use the Leased Premises.

During the course of construction of the Project, the City shall provide Lessee in writing with a minimum of one week's advance notice of any regularly scheduled progress meeting with the City's general contractor,

architect or other design professionals and invite Lessee to attend such meetings. In addition, Lessee shall have the right, but not obligation, at any time during the construction of the Project, on two business days' prior notice to the City, to enter the construction areas of the Leased Premises at Lessee's own risk, to observe the construction of the Project. If Lessee believes that the Project and related improvements are not being constructed in accordance with the Plans, then Lessee may request the City and its contractor to confer with Lessee concerning the matter. Notwithstanding the foregoing, the City understands and acknowledges that, regardless of the extent of Lessee's monitoring and inspection of, and/or other input into the construction of the Project, Lessee shall not be responsible for the construction means, methods, techniques, sequences and procedures employed by the City and its contractors. During the construction of the Project and related improvements, the City shall submit to Lessee all written progress reports it received from its contractors and construction manager. The City shall maintain, for Lessee's inspection, upon Lessee's request, a copy of all contracts, drawings, specifications, change orders and other modifications, in good order and marked to record all changes made during construction. At such time as the City believes the construction of the Project and related improvements to be complete, the City shall notify Lessee of the same.

J. While each Phase is under construction, Lessee shall not be responsible for any costs of construction, taxes, insurance or other cost of any kind with respect to such Phase or that portion of the Leased Premises involved in such Phase. Specifically, Lessee shall have no obligations to pay real property tax, utility charges or maintenance costs relative to such Phase.

K. To the extent permitted by law, Lessor shall indemnify, protect, defend and hold harmless the Lessee and Lessee's agents, beneficiaries, employees, and lenders, if any, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the construction of the Project and Lessor's making of any improvements or alterations pursuant to this Section 8 and caused by the negligent act or omission of Lessor or its employees. The foregoing indemnity includes, without limitation, any injury to person or property arising out of Lessor's construction of the Project. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or action or proceeding involved therein, and whether or

not (in the case of claims made against Lessor) litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding is brought against Lessee by reason of any of the foregoing matters, Lessor, upon notice from Lessor, shall defend the same at Lessor's sole expense with counsel reasonably satisfactory to Lessee.

L. During the period of construction, Lessor shall require its contractors to maintain insurance naming Lessor and Lessee as additional insureds. Such insurance shall include but need not be limited to liability, property and fire insurance with damages affording protection in amounts not less than the replacement cost of the value at risk, insuring the additions to and the alterations of the buildings in the courses of construction, including all materials and equipment therefor incorporated in, on or about the Leased Premises (exclusive of excavations, foundations and footings) under a Builder's Risk Completed Value Form or equivalent thereof, and Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Land, with statutory limits as then required under the laws of the State of Missouri. Such insurance shall be provided by insurers approved by the City's Comptroller's Office. The specific insurance coverage to be required shall be specified in Bid Package material as that term is used in Article II of the Funding Agreement.

M. During the Project, Lessee shall conduct its golf operations so as not to reasonably impede or hinder the City's contractors, and install signage approved in advance by the Director to direct Lessee's patrons during the construction period.

N. Subject to sub-paragraphs I., J., K. and L. of this Section 8, Lessee hereby releases the City from any and all claims which Lessee might otherwise have hereunder with respect to i) occupancy by the City or its contractors of any part of the Leased Premises for the purpose of construction or construction-related activities; ii) any loss or diminution of revenue or income, any claim for loss of good will, or any claim for loss or damage of any kind which Lessee may experience during the construction period. Lessee expressly acknowledges that the extension of the term of the 1987 lease and the rent schedule provided for in this Lease are intended to fully compensate Lessee for such loss or diminution of revenue or income.

9. Lease Year Defined. The First Lease Year hereunder began as of March 1, 1987, and ended on March 31, 1988. Thereafter, each Lease Year throughout the term of this Lease began or shall begin on April 1 and end on the following March 31, provided the Lease Year in which this Lease becomes effective shall begin on the Effective Date and end on the following March 31. 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 Percentage Rent, and Gross Revenue for any Lease Year shall not be carried forward or backward into any other Lease Year. If this Lease is terminated prior to the end of a Lease Year, Minimum Rent and Percentage Rent will be subject to proration.

10. Rent: Reconstruction Period. As and for rent in the Lease Year beginning on the Effective Date and ending March 31, 2006, Lessee shall perform its obligations under the Funding Agreement, Exhibit A hereto.

11. Rent - Balance of Term. For the Lease Years beginning April 1, 2006 and thereafter, Lessee shall pay to Lessor rent, as follows:

A. for the Lease Year(s) beginning April 1 of the following years:

a) 2006, \$200,000;

b) 2007, \$250,000;

c) 2008 through 2012, the greater of the Minimum Rent or the Percentage Rent hereinafter set forth:

Minimum Rent: for 2008, not less than \$300,000; for 2009, 2010, 2011 and 2012,

90% of the average rent paid in the previous 3 Lease Years but in no event less than \$300,000;

Percentage Rent: 14% of greens fees and cart fees; 6% of pro shop revenues, food and beverage sales, and all other revenue not expressly excluded from Gross Revenue by Section 12 hereof;

d) 2013 through 2016, the greater of the Minimum Rent or the Percentage Rent hereinafter set forth:

