AGREEMENT FOR THE

MANAGEMENT AND OPERATION OF

DE BELL GOLF COURSE

BY AND BETWEEN

THE CITY OF BURBANK

AND

S.S. GOLF, INC

2006-2011

AGREEMENT FOR THE MANAGEMENT AND OPERATION OF DEBELL GOLF COURSE

THIS AGREEMENT, made and entered into this 3rd day of October, 2006

BY AND BETWEEN CITY OF BURBANK, a municipal corporation

hereinafter referred to as "City"

AND S.S. GOLF, INC.

hereinafter referred to as "Operator",

WITNESETH:

WHEREAS, City owns DeBell Municipal Golf Course; and

WHEREAS, an operations and management agreement for the DeBell Golf Course facilities providing for the overall management, collection of fees, and provision of Operator services, and containing appropriate controls to insure public use of the facilities is consistent with said purposes; and

WHEREAS, City and Operator agree that the primary objective for Operator's performance under this Agreement is to maximize: (1) the public use of DeBell Golf Course, and (2) the revenue to be received by the City as a result thereof;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1. PREMISES

1.01 City and Operator agree that Operator shall management and operate the City facility known as DeBell Golf Course (sometimes referred to as "the premises') The premises that the Operator shall manage and operate (except for

landscape maintenance of the golf course, including the Par 3, and turf maintenance and irrigation of the driving range) are depicted in Exhibit A. The name of the golf course shall remain the same unless otherwise changed by City.

1.02 The premises shall be used only and exclusively for golf course operations and such other purposes as are related thereto provided express approval therefore is granted by the Director or his designee, and for no other purposes whatsoever.

1.03 Operator acknowledges personal inspection of the premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect the operation of the golf course. Operator accepts the premises in its present condition and agrees to make no demands upon City for any improvements or alteration thereof. Operator acknowledges that he will work out of the driving range starter shack during the demolition and construction of the new clubhouse.

1.04 Any improvements, additions, alterations or changes to the premises shall be subject to prior approval by the Director or his designee.

1.05 Operator hereby acknowledges the title of City and/or any other public agencies having jurisdiction thereover, in and to the premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

1.06 Ownership of all existing structures, and of all structures, buildings and/or improvements constructed by Operator upon the premises and all alterations, additions or betterments thereto, shall immediately vest and be vested in City at all times during and after the term hereof, without compensation being paid therefor. Such structures, buildings and/or improvement shall be surrendered to City upon termination of this Agreement.

2. TERM

2.01 The term of this Agreement shall be for a period of five (5) years commencing on the first day of the calendar month next succeeding approval by City Council. However, in the event said date is less than twenty-one (21) days from the date of said approval, the term shall commence on the first day of the second calendar month following the date of approval. During the last year of this Agreement the parties may mutually agree to extend the term of the Agreement on a month-to-month pending renewal of the Agreement or the commencement of management and operation of the premises by a new operator.

2.02 Any additional period requested shall be considered only if the City of Burbank requests that additional years be added. This agreement may be renewed for an additional five- (5) years only upon the mutual written consent of both parties. The Operator shall indicate in writing his intentions regarding renewal at least one (1) year prior to the expiration of this agreement. Any additional term shall be conditioned upon the Operator's substantial compliance with the Short term and Long Term Goals established in Exhibit B to this Agreement.

2.03. City and Operator agree that the Five-Year Long Range Plan shall be subject to annual review to occur no later than one year following the execution of this Agreement. Such annual review shall take place at a meeting between the Operator, the Director of Park and Recreation and such other persons, as the parties consider necessary. The Director will provide written notice of noncompliance with any goal or objective, with a reasonable period in which to cure such noncompliance. Instances of cured noncompliance shall not affect Operator's right to seek an additional term. As a result of this review and with the approval of the members of the Department of Park and Recreation Board and the City Council, the parties may agree to amend,

modify, or eliminate any of the goals or objectives in light of changing conditions and in furtherance of the best interests of the community.

3. OPERATOR'S BASIC SERVICE OBLIGATIONS

Operator acknowledges that, as of the date of commencement of the term of this Agreement, there are two (2) concessionaires of City operating: (a) the golf course maintenance contractor; and (b) the clubhouse, coffee shop food and beverage concessionaire.

3.01 Operator Services

Operator is hereby authorized and required to sell, rent, store and/or repair golf equipment; sell golf related clothing and supplies; provide instructional services in the playing of golf; rent power-driven golfmobiles and manually operated golf carts; and operate a driving range. Upon completion of the new clubhouse the City shall provide custodial services for the clubhouse. Operator shall provide custodial services for all other restrooms. This should include all supplies, such as paper, cleaning materials, and equipment necessary to satisfactorily maintain these facilities.

3.01.01 Merchandise

Except as otherwise provided by the City upon completion of the new clubhouse, Operator shall provide furnish and install at his own expense all necessary furniture, furnishings, facilities, telephone, and computers and maintain such inventory of golf merchandise as is deemed necessary by Director, or his designee, to adequately meet the public demand therefor. The Director, or his designee, shall have the right to prohibit the sale or rental of any item of merchandise on finding(s) that the item(s) is of such inferior quality as to not be in the public interest to be offered for sale, or that such item(s) is not necessary for proper service to the public.

3.01.02 Golf Instruction

Only qualified instructors shall teach the playing of the game of golf. Golf instructors shall comply with the rules and regulations for the play of golf.

3.01.03 Golfmobiles and Golf Carts

City provides 80 golfmobiles through a lease agreement with golf cart manufacturer. Operator shall handle the rental, charging of batteries and cleaning of motorized golfmobiles. The Operator may prohibit the use of golfmobiles on the golf course whenever weather conditions expose the user to danger or the golf course to damage arising from operation thereon. All golfmobiles and the maintenance thereof shall comply with the specifications and maintenance requirements as set forth in the City's lease agreement with cart manufacturer. Further, Operator shall comply with Director's, or his designee's, policy statement(s) regarding the issuance of golf cart rental receipts, and the system of accountability and procedures therefor.

