



Req. #6619

RESOLUTION NO. 33906

1 WHEREAS the Tacoma Landfill Consent Decree required the City of
2 Tacoma to develop a Land Use Master Plan to develop potential uses for the
3 Landfill after closure, and

4 WHEREAS, during the plan development, the citizens of Tacoma were
5 afforded the opportunity to express ideas concerning activities they would like
6 to see on the Landfill and its adjacent property; the results of the public
7 involvement process indicated that Tacoma citizens desired golfing facilities at
8 the site, and

9 WHEREAS, with the closure of the Metropolitan Park District facility,
10 Golf Land, across the street from the Landfill, the Solid Waste Utility ("SWU")
11 believed it was an ideal opportunity to locate a golf facility on the property
12 adjacent to the Landfill, which, except for the northerly 200 feet, is surplus to
13 the needs of SWU, and

14 WHEREAS, in 1995, the City commissioned a Market Demand Study by
15 National Golf Foundation Consulting, Inc. (NGF) to evaluate the economics
16 and demographics of various types of golf facilities for the site; the NGF
17 considered several facilities for the site, including a 9-hole or 18-hole golf
18 course, and a driving range and practice facility, and

19 WHEREAS, based upon their recommendation and understanding of the
20 market, NGF believes the development of a first-class golf driving range and
21 learning center would be ideal for our location; the NGF believes that the
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28-acre piece of land owned by SWU in the southeastern portion of the Landfill site appears to be the most stable area for the development of this project, and

WHEREAS, in May 1997, the City issued a Request for Proposals to enter into a public/private partnership with a firm who desired to design, construct, and operate a first-class, regional golf driving range and learning center on this land adjacent to the Tacoma Landfill, and

WHEREAS Eaglequest Golf Centers, Inc. (EGCI), a Vancouver, B.C. based company with local offices in Kent, was determined to be the only responsive proposer for the project, and

WHEREAS the Public Works Department established a Selection Team to evaluate EGCI's qualification for this project. Because the Selection Team was impressed with the quality of the EGCI team and the overall facility plan, the Selection Team recommended the Public Works Department proceed with negotiations for an operation agreement for the proposed facilities, and

WHEREAS EGCI proposes to construct a 5,000-square-foot pro shop with a small deli, a 240-yard driving range with target greens and sand hazards, 60 tee stations on two levels, a 10,500-square foot natural grass chipping and putting green area, a designated area for teaching and video taping customers, and, possibly, an 18-hole, landscaped putting course, and

WHEREAS the proposed operation agreement and its attachments outline the specific terms of the agreement with EGCI including, among other items, a financial payment obligation to the City for the use of the property, and

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1 the City's reservation of an easement to continue to operate the Landfill; this
2 easement reservation is similar to the one obtained in the sale of the Apartment
3 properties, and

4 WHEREAS staff recommends that the City enter into an operation
5 agreement with EGCI; Now, Therefore,

6
7 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

8 That, except for the northerly 200 feet, the parcel of land adjacent to the
9 Landfill is surplus to the needs of the City's Solid Waste Utility and should be
10 developed and operated as a golf driving range and learning center.

11 BE IT FURTHER RESOLVED that the proper officers of the City of
12 Tacoma are authorized to execute an Operation Agreement and its
13 attachments with Eaglequest Golf Centers, Inc. to design, construct, and
14 operate a first-class, regional golf learning center, said Agreement to be
15 substantially in the form of that document on file with the City Clerk.

16
17 Adopted DEC 09 1997

Gina Hanson
Mayor

18
19 *Rich Dombelt*
20 Attest: City Clerk

21 Approved as to form and legality:
22 *Heath C Whitman*
23 Assistant City Attorney

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REQUEST FOR ORDINANCE OR RESOLUTION

CITY CLERK USE

Request #:	6619
Ordinance #:	
Resolution #:	33906

1. DATE: September 23, 1997

2. REQUESTING DEPARTMENT/DIVISION/PROGRAM Public Works/Solid Waste Utility	3. CONTACT PERSON (for questions): Karen J. Larkin, P.E.	PHONE/EXTENSION 5525
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4. PREPARATION OF THIS REQUEST FOR RESOLUTION IS REQUESTED FOR THE CITY COUNCIL MEETING OF TUESDAY

5. SUMMARY TITLE/RECOMMENDATION: (A concise sentence, as it will appear on the Council Agenda)

Authorize the proper City officials to execute a 30-year Operations Agreement and Development Agreement with Eaglequest Golf Centers, Inc., of Vancouver, British Columbia to design, construct and operate a first-class, regional Golf Learning Center on property owned by the City adjacent to the Tacoma Landfill.

6. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

The Tacoma Landfill Consent Decree required the City to develop a Land Use Master Plan. The purpose of the plan was to develop potential uses for the landfill after closure. During the plan development the citizens of Tacoma were afforded the opportunity to express what activities they would like to see on the property. The results of the public involvement process indicated that Tacoma citizens desired golfing facilities at the site.

With the closure of the Metropolitan Park District facility, Golf Land, across the street from the landfill, the Solid Waste Utility believed it was an ideal opportunity to relocate the facility to the landfill. In 1995, the City commissioned a Market Demand Study by National Golf Foundation Consulting, Inc. (NGF) to evaluate the economics and demographics of various types of golf facilities for our site. The NGF looked at a range of facilities for the site including a 9 or 18-hole golf course, and a driving range and practice facility. Based upon their recommendation and understanding of the market, NGF believes the development of a first class golf practice and learning center would be ideal for our location. The NGF believes that the land owned by the SWU in the southeastern portion of the landfill site appears to be the most stable area for the development of this project.

In May 1997, the City issued a Request for Proposals to enter into a Public/Private partnership with a firm who desired to design, construct and operate a first class, regional golf driving range and learning center on this land adjacent to the Tacoma Landfill. Eaglequest Golf Centers, Inc., a Vancouver B.C. based company with local offices in Seattle and Kent was determined to be the only responsive proposer for the project. The Public Works Department established a Selection Team to evaluate Eaglequest's qualification for this project. The Selection Team was impressed with the quality of the Eaglequest team and the overall facility plan. The Selection Team recommended the Public Works Department proceed with negotiations for an Operations Agreement for the proposed facilities.

Eaglequest proposes to construct a 5,000 square foot pro shop with a small cafe, a 240 yard driving range with target greens, water and sand hazards, 51 artificial mat tee stations, 12 natural grass tee stations, a 10,500 square foot natural grass chipping and putting green area, a designated area for teaching and video taping customers, and a 18-hole naturally landscaped putting course. The attached Operations Agreement prepared by our Legal Department outlines the specific terms of the property lease to Eaglequest. The two major elements of this Agreement include a financial payment obligation to the City for the use of the property, and the City's reservation of an easement to operate the landfill. This easement reservation is similar to the one obtained in the sale of the Apartment properties.

7. FINANCIAL IMPACT: (Future impact on the budget.)

This Agreement contains provisions for minimum lease payments plus a percentage of the gross revenues to be paid annually to the Solid Waste Utility.

8. LIST ALL MATERIAL AVAILABLE AS BACKUP INFORMATION FOR THE REQUEST AND INDICATE WHERE FILED:


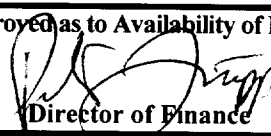
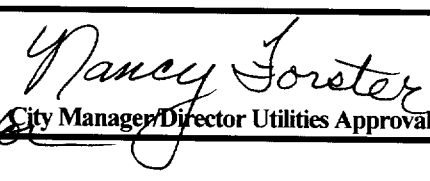
Source Documents/Backup Material	Location of Document
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Tacoma Landfill Land Use Plan	Public Works Department
Operations Agreement	City Clerk's office
Development Agreement	City Clerk's office
Request for Proposal	Public Works Department

9. FUNDING SOURCE: (Enter amount of funding from each source)

Fund Number & Name:	State \$	City \$	Other \$	Total Amount
4200 - SWU Operating Fund	\$0	\$0	\$0	\$0

If an expenditure, is it budgeted? Yes No Where? Org # Acct #

 10. Department Director/Utility Division Approval	Approved as to Availability of Funds  Director of Finance	 City Manager/Director Utilities Approval
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**TACOMA FIRS GOLF CENTER
OPERATION AGREEMENT**

Between

The City of Tacoma

and

Eaglequest Golf Centers, Inc.

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Exhibit A - Development Agreement

LIST OF ATTACHMENTS:

- Attachment A - Legal Description of Property and Map
- Attachment B - Legal Description of Landfill
- Attachment C - Special Leasehold
- Attachment D - Environmental Hold Harmless

TACOMA FIRS GOLF CENTER OPERATION AGREEMENT

THIS TACOMA FIRS GOLF CENTER OPERATION AGREEMENT (the "Agreement"), dated as of _____, is by and between THE CITY OF TACOMA (the "City"), a municipal corporation of the State of Washington, acting by and through the Public Works Department Solid Waste Utility ("SWU"), and EAGLEQUEST GOLF CENTERS, INC. ("EGCI"), a Washington corporation.

RECITALS

Pursuant to Specification No. G 030-97, the City issued a Request for Proposals ("RFP") to determine the most qualified operator of a driving range at the Property. EGCI issued a proposal dated June 24, 1997, (the "Proposal"), and EGCI was selected as a result of the RFP. Such RFP and EGCI's Proposal are incorporated by reference except as modified herein. In accordance with Section 4.6 of the City Charter, the Property upon which the project is to be constructed and operated is surplus to the needs of the City, is adjacent to the Tacoma Landfill, and is not necessary for the effective delivery of solid waste disposal services.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

The following words and terms shall have the following meanings for the purposes of this Agreement. Terms otherwise not defined herein shall be given their usual and customary meaning.

"Agreement" means this Tacoma Firs Golf Center Operation Agreement, including all attachments, appendices, schedules, and exhibits attached hereto and any amendments hereto, between the City and Eaglequest Golf Centers, Inc.

"Approved" or "Approval" shall mean such review and/or approval that shall not be unnecessarily or unreasonably withheld by the City.

"Assistant Director" means the Assistant Director of the Public Works Department.

"Available Revenues" of the Solid Waste Utility means those revenues not otherwise obligated in the pledge of revenues set forth in Ordinance No. 26046.

"Build Out Period" means the period commencing with the Effective Date and ending on the Opening Date of the Tacoma Firs Golf Center or the Project Completion Date as defined in the Development Agreement, whichever is earlier.

"City" means The City of Tacoma.

"Clubhouse Sales Receipts" shall mean the receipts from the sale of golf lessons and merchandise in the pro shop, the sale of food and beverages in the deli, and all other operations of the Golf Center Facilities as limited by Article VB2.

"Consent Decree" means that certain Consent Decree, as it has been or may be in the future amended, originally entered into between the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the State of Washington Department of Ecology ("DOE"), et al. v. City of Tacoma, dated March 25, 1991, U.S. District Court for the Western District of Washington Case No. C 89-583T, including all attachments thereto.

"Department" means the Public Works Department of the City.

"Development Agreement" means the Tacoma Firs Golf Center Development Agreement, attached hereto as Exhibit "A," including all schedules and exhibits attached thereto and all amendments thereto, which govern the terms and conditions of development of the improvements constituting the Tacoma Firs Golf Center between the City and EGCI.

"Driving Range" means the golf driving range that will be constructed by EGCI on the Property.

"Effective Date" shall have the meaning set forth in Article XXV below.

"EGCI" means Eaglequest Golf Centers, Inc.

"Force Majeure" shall have the meaning as described to such term in Article XXIV, below.

"Golf Center Gross Receipts" means all receipts received for buckets of driving range balls sold or charges for the driving range, mini-putt course, and any potential green fees as limited by Article VB2.

"Golf Center Facilities" means those improvements, structures, and facilities constructed by EGCI that are part of the Tacoma Firs Golf Center, but exclusive of the real property that comprises the Driving Range.

"Lender" means that financial institution or corporate entity which loans funds to EGCI to construct the Tacoma Firs Golf Center.

"Maintenance Standard" shall mean the maintenance standards set forth in Section VI.F.

"NOI" is defined as Net Operating Income per Generally Accepted Accounting Principles (GAAP) compliant financial statements before taxes, interest, and depreciation for the Tacoma Firs Learning Center as required per Article XII Section C of this Agreement.

"Opening Date" shall mean the date the Tacoma Firs Golf Center opens for business to the public.

"Property" means the real property upon which the Tacoma Firs Golf Center shall be located. The Property is described in Attachment "A" hereto.

"Tacoma Firs Golf Center" means the Driving Range and the Golf Center Facilities to be constructed and operated by EGCI on the Property as further legally described and identified in the map attached hereto as Attachment "A."

"Term" shall have the meaning set forth in Article III below.

"Term Year" means the period from January 1 through December 31 of any calendar year; provided, however, for the first Term Year, if any portion of the Golf Center Facilities opens for business on a day other than January 1 of any calendar year, then the first Term Year shall be from such opening date through December 31 of such year, and if the Term ends on a date other than the last day

of a calendar year, the last Term Year shall be the period beginning on January 1 of such year and ending on the last day of the Term.

"TMC" means the Tacoma Municipal Code.

"Unamortized Cost" (current book value) is the original acquisition cost (the \$2,700,000 minimum investment or the actual cost to be provided to the City after construction), adjusted for subsequent additional capital investments for physical improvements and utility installations, less life to date accumulated depreciation at a straight line rate based on an initial 30-year term.

ARTICLE II GRANT OF RIGHTS TO EGCI

A. Surface Rights. The City hereby grants to EGCI for the Term, and upon the terms and conditions hereof, the exclusive right and privilege to use the surface of the Property (and such subsurface portions of the Property as are necessary to develop, construct, and operate the Tacoma Firs Golf Center on the Property, including distribution of utilities, and footings and foundations for improvements), and to construct and operate the Driving Range and the Golf Center Facilities.