Minimum Rent, 90% of the average rent paid in the previous 3 Lease Years but in no event less than \$350,000;

Percentage Rent: 16% of greens fees and cart fees; 6% of pro shop revenues, food and beverage sales, and all other revenue not expressly excluded from Gross Revenue by Section 12 hereof;

e) 2017 through 2020, the greater of the Minimum Rent or the Percentage Rent hereinafter set forth:

Minimum Rent, 90% of the average rent paid in the previous 3 Lease Years but in no event less than \$425,000;

Percentage Rent: 18% of greens fees and cart fees; 6% of pro shop revenues, food and beverage sales, and all other revenue not expressly excluded from Gross Revenue by Section 12 hereof;

f) 2021 through 2026, if Lessee's option for an extension term under Section 7.b hereof is exercised, the greater of the Minimum Rent or the Percentage Rent hereinafter set forth:

Minimum Rent, 90% of the average rent paid in the previous three (3) Lease Years but in no event less than \$450,000;

Percentage Rent: 20% of greens fees and cart fees; 7% of pro shop revenues, food and beverage sales, and all other revenue not expressly excluded from Gross Revenue by Section 12 hereof;

B. As and for additional rent hereunder, Lessee agrees that it will deposit on the 30th of April of each Lease Year, beginning in the Year beginning on April 1 following completion of the Project, an amount equal to one and one-half percent (1.5%) of Lessee's Gross Revenues the immediately preceding Lease Year, in a fund to be known as the Capital Fund which shall be held at a bank in the City of St. Louis, restricted so that withdrawals therefrom by Lessee in excess of \$1000.00 shall require the prior written consent of the Director, which consent shall not be unreasonably withheld. Moneys in the Capital Fund shall not be deemed City funds until termination of this Lease. Moneys in the Capital Fund may be spent only for capital repairs or improvements of the Golf Courses and Clubhouse (including the Youth Learning Center and signage.) Any balance remaining in the Capital Fund at the end of each Lease year, plus interest accrued thereon, shall remain in the Capital Fund. Lessee hereby irrevocably donates and contributes any balance remaining in the Capital Fund at the termination of this Lease to the City, for use solely for capital repairs or improvements of the Golf Courses and Clubhouse (including the Youth Learning Center and signage.) Lessee's obligations under this Subsection 11.B shall survive the termination of this Lease.

C. Unless Section 8.E. is applicable, if both Phases I and II of the Project have not been completed by April, 1, 2007, then Lessee may at its option at any time thereafter terminate the rights and obligations of the parties hereunder in which case Lessee shall be entitled to all available remedies at law or to liquidated damages as the parties may agree by a separate agreement prior to the Effective Date. Unless Section 8.E. is applicable, if either Phase I and/or Phase II is not completed within ninety (90) days after the respective dates for completion set forth in Section 8.G. ("Outside Dates") then Minimum Rent beginning April 1, 2006, shall be reduced as follows. Minimum Rent shall be reduced by an Applicable Percentage for each element of the Project for a period of time equal to the elapsed time between the Outside Date and the date upon which such element was actually completed. The Applicable Percentages shall be for the Clubhouse, existing eighteen hole course, and the reconstructed nine-hole course as the Director and Lessee shall agree prior to the Effective Date, subject to the approval of the City's Board of Estimate and Apportionment.

12. Gross Revenue. For purposes of calculating Percentage Rent, Gross Revenue shall mean all money received directly or indirectly by Lessee,

as as a result of the sales or rentals of good and services on the Leased Premises, but shall not include:

(1) Cash refunds or credits allowed on returns by customers;

(2) Sales taxes, excise taxes, gross receipts 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 by independent contractors who do not pay a percentage of revenue from lessons and instructions to Lessee or which do not exceed the demonstrated cost to Lessee of the provision of such lessons and instruction;

(4) Sales made by any concessionaire or licensee of Lessor, it being the intention of this Lease that only Lessee's share of the receipts of such concessionaires of licensees, if any, is to be included in the calculation of Lessee's gross revenue; provided, all concession contracts and concessionaires are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld.

(5) Sales or trade-ins of machinery, vehicles, trade fixtures or personal property used in connection with Lessee's operation of the Leased Premises;

(6) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Lessee where such exchange or transfer is not made for the purposes of avoiding a sale which would otherwise be made from or at the Leased Premises;

(7) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shoppers, suppliers or manufacturers;

(8) The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;

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

(10) Receipts from the sales of uniforms or clothing required to be worn by employees;

(11) Amounts reasonably attributable to meals served or provided to employees of Lessee;

(12) Receipts from the sale of waste or scrap materials resulting from Lessee's operations;

(13) Amounts attributable to play by members of the American Golf Players Association or a similar program instituted by Lessee, exercising their membership right to play a limited number of rounds without separate payment of greens fees, provided, such number of rounds actually played does not exceed one round played per year by any such member.

13. Payments. (a) Lessee shall make its rent payment to Lessor quarterly, on the last days of the months of July, October, January, and April. The payments to be made on the last days of July, October and January shall be calculated on the prorated basis of the Minimum Rent applicable to the Lease Year in which the payments are made. The payment to be made on the last day of April of each Lease Year as the last installment of rent for the preceding Lease Year shall be in a like amount, plus, for any Lease Year in which the percentage rent applicable to such Lease Year shall have exceeded the Minimum Rent, the difference between such percentage rent and sums paid as Minimum Rent in such Lease Year, and shall be accompanied by a statement signed by a duly authorized officer of Lessee showing in reasonable detail the amount of gross revenue for such Lease Year. In the event of a change in Lessor's fiscal year, the schedule of payments under this Lease shall be changed so that the last of four quarterly payments of rent hereunder shall be due on the last day of such changed fiscal year.