3.01.04 Junior Golf Program

Operator shall cooperate with the Director, or his designee, in the promotion of a Junior Golf Program by providing lessons, range balls, general golf instructions, and conducting junior golf tournaments.

3.02 Golf Course Starter Services

Operator shall provide welcome greeter at the first tee. Operator is also required to render and provide golf course starter services. Said services are to include, but not limited to: open and close the golf course at the appropriate time; collect greens fees; collect golf tournament fees; accept reservations from the telephone and from patrons at the course and record same on starter sheets; place golfer's names on a call sheet as necessary; send golfers to the tee, and start them off at proper intervals in groups of four, three and two as applicable; receive requests from groups for tournaments, book tournaments and collect appropriate fees; take all actions necessary to speed play on

course; enter all golfers names on the starter's sheet and issue a cash register receipt to each golfer as greens fees are paid; total golf starter sheet at end of each day's play and reconcile with fee category totals on cash register detail tape; issue a golf cart rental receipt to golfers as rental fees are paid; and record in the daily log book the number of rounds of play and total amount of cash collected by fee category. Totals from the daily logbook on the number of rounds of play by fee categories shall be submitted to the Director, or his designee, on a recapitulation sheet once per month.

3.02.01 Days and Hours of Operation

Operator shall keep the starter's Office open every day, including Sundays and holidays, except Christmas Day. The minimum hours of operation shall be dawn to dusk weekdays, weekends, and holidays. Any changes in the days and hours for operation heretofore prescribed shall be subject to approval by the Director, or his designee.

3.02.02 Starter Service Supplies/Equipment

Operator shall provide all necessary golf starter sheets, golf pencils and an adequate number of golf scorecards. All of the aforementioned items shall be in form and content acceptable to the Director.

3.02.03 Golf Tournaments

Operator acknowledges that major tournaments are currently and customarily held at DeBell Golf Course and agrees to continue to accommodate and encourage such tournaments and favorably consider suggestions for additional events intended to accommodate the public, increase golf play at the demised premises, and otherwise mutually benefit the parties hereto. Operator shall schedule reserved starting times for tournaments in accordance with established procedures.

3.02.04 Marshalling

Operator shall implement a marshalling program that is intended to speed up play. The marshals shall be trained to assist as well as monitor the golfer and to expedite play on the course. The Operator shall provide two (2) marked golf carts for marshalling program and three (3) marshals (1 full-time and 2 part-time totaling approximately 72 man-hours per week). There will be one (1) marshal on weekdays and two (2) marshals on weekends and holidays.

A. Marshal

The marshal will be a paid employee. The marshal will work with the golf starter and be part of the golf shop team. He must be trained and easily identifiable on the course.

B. Special Equipment

Marshal's golf carts are to carry special equipment as follows: First Aid Kit, with blanket; Scorecards and Pencils; Golf Rule Book, and Communication Equipment (walkie-talkie).

C. Training

All marshals should receive training and instruction in: CPR; basic first aid; rules of golf courtesy; to assist golfers; and DeBell Golf Course local rules and conditions.

D. Identification

All marshals shall wear clothing that readily identifies them as golf course marshals. All marshals will carry identification cards.

3.03 Building and Equipment Maintenance Services

Should Operator fail, after ten (10) days notice from City of the need thereof, to perform its obligations required hereunder, City in addition to all other

available remedies may, but shall not be obligated to; exercise its Right of Entry as provided hereinafter. City may enter upon the premises and perform Operator's failed obligations, using any equipment or materials on the premises suitable for such purposes. Operator shall forthwith on demand reimburse City for its costs so incurred including direct and indirect overhead costs as determined by the Director, or his designee.

3.04 Grounds Maintenance Services

3.04.01 Daily inspection of all DeBell Golf Course facilities, including the 18-hole course, par three course, driving range, clubhouse, and all accessory buildings, in order to monitor maintenance contractor's compliance with specifications. Reporting of all problems noted on daily inspections to the maintenance contractor's superintendent and the Director, or his designee.

3.04.02 Monthly written reporting of work accomplished or not accomplished by the maintenance contractor to the City's Deputy Director/Park Services.

3.04.03 Locking of security gates at designated locations throughout golf course facilities in accordance with times established by the City's Deputy Director/Park Services.

3.04.04 Within 30 days from the beginning of the term of this agreement, to prepare and provide a written procedure manual to be approved by the City, covering all policies and procedures regarding the handling of reservations, tournaments, patrolling, etc.

3.04.05 Whenever play must be temporarily suspended on the golf course facility due to inclement weather conditions, the decision on when to allow play to

resume, and when to allow golf carts to go out on the course, will be made by Operator, Golf Course Maintenance Superintendent and Director, or his designee.

4. COMPENSATION FOR OPERATIONAL SERVICES OF OPERATOR

For such services as are required to be rendered by the Operator in connection with the operation of said golf course, and the rental and maintenance of equipment provided by the City pursuant to the terms of this agreement, City agrees to:

A. Pay the Operator **10%** of the golf mobile rental fees collected by Operator for handling the rental and providing day-to-day non-mechanical maintenance of said golf mobiles.

B. Pay the Operator the sum of **$12,000** per month for providing the services required by this Agreement. Provided that on July 1, 2007, and each subsequent year on that date, this amount will be adjusted by the rate of change in the Consumer Price Index (CPI) experienced in the month of February in the preceding calendar year. The CPI used will be that for Urban Wage Earners and Clerical Workers published by the Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Long Beach area. The CPI for February 2006 will be the base year index, and no rate of change in excess of 10% will be used in making adjustments.

C. Pay the Operator **5%** of all green fees collected by Operator.

D. The Operator shall receive all receipts from golf instruction fees including the driving range balls during the lessons.