B. Title. The City warrants and represents that the City holds fee simple title to the Property free and clear of all liens, encroachments, encumbrances, easements, covenants, conditions, restrictions, rights-of-way, and other exceptions to title. During the Term, the City shall not convey or transfer the Property or create or allow to be created any leases, liens, encroachments, encumbrances, easements, covenants, conditions, restrictions, rights-of-way, or other exceptions to title; provided, however, the City may: (i) with EGCI's prior written consent, which consent shall not unreasonably be withheld, grant easements that do not adversely affect EGCI's use or operation of the Tacoma Firs Golf Center or the Property, (ii) with reasonable advance notice to EGCI or pursuant to schedules provided to EGCI, but without the requirement of obtaining EGCI's prior written consent, have the right of access to the Property to monitor methane gas conditions on the Property and to inspect, maintain and/or locate and/or relocate facilities remediating or correcting same, provided that such relocation shall be at the City's sole cost and expense. The City shall use its best efforts to minimize any adverse effect upon EGCI's use or operation of the Tacoma Firs Golf Center by reason of any such relocation or access, and the City agrees to use reasonable efforts to undertake such relocation or related activities

in a fashion so as to minimize interference to EGCI's operation of the Tacoma Firs Golf Center or the Property. The City shall use reasonable efforts to cooperate with EGCI in minimizing any adverse impact that may result from such relocation of facilities remediating methane gas. By this grant, the City shall provide to EGCI the exclusive possessory right to use of the Tacoma Firs Golf Center, subject to the City's reasonable rights of access described herein, and throughout the Term, EGCI shall enjoy the quiet possession of the Tacoma Firs Golf Center. Notwithstanding the foregoing, the City reserves all rights to the Property below the surface to the extent such subsurface use of the Property does not impact EGCI's use or operation of the Tacoma Firs Golf Center and provided that such subsurface use is reasonable. Subject to assets and Available Revenues of the Solid Waste Utility, the City shall indemnify, defend, and hold harmless EGCI from any activities conducted on the Property by the City or the City's use of the Property (including easements granted by the City to third parties), and shall keep the Property free from any mechanic's liens that may result from the City's use of the Property. The City shall, at the City's sole cost and expense, correct any damage to the Property or the improvements thereon caused by the City's use of or activities on the Property (including from any easements granted by the City to third parties).

C. License. The City hereby grants to EGCI for the Term, and upon the terms and conditions hereof, the exclusive right to operate a ball rental operation, a clothing sales operation, a golf equipment sales and rental operation, and a food and beverage sales operation (hereinafter "Concession Operation").

ARTICLE III TERM

A. Term. The rights granted to EGCI under this Agreement shall be in effect from the date of execution of this Agreement until December 31, 2027 (the "Term"), unless terminated earlier pursuant to the provisions hereof. For all purposes herein, the anniversary date of this Agreement shall be January 1.

B. Option. EGCI shall have the right to extend the term of this Agreement for an additional five (5) years upon delivering to the City a written notice of such election to extend the Term, which election shall be made at least twelve (12) months prior to the expiration of the Term of the Agreement.

**ARTICLE IV
DEVELOPMENT OBLIGATIONS OF EGCI**

A. Due Diligence. Commencing with the Effective Date of this Agreement, EGCI shall have the right, until December 3, 1997, to conduct a due diligence inspection of the Property. During this period, EGCI shall have the right to investigate the soils and other physical condition of the Property, to perform a survey of the Property, and to study other aspects required for development of the Property. Such investigation may include test borings into the soil. The City shall provide to EGCI the right to copy all non-privileged information in the Solid Waste Utility's possession concerning the Property, including actions taken to remediate any conditions at the adjacent Tacoma landfill. At or prior to the expiration of due diligence, EGCI shall notify the City as provided in Article XV of its approval or disapproval of the physical condition of the Property. Failure to notify the City shall be deemed approval of the physical condition of the property. If EGCI disapproves the physical condition of the Property, then EGCI agrees to provide the City with the right to copy any data concerning the Property EGCI obtained pursuant to such investigation, and this Agreement shall be terminated and of no further force and effect, and the City shall then promptly refund to EGCI the \$20,000 initial payment made by EGCI pursuant to Section V.A.1 hereof. If EGCI approves the physical condition of the Property, then, subject to certain specific obligations of the City described herein and in the Tacoma Firs Golf Center Development Agreement, EGCI shall construct the Golf Center Facilities in accordance with the terms and conditions of the Tacoma Firs Golf Center Development Agreement attached hereto as Exhibit "A" and incorporated by reference herein. EGCI's acceptance of the physical condition of the Property shall not be construed as a waiver of EGCI's rights and the City's obligations described in Article IX Section A.3.

B. Construction of Facility. The RFP and the Proposal establish the basic intent for design and development except as altered by specific provisions of this Agreement. EGCI will construct a golf driving range and learning center in accordance with designs to be approved by the Public Works Department no later than January 5, 1998. The Driving Range will consist of a lighted 60-station, two-tiered golf driving range (of which a minimum of 20 stations shall be heated) and an attached golf center containing a minimum of 5,000 square feet of floor area and incorporating a full service pro shop with demo clubs, Eaglequest Learning Academy including video tape analysis, and a food and beverage operation. Also included are natural grass short game practice areas with sand

bunkers, and chipping and putting greens of a minimum 10,000 square feet. Parking will be provided for at least a minimum of 1.25 stalls for each tee station.

C. Contingencies. This lease is contingent upon EGCI obtaining the necessary governmental permits to build the Golf Center Facilities and Driving Range and contingent upon receipt of financing for the construction of such improvements on or before February 28, 1998. For these contingencies to be effective, EGCI must commence permit and loan application processes by December 21, 1997. Proof of said permit and loan applications must be provided to the Department.

ARTICLE V FINANCIAL OBLIGATIONS OF EGCI

A. Deposit. Upon the Effective Date of this Agreement, EGCI will make a refundable deposit to the City in the sum of \$20,000. Such deposit shall be credited to the first months' rent.

B. Rent. During the term hereof, Lessee shall pay to Lessor for the right to use the Property and operate the Concession Operation the Minimum Rent as defined in paragraph 1 below, or the Percentage Rent as defined in paragraph 2 below, whichever is greater.

1. Minimum Rent.

(a) During the Build Out Period, EGCI shall not be obligated to pay any consideration or rent to the City.

(b) After the Opening Date, in annual installments as provided below, EGCI shall pay to the City a minimum rental payment (the "Minimum Rent") of \$70,000 (which shall be pro-rated for any partial calendar year period). At the end of every five (5) year period of the term of the Lease, the minimum payment shall be adjusted upwards by any increase in the Seattle-Tacoma Consumer Price Index for All Urban Consumers ("CPI") since the beginning of the lease, not to exceed four (4) percent for each year. For instance, if the CPI increased 2% in year one, 3% in year two, 4% in years three and four, and 5% in year five, the minimum rent for the sixth through tenth year of the lease would increase by 17%. The same process repeats itself every five years. The beginning CPI shall be the CPI published nearest the Opening Date. If the United States Department of Labor, Bureau of Labor Statistics, at any time during the

term of this Lease ceases to publish the Consumer Price Index for All Consumers for All Items for Seattle-Tacoma, then the Consumer Price Index for All Urban Consumers for All Items for cities with a population of 1,250,000 or more in the Western United States, designated as "West-A" in the CPI Publication, shall be used. If the United States Department of Labor, Bureau of Labor Statistics, at any time during the term of this Lease ceases to publish the Consumer Price Index for All Urban Consumers for All Items for both Seattle-Tacoma and cities with a population of 1,250,000 or more in the Western United States, then the Consumer Price Index for All Urban Consumers for All Items, U.S. City Average, designated as "U.S. City Average" in the CPI Publication, shall be used.

2. Percentage Rent. In the alternative, EGCI shall pay to the City a "Percentage Rent" equal to the amount by which eight (8) percent of the "Golf Center Gross Receipts" plus four (4) percent of the Clubhouse Sales Receipts for each Term Year exceeds the amount of the Minimum Rent paid to the City for the previous Term Year.

Such payments shall be made yearly, within sixty (60) days after each year based upon the receipts from the previous calendar year. There shall be excluded from Golf Center Gross Receipts and Clubhouse Sales Receipts the following:

- (a) Goods returned to suppliers.
- (b) Monies and or credits received in settlement of claims for loss or damage to goods, wares, food, or merchandise.
- (c) Amounts paid to golf professionals for salaries and commissions paid exclusively for teaching lessons.
- (d) The amount of cash refunded or credit allowed on merchandise returned by customers and accepted by EGCI (including merchandise returned to other stores of EGCI or its affiliates), or the amount of cash refunded or credit allowed in lieu of EGCI's acceptance therefor.
- (e) All sales taxes, admissions taxes, use taxes, so-called luxury taxes, entertainment taxes, value added taxes, excise taxes including any leasehold excise tax on the transfer of the improvements, which are estimated to total approximately \$2.7 million, gross receipts taxes, and similar taxes, whether

imposed under any existing or future rules, regulations, laws, or ordinances, upon the sales of merchandise or services, whether or not such taxes are added separately to the selling price thereof and collected from customers or are paid by EGCI and included in the retail selling price, but shall not include taxes based on income.

(f) Delivery freight charges for food and pro shop operations (but not for other golf center operations).

(g) Any receipts from the transfer of goods, wares, or merchandise from the Tacoma Firs Golf Center to any other store owned by EGCI or an affiliate of EGCI, as in an "accommodation sale" as defined in Rule 208 pursuant to RCW 82.04.

(h) Bad debts and bad checks.

(i) Receipts from the sale of lottery tickets, except for the profits from the sale thereof (i.e., the profits from the sale of lottery tickets shall be included in Clubhouse Sales Net Receipts).

(j) Receipts from discounted clothing and equipment sales to employees at an amount not to exceed 10 percent of total sales.

(k) Proceeds from the sale of equipment or of all or of a substantial part of EGCI's stock-in-trade and merchandise at a sale other than at retail, or the sale of the business as a whole, including, but not limited to, all rights associated with the assignment of this Operation Agreement (provided, however, the right to sell equipment shall not affect EGCI's obligation to deliver the Golf Center Facilities to the City in the condition described in Section XII.B.3).

(l) Proceeds from the sale of gift certificates, or like vouchers, until such time as the same shall have been converted into a sale by redemption. Said conversion must occur within two years from the date of the certificate's or voucher's issuance.

4. Annual Statement. Within sixty (60) days following the last day of each Term Year, EGCI shall furnish City a statement of EGCI's annual Tacoma Firs Golf Center Gross Receipts made during the previous Term Year, or any partial Term Year, including any authorized deductions ("Annual Statement"). Such Annual Statement shall be certified as correct by an authorized officer of

EGCI. With each Annual Statement EGCI shall pay to City the amount of any additional Percentage Payment that is payable to City. Once with respect to each Term Year and within two (2) years after its end, whether during or after the Term, the City may cause an audit of EGCI's business at the Tacoma Firs Golf Center by an independent accountant of the City's own selection, and if any Percentage Payment for the Term Year made by EGCI to City is found to be more than 4 percent less than the amount of EGCI's actual Percentage Payment obligation for the period covered by the applicable Term Year, EGCI shall immediately pay to the City the cost of the audit and any additional Percentage Payment shown to be payable by EGCI; otherwise, the cost of this audit shall be paid by the City. EGCI's failure to provide to City any Annual Statement at the time and in the manner specified in this Agreement shall constitute a default under this Agreement, and City shall have the right, after providing EGCI thirty (30) days' notice and opportunity to cure such default, to conduct an audit to determine these receipts, and EGCI shall immediately reimburse the City for the reasonable cost of the audit on written demand by the City. In annualizing the Percentage Payments due, there shall be appropriate prorations and adjustments to take into consideration the dates on which the Build Out Period and Initial Operating Period commences and ends and the obligations for Minimum Rent and Percentage Rent during such periods.

5. The Annual Statement shall include the following information in a form and format to be agreed upon by the parties:

Driving Range -- Annual Gross receipts and number of buckets sold.

Food and Beverage -- Annual Gross Receipts.

Pro Shop Sales -- Annual Gross Receipts.

Lessons -- Annual Gross Receipts, less amounts paid to golf pros.

As provided above, EGCI shall also provide an unaudited financial statement of the revenues and expenses from the Tacoma Firs Golf Center, certified as true and correct by the chief financial officer or other equivalent or higher ranking officer of EGCI. In addition, EGCI shall deliver to the City annually a copy of EGCI's annual financial statement, certified to be accurate by an officer of EGCI.

C. Utilities. On the Effective Date of this Agreement, the City shall transfer all utility accounts associated with the Tacoma Firs Golf Center to EGCI.

The City covenants that such accounts shall have a zero balance due upon such transfer to EGCI. EGCI shall pay, before delinquency, all charges incurred for or in connection with the providing of telephone service, electricity, gas, oil, water, sewer (storm and sanitary), garbage collection, and any other utility to or for the Tacoma Firs Golf Center.

D. Maintenance. EGCI is responsible for paying for all maintenance necessary to keep the Tacoma Firs Golf Center maintained to the standards set forth in Section VI.F.

E. Leasehold Excise Tax. The City shall pay any and all leasehold excise taxes which are due and owing as a result of the Minimum Rent or Percentage Rent paid by EGCI. The City shall have the right to determine which payments are "contract rent" as that term is defined under Chapter 82.29A RCW and received for a lease of public property and which payments have been paid for the Concession Operation. The City shall also indemnify, defend and hold EGCI harmless from any deficiency in the leasehold excise tax obligation if such is levied by the Washington State Department of Revenue.

EGCI shall pay any and all leasehold excise taxes due and owing as a result of the transfer of the improvements to the City upon the end of the Build Out Period.

ARTICLE VI OBLIGATIONS OF EGCI

A. General Obligations. EGCI's goal is to offer quality playing conditions at reasonably competitive prices on the Tacoma Firs Golf Center, through the following:

1. A management philosophy that emphasizes sound business principles and common sense;
2. Payment to the City of its financial obligations;
3. Reinvestment of funds into the Driving Range, Golf Center Facilities, and golf programs necessary to maintain facilities and programs; and
4. Diversity in the areas of staff, programs, participants, and community as required by law.