(b) All rental payments under this Lease shall be held by the Comptroller in the Special Park Fund created by Ordinance 51336 for use pursuant to that ordinance, or as hereafter otherwise determined by Lessor in Lessor's sole discretion.

14. Accounting Records; Inspection; Audits. (a) Lessee shall keep complete and accurate records of any and all gross revenues, earnings, receipts, fees commissions and income whatsoever from the operation of the Leased Premises or any activity conducted thereon, in accordance with generally accepted accounting procedures. Such records shall specifically include, but not be limited to, duplicate cash register receipts and copies of bank statements and deposit slips. Lessee agrees to

maintain these records for a period of two (2) years after the conclusion of any Lease Year and further agrees that such financial records shall be open and available to Lessor or other persons authorized by Lessor for examination at all reasonable times during business hours. Lessee agrees to maintain the following records at its St. Louis office: journal tapes from cash registers that include daily close outs; starter sheets that list each player's name along with cart tickets for carts rented; daily closing reports that include a copy of the bank deposit slip and detail credit and debt accounts; weekly computer closing reports; monthly profit and loss reports; copies of tournament contracts and closing reports. Lessee further agrees to provide any additional financial records not at its St. Louis office no later than fourteen (14) calendar days after any written request for same.

(b) Lessee shall provide by mail monthly statements to Lessor's Comptroller or his/her designee with a copy to the Liaison, which shall include: i) gross revenue statements separately setting out revenues for greens fees, cart fees, pro shop revenues, food and beverage sales, lessons fees, and all other revenue; ii) a statement showing the beginning and ending balances of the Capital Fund established by Section 11.B above with itemized withdrawals and deposits from and to said fund, and iii) a statement showing the numbers of nine hole and eighteen hole rounds, respectively, played.

(c) In addition, Lessee shall provide Lessor with independent certified audits approved by Lessor's Comptroller of the golf course operations for each of the first three Lease Years beginning April 1, in which Lessee is obligated to pay Minimum or Percentage rent, whichever is higher within three (3) months from the end of the Lease Year being audited. Thereafter, at any time within two (2) years after the conclusion of a Lease Year, Lessor acting by and through the Comptroller may audit or have audited the golf course operations during such Lease Year and Lessee shall cooperate with any such audit by promptly making its records available to the auditor. If any audit is so conducted for any Lease Years following the Lease Year beginning April 1, 2007, Lessor shall pay the cost of such audit, unless such audit reveals that Lessee has under reported its gross revenue to Lessor by more than two percent (2%), in which event Lessee shall pay promptly the cost of the audit in addition to paying any deficiencies in rent resulting therefrom.

15. Real Property Taxes. This Lease may create a possessory interest in Lessee subject to real property taxation. Should this occur, subject to the

City's obligations under Section 8 with respect to construction of the Project, Lessee agrees to pay such real property taxes prior to delinquency, except in the case of contests of such taxation made in good faith. Lessee will have the right to contest the validity or amount of real property taxes by means of appropriate proceedings diligently pursued at Lessee's sole expense. Lessee agrees that, upon final determination of liability, it will promptly pay the amount of taxes found owing, along with any interest, penalties or cost that may result from Lessee's contest.

16. Other Taxes. Lessee will pay all taxes, license fees or other governmental charges assessed or imposed on the personal property of Lessee located on the Leased Premises or upon or as a result of the business operation of Lessee conducted on the Leased Premises, including any generally applicable tax or license fee of The City of St. Louis, Missouri.

17. Utilities. Lessee will pay before delinquency all charges for utilities, including electricity, gas, heating, cooling, sewers, telephone and water, used by Lessee on the Leased Premises; provided, however, Lessor will provide electricity to the pumphouse used for the golf courses irrigation system and will pay utility costs related to the Project. With the prior approval of the Director, on conditions and within limits and for periods determined by the Director, Lessee may draw water for the golf course irrigation system for the Grand Basin.

18. Maintenance, Repairs, Alterations, Additions. Subject to the City's compliance with its obligations under Section 8, Lessee assumes sole responsibility for maintenance and repair of any kind, of all buildings and other improvements on the Leased Premises and all personal property acquired under this Lease. Lessee will maintain the Leased Premises in good order and in clean, sanitary and safe condition at Lessee's sole expense and replace all equipment, furnishings, systems and fixtures as needed at its sole cost and expense. Lessee further agrees it will maintain the Leased Premises in conformance with the City's Building Code and the minimum maintenance standards specified in Exhibit D hereto. Lessee further agrees that it will, not later than six calendar weeks prior to the first day of each Lease Year, submit to the Director a revised maintenance plan for the Leased Premises for the following Lease Year for the Director's approval, which approval shall not be unreasonably withheld. Upon such approval, such revised maintenance plan shall determine Lessee's obligations under this

Paragraph for the Lease Year to which such revised maintenance plan is applicable.