5. PAYMENT OF RENTAL

5.01 Operator shall pay City the sum of percentages of monthly gross receipts as follows:

5% of the monthly gross receipts from the rental, repair and sale of golf equipment, clothing and supplies. This payment shall be

waived during the period of the demolition and construction of the new clubhouse;

25% of the monthly gross receipts from the driving range. In addition ten percent (10%) of gross revenues from the driving range shall be paid to the City and used as a Capital Improvement Contribution (CIP). Once the new clubhouse demolition and construction commences the Operator will not be required to pay the additional 10% CIP;

5.02 Payment shall be made by check or draft issued and payable to the City of Burbank and hand-delivered to the Park, Recreation and Community Services Department, 301 East Olive Avenue, Burbank, CA 91502.

5.02.01 Payment shall be made to the City on or before the fifteenth (15th) day of each month of the term herein provided. A late payment charge of two percent (2%) per month shall be added to any late payment received after said date.

5.02.02 The late payment charge herein provided may be waived whenever the Director, or his designee, finds late payment excusable by reason of extenuating circumstances. City shall not be obligated at any time during the term provided to notify the Operator of the accumulation of late payment charges.

6. ACCOUNTING RECORDS

6.01 All sales shall be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. All of Operator's cash registers shall have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are

imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash register, Operator shall record by hand all collections, and issue a sequentially pre-numbered customer's receipt in like manner. If computerized system is utilized the similar accounting procedures also apply.

6.02 Operator shall be required to maintain a method of accounting, to the satisfaction of the City, which correctly and accurately reflects the gross receipts, and disbursements. The method of accounting, including bank accounts established for the authorized operations, shall be separate from the accounting system used for any other business operated by Operator or for recording Operator's personal financial affairs. Such method shall include the keeping of the following documents: regular books of accounting such as general ledgers; journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.; State and Federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown which shall be kept in confidence by City; cash register tapes (daily tapes may be separate but shall be retained so that from day to day the sales can be identified), golf starter sheets and golf cart rental forms; and any other reporting records that the Auditor-Controller and/or Director, or his designee, deems necessary for proper reporting of receipts.

6.03 All documents, books and accounting records shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement and for four (4) years thereafter. In addition, the City or its designated auditor may from time to time conduct an audit and re-audit of the books and business conducted by Operator and observe the operation of the business so that accuracy of the above records can be confirmed. All information obtained in connection with the City's

inspection of records or audit shall be treated as confidential information and exempt from public disclosure thereof to the extent permitted under the California Public Records Act. City shall not be liable or responsible for the disclosure of any such records including those marked trade secrets, confidential, or proprietary, if such disclosure is deemed to be required by law, or by an order of a court of competent jurisdiction.

6.04 In the event that an audit or review conducted by the Auditor-Controller and/or Director, or his designee, finds that due to Operator's non-compliance with its obligation to report gross receipts received in connection with its operations authorized herein, an actual loss and/or a projected loss of revenue to City can be determined, Director, or his designee, may at his option, (1) bill Operator for said losses, said amount to be paid to City within thirty (30) days following billing therefor unless otherwise extended by Director, or his designee; and/or (2) use the Security Deposit as provided for herein; and/or (3) assess liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Operator to correctly report gross receipts; and a projected loss of revenue due to the City. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is $500.00 per day for each day of the loss period as determined by City and that Operator shall be liable to City for liquidated damages in said amount.

6.04.01 Should the Director, or his designee, find that the additional percentage payment due to City exceeds two percent (2%) of the total amount which should have been paid as determined by such review or audit and observation, and there being no reasonable basis for the failure to report and pay thereon, Operator shall

also pay the cost of the audit as determined by City and pay any penalty heretofore provided for the delinquent payments.

6.05 Operator shall furnish the Director, or his designee, with a monthly gross receipts report showing the amount payable therefrom to the City. Such a report shall accompany each monthly payment required to be made as provided herein. The monthly reporting period shall be by calendar month, rather than monthly anniversary date of the effective date of this Agreement. In addition thereto, Operator shall furnish the Director, or his designee, with quarterly profit and loss statements and an annual profit and loss statement, a certified audit and balance sheet prepared by a Certified Public Accountant and in a form acceptable to the Director or their designee. The monthly profit and loss statements shall be submitted with the monthly payment. The annual financial statement shall be submitted within sixty (60) days of the close of an Agreement year. Said closing date shall be determined by reference to the date for commencement of the term herein provided.

7. OPERATING RESPONSIBILITIES

7.01 Compliance with Laws, Rules and Regulations

Operator shall conform to an abide by all municipal ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the golf course operation, the same must be first obtained from the regulatory agency having jurisdiction thereover. In addition, Operator shall conform to and abide by all rules and regulations of the City Council and the Director, or his designee, insofar as the same or any of them are applicable.

7.02 Disorderly Persons

Operator shall exercise every reasonable effort not to allow any loud, boisterous or disorderly persons to loiter about the demised premises.

7.03 Illegal Activities

Operator shall not knowingly permit any illegal activities to be conducted upon the demised premises.

7.04 Signs

Operator shall not post signs upon the demised premises or improvements thereon, unless prior written approval therefor is obtained from the Director, or his designee.

7.05 Public Use

Operator shall use its best efforts to maximize the public use of DeBell Golf Course and the facilities therein.

7.06 Operator's Staff and Employment Practices

7.06.01 Operator shall maintain an adequate and proper staff. The Director, or his designee, may at any time give Operator written notice to the effect that the conduct or action of a designated employee of Operator is, in the reasonable belief of the Director, or his designee, detrimental to the interest of the public patronizing the premises. Following Director's, or his designee's, written notice therefor Operator shall, at the Director's or his designee's discretion: (1) terminate such employee's work assignment at the demised premises or (2) Operator shall meet with representatives of the Director to consider the appropriate course of action with respect to such matter and Operator shall take reasonable measures under the circumstances to assure the Director, or his designee, that the conduct and activities of Operator's employee will not be detrimental to the interest of the public patronizing the premises.