B. Limitation on EGCI's Use. EGCI shall not have the right to construct any improvements on the Property or to use the Property for any purpose except as generally described by EGCI in the Proposal, and except for any incidental purposes directly related to the uses described in EGCI's Proposal unless approved by the City.

C. Programs for the General Public. Except as otherwise specifically provided in this Agreement, EGCI shall provide programs, classes, and events at the specific Tacoma Firs Golf Center in accordance with the Marketing Plan dated October 28, 1997, and delivered to the City. Said Marketing Plan may be amended from time to time by EGCI in its reasonable discretion, provided the original intent and standards of the Marketing Plan are preserved. EGCI shall deliver said amendments within thirty (30) days of their adoption. Unless as otherwise approved by the Department, the requirements, specifications, and standards set forth in the Marketing Plan dated October 28, 1997, shall be deemed to be the minimum acceptable performance for operation of the Tacoma Firs Golf Center.

D. Operation of the Tacoma Firs Golf Center. Except as otherwise specifically provided in this Agreement, EGCI shall operate the Tacoma Firs Golf Center in accordance with the Operating Procedures Manual dated October 28, 1997, and delivered to the City. Said Manual may be amended from time to time by EGCI in its reasonable discretion, provided the original intent and standards of the Manual are preserved. EGCI shall deliver said amendments to the City within thirty (30) days of their adoption. Unless as otherwise approved by the Department, the requirements, specifications, and standards set forth in the Manual dated October 28, 1997, shall be deemed to be the minimum acceptable performance for operation of the Tacoma Firs Golf Center. Subject to force majeure, EGCI agrees that, once the Golf Center Facilities are completed, weather permitting, they shall be open a minimum of eight (8) hours every day of the year; provided, however, EGCI shall have the right to close the Golf Center on Christmas Day and Thanksgiving Day, and to close the facilities for temporary periods with the approval of the City when such closure is required for extraordinary maintenance and repair.

E. Personnel. EGCI shall employ the following personnel to operate the Tacoma Firs Golf Center:

1. General Manager;

2. Head golf professional (PGA or LPGA Class A);
3. Greens Superintendent who is a Class A member of the GCSAA;
4. Manager experienced in food and beverage services.

Such personnel may be part-time or full-time and work at other Eaglequest sites.

F. Maintenance Standards. EGCI recognizes that, although it is operating its facilities as an independent operator for profit, the City's Public Works Department Solid Waste Utility Division is organized and exists for the purpose of operating a solid waste management facility for the use of the general public. Concurrently, on surplus land, the City wishes to allow for the development of a first-class Driving Range and Golf Center Facility for the use and enjoyment of the public. Therefore, EGCI has developed an Operating Procedures Manual (subject to the review and approval of the City, which approval shall not be unreasonably withheld) for the Golf Center's agents and employees and will devote their best reasonable efforts toward providing safe, clean, sanitary, and well-maintained facilities. EGCI will undertake the following activities to ensure the driving range and its facilities are maintained in a good state of repair at all times:

1. Security Services. EGCI shall be responsible for opening and closing/locking the gates and doors when the Driving Range and Golf Center Facilities are opened or closed to the public. EGCI shall be responsible for providing any and all security services, equipment, or devices to monitor and protect the Tacoma Firs Golf Center against vandalism, theft, or fire.

2. Custodial Maintenance EGCI shall, at its own expense, at all times, keep the Property in a very neat, clean, safe, and sanitary condition. EGCI shall develop daily, weekly, monthly, and annual cleaning schedules and ensure a supply of toilet tissue, soap, paper towels, and cleaning supplies/materials are available at all times to maintain the facilities in a proper operating condition for public use.

3. Preventive Maintenance. EGCI shall conduct periodic inspections of all buildings, equipment, fixtures, grounds, and structures and, at

its own expense, take action to ensure repairs and maintenance are carried out to restore all site improvements to their original condition, normal wear and tear notwithstanding. Examples of such maintenance would include replacement of worn carpeting, replacement of broken windows, patching of asphalt pathways, and replacement of broken irrigation heads. These maintenance activities are intended to bring and keep the Tacoma Firs Golf Center in or to a satisfactory state of repair or maintenance without the need to replace the entire facility (if such repair or maintenance work is or can be accomplished in a satisfactory manner).

4. Major Maintenance. Any maintenance activity not addressed under custodial or preventive maintenance is addressed under this category. EGCI shall, at its own expense, make all repairs and conduct all maintenance of whatever nature determined by EGCI and/or by the City reasonably to be necessary to maintain or restore the structures on the Tacoma Firs Golf Center site in good condition and repair, normal wear and tear withstanding (subject to the provisions of Article X hereof). EGCI has total responsibility for building maintenance, equipment maintenance, and grounds maintenance to include, but not be limited to, repair and maintenance of the roofs (and replacement, if necessary), HVAC systems, utility systems, structural systems, irrigation and drainage systems, cart paths, parking lots, lighting, synthetic and natural turf, driving range netting and poles, trees, restrooms, restaurant equipment, windows, and virtually all improvements to the Tacoma Firs Golf Center. This provision clearly acknowledges the awareness by both parties that from time to time improvements made to the Property (such as the driving range netting as example) will wear out and will need to be removed and replaced in their entirety to restore that particular feature to their original good condition, normal wear and tear notwithstanding. EGCI will ensure that it has sufficient funds in reserve to address these maintenance needs as they arise, in a timely and satisfactory manner.

In the event of a dispute over whether EGCI is properly maintaining the Tacoma Firs Golf Center, EGCI and the City shall, after first attempting to resolve the dispute through the Assistant Director, submit such dispute to binding arbitration in accordance with the provision of Article XIX hereof.

G. Capital Improvements

1. Design Review. EGCI shall submit to the Department for its review and approval any plan and specifications for any capital improvement project in excess of \$50,000. Said approval shall not be unreasonably withheld.

2. City Capital Improvements. The City shall not construct capital improvements located on the Property, whether or not such improvement is related to the function or operation of the Tacoma Firs Golf Center, without the prior written consent of EGCI, which consent shall not be unreasonably withheld.

3. Ownership of Capital Improvements. Upon the occurrence of the end of the Build Out Period, expiration of this Agreement or its earlier termination pursuant to this Agreement, whichever is sooner, ownership of the capital improvements of the Tacoma Firs Golf Center consisting of physical improvements and utility installations shall pass to the City at no cost. Such capital improvements do not include EGCI's business and trade fixtures, furniture, personal property, movable partitions, machinery and equipment, other than that which is affixed to the Property so that it cannot be removed without material damage to the Property. Such improvements shall be transferred to the City in an "as is condition" consistent with the use of the Improvements.

H. Public Involvement. Annually, at the time it provides the City with its annual report, EGCI shall provide written and oral reports to the Assistant Director concerning the operation of the Tacoma Firs Golf Center over the previous year. EGCI shall provide a written response to the Department on any comments received concerning these reports.

**ARTICLE VII
OBLIGATIONS PERFORMABLE BY CONCESSIONAIRES**

EGCI may only subcontract any of its obligations under this Agreement with the express written approval of the Department, which shall not unreasonably be withheld or delayed. EGCI shall provide all information reasonably requested by the City in order to make its determination. Notwithstanding the foregoing, EGCI shall remain ultimately responsible for the proper performance of all such obligations.

**ARTICLE VIII
OBLIGATIONS OF THE CITY**

A. Expeditious Review. The Department shall expeditiously complete any reviews required under this Agreement, which, in no event other than an emergency or permit reviews, shall be less than fifteen (15) days.

B. Maintenance Inspections.

1. The City, at its own cost, shall conduct periodic major, preventive, and custodial "maintenance" inspections of the structural, mechanical, heating, plumbing, and utility systems. Inspections will also be conducted on such areas as driving range, netting, synthetic turf, irrigation systems, building siding and roofing, lighting, floor covering, restroom as well as course maintenance standards and conditions. Such major and preventive maintenance inspections are intended to keep the Tacoma Firs Golf Center up to the same good conditions as when installed, normal wear and tear notwithstanding. Inspection of any of the above areas does not limit inspections to those identified areas only. Inspections are to include any and all improvements made to the Property by EGCI. Such inspections in no way reduce or eliminate EGCI's obligation to conduct its own inspections and to maintain the Tacoma Firs Golf Center in as good a condition as when built. City personnel will have the right to access the Property, at reasonable times, following reasonable notice to EGCI, to conduct such inspections. Such right of access to the Property for inspection purposes will not be unreasonably withheld by EGCI.

2. If the City provides EGCI a written inspection letter identifying needed maintenance work (agreed to by EGCI), EGCI shall take action and remedy the maintenance deficiency. If such work requires immediate attention, as with an emergency, such action shall be taken, but, in any event, all maintenance work shall be completed no later than thirty (30) days as required by Article XII. However, if the maintenance work will adversely impact peak season operations or will require more than a \$2,000 expenditure, EGCI may propose (in writing) an alternate date for the work to be completed. In the event of a dispute over these issues, the parties shall seek to resolve such dispute through arbitration as provided in Article XIX.

C. Performance Evaluation. The City shall also monitor and evaluate EGCI's performance under and for compliance with the terms of this Agreement.

D. Air Monitoring. Pursuant to its regular program of ambient air monitoring at locations around the Tacoma Landfill, once the Golf Center is constructed, the City shall monitor the ambient air at the Golf Center three (3) times per week. Such data will be available upon request by EGCI and the public.

E. Maintenance of Buffer Area. The City shall maintain the 200 foot buffer area north of the Golf Center Facilities consistent with the fact that this area represents the primary view corridor for all of the customers of the Driving Range. The City shall hydroseed the south side of the large mound of dirt which is visible from the Driving Range. The City will remove prior to the Commencement Date all debris, dumpsters, buses, and other vehicles located on the Property, and not allow storage of vehicles on the Property within view of the customers.

ARTICLE IX COMPLIANCE WITH LAW

A. General Requirements.

1. EGCI, at no cost to the City, shall perform and comply with all applicable, current, and future laws of the United States, the State of Washington, the Charter and Municipal Code of the City of Tacoma, and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Whenever EGCI is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any of its officers, employees, contractors, subconcessionaires, agents, or invitee, EGCI shall immediately desist from and/or prevent or correct such violation.

2. Notwithstanding the foregoing, if any statute, order, rule, or regulation of general applicability (such as the Americans with Disabilities Act and its implementing regulations) passes within the last seven (7) years of the Term, requiring EGCI to make any major capital improvements during the last seven (7) years of the Term, and EGCI in good faith determines that it would not be economical to construct such major capital improvements, then EGCI shall have the right to terminate this Agreement in lieu of constructing such major capital improvements (which election shall be made by EGCI at least sixty (60) days prior to the date that EGCI would become obligated to construct such improvements), unless the City agrees to extend the Term of this Agreement by five (5) additional years on the same terms and conditions otherwise provided in this Agreement. For purposes of this Agreement, major capital improvements shall not include any

major maintenance. Any capital improvement that would cost \$100,000 or more (in 1997 dollars, adjusted for increases in the CPI), shall be deemed to be a "major capital improvement."

3. Notwithstanding the foregoing, EGCI shall not be required to construct any improvements or alterations thereto, or to remedy any environmental condition as a result of the adjacent Tacoma Landfill, or to remediate any methane gas, soils, groundwater, or hazardous or toxic materials that may, as a result of the Landfill, exist on the Tacoma Firs Golf Center Property, and the City shall be solely responsible, at the City's cost, of performing any such remediation required by law. EGCI shall be responsible for hazardous materials introduced to the Property by EGCI. Nothing contained herein shall be construed as imposing any liability upon EGCI on account of increased levels of methane gas, contaminated soils, groundwater, hazardous or toxic materials that may have resulted from natural conditions or increases thereof that have occurred as a result of EGCI's development of the Tacoma Firs Golf Center. Subject to assets of and available revenues from the Solid Waste Utility, the City shall indemnify, defend, and hold EGCI harmless from any losses, including lost profits (not to exceed the reasonable rate of return on investment as defined in Article XII Section C), costs, expenses, or liabilities resulting from the presence of any methane gas, contaminated soils or groundwater, or other hazardous or toxic materials on the Property that arose from the adjacent Landfill site, are above the levels of the chemicals of concern set forth in the Consent Decree and which negatively affect the use and enjoyment of the Tacoma Firs Golf Center. No general indebtedness shall be incurred.

In the event EGCI is made aware of any problem concerning the hazardous materials produced by the Tacoma Landfill and the operations of the Tacoma Landfill above the levels of the chemicals of concern as set forth in the Consent Decree which negatively affect the use and enjoyment of the Tacoma Firs Golf Center, EGCI shall immediately notify the City of such problem. The City shall take immediate action to correct the problem consistent with the obligations of Article II above. In the event EGCI is unable to operate Tacoma Firs Golf Center at its Reasonable Potential for a period of three (3) months because of such problems, it shall be considered a default by the City and subject to the terms of Article XII below. Not operating at Reasonable Potential shall be defined as, despite offering substantially the same services and merchandise, the Golf Center Facilities generate sales of 12.5% less than from the same calendar period of the previous year.

B. Licenses and Other Authorizations. EGCI, at no cost to the City, shall secure and maintain in full force and effect during the Term, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof. EGCI shall submit to the Public Works Department evidence of EGCI's satisfaction of all such requirements prior to the commencement of any construction work at the Property with respect thereto. EGCI shall be responsible for payment of all fees and charges incurred in obtaining such approvals and for obtaining a certificate of occupancy prior to opening the Golf Center Facilities for business.

C. Special Use Permit. EGCI acknowledges that it must comply with all conditions of the special use permit currently affecting the Property at the time of construction of any Capital Improvements. Said conditions include, but are not limited to, widening the pavement on Tyler Street and restriping it to designate a "left turn pocket" on Tyler Street. Additionally, EGCI must construct a five-foot-wide gravel walkway. At some future time, when the City widens Tyler Street, the City shall construct the street, curb and gutter, and sidewalks to replace the gravel walkway.