(b) After the completion of the reconstruction of the Golf Courses, and construction of the new Clubhouse, Lessee shall be responsible, at its cost, for any new additions to, and the continuing maintenance and repair of any kind, of the Leased Premises, fixtures, planting, furniture and related equipment, systems and fixtures, irrigation, plumbing, electrical, drainage, and water flow systems. Any additions or alterations in the physical properties must be approved in advance in writing by the City's Board of Public Service as provided in Ordinance 59741 (if applicable) and subject to any of the necessary City approvals. All buildings, structures, improvements, facilities and installations now present or hereafter erected by Lessee on the Leased Premises shall be considered to be owned by Lessor, and shall revert back to Lessor's control upon termination of this Lease at no expense to Lessor. Lessee shall be the legal owner of all personal property it has purchased for the maintenance and operation of the golf courses.

c) All signage on the Leased Premises shall be subject to the prior written approval of the Director. Lessee shall at all times maintain i) on the exterior of the Clubhouse a sign acknowledging the contribution the Probst Entities to the cost of the Golf Work, ii) in the grille in the Clubhouse, a sign identifying the grille as "Ruthie's Caf☞", iii) in the Clubhouse, a plaque honoring the former United States President Dwight D. Eisenhower, all of which shall be at all times consistent the signage specifications. Initial signage consistent with the signage specifications shall be installed as part of the Project.

d) No living, non-storm-damaged tree may be removed from the Leased Premises without the prior written approval of the Director. All trees removed shall be reported to the Liaison in writing. Trees removed shall be replaced as provided in Lessee's annual maintenance plan as approved by the Director.

e) The Director may require Lessee to reconfigure any hole on the Golf Courses, upon reasonable compensation to Lessee for the cost of such reconfiguration, in the event of a need arising for such reconfiguration due to a municipal purpose.

19. Construction or Work. Any and all construction or work on the Leased Premises by or on behalf of Lessee, and the Project, shall be

done in complete compliance with all applicable City, State and Federal Codes and pursuant to plans and specifications approved by Lessor's Board of Public Service as provided in Ordinance 59741, if applicable, and subject to approval by or permit of any other City department or agency whose approval or permission may be required under the Saint Louis City Charter or Saint Louis City ordinance prior to the commencement of any such construction or work.

20. Repairs by City. In the event Lessee fails to make repairs or keep any part of the Leased Premises in safe and sanitary condition, Lessor reserves the right, to be exercised by the Director or his designee, to enter the property for the purpose of making emergency repairs and to charge all costs of said repairs to Lessee.

21. Sub-contractors. (a) Lessee shall be responsible for the performance of subcontractors it may hire for duties on the Courses. Lessor's Board of Public Service shall have the right of approval of sub-contractors, which approval shall not be unreasonably withheld.

(b) Prior to the commencement of any construction on the golf courses costing in excess of \$10,000, except where such work is carried on by Lessee's employees, Lessee shall furnish evidence satisfactory to Lessor that Lessee is financially able to pay its subcontractors, workmen and material suppliers, and shall furnish to the Lessor a bond in an amount, in form, and with surety acceptable to, the Lessor, naming the Lessor and Lessee as obligees and insuring the completion of the proposed work free and clear of all liens, without cost to Lessor. Lessee shall procure or require procurement of payment and performance bonds in all events when required by Missouri law, at no cost or expense to the City.

22. Right to Sell. Lessee will to the extent permitted by law have the exclusive right, and duty, to sell, rent, or repair golf-related supplies or equipment on the Leased Premises. Lessee will also have the right to sell food and drink on the Leased Premises, subject to all necessary licensing, and to the rights of any parties to existing concession agreements and sponsors of special events.

23. Sales. Lessee shall maintain on file in the office of the Director at all times a current list of all items (including food and drink) or services offered for sale on the Leased Premises and current prices thereof. The Director shall have the right reasonably to disapprove of any such item or price.

24. Prices. Lessee will charge greens fees and cart fees as provided by Exhibit E hereto.

25. Employment; MBE/WBE Lessee acknowledges its obligations to comply with the Mayor's Executive Order 26, and 28 dated July, 1997 and with any applicable subsequent policy order or ordinance of the City with respect to employment and MBE/WBE participation. Lessee agrees to comply with all applicable laws or regulations, local, state or Federal, pertaining to equal employment opportunity and discrimination in employment.

26. Prevailing Wages. Lessee agrees to require all sub-contractors of any tier to pay prevailing wages in the St. Louis Metropolitan Area.

27. Existing Relationships. All existing written contracts for tournaments and special events shall be honored, and all traditional relationships with outside organizations that use the course and are presently without a contract shall be maintained and conducted in good faith by the Lessee within the traditional bounds of those relationships, provided, however, that Lessor recognizes that it is Lessee's usual business practice to memorialize contractual arrangements for tournaments in written form. Specifically, but without limitation, the golf courses must continue to be made available for the Great Forest Park Balloon Race in September, skiing and sledding (November through March), and miscellaneous charitable fund-raising events in the Lindell Pavilion (principally walking and jogging events). Lessee will work in good faith with organizers of professional and amateur golf tournaments that may wish to use the courses.