7.06.02 Operator shall establish an identification system for personnel assigned to the golf course starter service which clearly indicates to golf course patrons the name of the person(s) on duty and responsible for collecting greens fees. The identification system shall be furnished at the Operator's expense and shall include appropriate attire, name badges and/or name plates as specified by the Director, or his designee.

7.06.03 Operator warrants that it fully complies with all laws regarding employment of aliens and others, and that all its employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Operator shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Operator shall retain such documentation for all covered employees for the period prescribed by law. Operator shall indemnify, defend, and hold harmless, the City, its officers and employees from employer sanctions and any other liability which may be assessed against Operator or City or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

7.07 Utilities

7.07.01 The City provides payment for applicable utilities. However, Operator shall pay for all telephone accounts and telephone service at demised premises. All existing telephone numbers that identify DeBell Golf Course shall be placed in the name of the Operator and shall not be changed or be transferred to any

other location. Operator waives any and all claims against City for compensation for loss or damage caused by a defect, deficiency or impairment of any utilities system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the demised premises.

7.08 Sanitation

No offensive matter or refuse or substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health shall be permitted to remain on the premises and Operator shall prevent any accumulation thereof from occurring.

7.09 Security Devices

Operator may provide any additional legal devices, mechanism, or equipment designed for the purpose of protecting the premises from theft, burglary or vandalism, provided written approval for installation thereof is first obtained from the Director, or his designee. All purchases and installation thereof shall be at Operator's expense. During the last thirty (30) days preceding the termination of this Agreement, Operator shall remove same from the premises, other than for those items of personality which have been furnished by City, or have been so affixed that their removal therefrom cannot be accomplished without damage to the realty as determined by the Director or his designee.

7.10 Safety

Operator shall immediately correct any unsafe condition of the premises or notify the Director, or his designee, as well as any unsafe practices occurring thereon. Operator shall obtain emergency medical care for any member of the public who is in need thereof, because of illness, or injury occurring on the premises. Operator shall cooperate fully with City in the investigation of any injury or

death occurring on the premises, including a prompt report thereof to the Director or his designee.

7.11 Prices

7.11.01 Operator shall at all times maintain a complete list or schedule of the prices charged for all goods and services, or combinations thereof, supplied to the public on or from the demised premises. Said prices shall be fair and reasonable based upon the following considerations; that said operation is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; comparability with prices charged for similar goods and/or services supplied in the Los Angeles Metropolitan Area; and reasonableness of profit margin in view of the cost of providing same in compliance with the obligations assumed in this Agreement. In the event the Director, or his designee, notifies Operator that the prices being charged are not fair and reasonable, Operator shall have the right to confer with the Director, or his designee, and justify said prices. Following reasonable conference and consultation thereon, Operator shall make such price adjustments as may be ordered by the Director or his designee.

7.11.02 City hereby reserves the right to establish the greens fees schedule for patrons using the golf course and to establish the maximum allowable golf cart rental fees and golf tournament entry fees.

7.12 Quality of Goods and Services

Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to City and is considered a part of the consideration for this Agreement. Therefore, Operator agrees to operate and manage, during the entire term of this Agreement, the golf course and facilities in a first class manner, and comparable to other first class golf courses providing similar facilities

and services. Where such facilities are provided, Operator shall provide the best quality and shall maintain a high standard of service at least equal to that of other establishments in County golf courses and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Operator, following receipt of written notification therefor, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the Director or his designee based on findings that the provision of such goods or services are harmful to the public welfare.

7.13 Use of Facilities: Restrictions

Operator shall obtain Director's, or his designee's, prior written approval of (1) any events or activities not otherwise specifically provided for and authorized herein, or (2) any events or activities requiring the exclusive use of the demised premises or any portion thereof.

7.14 Reporting

The Operator or his representative shall meet with the Director of his representative once every two (2) weeks, and at such other times as may be required by the City to review Operator's performance under this Agreement and to discuss any problems or matters as determined by the City.

7.15 Trade Fixtures

Operator at its own expense shall provide and install all additional appliances, furniture, fixtures, equipment, door locks and padlocks that are required for the operation of the demised premises. During the last thirty (30) days preceding the termination of this Agreement, Operator shall remove same from the premises, other than for those items of personality which have been furnished by City or so affixed that their removal therefrom cannot be accomplished without damage to the realty. Should

Operator fail to so remove said appliances, furniture, fixtures, equipment, door locks and padlocks within said thirty (30) day period, Operator shall lose all right, title and interest in and thereto, and City may elect to keep same upon the premises or to sell, remove or demolish same. Operator shall reimburse City for any cost as determined by the Director, or his designee, incurred in excess of any consideration received from the sale, removal or demolition thereof.

7.15.01 Operator's Merchandise

In the event of death of the Operator, or non-renewal, or termination of this agreement, The Operator, or his representative, may elect to have the City require the new Operator to purchase all existing Operator's merchandise, furnishings and fixtures, driving range equipment and computers, etc. at fees established by arbitrators to assure prompt payment. Said election shall be by written notice within 30 days of death, non-renewal, or termination, or 30 days of appointment following written notice to the City and shall become effective only if agreed to in writing by the City.

7.16 Habitation

The premises shall not be used for human habitation, other than a night watchman or patrolman as approved by the Director or his designee.

7.17 Golf Clubs/Organizations

Operator acknowledges that at DeBell Golf Course there is presently organized, active and participating responsible golf organizations that have, over long periods of time, been helpful to City in the operation and improvement of the golf course. Without granting any special privileges to any person or group, Operator agrees to encourage and cooperate with these organizations, and to consult with their authorized representatives on matters of mutual interest. Similarly, Operator agrees to

encourage formation of such additional, responsible organizations by users of the golf facilities and to consult with them in the same manner.