D. Equality of Treatment. EGCI shall conduct its business in a manner that assures fair, equal, and nondiscriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age, national origin, or the presence of a physical or mental disability.

ARTICLE X DAMAGE OR DESTRUCTION

A. Destruction; Restoration by EGCI. Subject to the provisions of Sections X.B and X.C hereof, if the Tacoma Firs Golf Center is damaged or destroyed during the Term by a casualty covered by EGCI's fire and extended coverage insurance, then EGCI shall restore the Tacoma Firs Golf Center to substantially the same condition as it was in immediately before such damage or destruction utilizing the proceeds of such insurance. EGCI shall also be responsible for the amount of any deductible. EGCI shall restore the Golf Center Facilities and re-open the Tacoma Firs Golf Center for business within a reasonable period of time following the casualty, taking into account the reasonable time required to receive the insurance proceeds, assess the scope of the casualty, prepare plans and specifications for rebuilding, obtain permits, enter into a construction contract, obtain materials, and similar factors.

B. EGCI's Right to Terminate. If the Tacoma Firs Golf Center is damaged or destroyed during the Term by a casualty, and (i) such casualty is not covered by EGCI's full replacement fire and extended coverage insurance, or (ii) the casualty occurs during the last five (5) years of the Term, then EGCI shall have the option of either repairing and reconstructing the Tacoma Firs Golf Center or of terminating this Agreement. If EGCI elects to repair and reconstruct, EGCI shall promptly do so.

To exercise the right of termination described in this subsection, EGCI must comply with all of the following conditions:

(i) Give City notice of termination within sixty (60) days after the damage or destruction, specifying the date of termination which shall be not less than sixty (60) days nor more than one hundred eighty (180) days after the date such notice of termination is given;

(ii) Continue to make all Percentage Rent payments when due (Minimum Rent being abated during this period as provided in Section X.D below), if any, as required by the provisions of this Agreement until the date of termination, if EGCI continues to use the Tacoma Firs Golf Center after the casualty but prior to the date of termination;

(iii) On or before the termination date, deliver possession of the Tacoma Firs Golf Center to City, quitclaim all right, title, and interest in the Tacoma Firs Golf Center to City, cease to do business on the Tacoma Firs Golf Center, and vacate the Tacoma Firs Golf Center.

C. Lender's Claim on Insurance Proceeds. Notwithstanding the provisions of Section X.A, if any lender of EGCI has an interest in the insurance proceeds and such lender does not make all the insurance proceeds available to EGCI for rebuilding but requires all or a portion thereof to be used to repay the lender's loan, then EGCI shall have the right to terminate this Agreement.

D. Abatement or Reduction of Payments. In case of any damage or destruction under this Article, all Minimum Rent and other charges hereunder, shall abate until the Tacoma Firs Golf Center is fully restored and open for business, and any Minimum Rent and other charges paid in advance shall be pro-rated from the date of the casualty through the date of reopening. If EGCI continues to conduct business from the Tacoma Firs Golf Center from temporary facilities or temporary structures, then EGCI shall be liable only for the

Percentage Payments (no Minimum Rent) during such period, and appropriate prorations shall be made by the parties.

E. Insurance Proceeds.

1. If EGCI is obligated or elects to restore the Tacoma Firs Golf Center pursuant to this Section, the proceeds of any insurance maintained under this Agreement shall be the property of EGCI and used for payment of costs and expenses of restoration and repair of the Tacoma Firs Golf Center, and the balance, if any, remaining after completion of such repair and restoration shall be the property of EGCI.

2. If following a casualty this Agreement is terminated as a result of the circumstances described in Sections X.B or X.C, then the insurance proceeds shall first be paid to EGCI's lenders to the extent of amounts due EGCI's lenders on account of the lenders' loans or otherwise required to pay off such loans in full, and the balance of any insurance proceeds remaining shall be delivered to the City.

F. Agreement to Govern EGCI's Rights. EGCI and the City agree that EGCI's and the City's rights in case of destruction shall be governed solely by the provisions of this Agreement.

ARTICLE XI INSURANCE AND INDEMNIFICATION

A. Liability Insurance. Throughout the Term, EGCI shall take out and maintain, at no cost or expense to the City, the insurance described below. Such insurance shall name the City as an additional insured. Such policy shall be filed with the City's Risk Manager twenty (20) days prior to the commencement of this Agreement (and 20 days prior to policy(ies) renewal). Said policy(ies) (1) shall be subject to approval by the City's Risk Manager as to Company, Form, and Coverage, and primary to all other insurance the City may secure, and (2) must protect the City from any and all claims and risks in connection with any activity performed by EGCI, or any of their respective officers, employees, agents, contractors, or assigns, by virtue of this Agreement or any use and occupancy Tacoma Firs Golf Center as authorized by this Agreement.

1. A policy of Commercial General Liability Insurance, written on an occurrence form, rather than a "Claims Made" form, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Owners and Contractors Protective Liability
- Stop Gap or Employers Contingent Liability
- Liquor Liability (if applicable)

Such policy(ies) shall provide the following minimum limit:
\$2,000,000 per occurrence
\$5,000,000 annual aggregate

A deductible or self-insured retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage only is acceptable.

2. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased, or hired vehicles. Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage
\$ 1,000,000 per accident

Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire term of this Agreement.

Such insurance shall be endorsed to include the City of Tacoma, its officers, elected officials, employees, agents and volunteers as an Additional Insured.

The following documents must be provided as evidence of insurance coverage:

(a) A copy of the policy's declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsement.

(b) A copy of the endorsement naming the City of Tacoma as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable.

(c) A copy of the "Endorsements Form" to the policy which shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements.

(d) A copy of the endorsement stating that "The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced, or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Tacoma."

(e) A copy of the endorsement stating that "Separation of Insureds" or "severability of interests" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought."

At the request of the City, EGCI shall provide the City with a copy of the applicable insurance policies.

Such insurance policies shall be subject to Approval by the City Risk Manager as to company, form, and coverage. The insurance carrier shall be rated A-VII or higher in the A.M. Best's Key Rating Guide, licensed to do business in the State of Washington, or be filed in the State of Washington as surplus lines by a Washington Surplus Lines Broker. EGCI shall provide for the prompt and efficient handling of all claims for bodily injury, property damage, or theft arising out of the activities of EGCI under this Agreement. EGCI shall ensure that all such claims, whether processed by EGCI or EGCI's insurers), either directly or by means of an agent, will be handled by a person with a permanent office in the Seattle/Tacoma area.

B. Builder's Risk Insurance. Before commencement of any construction work on the Tacoma Firs Golf Center, EGCI shall also procure or cause to be procured, and shall maintain in force until completion of said work (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the City, and (ii) contractor's workers' compensation insurance covering all persons

employed in connection with work on the Driving Range and Golf Center. Said builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

C. Fire and Extended Coverage Insurance. EGCI, at its sole cost and expense, shall keep the buildings and all other improvements (which value shall be determined by EGCI annually and identified in a notice to the Public Works Assistant Director provided no later than March 1 of each year) on the Tacoma Firs Golf Center throughout the term of the Agreement against the following hazards:

1. All Risk Property Coverage (including earthquake and flood damage) and including Real and Personal Property, Business Interruption and Extra Expense, in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis (excluding from the replacement cost the value of the footings and foundations) or in the case of Business Interruption, sufficient coverage to ensure that EGCI can pay all of its fixed costs during any interruption of EGCI's business.

2. Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the Tacoma Firs Golf Center.

3. Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the Tacoma Firs Golf Center.

The policy(ies) shall be in the name of City and EGCI, as their interest may appear, and a copy of said policy(ies) shall be delivered to City before commencement of this Agreement. In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described in this Section C above, the parties to this Agreement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance. If EGCI is obligated or has the option (and such option is exercised) under this Agreement to repair or reconstruct, any proceeds of insurance shall be payable to EGCI, and may be used for repair and reconstruction of the Tacoma Firs Golf Center, subject to any requirements as to the disposition of the proceeds that may be imposed by the beneficiary under any mortgage or deed of trust at any time encumbering the

Tacoma Firs Golf Center (subject to the limitations of Article XIII hereof); in all other events, all proceeds shall be payable to the City.

D. Insurance Generally. All such policies required by this Section shall be nonassessable and shall contain language to the effect that (i) the policies cannot be canceled or materially changed except after forty-five (45) days' written notice by the insurer to the City, and (ii) the City shall not be liable for any premiums or assessments. Notwithstanding anything contained to the contrary in this Article, EGCI may provide this insurance through a so-called blanket policy or policies of insurance carried and maintained by EGCI. EGCI shall be allowed to provide all insurance through a blanket policy of insurance covering other sites of EGCI and its affiliates. None of the above policies shall be cancelled or materially altered except after forty-five (45) days' written notice to the Department.

E. Indemnification. EGCI agrees to indemnify, defend, and hold harmless the City from and against any and all claims, suits, actions, proceedings, economic loss, liability, damage, cost, or expense of any kind (including reasonable attorneys' fees and expenses associated therewith or with successfully establishing the right to indemnification hereunder) ("Damages") resulting from or arising out of the Tacoma Firs Golf Center, or the operations thereof. Notwithstanding the foregoing, EGCI shall not be obligated to indemnify, defend, or hold City harmless from any Damages to the extent caused by any act, omission, or breach of this Agreement by City, City's agents, employees, or contractors, or arising out of the condition of the Tacoma Firs Golf Center prior to the commencement of the Term.

F. Mutual Waiver of Subrogation Rights. EGCI and City hereby mutually release each other from all liabilities and claims and waive all rights of recovery against each other for and to the extent of their respective property insurance coverages for such liabilities and claims, including any extended coverage and endorsements thereto; provided, however, that this release and waiver shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of either party.

ARTICLE XII DEFAULT AND REMEDIES

A. Notice of Breach and Termination. The City shall have the right to declare EGCI in default if EGCI fails to perform any obligation required of it within thirty (30) days after written notice by the City to EGCI specifying the particular

obligation(s) EGCI has failed to perform; provided, however, that if the nature of EGCI's obligation reasonably requires more than thirty (30) days for performance, then EGCI shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. If EGCI does not cure such default as provided herein, then the City shall have the right, in addition to other remedies of the City, to terminate this Agreement.

B. Immediate Termination by the City.

1. Termination. Notwithstanding the provisions of Section XII.A, each of the following acts and omissions constitutes a material breach for which the City shall be entitled to immediately terminate EGCI's rights and interests:

(a) The failure of EGCI to keep the Golf Center open for operation as required hereunder without the prior written permission of the Public Works Assistant Director, and the failure of EGCI to re-open the Golf Center within three (3) business days following receipt of a notice of default from the City; provided, however, EGCI shall not be in breach if the closure is due to Force Majeure, weather conditions, public safety considerations, fire, or other casualty, temporary closures for repairs and maintenance, and closures to prevent the accrual of prescriptive rights.

(b) EGCI's failure to pay any monies due to the City under this Agreement on or before the due date (notwithstanding the right of the City to interest on any such sums that become delinquent) and the continuation of such failure for fifteen (15) consecutive days after written notice of such breach to EGCI.

(c) EGCI's material failure to perform and failure to cure such breach within thirty (30) days after written notice thereof from the City to EGCI, or material violation of, any other substantial condition, covenant, or obligation of or under this Agreement on twelve (12) or more occasions in any twelve (12) month period. Substantial conditions among others are those identified in the Marketing Plan and the Operating Procedures Manual.

2. Payment by City if Termination Occurs Within Ten (10) Years After Opening. If the termination occurs prior to the date that is the 10th anniversary of EGCI's opening of the Tacoma Firs Golf Center for business, even if such termination is a result of EGCI's default (except for a default based upon non-payment of monies due under this Agreement), then the City shall pay to

EGCI a sum equal to the unamortized cost of EGCI's initial capital investment incurred in development of the Tacoma Firs Golf Center (including all hard and soft costs, but excluding any inventory and operational costs), amortized over a 30-year period on a straight line basis from the date the Tacoma Firs Golf Center opened for business through the date of the 10th anniversary of the Tacoma Firs Golf Center opening for business. Such payment shall be paid by the City concurrently with, and as a condition to, the termination of the Agreement.

3. Remedies Upon Material Breach and Default by EGCI. In the event of a material breach and default of this Agreement by EGCI and its termination by the City as provided herein, the City, in addition to all other remedies available to it under law and without any additional notice to EGCI, may authorize others to operate the Tacoma Firs Golf Center; provided, however, that notwithstanding such termination and reentry, EGCI's liability for any monies already accrued and to be paid to the City hereunder shall not be extinguished, and EGCI shall pay to the City said monies within thirty (30) days after demand therefor from the City, but EGCI shall not be liable for any Minimum Rent or Percentage Rent or other obligations hereof accruing from and after the date of termination.

C. Termination by EGCI. The City shall be in default hereunder if the City (i) fails to perform a material provision hereof and fails to cure such breach within thirty (30) days after written notice thereof from EGCI to the City, or (ii) the City fails to perform on twelve (12) or more occasions in a twelve (12) month period any material provisions hereof regardless of whether such defaults are cured. In such case, EGCI may terminate this Agreement and the City shall be liable to EGCI for liquidated damages in the amount of the unamortized cost of the Golf Center Facilities over a 30-year period plus a reasonable rate of return on the investment which is defined as four (4) times the Net Operating Income (NOI) as averaged over the preceding two (2) years.

D. Termination Plan. Prior to the effective date of any termination under this Agreement, EGCI and the City will jointly develop a termination plan providing for, without limitation, assignment or termination of any outstanding agreements with subcontractors, concessionaires, and other third parties; post-termination staffing; accounting close-out; financial settle-up; record storage; and a property inventory, including identification of all property to be retained by the City. EGCI shall be entitled to remove only property and equipment that are not fixtures without replacing same unless EGCI receives the City's prior approval thereof.