With respect to special, non-golfing, events, held at the Leased Premises at the City's request, Lessor agrees to hold Lessee harmless from all suits, actions, loss, expense or claims of any kind whatsoever, including attorney's fees or expenses, arising therefrom, except as may be the result of a negligent or deliberate act of Lessee or of Lessee's employees or agents. The costs of such special events will not be charged to Lessee. Lessee acknowledges that food and beverage service and other concessions may be given to third parties for the Great Forest Park Balloon Race. Lessor shall in good faith endeavor to require any persons or entities desiring to use the Leased Premises for such aforementioned non-golf events or similar uses to reach a satisfactory agreement with Lessee prior to such use regarding responsibility for any damage which may result to the Leased Premises from the event and, in any event, prior

to issuing any permit which includes the use of the Leased Premises, Lessor shall require that Lessee is named as an "insured" on all City required liability and property damage insurance.

28. Golf Carts. Lessee, at its sole expense, shall acquire and provide for use by the public an adequate number of E-Z-Go or equivalent golf carts in accordance with industry standards suitable for use on the Leased Premises. In addition, Lessee, at its sole expense, shall provide such electrical charge units, tools, spare parts, air compressors, truck batteries, racks hoses and tow bars as may be reasonably required to maintain each of the golf carts in good operating condition. Lessee further agrees, at its cost, to replace the entire fleet of golf carts at least once each six (6) years. At all times the golf carts shall be and remain the property of Lessee.

29. Marshals. Lessee will provide marshals as needed, during hours of operation, to assist in promoting safe conditions on the Leased Premises.

30. Hours of Operation. During the term of this Lease, Lessee shall continuously cause the Leased Premises (other than those portions of the Leased Premises on which the City is implementing the Project) to be operated in such a manner as to maximize income consistent with the permitted uses specified in Paragraph 4 hereof consistent with Lessee's goal of making reasonable profit from its operations under this Lease. In this regard, Lessee shall keep the golf courses open for play and the Clubhouse open all year round as weather and golf course conditions permit, from dawn until sunset. The Lindell Pavilion shall be open Memorial Day through Labor Day daily from 5:00 a.m. until 10:00 p.m., and on all other days except Thanksgiving Day and Christmas Day from 6:00 a.m. until 10:00 p.m. If the Leased Premises are partially destroyed and this Lease remains in full force and effect, Lessee shall continue business operations on the Leased Premises to the extent reasonably practical from the standpoint of good business judgment during the period of restoration.

31. Environmental Laws; Inspections. The Lessee shall not take or omit any action which would constitute a violation of any applicable laws pertaining to health of the environment including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as hereafter amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the

Used Oil Recycling Act of 1980, the Hazardous and Solid Waste Amendments of 1984, as hereafter amended ("RCRA"), the Federal Water Pollution Control Act, as now or hereafter amended ("AWPCA"), and any laws of the State of Missouri or any subdivision thereof, relating to the presence of, removal, spill, release, leaking or disposal of oil, petroleum, toxic pollutants, solid waste or other hazardous substances. Notwithstanding the foregoing, Lessee shall not be liable to City for any violation of such laws not caused or committed by Lessee, its agents, employees, contractors, and invitees.

The City shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if the City has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur.

32. Contract Monitoring. The Director shall appoint an employee ("the Liaison") of the Department of Parks, Recreation and Forestry to inspect the golf courses for compliance with Lessee's maintenance standards and schedules set out in this Lease. The Liaison shall have unlimited access to inspect the Leased Premises and facilities at any reasonable time, and shall have a key to the front door of the Lindell Pavilion or Clubhouse, as applicable, and the right of access thereto at anytime. The Liaison shall submit a report of his inspections monthly to the Director, with copies of the report going to the Lessee. An initial written procedure for day-to-day administration of this Lease and correction of day-to-day deficiencies of performance by Lessee is attached as Exhibit F. This procedure may be revised from time to time, but shall always address the following matters:

(1) Classification of deficiencies in three levels of significance, e.g., critical, major, and minor.

(2) Definitions and/or examples of deficiencies in each classification.

(3) A procedure for determination that a deficiency as alleged by the Liaison exists, which shall include: notice to Lessee, time for cure, an informal procedure for contest of a proposed deficiency by Lessee.

(4) A schedule of penalties for determined deficiencies.

This procedure shall be reviewed annually by the Director and Lessee, revised as necessary prior to the beginning of each Lease Year, and submitted to and approved by the Board of Public Service prior to the beginning of each Lease Year.

33. Insurance.

a) Lessee shall at its sole cost, procure and maintain on file with Lessor's Comptroller at all times, policies of insurance as hereafter specified applicable to Lessee's use of the Leased Premises pursuant to Section 4; Lessee's insurance hereunder shall not cover operations of the City or its contractors for those portions of the Leased Premises on which the Project is being implemented while such implementation is occurring. Such policies shall name "The City of St. Louis and its officers, agents, and employees" as additional insured and be issued by insurers having a Best's Rating of not less than B¹².

b) Insurance in the initial minimum amounts, below, shall be provided:

A. Worker's Compensation: Missouri statutory.

B. Comprehensive Liability (to include premises, operations, products, and completed operations and personal and bodily injury including death with employment exclusion deleted):

	Each Occurrence	Aggregate
1. Bodily Injury	\$1,000,000	\$1,000,000
2. Property Damage	\$500,000	\$1,000,000

Products and completed operations shall be maintained for two (2) years after final payment.

C. Comprehensive Automobile Liability:

	Each Occurrence	Aggregate
Bodily Injury and Property Damage Combined	\$1,000,000	\$1,000,000

This insurance shall include for bodily injury and property damage.