7.18 Advertising and Promotional Materials

Operator shall not promulgate nor caused to be distributed any advertising or promotional materials unless prior approval thereof is obtained from Director. Said approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within fifteen (15) days following the request for approval. Such materials include, but are not limited to; advertising in newspaper, magazines and trade journals, WEB page, and radio and/or television commercials.

7.19 Credit in Promotional Materials

Operator agrees that any advertising or promotional materials promulgated by Operator which contain the words "DeBell Golf Course", or an derivative thereof, shall also include the phrase "a unit of the City of Burbank Park, Recreation and Community Services Department" unless specifically approved otherwise by the Director.

8. DESTRUCTION OF DEMISED PREMISES

8.01 In the event the demised premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, Operator shall either restore the premises or terminate this Agreement. City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. If the destruction is from a risk for which insurance coverage is not required or provided under said policy of insurance, City shall either restore the premises or terminate this Agreement. Said insurance proceeds, if any, shall be held for the benefit of Operator only in the event of an election by Operator to restore the premises and shall be disbursed in installments as construction progresses for payment

of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the Director and release of mechanic's liens by all persons furnishing labor and materials thereon. If the proceeds of insurance are insufficient to pay the actual costs of restoration, Operator shall deposit the amount of the deficiency with the City upon demand therefor by the Director or his designee, and said sums shall be held for payment of said costs and disbursed in the manner heretofore provided. Any undistributed funds shall be retained by City and credited over the remaining term of this Agreement.

8.02 If the premises are restored, this Agreement shall continue in full force and effect.

8.03 Operator shall cooperate in the restoration of the demised premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

8.04 The aforesaid provisions for abatement and/or other relief shall also be applicable to a total or partial destruction of the demised premises by the aforementioned causes, except that the relief to be provided shall be based upon the extent the Director or his designed may determine that the reduction in the public's use of the demised premises due to the partial or total closure thereof has affected the golf course operation.

8.05 Operator agrees to accept the remedy heretofore provided in the event of a destruction of the demised premises and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may hereafter be made available under the laws and statutes of this State.

9. CONSTRUCTION BY CITY AFFECTING DEMISED PREMISES

9.01 Except as provided in Section 1.03, in the event City shall commence any demolition and/or construction on the premises, this Agreement shall continue in full force and effect, except that the payments to be made by Operator shall be abated and/or other relief afforded to the extent that the Director or his designee may determine the construction interferes with the authorized operations, provided a claim therefor is filed with the Director or his designee within one hundred (100) days of commencement of construction.

9.02 Operator agrees to cooperate with City in the event the construction affects the affects the demised premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Operator further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

9.03 Following completion of the new facility, Operator shall resume its operations therefrom within thirty (30) days of written notice from the Director or his designee that the demised premises are tenantable.

9.04 The aforementioned provisions of this section shall also be applicable in the event of performance of work on the demised premises that requires partial or total closure thereof, except that the abatement and/or other relief to be provided shall be based upon the extent the Director or his designee may determine that the reduction in the public's use of the demised premises due to the partial or total closure thereof, has affected the Operator's operations.

9.04 Operator agrees to accept the remedy heretofore provided in the event of construction upon the demised premises, and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may be made available hereafter under the laws and statutes of this State.

9.05 Damage or Destruction of Premises

If the golf course or facilities operated by the Operator shall be so damaged by fire, earthquake, elements, casualty, war, insurrection, riot, public disorder, any authorized act upon the part of the City or any governmental authority, or any cause or happening as to be substantially destroyed to such an extent that the same cannot be used, then this agreement, at the option of either party, shall terminate.

But in the event of any partial damage or destruction, City, at its option, may restore said facilities and course to their previous condition. Under no circumstances shall the City indemnity the Operator for any loss of income during such partial or total loss of the use of the area.

10. INDEPENDENT CONTRACTOR

10.01 This agreement is by and between the City of Burbank and Operator and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between City and Operator.

10.02 Operator understands and agrees that all persons furnishing services to City pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of Operator and not of City.

10.03 Operator shall bear the sole responsibility and liability for furnishing Worker's Compensation benefits to any person for injuries from or connected with services performed on behalf of Operator pursuant to this Agreement.

11. SECURITY DEPOSIT

11.01 Prior to the commencement of the term of this Agreement, Operator shall pay to the City the sum of $15,000.00. In lieu thereof, Operator may deposit said amount in a bank whose deposits are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), provided that a certificate of deposit is delivered to the Director or his designee giving City the exclusive right to withdraw any or all of said amount during the term of this Agreement. Operator shall be entitled to any and all interest accruing from said certificate of deposit. Director or his designee may accept from the Operator such other security instrument such as an Irrevocable Letter of Credit payable only to the City and in form content acceptable to the Director or his designee.

11.02 Said sum shall serve as security for faithful performance of all covenants, promises and conditions assumed by Operator herein, and may be applied in satisfaction and/or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments; correction of maintenance deficiencies; securing required insurance; loss of revenue due to abandonment, vacation or discontinuance of golf course operations; failure to complete construction; and payment of mechanic's liens. Application of amounts on deposit in satisfaction and/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

11.03 In the event any or all said amounts is applied in satisfaction and/or mitigation of damages Operator shall immediately deposit such sums as are necessary to restore the security deposit to the full amount required hereunder.

11.04 Said sum shall be returned to Operator upon termination of this Agreement less any amounts that may be withheld therefrom by City as heretofore provided.

12. HOLD HARMLESS AND INDEMNIFICATION

12.01 City has retained the services of Operator to be responsible for the operation and management of the DeBell Golf Course. Operator has, prior to submitting its proposal to operate and manage the golf course, thoroughly inspected and is familiar with the golf course and its related facilities. Operator has represented that it is a golf professional with specialized expertise in the area of golf course operation and management and City has relied upon said representations in selecting Operator for this Agreement. City relies on the expertise of Operator to oversee the operation of the golf course and its facilities and to promptly notify City in writing of any dangerous conditions occurring thereon caused or maintained by any person or entity, including the City. Operator agrees to defend, indemnify and save harmless the City its agents, officers and employees from and against any and all claims, demands, losses, damages, costs, liabilities and expenses (including, but not limited to, attorney's fees and costs of suit) of whatever kind or character, on account of any actual or alleged loss, injury or damages to any person, firm, corporation or to any property, arising out of or in connection with any person's use of or presence on the golf course or Operator's performance of this Agreement, including any worker's compensation suits, liability or expense, except in cases of the sole gross negligence of the or willful misconduct of the City. Operator's duty to indemnify City shall survive the expiration or other termination of this Agreement.