ARTICLE XIII ASSIGNMENT OF AGREEMENT

EGCI shall not assign or transfer this Agreement, without the prior written approval of the City. Any such assignment shall be specifically subject to all the terms and provisions of this Agreement. In the event of any proposed assignment of the Agreement, EGCI shall cause to be delivered to the City simultaneously with such proposed assignment, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provision of this Agreement. The City's consent to an assignment or subletting shall not unreasonably be withheld or delayed. The City further agrees that EGCI may encumber any improvements constructed by EGCI on the Property with a mortgage, deed of trust, or other financing instrument, and collaterally assign EGCI's interest herein, with the City's prior written consent, which consent shall not unreasonably be withheld; provided, however, any interest held by such a lender holding such mortgage, deed of trust, or other security interest in any insurance proceeds pursuant to this Agreement shall be limited to Lessee's interest in this Agreement, but not a lien on the Property, the reasonable cost of funds used to pay the hard and soft costs incurred in construction of such improvements (and any replacements thereof), and such lender shall not have any interest in insurance proceeds if the loan was originated for purposes unrelated to the financing of the Tacoma Firs Golf Center. EGCI shall provide the City with all information necessary for it to determine whether the assignment should be approved.¹ Any assignee approved by the City must accept and assume in writing all the terms and conditions of this Agreement to be kept and performed by EGCI, and such assignment shall not in any manner discharge or release EGCI or its sureties herein from any other obligation under the terms of this Agreement. Notwithstanding the foregoing, a merger, corporate reorganization, or an assignment to an "affiliate," shall not require the City's consent. An "affiliate" shall be defined as a person or entity controlling, controlled by, or under common control with the EGCI. The Public Works Department may transfer or convey this Agreement or any right or interest herein of the Public Works Department to another City entity without the prior written consent of EGCI, but the Public Works Department shall provide to EGCI written notice of such

¹ The City understands that its officers will be requested to sign a Landlord's Waiver providing notice to EGCI's Lender and an opportunity to cure and operate the Golf Center Facilities. The City agrees to sign such reasonable and appropriate documentation.

transfer and conveyance, and the City shall continue to be liable hereunder. The terms and provisions of this Agreement shall bind and inure to the benefit of the Public Works Department's successors and assigns.

ARTICLE XIV AUTHORITY TO ENTER INTO THE AGREEMENT

The City warrants and represents to EGCI that this Agreement is a duly adopted, legal, and binding agreement of the City, and the execution, delivery, and performance of this Agreement has been duly and validly authorized, and no other action by the City is requisite to the valid and binding execution, delivery, and performance of this Agreement by the City. EGCI warrants and represents to the City that this Agreement is a duly adopted, legal, and binding agreement of EGCI, and the execution, delivery, and performance of this Agreement has been duly and validly authorized, and no other action by EGCI is requisite to the valid and binding execution, delivery, and performance of this Agreement by EGCI. If any third party files any action against EGCI or the City relating to the City's authority to enter into this Agreement, then subject only to the assets of the Solid Waste Utility and available revenues from its Solid Waste Utility, the City shall indemnify, defend, and hold EGCI harmless on account of such action. No general indebtedness shall be incurred. If any third party files any action against EGCI or the City relating to EGCI's authority to enter into this Agreement (but only where such challenge does not derive from a challenge to the City's authority to enter into this Agreement), then EGCI shall indemnify, defend, and hold the City harmless on account of such action.

ARTICLE XV NOTICE ADDRESSES

A notice, request, approval, or communication under this Agreement by either party to the other shall be in writing and shall be sufficiently given or delivered if sent postage prepaid by United States first-class mail or facsimile, and:

A. EGCI. In the case of a notice or communication to EGCI, if the same is mailed or faxed, to:

Gregory Mollner
Vice President
U.S. Corporate Development
Eaglequest Golf Centers, Inc.
9116 South 212th Street
Kent, Washington 98031

or faxed to: (206) 850-5686

With a copy to: Don Holstrom
V.P. Finance/Corporate Development
535 Thurlow Street, Suite 601
Vancouver, B.C. V6E 3L2

With a copy to: Shannon Sperry
2600 Union Square
601 Union Street
Seattle, Washington 98101 4000

Or faxed to: (206) 340-2563

B. The City. In the case of notices to, requests of, or approvals sought from the City, if the same is mailed to:

Assistant Director
Public Works Department
Tacoma Municipal Building
747 Market Street, Room 420
Tacoma, Washington 98402

Or faxed to: (253) 591-5097

With a copy to:

Tacoma City Attorney
Tacoma Municipal Building
747 Market Street, Suite 1120
Tacoma, Washington 98402

Or faxed to: (253) 591-5755

Either party may, from time to time, designate by written notice dispatched as provided in this section, alternative addresses for communication to such party.

ARTICLE XVI WAIVER

No action other than a written document from a party specifically so stating shall constitute a waiver by that party of any particular breach or default by the other party, nor shall such a document waive the other party's failure to comply fully with any other term or condition of this Agreement, irrespective of any knowledge any officer or employee of the waiving party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

ARTICLE XVII NO THIRD PARTY RIGHTS OR PARTNERSHIP CREATED

A. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained, nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

B. No Partnership or Joint Venture. In no event shall the City be construed to be a partner, associate, or joint venturer of EGCI. EGCI is not made an agent of the City for any purpose whatsoever by this Agreement. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between EGCI and the

Public Works Department. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation nor shall any person, firm, organization, or corporation have any right or cause of action hereunder. Neither EGCI nor any of its subconcessionaires shall create any obligation or responsibility on behalf of the Public Works Department or the City or bind the Public Works Department or the City in any manner. EGCI is deemed to be an independent contractor and not the agent, employee, partner, or joint venturer nor bear any other relationship in law to the Public Works Department or the City.

ARTICLE XVIII GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any suit or arbitration arising under this Agreement shall be in Pierce County, Washington, and the parties hereto do hereby stipulate to the jurisdiction and venue of the Superior Court of Pierce County, Washington.

ARTICLE XIX DISPUTE RESOLUTION

A. Arbitration. Any controversy, dispute, or claim concerning either (a) the construction of the Tacoma Firs Golf Center or otherwise arising under Golf Center Development Agreement, or (b) maintenance of the Tacoma Firs Golf Center in accordance with the provisions of Section VI.F hereof, shall be resolved at the request of any party hereto ("Initiation") directed to the American Arbitration Association ("AAA") by a binding arbitration conducted by a single Arbitrator in Pierce County, Washington, in accordance with the Commercial Arbitration Rules ("CAR") of the AAA, except as modified by the terms of this Section. The arbitrator shall apply State of Washington substantive law to the matter(s) which are the subject of the arbitration. The arbitrator shall be limited to interpreting this Agreement in accordance with Washington substantive law. The arbitrator shall prepare and provide to the parties a written decision ("Decision") on all matter(s) which are the subject of the arbitration, including factual findings and the reasons which form the basis of the Decision of the arbitrator. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to Washington law for any such error. The Decision shall have the effect and be enforceable in the manner provided by the

Washington law. Each party shall pay one-half (1/2) of the fees of the arbitrator. The parties hereby agree that the CAR are modified as follows:

1. If the parties have not agreed to an Arbitrator within sixty (60) days after Initiation of arbitration, then the AAA shall appoint a single neutral Arbitrator as soon thereafter as practical.

2. The parties shall be permitted discovery under the supervision and rules set by the Arbitrator; provided, however, that discovery shall be completed within one hundred twenty (120) days of selection or appointment of the Arbitrator. The Arbitrator shall have power to impose such sanctions as the Arbitrator deems appropriate for failure of a party or counsel for a party to comply with discovery rules established by the Arbitrator.

3. A hearing before the Arbitrator shall be held no later than one hundred eighty (180) days after Initiation of arbitration, unless a hearing is waived by all parties.

4. No later than fourteen (14) days from the date of closing of the arbitration hearing, or, if an oral hearing has been waived, from the date of transmitting final statements and proofs to the Arbitrator, the Arbitrator shall render a written Decision.

During the pendency of such arbitration, EGCI shall not suspend construction unless resolution of the dispute is required for construction to continue.

ARTICLE XX TABLE OF CONTENTS AND ARTICLE CAPTIONS

The Table of Contents is for convenience only and forms no part of this Agreement. The article captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

ARTICLE XXI AMENDMENT

No modification or amendment of the provisions hereof shall be effective unless in writing and signed by the City Manager and by an authorized

representative of EGCI. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

ARTICLE XXII COUNTERPARTS

This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All counterparts together will constitute one and the same agreement.

ARTICLE XXIII SEVERABILITY

Each provision of this Agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

ARTICLE XXIV FORCE MAJEURE

Whenever a day is appointed herein on which, or a period of time is appointed within which, either party hereto is required to do or complete any act, matter, or thing, except for the payments set forth in Article V of this Agreement, the time for doing or completion therefor shall be extended by a period of time equal to the number of days during which such party is prevented from the doing or completion of such act, matter, or thing as a result of fires, floods, explosions, strikes, serious accidents, strikes, lock-outs, embargoes, wars, insurrections, rebellions, declaration of national emergencies, acts of God, or other causes beyond such party's control (financial inability excepted) ("Force Majeure"). A party shall not be responsible nor deemed to be in default on account of delay in the performance of any act to be performed under this Agreement due to the occurrence of Force Majeure. In the event that such a cause results in delay of a party's performance of any act to be performed under this Agreement, that party will promptly inform the other party and, thereafter, will use its best efforts to remedy such delay. Each party's obligations hereunder shall be tolled during the period such party is prevented from performing such obligations due to any Force Majeure delays. Nothing contained herein shall be construed as extending the Term hereof due to Force Majeure.

**ARTICLE XXV
EFFECTIVE DATE**

This Agreement shall become effective upon execution by the authorized representatives of each party.

**ARTICLE XXVI
MISCELLANEOUS**

A. Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises, or other undertakings between the parties. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's preparation of the same. This Agreement may not be amended or modified in any way except by a written amendment to this Agreement duly executed by the parties.

B. Enforceability. If any provision of this Agreement, or the application of it to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of this provision to any person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. Time. Time is of the essence of this Agreement.

D. Conflict. In the event of any conflict between the terms of the RFP and the Proposal, the terms hereof shall control.

E. Plan Review and Approval/Signage. The City shall have the right to review and approve all plans for construction of improvements and all exterior permanent or other major signage on the Tacoma Firs Golf Center, which approval shall not unreasonably be withheld or delayed. EGCI shall only permit advertising with respect to the Tacoma Firs Golf Center that is consistent with the nature of the Center. Any advertising that is inconsistent with the nature of the Tacoma Firs Golf Center shall be removed and/or stopped upon City demand. Notwithstanding the foregoing, no sponsorships, promotions, or advertising for

alcohol, tobacco, firearms, and explosives, or by the companies manufacturing or producing the same, shall be permitted by EGCI without the prior written approval of the City, which may be granted or withheld in the sole discretion of the City; provided, however, EGCI may utilize advertising, promotional material, and sponsorships for beer and wine without obtaining the City's prior consent therefor, provided that such advertising, promotional material, and sponsorships is similar to that which is customary for a facility similar to the Tacoma Firs Golf Center and is in keeping with the nature of the Tacoma Firs Golf Center.

F. Right to Construct and Operate Golf Center. The City's grant of rights to construct and operate the Tacoma Firs Golf Center are subject to the terms of Attachment "E," attached hereto and incorporated herein by reference.

G. Environmental Hold Harmless. Pursuant to the limitations of the terms specifically set forth in Attachment "F," as well as the limitations of the assets and the available revenues of the Solid Waste Utility, the City agrees to hold harmless EGCI as well as its Lender from and against any and all claims, demands, causes of action, damages, liabilities, losses, and expenses caused by or resulting from Hazardous Substances (as defined in Attachment "F"), which were generated, stored, disposed of, or existing on, at, or under the Tacoma Landfill, including Hazardous Substances which may have in the past, or in the future, migrate from the Tacoma Landfill to the Property and exceed the levels of the chemicals of concern identified in the Consent Decree.

H. Liquor License. The City acknowledges that EGCI will apply for, and if granted, will operate with a liquor license to serve wine and beer on the Property.

I. Additional Golf Facilities. During the Term of this Agreement, if the City decides to use the contiguous property to the West for any other use other than a landfill, solid waste related facility, or recycling facility, EGCI shall have the first right of refusal to construct additional golf facilities, including a 9-hole or 18-hole executive golf course. EGCI must exercise this first right of refusal option within 90 days of receiving notice from the City of its decision to use the contiguous property for some other use other than a landfill, solid waste related facility, or recycling facility. Any gross revenues from such newly constructed facilities shall be considered Golf Center Gross Receipts, and rent shall be paid as set forth in this Lease.

J. Gas Monitoring. Landfill gas shall be monitored by the City of Tacoma in accordance with the Landfill Gas Management Plan developed pursuant to the Consent Decree, defined herein, as it has been or may be in the future amended. For more information, please contact Gary Kato at the Solid Waste Utility. If requested, monitoring results shall be provided to EGCI. No fees shall be charged to EGCI for this service.

K. Debris and Waste Material. Any debris or waste material encountered during construction of the Tacoma Firs Golf Center property shall be accepted by the Solid Waste Utility at the Tacoma Landfill at a minimal charge to EGCI.

L. Landfill Expansion. The City agrees that it will not place solid waste over the closed, unlined areas of the landfill within 1,000 feet of the Property.

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

CITY OF TACOMA

EAGLEQUEST GOLF CENTERS, INC.

Ray E. Corpuz, Jr., City Manager

Gregory Mollner
Vice President
U.S. Corporate Development
Eaglequest Golf Centers, Inc.
9116 South 212th Street
Kent, Washington 98031

Countersigned:

Countersigned:

Peter Luttrupp, Finance Director

Department Director

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Risk Manager

ATTACHMENT A

LEGAL DESCRIPTION OF PROPERTY

The subject Property is known as Tax Parcel Nos. 2201-33000 and 2201-33010, and is legally described as follows:

Parcel 3010

That portion of the Southeast Quarter of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M., described as follows:

Commencing at the southwest corner of said subdivision, thence northerly along the west line of said subdivision a distance of 270.0 feet; thence easterly parallel with the south line of said subdivision a distance of 762.52 feet, more or less, to a point distant 580.00 feet westerly of, measured at right angles, to the east line of said subdivision, and the point of beginning; thence northerly parallel with said east line a distance of 1053.8 feet, more or less, to the point of intersection with the north line of said subdivision; thence easterly along said north line to the point of intersection with said east line of said subdivision; thence southerly along said east line of said subdivision to the southeast corner thereof; thence westerly along the south line of said subdivision 580.00 feet; thence northerly to the point of beginning.