(i) owned automobiles

(ii) hired automobiles

(iii) non-owned automobiles

D. Fire Insurance: Unless Section 36(b) is applicable, Lessor shall maintain, at Lessor's sole expense, a standard form policy or policies of fire and extended coverage insurance on the Leased Premises, including the Lindell Pavilion as long as its is part of the Leased Premises, and the Clubhouse related buildings and all personal property, furnishings and equipment owned by Lessor. Lessee agrees to carry insurance on any deductible stipulated by Lessor's insurance carrier, if any, up to one hundred thousand dollars (\$100,000.00). Lessee agrees to maintain insurance coverage on, or otherwise assume financial liability for, personal property, furnishings and equipment owned by Lessee.

c) Prior to cancellation of any insurance policy required to be maintained by a party, the other party shall be given thirty (30) days written notice by registered mail, return receipt requested.

d) In fulfilling its obligations for the acquisition of insurance coverage under this Paragraph, Lessee shall have the right to self-insure in a manner subject to the reasonable approval of Lessor's City Counselor any hazards so covered up to a maximum of two hundred fifty thousand dollars (\$250,000.00) per occurrence. 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.

e) If at any time any of the insurance policies required by this Paragraph shall be or become unsatisfactory to Lessor, as to form or substance (including coverage amounts), or if a company issuing such policy shall have a Best's Rating of less than B¹², Lessee shall, upon notice to that effect from the Lessor, promptly obtain a new policy, and submit the same for approval to Lessor's Comptroller, provided, however, that within ten days of receipt of notice to such

effect from Lessor, Lessee may notify Lessor that it disputes the content of such notice. In that event, such issue shall be resolved within 45 days by a panel consisting of Lessor's Comptroller or his designee, a designee of Lessee, and an insurance broker doing business in the Metropolitan Saint Louis Area jointly selected by Lessor's designee and Lessee's designee within 10 days after Lessee's notice under this Paragraph.

34. Indemnification. Subject to the City's obligations with respect to construction of the Project under Section 8, Lessee and its sureties shall indemnify, and hold harmless Lessor, and all its departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or claims of any kind whatsoever, including attorneys' fees or expenses, arising out of or relating in any way to the execution, performance, or non-performance of the Lease, whether or not covered by insurance. Lessee shall, at Lessor's option, defend Lessor, at Lessee's sole expense, against any such claim, suit or action. This provision does not apply, however, to any liability as may be the result of the direct and proximate negligence or willful misconduct of Lessor or Lessor's employees or agents acting within the scope of their employment or agency.

35. Assignment - Assumption. (a) Lessee shall not voluntarily assign, sublet, or encumber its interest in this Lease or in the Leased Premises without Lessor's prior written approval. Any assignment, subletting, or encumbering without Lessor's consent shall constitute a default hereunder and shall be voidable at Lessor's election. No consent to any assignment, sublease or encumbrance shall constitute a further waiver of the provision of this paragraph.

(b) Simultaneously with any assignment, sublease, or encumbrance approved by Lessor, the assignee, sublessee or second party to an encumbrance shall execute an agreement running to Lessor assuming Lessee's obligations under this Lease. Lessee shall remain fully obligated under this Lease notwithstanding any assignment or sublease or any indulgence granted by Lessor to Lessee or to any assignee or sublessee unless released in writing by Lessor.

36. Damage and Restoration; Lessee's s Fire Insurance. (a) If either of the golf courses, or any building, fixture or improvement on the Leased Premises should be partially damaged or totally destroyed by fire or other casualty, Lessee will use the insurance proceeds, if any, to

promptly and diligently restore the courses or improvements to substantially the same condition as they were in immediately before such destruction, provided that restoration can be made under existing laws. To the extent insurance proceeds are not adequate to so restore, Lessor may, but need not, require the restoration to be performed with the costs in excess of insurance proceeds to be paid by Lessor. During any period in which restoration prevents Lessee from using all or a significant portion of the Leased Premises, there shall be an equitable abatement or reduction of minimum rent. If existing laws do not permit the restoration, or if insurance proceeds are insufficient and Lessor does not elect to restore, or if the parties should agree that restoration is not warranted, then either party may elect to terminate this Lease by giving 120 days notice to the other. Such termination shall release and discharge both parties hereto from any further obligations or liabilities under this Lease except for the payment of sums due and owing by Lessee to Lessor as of the termination date. In such case, Lessee shall be entitled to any insurance proceeds up to the amortized amount of Lessee's \$2 Million payment under the Funding Agreement. For such purpose Lessee's payment shall be amortized on a basis and over a period to be agreed to by the parties prior to the Effective Date.

(b) Lessee may provide fire and extended coverage insurance at its cost and expense on the Leased Premises, including the Lindell Pavilion as long as it is part of the Lease Premises and the Clubhouse, related buildings and all personal property, furnishings and equipment owned by Lessor, subject to the approval of the City's Comptroller. Lessee may provide all or part of such insurance by self-insurance, subject to the approval of the City's Comptroller. In such event, if the insurance proceeds are inadequate to restore the courses or improvements, there shall not be any abatement of rent, and Lessor may terminate this Lease by giving 120 days notice to Lessee. Also, in such case the last sentence of subsection (a) is inapplicable.