12.03 Operator agrees to hold the Los Angeles County Flood Control District, and the City, its officers, agents and employees, harmless from any and all claims or rights of action for damages which may or might arise or accrue to said Operator, his agents, servants, employees or others who may be on the premises at his invitation or the invitation of any one of them, by reason of injuries to the property or the person of any of them resulting from the entry upon or the use of the premises by the

Los Angeles County Flood Control District, the City or either of them, at any time, for any purpose necessary or convenient in connection with river and flood-control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the licensed premises, or any part thereof, when in the judgment of any of them such flooding is necessary in connection with flood-control work.

13. INSURANCE

13.01 During the term of this Agreement, Operator shall carry public liability insurance with an insurance company qualified to do business in the State of California (except "off-shore" companies), which insurance company shall have Best Rating of A- or better. Said insurance shall be in an amount on the effective date of this agreement, with limits no less than $2,000,000, combined single limit for bodily injury, property damage, products liability and liquor liability, and subsequent thereto, in amounts reasonably satisfactory to City. Operator shall also provide City with the full name, address, and telephone number of the insurance carrier and a copy of the policy for inspection by the City. City shall, only in the event it does not purchase a policy for itself, reimburse Operator fifty percent for any sums expended for premium on the public liability insurance policy.

Operator shall supply City with a certificate of insurance and an additional insured endorsement in a form acceptable to the City Attorney, which names the City, its officers, agents and employees as additional insureds, and provides that said insurance shall be deemed primary such that any other insurance carried by the City dell be deemed excess thereto. City may require, at any time, additional proof of insurance, including copies of policies.

13.02 Operator shall maintain workers' compensation insurance for all its employees who are in any way connected with the performance under this lease. Such

insurance shall comply with all applicable state laws. Operator shall annually provide City with a certificate of insurance showing proof of such insurance acceptable to City.

13.03 The Operator agrees to obtain a fire insurance policy in a sum on the effective date of this Agreement of not less than 80% of the insurable value of said buildings, furnishings and equipment. Such insurance shall be in full force and effect at all times during the term of this lease. Such insurance to be underwritten and maintained in a responsible company or companies qualified to do business in the State of California. This policy may be combined with the liability policy required in subsection 13.01. If fire insurance coverage is provided through a separate policy, Operator shall supply City with a certificate of insurance and an additional insured endorsement in a form acceptable to the City Attorney, which names the City, its officers, agents and employees as additional insureds, and provides that said insurance shall be deemed primary such that any other insurance carried by the City dell be deemed excess thereto. City may require, at any time, additional proof of insurance, including copies of policies.

14. TAXES AND ASSESSMENTS

14.01 The contractual rights provided by this Agreement may be subject to real property taxation and/or assessment thereon, and in the event thereof, Operator shall pay before delinquency all lawful taxes, including but not limited to; possessory interest taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment-levying body upon the premises and any improvements located thereon.

14.02 Operator shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.

15. TRANSFERS

15.01 Operator shall not, without the prior written consent of the Director or his designee assign, hypothecate, or mortgage this Agreement, or sublease or sublicense any portion of the premises. Any attempted assignment, hypothecation, mortgage, sublease or sublicense without the consent of the Director or his designee shall render this Agreement null and void.

15.02 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Operator shall be binding upon any transferee thereof.

15.03 The operations herein authorized shall not be transferable by testamentary disposition or the State Laws of interstate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of Operator occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Operator or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Operator, or by a process of law including proceedings under Chapter X and XI of the Bankruptcy Act.

15.04 Shareholders and/or partners of Operator may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is effected in such a way as to give majority control of Operator to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of execution of this Agreement, approval thereof shall be required. Consent to any such transfer shall be refused, if the Director finds that the transferee is lacking in experience

and/or financial ability to render and provide services for the operation of the golf course.

15.05 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and conditions of a hypothecation or mortgage previously approved by the Director or his designee.

15.06 In reference to the previous Section, the City consent with regard to successive transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure or the assignment of the Agreement in lieu of foreclosure, pursuant to the terms of a deed of trust previously approved by the City, shall not be unreasonably withheld.

16. NON-DISCRIMINATION AND CIVIL RIGHTS COMPLIANCE

16.01 Operator hereby certifies and agrees that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, where applicable, Title 43, part 17 of the Code of Federal Regulations Subparts A and B, and the Americans with Disabilities Act of 1990, to the end that no persons shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age or disability, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.

16.02 Operator certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or disability and in compliance with all federal and state laws prohibiting discrimination in employment, including but not

limited to, the Federal Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the State Fair Employment Practices Act.

16.03 Operator certifies and agrees that subcontractors, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, political affiliation, marital status, sex, age or disability.

16.04 All employment records shall be open for inspection and re-inspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of non-discrimination by Operator in the areas heretofore described.

16.05 If City finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which City may determine to cancel, terminate, or suspend this Agreement. While City reserves the right to determine independently that the non-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Department or the Federal Equal Employment Opportunity Commission that Operator has violated State or Federal non-discrimination laws or regulations shall constitute a finding by City that Operator has violated the non-discrimination provisions of this Agreement.

16.06 The parties agree that in the event Operator violates the non-discrimination provisions contained herein, City shall, at its option, be entitled to a sum of One Thousand Dollars ($1,000.00) pursuant to California Civil Code 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement. Operator further agrees that One Thousand Dollars ($1,000.00) is a reasonable sum under all of the circumstances existing at the time of the execution of this Agreement.