Except therefrom the west 30.0 feet of the south 30.0 feet of the above described parcel.

Parcel 3000

The south half of the east half of the northeast quarter of the southwest quarter of Section 13, Township 29 North, Range 2 East, W.M., less the following described tract:

Beginning at the southwest corner of said subdivision, thence South 88°20'44" East along the south line of said subdivision 87.52 feet; thence North 5°57' West, 667.4 feet to the northeast corner of said subdivision; thence South 1°35' West along the west line of said subdivision 661.52 feet to the point of beginning.

ATTACHMENT B

LEGAL DESCRIPTION OF LANDFILL

Commencing at the Southeast corner of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence along the South line of Section 13 North 88° 26' 10" West, 577.46 feet to the point of beginning; thence continuing North 88° 26' 10" West, 764.16 feet; thence North 1° 43' 47" East, 1324.13 feet; thence North 8° 10' 26" West, 672.00 feet; thence North 88° 18' 34" West, 201.00 feet; thence North 1° 41' 26" East, 615.89 feet to the South line of South 40th Street; thence along said South line North 88° 13' 35" West, 568.22 feet; thence North 1° 53' 04" East, 46.16 feet to the north line of said Quarter; thence North 1° 37' 22" East, 1323.92 feet to the Northeast corner of "Orchard Terrace," thence North 88° 20' 6" West, 116.37 feet along the north line of "Orchard Terrace"; thence North 1° 36' 52" East, 1100.74 feet; thence South 88° 25' 49" East, 50.00 feet; thence North 1° 36' 52" East, 223.35 feet to the north line of Section 13, Township 20 North 2 East, W.M.; thence North 88° 25' 49" West, 3.82 feet along said north line of Section 13; thence North 2° 03' 45" East, 376.66 feet; thence North 88° 25' 49" West, 50.00 feet to the southeast corner of South 34th Street; thence North 2° 03' 45" East, 955.31 feet to the north line of the Southwest Quarter of Section 12, Township 20 North 2 East, W.M.; thence South 88° 10' 16" East, 1493.55 feet along said north line of the Southwest Quarter of Section 12; thence South 1° 53' 09" West, 737.48 feet; thence South 18° 06' 51" East, 263.14 feet; thence South 1° 53' 09" West, 340.00 feet to the North line of said Section 13; thence South 88° 25' 55" East, 282.04 feet along said North line of Section 13; thence South 0° 32' 59" West, 927.05 feet to the South line of South 36th Street; thence South 88° 20' 33" East, 62.96 feet to the Northwest corner of that parcel deeded to Edward Lindblom by AFN Deed 2309767, August 11, 1969; thence around said deed South 1° 36' 20" West, 130.00 feet; thence continuing around said deed South 88° 20' 36" East, 70.00 feet; thence continuing around said deed North 1° 36' 20" East, 130.00 feet to the South line of South 36th Street; thence South 88° 20' 56" East, 60.00 feet along South 36th Street; thence South 1° 36' 20" West, 400.36 feet; thence North 88° 20' 06" West, 200.00 feet; thence South 1° 36' 20" West, 254.68 feet; thence South 88° 20' 36" East, 19.11 feet; thence South 0° 32' 59" West, 428.46 feet to the northwest corner of "Mason Circle" plat; thence South 0° 32' 59" West, 643.65 feet along the West line of said plat to the North line of the Southwest quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence North 88° 15' 00" West, 246.42 feet along said north line; thence South 1° 35'

01 " West, 661.38 feet; thence South 6° 27' 42" East, 667.08 feet; thence South 1° 44' 07" West, 1324.04 feet to the point of beginning.

ATTACHMENT C

SPECIAL LEASEHOLD WITH RESERVATION OF EASEMENTS

THE LESSOR, THE CITY OF TACOMA, a Washington municipal corporation, for and in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, in hand paid, grants and conveys to **EAGLEQUEST GOLF CENTERS, INC.**, a Washington corporation, a leasehold in the following described real estate, situated in the County of Pierce, State of Washington.

See **Exhibit "A"** attached hereto and incorporated herein,

Landfill Effects Easement. Reserving unto Lessor, however, for the benefit of that certain real property legally described on Exhibit "B" attached hereto (the "Benefited Property") a perpetual, non-exclusive easement (the "Landfill Effects Easement") burdening the property described in Exhibit "A" hereto (the "Burdened Property") for the benefit of the Benefited Property, pursuant to which the Lessor and the Lessor's successors in interest in the Benefited Property is and shall perpetually be entitled to subject the Burdened Property to any and all adverse impacts (including, without limitation, private nuisances) associated with past, present, or future operation and/or maintenance of a solid waste related facility, recycling facility, and landfill operation on the Benefited Property, including, without limitation, noxious odors, air pollution not violative of applicable health and safety standards, excessive noise, artificial lighting, seagulls and other birds and associated bird excrement and noise, noise associated with the generation of electricity from methane gas, traffic, and all other environmental, social, health and economic conditions, associated with operation of a solid waste related facility, recycling facility and a landfill on the Benefited Property; provided, however, that, unless authorized by the Consent Decree (defined below) and applicable Solid Waste Permits (defined below), nothing herein shall authorize Lessor's use of the Benefited Property, or actions with respect to the Burdened Property, in any manner which violates the Consent Decree or the Environmental Laws (defined below).

By acceptance of this Leasehold, Lessee acknowledges that its use and enjoyment of the Real Property may be adversely affected by the impacts, disturbances, and activities resulting from Lessor's use of the Benefited Property and Lessee hereby waives and releases any claims now or hereafter arising, which Lessee may have against Lessor as a result of, arising out of or in any way

relating to the impacts, disturbances and/or activities resulting from Lessor's use of the Benefited Property provided that such impacts, disturbances, and activities do not result from either: 1) Lessor's violations of the Consent Decree or Solid Waste Permits or; 2) Lessor's violations of the Environmental Laws in a manner not authorized by the Consent Decree.

The Landfill Effects Easement shall be perpetual, and the Landfill Effects Easement and the forgoing provisions shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

As used herein, the term "Environmental Law" shall mean the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Federal Hazardous Materials Transportation Control Act, 49 U.S.C. Section 1801 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq.; the Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Washington Water Pollution Control Act, RCW Chapter 90.48; the Washington Clean Air Act, RCW Chapter 70.904; the Washington Solid Waste Management Recovery Act, RCW Chapter 70.95; the Washington Hazardous Waste Management Act, RCW Chapter 70.105; the Washington Hazardous Waste Fees Act, RCW Chapter 70.105A; the Washington Model Toxics Control Act, RCW Chapter 70.105D; Washington Initiative Measure 97, 1989 Laws Chapter 2; the Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98; the Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99; and any federal, state and local law, ordinance and rule of a similar nature regulating the discharge of hazardous substances and pollutants.

As used herein, the term "Consent Decree" means that certain Consent Decree, as it has been or may be in the future amended, originally entered into between the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the State of Washington Department of Ecology ("DOE"), et al. vs. City of Tacoma, dated March 25, 1991, U.S. District Court for the Western District of Washington Case No. C 89-583T, including all attachments thereto.

As used herein, the term "Solid Waste Permit" means any permit granted for the Tacoma Landfill by the Tacoma-Pierce County Health Department or the Washington Department of Ecology as authorized by Criteria for Municipal Solid Waste (WAC 173-351) or Minimum Functional Standards for Solid Waste Handling (WAC 173-304).

DATED: _____, 1997

The City of Tacoma,
a Washington municipal corporation

By: _____
Brian Ebersole, Mayor

Attest: _____
Rick Rosenblatt
City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Brian Ebersole, to me known (or proven by satisfactory evidence) to be the Mayor of the City of Tacoma, a Washington municipal corporation, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said municipal corporation, for the uses and purposes therein

mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing in _____.
Print Name: _____.
My commission expires: _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Rick Rosenblatt, to me known (or proven by satisfactory evidence) to be the City Clerk of the City of Tacoma, a Washington municipal corporation, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing in _____.
Print Name: _____.
My commission expires: _____.

EXHIBIT "A"
TO
SPECIAL WARRANTY LEASEHOLD
WITH RESERVATION OF EASEMENTS

The subject Property is known as Tax Parcel Nos. 2201-33000 and 2201-33010, and is legally described as follows:

Parcel 3010

That portion of the Southeast Quarter of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M., described as follows:

Commencing at the southwest corner of said subdivision, thence northerly along the west line of said subdivision a distance of 270.0 feet; thence easterly parallel with the south line of said subdivision a distance of 762.52 feet, more or less, to a point distant 580.00 feet westerly of, measured at right angles, to the east line of said subdivision, and the point of beginning; thence northerly parallel with said east line a distance of 1053.8 feet, more or less, to the point of intersection with the north line of said subdivision; thence easterly along said north line to the point of intersection with said east line of said subdivision; thence southerly along said east line of said subdivision to the southeast corner thereof; thence westerly along the south line of said subdivision 580.00 feet; thence northerly to the point of beginning.

Except therefrom the west 30.0 feet of the south 30.0 feet of the above described parcel.

Parcel 3000

The south half of the east half of the northeast quarter of the southwest quarter of Section 13, Township 29 North, Range 2 East, W.M., less the following described tract:

Beginning at the southwest corner of said subdivision, thence South 88°20'44" East along the south line of said subdivision 87.52 feet; thence North 5°57' West, 667.4 feet to the northeast corner of said subdivision; thence South 1°35' West along the west line of said subdivision 661.52 feet to the point of beginning.

EXHIBIT "B"
TO
SPECIAL WARRANTY LEASEHOLD
WITH RESERVATION OF EASEMENTS

BENEFITED PROPERTY

Commencing at the Southeast corner of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence along the South line of Section 13 North 88° 26' 10" West, 577.46 feet to the point of beginning; thence continuing North 88° 26' 10" West, 764.16 feet; thence North 1° 43' 47" East, 1324.13 feet; thence North 8° 10' 26" West, 672.00 feet; thence North 88° 18' 34" West, 201.00 feet; thence North 1° 41' 26" East, 615.89 feet to the South line of South 40th Street; thence along said South line North 88° 13' 35" West, 568.22 feet; thence North 1° 53' 04" East, 46.16 feet to the north line of said Quarter; thence North 1° 37' 22" East, 1323.92 feet to the Northeast corner of "Orchard Terrace," thence North 88° 20' 6" West, 116.37 feet along the north line of "Orchard Terrace"; thence North 1° 36' 52" East, 1100.74 feet; thence South 88° 25' 49" East, 50.00 feet; thence North 1° 36' 52" East, 223.35 feet to the north line of Section 13, Township 20 North 2 East, W.M.; thence North 88° 25' 49" West, 3.82 feet along said north line of Section 13; thence North 2° 03' 45" East, 376.66 feet; thence North 88° 25' 49" West, 50.00 feet to the southeast corner of South 34th Street; thence North 2° 03' 45" East, 955.31 feet to the north line of the Southwest Quarter of Section 12, Township 20 North 2 East, W.M.; thence South 88° 10' 16" East, 1493.55 feet along said north line of the Southwest Quarter of Section 12; thence South 1° 53' 09" West, 737.48 feet; thence South 18° 06' 51" East, 263.14 feet; thence South 1° 53' 09" West, 340.00 feet to the North line of said Section 13; thence South 88° 25' 55" East, 282.04 feet along said North line of Section 13; thence South 0° 32' 59" West, 927.05 feet to the South line of South 36th Street; thence South 88° 20' 33" East, 62.96 feet to the Northwest corner of that parcel deeded to Edward Lindblom by AFN Deed 2309767, August 11, 1969; thence around said deed South 1° 36' 20" West, 130.00 feet; thence continuing around said deed South 88° 20' 36" East, 70.00 feet; thence continuing around said deed North 1° 36' 20" East, 130.00 feet to the South line of South 36th Street; thence South 88° 20' 56" East, 60.00 feet along South 36th Street; thence South 1° 36' 20" West, 400.36 feet; thence North 88° 20' 06" West, 200.00 feet; thence South 1° 36' 20" West, 254.68 feet; thence South 88° 20' 36" East, 19.11 feet; thence South 0° 32' 59" West, 428.46 feet to the northwest corner of "Mason Circle" plat; thence South 0° 32' 59"

West, 643.65 feet along the West line of said plat to the North line of the Southwest quarter of Section 13, Township 20 North, Range 2 East, W.M.; thence North $88^{\circ} 15' 00''$ West, 246.42 feet along said north line; thence South $1^{\circ} 35' 01''$ West, 661.38 feet; thence South $6^{\circ} 27' 42''$ East, 667.08 feet; thence South $1^{\circ} 44' 07''$ West, 1324.04 feet to the point of beginning.