37. Eminent Domain. If at any time during the term of this Lease, title to all or substantially all 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 during the Lease Year in which the taking occurs shall be apportioned as of the date of the taking. For the purpose of this section, substantially all of the Leased Premises shall be deemed to have been taken if that portion of the Leased Premises not taken cannot be economically utilized by Lessee for

those purposes permitted under Paragraph 4 of this Lease, but if the Eighteen Hole Course is not taken, or, after the completion of the Golf Work, two of the three nine hole courses are not taken, then less than substantially all of the leased premises shall be deemed to have been taken.

In the event that title to less than all or substantially all of the Leased Premises is taken by condemnation or by right of eminent domain, this Lease shall not terminate, but the Minimum Rent during the remainder of the Lease term shall be reduced as of the date of such partial taking in a proportion equal to the reduction in the square footage of the Leased Premises.

If there is a taking by right of eminent domain, the award shall belong to and be paid to Lessor, except that Lessee shall received from the award the following: (a) a sum attributable to the value of Lessee's leasehold estate, including improvements made or paid for by Lessee pursuant to the Funding Agreement, and (b) a sum attributable to loss of good will if included in the award.

38. Frustration of Purpose. At any time during the term of this Lease, if the governing body of any political subdivision having competent jurisdiction over the Leased Premises should enact any valid zoning ordinance, law or regulation which prohibits the use of the whole or a substantial part of the Leased Premises for the purposes as provided in Paragraph 4 of this Lease, Lessee may elect, within one hundred twenty (120) days after the effective date of such ordinance, law or regulation, to cancel this Lease and surrender possession of the Leased Premises. Any such cancellation and surrender will act to release and discharge the parties hereto from any further obligation under this Lease except for the payment of any sums due and owing by the Lessee to the Lessor as of the termination date.

39. Course Manager. At all times during the term hereof, Lessee will designate a full-time, on-site daily manager of the Leased Premises, such manager being subject to the prior approval of the Director. At any time during the term of the Lease, the Director may reasonably request replacement of the manager, in writing to Lessee. Lessee and Director shall meet and confer on any such request and take appropriate action thereon, consistent with law, within 30 days from the date of such a request.

40. Lessor's Cooperation. Lessor recognizes and acknowledges that Lessee may need the assistance and cooperation of Lessor from time to time in order to properly perform and fulfill Lessee's covenants and obligations under this Lease. Therefore, Lessor agrees that the Liaison shall work with Lessee in assuring that Lessee obtains the appropriate assistance and cooperation of Lessor, subject to the terms of this Lease and all applicable laws.

41. Annual Report. Lessee shall submit to the Director a written annual report describing in detail the activities and operations of Lessee on the Leased Premises in the preceding calendar year by April 30 of each year.

42. Violations, Default, Remedies. (a) The following conditions will constitute a breach of this Lease and a default hereunder:

(1) If Lessee fails to pay any rent when due or fulfill any other monetary obligation of Lessee to Lessor, including but not limited to the maintenance of insurance and the making of any payment of rent when due under Paragraphs 9 and 10 hereof and Lessee fails to cure such monetary default within ten (10) days after written notice from Lessor to Lessee of such monetary default.

(2) If either party fails to perform any of its other non-monetary obligations under this Lease when due or called for.

(3) If Lessee shall fail to satisfy any final judgment against it arising out of its operations at the Leased Premises within 30 days after such judgment becomes final.

(4) If Lessee shall fail to submit in a timely manner its Maintenance Plan for any Lease Year.

(5) If Lessee shall unreasonably fail or refuse to agree prior to any Lease Year, to a written procedure as described in Paragraph 31 for such Lease Year.

(6) The levy of any attachment of execution or the appointment of any receiver or the execution of any other process of any court which directly or indirectly substantially interferes with Lessee's operations under this

Lease and which attachment, execution, receivership, or other process of such court (or the effect thereof) is not vacated, dismissed or set aside within a period of one hundred twenty (120) days.

(7) If Lessee shall be adjudged bankrupt, or a receiver be appointed for Lessee's property, or if Lessee's interest in this Lease shall pass by operation of law to any person other than Lessee and such adjudication, appointment or order is not vacated, dismissed, or set aside within one hundred twenty (120) days from its entry.

(8) If Lessee shall make any assignment, sublease, or encumbrance of this Lease or any interest of Lessee under this Lease, without Lessor's approval pursuant to Paragraph 33 of this Lease.

(9) If Lessee shall be in default of any of its obligations under the Funding Agreement, Exhibit A hereto.

(b) If any of the events identified in subparagraphs (a)(2) through (a)(5) of this paragraph should occur, such event shall constitute a default if the defaulting party fails to cure such event within sixty (60) days from the date of written notice from the non-defaulting party, provided, however, that if the nature of the non-monetary default is the result of a force majeure occurrence or is otherwise 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.

(c) If Lessee shall be in breach of this Lease, as provided above, this Lease and Lessee's interest and rights thereunder shall cease, terminate, and be forfeited and Lessee shall surrender the Leased Premises forthwith. In addition, if any of the conditions identified in subparagraph

(a) 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. If Lessee is the party in default, Lessor may terminate Lessee's right to possession without termination of the Lease. If Lessor elects to continue the Lease

and so informs Lessee in writing, Lessor will retain the right to recover rent and all other payments at such time as they become due under this Lease and, Lessee may assign its interest in the Lease pursuant to Paragraph 32 of this Lease. Lessor may also elect to rent the leased Premises to any other party at a rental rate and for such terms as Lessor deems practicable, and the rent so received shall be credited to the account of Lessee, less any expense of repossession and re-renting. During the unexpired remainder of the Lease term, Lessee will be liable for any deficiency that results from Lessor re-renting the Leased Premises at a lesser amount than the minimum rent called for in this Lease.