17. EASEMENTS

17.01 City reserves the right to establish, grant or utilize easements or right of ways over, under, along and across the demised premises for utilities and/or public access to the demised premises provided City shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Should the establishment of such easements permanently deprive Operator of the use of a portion of the premises, an abatement of payments shall be provided in an amount proportional to the total area of the premises in the before and after conditions.

18. CANCELLATION

18.01 This Agreement shall be subject to cancellation upon the occurrence of any one or more of the circumstances as described in Events of Default hereinafter. As a condition precedent thereto, the Director or his designee shall give Operator ten (10) days notice by registered or certified mail of the date set for cancellation thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on the before said date, if request is made therefor.

18.02 Upon cancellation City shall have the right to take possession of the premises, including all improvements, equipment, and inventory located thereon, and use it for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

18.03 Action by City to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

19. EVENTS OF DEFAULT

19.01 The abandonment, vacation or discontinuance of golf course operations on the demised premises for more than twenty-four (24) consecutive hours.

19.02 The failure of Operator to punctually pay or make the payments required herein when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.

19.03 The failure of Operator to operate in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the Director or his designee to correct the condition therein specified.

19.04 The failure to maintain the premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than ten (10) days after written notice from the Director or his designee for the correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Operator shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Director or his designee.

19.05 The failure of Operator to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the Director or his designee for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Operator shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such

notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Director or his designee.

19.06 The filing of a voluntary petition in bankruptcy by Operator; the adjudication of Operator as a bankrupt; the appointment of any receiver of Operator's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of Operator under any Federal Reorganization Act, including petitions or answers under Chapters X or XI of the Bankruptcy Act; the occurrence of any act which operates to deprive Operator permanently of the rights, powers and privileges necessary for the proper conduct and operation of the golf course; the levy of any attachment or execution which substantially interferes with Operator's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

19.07 Determination by the Director, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Operator in violation of state and/or federal laws thereon.

19.08 Transfer of the majority controlling interest of Operator to persons other than those who are in control at the time of the execution of this Agreement without approval thereof by the Director.

19.09 Operator's material misrepresentation of fact(s) in its "Affidavit to Accompany Proposals", which was required to be submitted in response to the Request For Proposals used in the solicitation process for this Agreement, and which by this reference is incorporated herein as if fully set forth.

19.10 Failure to have submitted schematic plans and/or working drawings on or before the date(s) designated in this Agreement for submission thereof.

19.11 Failure to have commenced required construction or any phase thereof on or before the date designated in this Agreement for commencement thereof.

19.12 Failure to have completed construction on or before the date designated in this Agreement for completion thereof.

20. DEFAULT FOR INSOLVENCY

20.01 City, through its Director of the Park, Recreation or Community Services Department or his designee, may immediately terminate this Agreement for default in the event of the occurrence of any of the following:

A. The Director or his designee determines that the Operator is insolvent. Operator shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether insolvent within the meaning of Federal Bankruptcy Law or not.

B. The appointment of a Receiver or Trustee for Operator.

C. The execution by Operator of an assignment for the benefit of creditors.

20.02 The rights and remedies of City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

20.03 Any discretion vested in the Director or his designee pursuant to the provisions of this Section shall be reasonably exercised.

21. WAIVER

21.01 Any waiver by City of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained by construed as in any manner changing the terms of this Agreement or stopping City from enforcing the full provisions thereof.

21.02 No delay, failure, or omission of City to re-enter the premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

21.03 No notice to Operator shall be required to restore or revive "time of the essence" after the waiver by City of any default.

21.04 No option, right, power, remedy or privilege of City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, privileges and remedies given City by this Agreement shall be cumulative.

22. RIGHT OF ENTRY

22.01 Should Operator be deemed deficient, as determined by Director or his designee, in its performance of its obligations required hereunder, City in addition to all other available remedies may, but shall not be so obliged, enter upon the premises and correct Operator's deficiencies using City forces, and equipment and materials on the premises suitable for such purposes, or by employing a separate private contractor.

City costs so incurred, including direct and indirect overhead costs as determined by Director, shall be reimbursed to City by Operator and/or its sureties within thirty (30) days of demand thereof.

22.02 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours, Operator hereby irrevocably appoints City as an agent for continuing operation of the services granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the premises, including all improvements, equipment and inventory thereon; and (2) remove any and all persons or property on said premises and place any such property in storage for the account of an at the expense of Operator; and (3) sublease or license the premises; and (4) after payment of all expense of such subleasing or licensing apply all payments realized therefrom to the satisfaction and/or mitigation of all damages arising from Operator's breach of this Agreement. Entry by the officers and employees of City upon the premises for the purpose of exercising the authority conferred hereon as agent of Operator shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

23. SURRENDER

23.01 Expiration of the term hereof, or cancellation thereof as herein provided, Operator shall peaceably vacate the premises and any and all improvements located thereon and deliver up the same to City in a reasonably good condition, ordinary wear and tear excepted, subject to the right of City to demand removal thereof to the extent that paragraph 1.06 may be applicable thereto.

24. INTERPRETATION

24.01 This Agreement shall be interpreted according to the rules that govern the interpretation of contracts, as prescribed in part 2 of Division 3 of the California Civil Code, commencing with Section 1635.

24.02 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.

24.03 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

"Auditor-Controller": the Auditor-Controller of City or an authorized representative thereof.

"Building Official": the City Director of the Department of Public Works, his authorized representative, or his successor in interest.

"Capital Improvement": any construction project that extends the useful life and/or increases the capacity of the golf course.

"Director": Director of Department of Parks, Recreation, and Community Services or an authorized representative thereof.

"Golf Course Operation": The privilege of engaging in the golf activities authorized herein on the public property designated thereof.