ATTACHMENT D

ENVIRONMENTAL HOLD HARMLESS AGREEMENT TACOMA TO EAGLEQUEST GOLF CENTERS, INC./LENDER

WHEREAS the City of Tacoma ("City"), by Resolution No. 30227 (1988), has authorized the proper officers of the City to insure that the City of Tacoma be the sole responsible party for Superfund investigation and cleanup of the Tacoma Landfill, and that the parties adjacent to the Landfill be provided assurances that the City will be solely responsible for any contamination emanating from the Landfill at levels exceeding those identified for the chemicals of the concern in the hereinafter defined Consent Decree;

WHEREAS the City and the United States of America, on behalf of the Environmental Protection Agency ("EPA") and the State of Washington Department of Ecology ("DOE") executed and lodged a Consent Decree in the U.S. District Court on May 17, 1991, under Cause No. C89-583T, pursuant to which the City has undertaken to commence and complete all planning, monitoring, and remedial work on the Tacoma Landfill in accordance with the Consent Decree; and

WHEREAS EGCI/LENDER are considering the lease/financing of property in the vicinity of the Tacoma Landfill near South Tyler Street, which is more particularly described in Exhibit "A" hereto ("Property"), and in that undertaking seek assurance that they and their successors would not be exposed to environmental liability as a consequence of the lease of the Property in the vicinity of the Tacoma Landfill;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this agreement, the City of Tacoma extends to EGCI/LENDER in connection with said lease or financing of the Property, the following hold harmless agreement:

1. Environmental Hold Harmless. Subject to the assets and revenues from the Solid Waste Utility, the City shall defend and hold EGCI/LENDER harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses, and expenses caused by or resulting from Hazardous Substances, which were generated, stored, disposed of, or existing on, at, or under the Tacoma Landfill, including Hazardous Substances which may have in

the past, or in the future, migrate from the Tacoma Landfill to the Property and exceed the levels of the chemicals of concern identified in the Consent Decree. This agreement to hold harmless is to apply to claims brought by any party based upon any state or federal statutory or common law, including any claims brought under the laws described in paragraph 2 below, and shall include claims for investigation, litigation, administration, oversight, and personnel costs, all costs arising out of or related to the cleanup, storage, treatment, handling, disposal, transportation, presence of, or threatened release or discharge of, any contaminants, at, from, or beneath the Tacoma Landfill, and any property damage or damages for personal injury related thereto.

2. Hazardous Substances. For purposes hereof, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminates," or "toxic substances," which exceed the acceptable levels identified in the Consent Decree and incorporated documents in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 1601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.49.010, et seq.; the Hazardous Waste Management Statute, RCW 90.105, et seq.; the Toxic Substance Control Act, RCW 70.105C, et seq.; and the Model Toxics Control Act, RCW 70.105C, et seq.; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

3. Notice to City. The City's obligation pursuant to this agreement shall be conditioned upon receipt by the City of timely written notice of any such claim or suit, giving the City reasonable opportunity to assume and defend such claim or suit, and cooperation by EGCI/LENDER or successors with the City in connection therewith.

4. Successors. This agreement shall be binding upon and inure to the benefit of EGCI/LENDER and their heirs, successors, and assigns, and shall run with the land.

DATED at Tacoma, Washington, this ____ day of _____, 1997.

CITY OF TACOMA

Countersigned:

Peter Luttrupp, Finance Director

Ray E. Corpuz, Jr., City Manager

Attest:

Rick Rosenblatt, City Clerk

Approved:

William Pugh, Director
Public Works Department

Approved as to form:

Assistant City Attorney

Andrew Michels, Risk Manager

EXHIBIT "A" TO
ATTACHMENT D,
ENVIRONMENTAL HOLD HARMLESS

(Legal Description of Property)

The subject Property is known as Tax Parcel Nos. 2201-33000 and 2201-33010, and is legally described as follows:

Parcel 3010

That portion of the Southeast Quarter of the Southwest Quarter of Section 13, Township 20 North, Range 2 East, W.M., described as follows;
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Except therefrom the west 30.0 feet of the south 30.0 feet of the above described parcel.

Parcel 3000

The south half of the east half of the northeast quarter of the southwest quarter of Section 13, Township 29 North, Range 2 East, W.M., less the following described tract;

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=====

APPROVED this ____ day of _____, 19__.

EGCI

LENDER

EXHIBIT A

TACOMA FIRS GOLF CENTER DEVELOPMENT AGREEMENT

The Tacoma Firs Golf Center shall be developed in accordance with the terms of this Agreement.

ARTICLE 1 DEFINITIONS

The following words and terms shall have the following meanings for the purposes of this Golf Center Development Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operation Agreement. Terms otherwise not defined herein shall be given their usual and customary meaning.

"Commencement Date" means the date that EGCI is obligated to commence construction of the Tacoma Firs Golf Center, as provided in Section 3.11.

"Coordinator" means an on-site field coordinator hired or employed by the Department's Solid Waste Utility Division or the City to observe and review the construction of the Tacoma Firs Golf Center.

"Development Permits" means all City, State, and/or Federal permits required for construction of the Golf Center Facilities.

"Minimum Investment" shall mean the minimum dollar amount of required capital improvement/commitments or expenditures by EGCI, as further defined at Section 2.2.

"Operation Agreement" means that certain Golf Center Agreement dated as of _____, 1997, between the City of Tacoma ("City") and Eaglequest Golf Centers, Inc. ("EGCI"), to which this Golf Center Development Agreement is attached.

"Project" means the entire Tacoma Firs Golf Center and any part thereof.

"Project Completion Date" means the date EGCI is obligated to complete construction of the Tacoma Firs Golf Center, which shall be the end of the Build Out Period as defined in Article I of the Operation Agreement.

Exhibit A
Tacoma Firs Golf Center Development Agreement - A-1

ARTICLE 2
FINANCIAL OBLIGATIONS OF EGCI

2.1 **Cost of Development.** Subject to EGCI's approval of the physical condition of the Property, as described in Article IV of the Operation Agreement, EGCI agrees to pay all costs associated with development of the Tacoma Firs Golf Center.

2.2 **Minimum Investment.** EGCI shall make a minimum investment of \$2,700,000 to complete development of the Golf Center and prepare the Center for operation. EGCI shall have the discretion to invest such funds in any of the line items of categories set forth in the construction budget previously presented by EGCI to the City with EGCI's proposal, including the right to invest more or less funds in any of the line items, so long as EGCI's total investment equals at least \$2,700,000.

2.3 **Taxes.** EGCI shall pay all taxes associated with construction of the physical improvements of the Golf Center Facilities.

2.4 **Utilities.** The City warrants that there is sufficient capacity in its electrical, sanitary and sewer utilities, and that there is sufficient potable and irrigation water for the Golf Center Facilities. Stormwater detention will be required, however.

ARTICLE 3
DEVELOPMENT OBLIGATIONS OF EGCI

3.1 **Facilities.** The City's RFP and EGCI's Proposal dated May 20, 1997, establish the basic intent for design and development except as altered by specific provisions of this Agreement. EGCI will construct a 60-tee station driving range and learning center (a portion of which will be two-tiered, and at least 20 shall be heated), and an attached Golf Center containing 5,000 square feet of floor area and incorporating a fully stocked pro shop, Eaglequest Golf School with golf lessons, video taping, and a food and beverage operation. Also included are short game practice areas with sand bunkers, chipping, and putting greens. Parking will be provided for a minimum of 1.25 stalls for each tee station. In its review of the construction plans, the City will examine them for any potential interference with the City's methane gas extraction system and approve the design so as to avoid any

Exhibit A
Tacoma Firs Golf Center Development Agreement - A-2

adverse effect on the methane gas extraction system on the Property and adjacent Landfill.

3.2 Standards for Facilities.

3.2.1 Building Codes. All permanent Golf Center Facilities shall be constructed in accordance with currently applicable building codes.

3.2.2 Useful Life. Permanent Golf Center Facilities shall have an expected useful life of at least forty (40) years.

3.2.3 Lighting. Night lighting of the driving range is part of the plan and shall be approved by the Public Works Department.

3.3 Design Review and Approval Process. Within thirty (30) days following the City's approval of the Development Plan for the Tacoma Firs Golf Center, EGCI shall submit to the Public Works Department eight (8) copies of schematic drawings to show the specific location of all buildings and features to be constructed, the associated circulation flow, a diagram of proposed lighting, and the architects' drawings and renderings of the major buildings and structures with sufficient detail to indicate materials and appearance. Within thirty (30) days following approval of the schematic drawings, EGCI shall submit to the Public Works Department eight (8) copies of final working drawings and specifications with sufficient detail to review design and materials related to all permanent features of the Golf Center Facilities.

All such working drawings and specifications shall be prepared by architects or engineers licensed in the State of Washington, who shall have affixed to the same his or her signature and seal. The schematic drawings are subject to the review and approval of the Public Works Department which review and approval shall not be unreasonably withheld. Except for permit approval, the Public Works Department shall have not more than fifteen (15) working days to complete such review and either approve, conditionally approve, or disapprove each such submittal or revised submittal; provided, however, if public review is required, then such 15-day period may be extended to accommodate the time required for the public review process. In the event of a conditional approval or disapproval, the Public Works Department shall specify, in a letter signed by the Assistant Director or the Assistant Director's designee, the conditions attached to such approval or the reasons for such disapproval. Within fifteen (15) days after EGCI's receipt of the Public Works Department's conditional approval or disapproval notice, EGCI shall submit to the Public Works Department: (a) EGCI's written acceptance of the conditions attached to the Public Works Department's conditional approval or such submittal; (b) EGCI's

Exhibit A

Tacoma Firs Golf Center Development Agreement - A-3

written explanation of why specified conditions or Public Works Department's disapproval cannot be accepted by EGCI and the EGCI's proposed schedule for meeting(s) to resolve such dispute; or (c) a revised submittal responding to the Public Works Department's previously stated objections. EGCI shall keep a complete set of approved final plans and specifications on the construction sites throughout the duration of construction.

3.4 "As-Built" Drawings to be Provided. EGCI shall provide the Public Works Department with a set of reproducible, mylar 24" x 36" "as-built" drawings and as-built in AUTO CAD format for the permanent golf facilities constructed under this Development Agreement.

3.5 No Representation or Liability Created by Approval. Except as otherwise provided herein with regard to chemicals of concern that may emanate from the Landfill at levels exceeding those identified in the Consent Decree, and except as set forth in the Operation Agreement, the approval of any plans and specifications by the Public Works Department or any other person or entity shall not constitute an opinion or representation by the Public Works Department as to their compliance with any law or ordinance or their adequacy for other than the Public Works Department's own purposes; and such approval shall not create or form the basis of any liability on the part of the Public Works Department or any of its employees or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with applicable laws or ordinances.

3.6 Site Coordination and Construction Plan. At least twenty (20) working days prior to commencement of construction, EGCI shall submit for the Public Works Department's approval, a copy of the contractors' Washington State Business License, evidence of insurance, a construction bond covering 100 percent of the estimated cost of construction, and a Site Coordination and Construction Plan that addresses the following items and other matters as may be reasonably required by the Public Works Department:

- Access to the Property by construction personnel;
- Designation of EGCI's project manager and local construction manager;
- Delivery, handling, and storage of materials and equipment;
- Use of existing facilities and utilities;

Exhibit A

Tacoma Firs Golf Center Development Agreement - A-4

- Parking for construction personnel, staging location(s);
- Dust control, wheel wash, and street clean-up;
- Signage during construction;
- Silt fencing and use of straw to prevent erosion of slopes;
- Location of temporary bathrooms for construction personnel;
- Hours of work and coordination of activity, noise control;
- Fencing or other barriers to prevent public access to construction site;
- Clean up of work and the disposition of refuse;
- List of emergency telephone numbers, and names and responsibilities;
- Public relations plan, including a primary contact name and the office location and phone number of such primary contact.

3.7 Review of Plan. The Public Works Department shall review EGCI's Building Plans and shall provide comments to EGCI no later than five (5) working days prior to delivery of construction permits. EGCI shall revise the Site Coordination and Building Plans in accordance with comments by the Public Works Department, to the extent that the comments will not require EGCI to develop more expensive features in the Tacoma Firs Golf Center than originally described in the RFP, and provided such changes shall not increase maintenance expenses. EGCI shall comply with the Building Plans throughout construction of the golf facilities. Change orders or field changes in the plan shall be subject to the review and signed approval of the Public Works Department's Coordinator, except for minor field changes. EGCI shall have the right during the course of construction to make minor field changes without seeking the approval of the City. Minor field changes shall be defined as those non-structural exterior and interior changes from the approved Construction Drawings which have no material adverse effect on the improvements, and do not constitute material deviations from the exterior design, and are made in order to expedite the work of construction, in response to field conditions, and costing less than \$25,000.00 in any instance.

3.8 Inspections. The Public Works Department's Coordinator and advisors (including, but not limited to, an on-site inspector) may inspect any golf facility or

capital improvement work of or for EGCI upon reasonable prior notice at any time to determine whether such work is in accordance with the plans and specifications approved by the Public Works Department for the same. EGCI personnel shall be present at all inspections. If any such work is not materially in accordance with such plans and specifications, the Public Works Department shall send to EGCI, return receipt requested, a Notice of Non-Compliance. EGCI shall correct any material deviations identified in such notice prior to the completion of construction of the Tacoma Firs Golf Center. For purposes hereof, material deviations include, without limitation, violations of building and safety codes, deviations of the building structure, and material exterior deviations from the plans and specifications approved by the City. Notwithstanding the foregoing, EGCI shall be obligated to construct the Golf Center Facilities materially in accordance with the plans and specifications, and the failure of the City to inspect shall not reduce this obligation.

3.9 Management Team. EGCI shall designate in writing to the Public Works Department its project manager and construction supervisor. The Public Works Department's Coordinator shall be Jody Bratton, P.E., unless otherwise provided for in writing. EGCI's project manager shall meet at least once per week (or more if reasonably required by the Public Works Department) with the Public Works Department's Coordinator.

3.10 Status Report. If requested by the City, EGCI shall provide an estimated construction schedule to the City. Also, if requested by the City, EGCI shall provide monthly status reports to the Public Works Department describing construction progress. Such reports shall include the following information, if reasonably requested by the Public Works Department: Payments made to contractors, subcontractors and suppliers, any deviations from the construction schedule, any changes to construction budget, and any change orders or field changes issued.

3.11 Construction Commencement. EGCI shall begin construction of the Golf Center Facilities no later than thirty (30) working days following receipt of building permits except for delays due to unsuitable weather or force majeure.