43. Non-Waiver. No failure of either party to exercise any power given under this Lease or to insist upon strict compliance with the undertakings, duties and obligations of the other party hereunder, and no custom or practice of either party at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the provisions, covenants, terms and conditions of this Agreement.

44. Peaceable Termination. Lessee shall peaceably and immediately give up and surrender to Lessor the Leased Premises and every part thereof at the termination of this Lease.

In case of termination of the agreement because of failure of Lessee to pay rent or any other monetary obligation, or to perform any other obligation of the agreement, the City shall be entitled to take action on the Letter of Credit.

45. Time of Essence. Time is of the essence of each provision of this Lease.

46. Integrated Agreement. This Lease contains or refers to all of the agreements of the parties and cannot be amended or modified except by written agreement.

47. Lessee's Acknowledgments. Lessee acknowledges that neither expenditures of funds by Lessee, nor construction of improvements by Lessee, nor any representation by any City official or employee, shall create any valid expectancy or right in the Lessee to renewal of this lease, or obligation by Lessor to renew this Lease, and that Lessee's performance of all its undertakings in this lease, over the term thereof, is

a valid factor for consideration by the City in determining whether this Lease shall be renewed.

48. 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; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. 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 telegram or overnight express delivery service shall be deemed effective one (1) business day after transmission to the telegraph company or after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of notice, demand, request, reply or payment, if to Lessor, delivery of such shall be to both the Director and to the Comptroller at the following addresses:

Director of Parks, Recreation and Forestry
5600 Clayton Avenue
St. Louis, MO 63110

Comptroller of the City of St. Louis
Room 212, City Hall
St. Louis, MO 63103

If to Lessee, delivery shall be to:

American Golf Corporation
2951 28th Street, Suite 3000
Santa Monica, CA 90405
Attention: Legal Department

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.

49. Governing Law. This Lease and the rights and liabilities of the parties to this Lease

shall be governed by the laws of the State of Missouri. If any provision of this Lease is invalidated by judicial decision or statutory enactment, the invalidity of any such provision will not affect the validity of any other provision of this Lease.

50. 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.

51. Nondiscrimination. Lessee agrees that in the use of the Leased Premises or in the use of any premises, it will not exclude or discriminate against any person solely because of race, color or creed, gender, sexual orientation, or for any reason not sanctioned by law and not applicable alike to persons generally in the use of said Leased Premises.

52. Binding Effect. This Lease shall be binding on and inure to the benefit of the parties and their successor except as otherwise herein provided.

In Witness Whereof, the parties have set their bonds and seals the day first above written:

AMERICAN GOLF CORPORATION, a California Corporation

By: _____
President

Attest:

Secretary

THE CITY OF ST. LOUIS

Mayor

Comptroller

Approved as to form:

City Counselor

City Register

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EXHIBIT E

All Rates

							All 27 Open		
Carts	1997	1998	1999	27Holes till 7/01	18 Holes 7/01- 9/02	9 Holes 9/02-10/03	Oct. 2003	2004	2005
18 Holes	\$22.00	\$22.00	\$22.00	\$22.00	\$22.00	\$22.00	\$24.00	\$24.00	\$26.00
9 Holes	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00	\$14.00	\$14.00	\$16.00
9 Holes (Sr)	\$11.00	\$11.00	\$11.00	\$11.00	\$11.00	\$11.00	\$12.00	\$12.00	\$13.00

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Weekday Green Fee

18 Hole	\$18.00	\$18.00	\$18.00	\$20.00	\$22.00	\$22.00	\$25.00	\$27.00	\$29.00
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18 Hole Senior, Junior	\$10.00	\$10.00	\$10.00	\$12.00	\$12.00	\$15.00	\$17.00	\$17.00	\$18.00
9 Hole	\$12.00	\$12.00	\$12.00	\$12.00	\$12.00	\$13.00	\$15.00	\$16.00	\$18.00
9 Hole Senior, Junior	\$6.00	\$6.00	\$6.00	\$8.00	\$8.00	\$8.00	\$10.00	\$10.00	\$11.00

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Weekend Green Fee

18 Holes	\$21.00	\$21.00	\$21.00	\$24.00	\$24.00	\$29.00	\$35.00	\$37.00	\$39.00
9 Holes	\$12.00	\$12.00	\$12.00	\$13.00	\$14.00	\$15.00	\$17.00	\$18.00	\$20.00

After 2005, rate increases would be based upon the average increase in the CPI over each two year period, rounded up to the nearest quarter. Rates could be raised in 2007, 2009, 2011 and so on ... based on the two year CPI formula. Any other green fee or cart fee increase would need the approval of the Director and and the Board of E & A.

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Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
06/30/00	06/30/00	PARK	07/05/00	
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
07/07/00		07/14/00	07/14/00	07/21/00
ORDINANCE	VETOED	VETO OVR	SIGNED BY MAYOR	
65044			08/09/00	