"Gross Receipts": Except as specifically provided by policy statement issued by the Director or his designee, the term "gross receipts" as used in this lease, is defined to be all money, cash receipts, assets, property or other things of value, including but not limited to: gross charges, sales, rentals, fees and commissions made or earned by Operator and/or all the assignees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted, or performed in whole

or in part, on the premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise. Gross receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

A. Except as specifically provided below or by policy statement issued by Director or his designee, there shall be no deduction from gross receipts for any overhead cost or expense of operations, such as but without limitation to salaries, wages, costs of goods, interest, debt amortization, credit, collection costs, discount from credit card operations, insurance and taxes. Bona fide bad debts actually incurred by Operator or its, assignees, licensees, concessionaires and permittees may be deducted from gross receipts. There shall, however, be no deduction for bad debts based on past experience or transfers to a bad debt reserve. Subsequent collection of bad debts previously not reported as gross receipts shall be included in gross receipts at the time they are collected.

B. Except as specifically provided below or by policy statement issued by the Director, gross receipts reported by Operator and its, assignees, licensees, concessionaires and permittees, must include the full usual charges for any services, goods, rentals or facilities provided by Operator or its, assignees, licensees, concessionaires or permittees. Gross receipts shall not include the following: direct taxes imposed upon the consumer and collected therefrom by the Operator such as, but not limited to, Federal, State, or Municipal retail sales taxes, or related direct taxes, which are direct taxes paid periodically by Operator to a governmental agency accompanied by a tax return statement; receipts from fees or charges made for golfing

instructions; receipts derived from the rental of cartmobiles which are leased by Operator specifically for tournament purposes but not to exceed the cost to Operator of leasing such cartmobiles; receipts from entry fees or charges made for Juniors' Golf Tournaments.

C. The Director or his designee, by policy statement consistent with recognized and accepted business and accounting practices, upon consultation with Operator, and with the approval of the Auditor-Controller and County Counsel, may further interpret the term "gross receipts" as used in this lease.

"Gross Sale Price": the total consideration resulting from the transfer of Operator's interest in the lease (or portion thereof) determined by the total of cash payments and the market value of all non-cash consideration, including, but not limited to, stock, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgements.

"State": the State of California.

25. FORCE MAJEURE/TIME EXTENSIONS

25.01 Except as otherwise specifically provided hereinbefore, and in the event either party hereto shall be delayed or prevented from performance of any act required hereunder by reason of Acts of God, litigation to which Operator is not a plaintiff, or other cause without fault and beyond control of the party obligated, performance of such act shall be excused for the period of time of the delay as determined by the Director or his designee. An extension of time for any such cause shall only be for a period of time equivalent to the enforced delay. Operator's inability to obtain financing shall not be grounds for an extension of time. Director or his designee shall prepare and execute, and Operator shall execute the appropriate document acknowledging any extension of time granted pursuant to this section.

26. OPERATORS NON-COMPLIANCE AND LIQUIDATED DAMAGES

26.01 If the Director or his designee determines that there are deficiencies in Operator's performance of the golf course operations authorized and required herein, the Director or his designee will provide, as specified in the Section of this Agreement entitled Events of Default hereinbefore, a written notice to the Operator to correct said deficiencies within specified time frames, except for the repair of leaking valves which must be corrected within twenty-four (24) hours following notification.

26.02 In the event that Operator fails to correct the deficiencies within the prescribed time frames the Director or his designee may, at his option; (1) use the Security Deposit as provided for herein, (2) exercise its rights under the Section of this Agreement entitled Right of Entry hereinbefore, and/or (3) assess liquidated damages pursuant to the schedule hereinafter listed.

27. GOLF COURSE EVALUATION REPORT

27.01 City and Operator agree that the overall condition and playability of the golf course and the condition of the buildings therein is of the primary importance to both parties.

27.02 The City shall make every reasonable effort to conduct inspections on a regular basis and within 3 to 4 week intervals, and the Operator or his authorized representative will be invited to participate in the inspection tour of the premises.

28. NOTICES

28.01 Any notice required to be given under the terms of this Agreement or any law applicable thereto may be: (1) delivered by personal service; or (2) placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, return receipt requested, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United

States Postal Service. The address to be used for any notice served by mail upon Operator shall be 1500 Walnut Ave., Burbank, CA, 91501 or such other place as may hereafter be designed in writing to the Director or his designee by Operator. Any notice served by mail upon City shall be addressed to the Park, Recreation & Community Services Director, 301 East Olive Ave., Burbank, California 91502 or such other place as may hereafter be designated in writing to Operator by the Director or his designee. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

29. SEVERABILITY

29.01 If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

30. CONTRACT ENFORCEMENT AND AMENDMENTS TO THIS AGREEMENT

30.01 The Director or his designee shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of City having duties in connection with the administration thereof.

30.02 Any officers and/or authorized employees of City may enter upon the demised premises at any and all reasonable times for the purpose of determining whether or not Operator is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of City within the demised premises.

30.03 In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs incurred in the action brought thereon.

30.04 This document may be modified only by further written agreement between the parties. Any such modification shall not be effective unless and until executed by Operator and in the case of the City, unless otherwise specifically authorized hereinbefore, until executed by the City Council.

31. ENTIRE AGREEMENT

31.01 This document, and the exhibits attached hereto, constitutes the entire agreement between the City and Operator for the DeBell Golf Course operations and use granted herein. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to the golf course operation, tennis center operation and the demised premises to be used in the conduct thereof.

IN WITNESS WHEREOF Operator has executed this Agreement, or caused it to be duly executed, and the City of Burbank, by order of its City Council caused this Agreement to be executed the day and year first above written.

S.S. Golf, Inc.

OPERATOR

By _____

Scott Scozzola, President

CITY OF BURBANK

By _____

Asst. City Manager

ATTEST:

City Clerk

By _____
Margarita Campos, CMC

APPROVED AS TO FORM:

DENNIS A. BARLOW,
City Attorney

By _____
Terry B. Stevenson
Sr. Assistant City Attorney