EGCI shall submit any requests for time extension to the City in writing no later than ten working days after the cause of the delay occurs. The request shall be limited to the change in the critical path of EGCI's schedule attributable to the change or event giving rise to the request. To be considered by the City, the request shall be in sufficient detail (as determined by the City) to enable the City to ascertain the basis and amount of the time requested. EGCI shall be responsible for showing the progress schedule that change or event: (1) had a specific impact on the critical

path, and except in cases of concurrent delay, was the sole cause of such impact, and, (2) could not have been avoided by resequencing of the work or other reasonable alternatives. In evaluating the request, the City will consider how well EGCI used the time from commencing construction up to the point of the delay and the effect the delay has on any completion times included in the Operation Agreement.

The time extension for physical completion will be extended for a period equal to the time the City determines the work was delayed because of:

1. Unsuitable weather
2. Any action, neglect, or default of the City, its officers or employees, or of any other contractor employed by the City;
3. Fire or other casualty for which EGCI is not responsible;
4. Strikes;
5. Any other condition for which the City permits time extensions, such as:
 - a. A change order which increases the time to complete the work;
 - b. A change in the condition of work is determined to exist which caused a delay in completing the project;
 - c. The City does not approve properly prepared and acceptable drawings within a reasonable time;
 - d. Performance of the work is delayed as a result of damage by others;
 - e. The removal or relocation of any utilities by forces other than EGCI caused the delay;
 - f. Performance of the work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of the City;
 - g. If a dispute of claim also involves a delay in completing the work and the dispute or claim proves to be valid;
6. Exceptional causes not specifically identified in items 1 through 5, provided the request letter proves EGCI had no control over the cause of the delay and could have done nothing to avoid or shorten it.

The City will not allow a time extension for any cause listed above if it resulted in EGCI's default, collusion, action or inaction, or failure to comply with the contract.

The City considers the time specified in this contract as sufficient to do all the work. For this reason, the City will not grant a time extension for:

Exhibit A
Tacoma Firs Golf Center Development Agreement - A-7

- a. Failure to obtain all materials and workers;
- b. Changes, protests, increased work, or changed conditions that do not delay the completion of the project or prove to be invalid or inappropriate time extension request;
- c. Delays caused by nonapproval of drawings or plans;
- d. Rejection of faulty or inappropriate equipment.

The reasons for time of extension shall be determined by the City, and such determinations will be final.

Moreover, due to climate and other natural conditions, the only months in which EGCI may plant grass seed are the months of March 1 through May 15, or August 15 through October 1, inclusive, unless EGCI obtains the approval of a licensed Landscape Architect in the State of Washington to grant authorization to EGCI. If the construction schedule is such that the Property is not in a condition adequate to allow EGCI to plant grass seed during those months, then the construction schedule shall be extended as necessary to allow for the planting for grass seed at those times. Moreover, EGCI has no control over the rate of growth of grass, which is also subject to climate and other natural factors, and EGCI shall be allowed such reasonable additional time to open the golf center as is necessary to grow the grass and to place the golf center in such condition as is necessary to meet the quality and finish standards of this Agreement and the Building Plans.

3.12 Construction of Facilities. EGCI will, at its expense and subject to the provision of this Agreement and the Operation Agreement, construct the permanent Golf Center Facilities and provide, furnish, and install within the facilities all furnishings, fixtures, architectural, electrical, and mechanical work to complete the facilities in accordance with the approved plan and specifications, and equip the facilities for golf center operations.

3.13 Condition of Construction Site. Pursuant to the Operation Agreement, EGCI shall examine the Property for location of the permanent Golf Center Facilities on the Property. By December 3, 1997, EGCI shall determine, based upon its examination of the physical condition of the Property, whether the Property is suitable for Golf Center Facilities to be located thereon, and EGCI hereby accepts the Property in an "as is" condition, subject to the City's obligations to be responsible for any hazardous or toxic materials on the Property, and any remediation required as a result of the use of the adjacent property as a landfill, as provided in the Operation Agreement. The City shall continue to be liable for remediation of any

Exhibit A

Tacoma Firs Golf Center Development Agreement - A-8

chemicals of concern exceeding the levels identified in the Consent Decree, e.g., methane gas or other hazardous materials being released from the Landfill.

The City requires, pursuant to the issuance of the Special Use Permit, EGCI to construct a left-turn pocket on Tyler Street and prepare the road shoulder along Tyler Street to accommodate a 5-foot-wide pathway frontage along the property length. Any site preparation work shall be at EGCI's sole cost and expense. Except for the foregoing, EGCI expressly agrees that the Public Works Department shall have no liability or obligation to prepare the Property for construction of the Golf Center Facilities.

3.14 Contractor Licensed in Washington. EGCI's contractor shall be licensed to work in Tacoma, Washington, in accordance with all applicable laws.

3.15 Liens Prohibited. EGCI shall not suffer or permit any mechanic's lien or other liens to be filed against the Golf Center including its concession facilities by reason of work, labor, services, or materials supplied or claimed to have been supplied to EGCI. EGCI shall indemnify and hold harmless the City from and against any and all loss, costs (including attorney's fees), liability, expenses, or claims arising out of work done by EGCI. EGCI shall pay all the City's reasonable costs, including legal costs as incurred by the City in removing any liens related to the construction described in this Development Agreement or any other activities of EGCI or its contractor on City property, except for liens accruing by reason of any work performed on the Property by the City or the Public Works Department, including the costs of abating any hazardous or toxic materials on the Property.

3.16 High Quality Workmanship. All work required by EGCI to complete the Golf Center Facilities shall be carried out with good workmanship and with new materials (or recycled materials which are functionally equivalent to new materials), which shall all be of a high quality, conform to accepted standards of practice, and shall not be in contravention of the laws, codes, or regulations of the municipality or any other authority having jurisdiction.

3.17 Insurance Requirements. Before commencing construction, EGCI's contractor shall furnish to the Public Works Department certificates of the following insurance policies, naming the City as an additional named insured:

3.17.1 Commercial general liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford protection, with respect to bodily injury, death or property

Exhibit A

Tacoma Firs Golf Center Development Agreement - A-9

damage of not less than Five Million Dollars (\$5,000,000) per occurrence with a deductible amount of not more than Five Thousand Dollars (\$5,000).

3.17.2 Comprehensive automobile liability insurance of not less than Five Million Dollars (\$5,000,000) single limit, bodily injury and property damage.

3.17.3 Worker's Compensation or similar insurance in form and amount required by law, including employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence.

EGCI shall be allowed to provide all such insurance through a blanket policy of insurance covering other sites of EGCI and its affiliates. None of the above policies shall be canceled or materially altered except after thirty (30) days written notice to the Public Works Department or following completion of the golf facilities as set forth in Article 6.

3.18 Waste Disposal. EGCI shall provide on-site containers for collection of waste materials, debris, and rubbish. EGCI shall keep the work site and adjacent properties free of accumulation of construction waste materials, rubbish, and windblown debris, and on a daily basis shall dispose of all flammable, hazardous, and toxic materials. Storage of these materials will not be permitted on the site. Storage and disposal must be in accordance with 40 CFR, WAC 173-303, and 49 CFR, and state and local fire codes and regulations. All waste materials, debris, and rubbish must be disposed of legally at disposal areas away from the site at EGCI's expense.

At the completion of EGCI's work, EGCI shall leave the construction site and surrounding area clean and to the satisfaction of the Public Works Department, shall remove all tools, equipment, and surplus materials from the construction site, and remove all waste material and refuse and deposit them in places or in receptacles designated by the Public Works Department.

3.19 Liability Regarding Construction Work. The Public Works Department shall not in any way be responsible or liable for any work carried out or any materials or tools left or installed in the facilities by EGCI. Any damage caused by EGCI's contractors or subcontractors employed to construct the Golf Center Facilities shall be repaired promptly by EGCI. If EGCI fails to repair such damage, the Public Works Department may engage its own contractor to make repairs to the satisfaction of the Public Works Department, and the Public Works Department may recover the costs if incurred from EGCI. EGCI shall be entirely responsible for the security of

the facilities during construction and the Public Works Department shall not be liable for any loss or damage suffered by EGCI.

3.20 EGCI as Sole Obligor. EGCI and its successors, assigns, and guarantors shall be the sole obligors under any loan or credit document made in connection with Project financing. EGCI shall execute documents reasonably required for Project construction or term financing, provided that such documents do not affect the interests of the City or the Department beyond the City's or Department's interests in the Project revenues, Project documents, agreements, and permits for the satisfaction of any claim or obligation with respect to Project financing.

3.21 Access. The City shall allow EGCI reasonable access to the contiguous real property owned by the City for purposes of access during the construction period. EGCI and its contractors shall have the right of reasonable access through the City of Tacoma Landfill during the regular hours of daily operation (Monday through Sunday--8:00 a.m. until 6:00 p.m.). EGCI and its contractors shall follow all signage and rules, including those laws and regulations pertaining to roads, drainage, erosion control. While utilizing this right of access, EGCI and its contractors shall make access with minimal interference to the solid waste handling activities of the Solid Waste Utility. EGCI and its contractors shall restore to original condition any City property which was damaged by them. Any damages to City real or personal property caused by EGCI or its contractors shall be repaired in accordance with Section 3.19.

ARTICLE 4 OBLIGATIONS OF THE DEPARTMENT

4.1 Design Review. The Public Works Department will facilitate the public process leading to approval of the development plan and all other design reviews outlined herein in a timely manner.

4.2 Assistance with Environmental Documentation. The Public Works Department shall assist EGCI with preparation and processing of environmental documentation associated with the Project. The Public Works Department shall serve as Lead Agency.

4.3 Development Permits. EGCI shall have responsibility for obtaining all development permits. Without limiting the foregoing, the Department will endeavor to assist when possible especially when such assistance can help keep the project moving.

Exhibit A
Tacoma Firs Golf Center Development Agreement - A-11

4.4 Construction Review. The Public Works Department will provide timely inspections, monitoring, and review and decisions of proposed change orders or field changes during the construction process. As provided, however, Public Works Department approval shall not be required for minor field changes.

ARTICLE 5 OWNERSHIP OF FACILITIES

5.1 EGCI shall own all Golf Center Facilities developed under this Agreement until completion of construction or as described in the Operation Agreement.

5.2 The City shall own the underlying land and the methane collection system. The City shall not subordinate its interest in the underlying land to EGCI's lender.

ARTICLE 6 COMPLETION OF FACILITIES

6.1 Project Completion Date. Subject to extensions required from weather delays as provided herein, EGCI shall complete construction of the Golf Center Facilities within ten (10) months of receipt of construction permits, subject to extensions of the Build Out Period as defined and provided in Article I of the Operation Agreement, and subject to extensions due to Force Majeure. EGCI may also request an extension of the Project Completion Date (and the Build Out Period) by submitting a request for such extension to the Public Works Department in writing at least thirty (30) days in advance of the originally determined Project Completion Date. Such request shall not be unreasonably withheld.

Completion of the Golf Center Facilities shall be evidenced by the following:

EGCI will deliver a copy of the Certificate of Occupancy to the Public Works Department.

EGCI will discharge any liens that may have been mechanic's or materialmen's filed against the facilities or any City property with respect to construction of the facilities.

EGCI will deliver a certificate signed by an appropriate officer of EGCI that there are no mechanics' or materialmen's liens, other than mechanics' or materialmen's liens which are bonded by EGCI as required by law.

EGCI will deliver a certificate of its architect that the facilities have been constructed in accordance with approved plans and specifications in a good and workmanlike manner.

EGCI will submit an accounting indicating the actual cost of construction and all deliverables listed in the RFP to be at least \$2,700,000 million.

EGCI will deliver the "As-builts" required in Section 3.4 as soon as is reasonably possible after the Project Completion Date.

6.2 Turf and Landscaping. All turf will be seeded and landscaping planted by the Project Completion Date, but it will also be EGCI's responsibility to ensure healthy grow-in and provide for rapid replacement of any dead turf or plants as set forth in the Operation Agreement.

6.3 Punchlist. Upon substantial completion of the facilities, representatives of EGCI and the Public Works Department shall inspect the facilities and identify items remaining for completion in accordance with the approved plans and specifications. EGCI shall cause its contractor to complete all punchlist items within thirty (30) days of receipt.

ARTICLE 7 NON-COMPLIANCE

7.1 Default by EGCI. If EGCI shall fail to comply with the provisions of this Development Agreement, the Public Works Department shall provide EGCI with written notice of such delinquency, and EGCI shall, in accordance with the Operation Agreement, cure such default within thirty (30) days after receipt thereof; provided, however, that if the nature of EGCI's obligation reasonably requires more than thirty (30) days for performance, then EGCI shall not be in default if it commences performance within such thirty (30) day period and, thereafter, diligently prosecutes the same to completion. This period shall run concurrently with, and not be in addition to, any cure period described in the Operation Agreement. In such event, the City shall have the right to declare and treat EGCI's non-compliance as a material default or breach of covenant under the Operation Agreement and to

Exhibit A

Tacoma Firs Golf Center Development Agreement - A-13

exercise any right available under the provisions of the Operation Agreement, including the right of termination.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of _____, 1997.

CITY OF TACOMA

EAGLEQUEST GOLF CENTERS, INC.

Ray E. Corpuz, Jr., City Manager

Gregory Mollner
Vice President
U.S. Corporate Development
Eaglequest Golf Centers, Inc.
9116 South 212th Street
Kent, Washington 98031

Countersigned:

Peter Luttrupp, Finance Director

Karen J. Larkin
Assistant Director
Public Works Department

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Risk Manager

Exhibit A
Tacoma Firs Golf Center Development Agreement - A-14

Resolution No. 33906

Adopted: DEC 9 1997

Maker of Motion: Crowley

Seconded: McGavick

Roll Call vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Baarsma	✓			
Mr. Crowley	✓			
Mr. DeForrest	✓			
Mr. Evans	✓			
Mr. Kirby	✓			
Dr. McGavick	✓			
Mr. Miller	✓			
Dr. Silas	✓			
Mayor Ebersole	✓			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Baarsma				
Mr. Crowley				
Mr. DeForrest				
Mr. Evans				
Mr. Kirby				
Dr. McGavick				
Mr. Miller				
Dr. Silas				
Mayor Ebersole				