

SUBLEASE AGREEMENT FOR OPERATION OF YOUTH GOLF LEARNING CENTER

THIS AGREEMENT ("Agreement" or "Sublease") is made by and between the CITY OF SALINAS, a California municipal corporation (the "CITY"), the FUTURE CITIZENS FOUNDATION, a California nonprofit corporation and licensee of the First Tee Division of the World Golf Foundation, dba The First Tee of Monterey County ("TFTMC").

RECITALS

1. The CITY leases from the County of Monterey certain real property described in Exhibit "A" (the "Premises"), pursuant to a June 1, 1997, Ground Lease Agreement (the "Ground Lease"). Pursuant to a Site Lease dated as of February 1, 1999 (the "Site Lease") between the City and the Salinas Public Financing Authority (the "Authority"), and a Lease Agreement dated as of February 1, 1999 (the "Lease") the City has leased and leased back the Premises. On February 25, 1999, the CITY assigned certain of its interests in the Lease to BNY Western Trust Company (the "Trustee") which in turn executed and delivered certain Certificates of Participation ("COP's") to finance the construction of the Twin Creeks Municipal Golf Course ("Twin Creeks" or the "Facility") on the Property. The COP's were executed and delivered by the Trustee pursuant to a Trust Agreement dated as of February 1, 1999 (the "Trust Agreement"), by and among the City, the Authority and the Trustee.

2. The CITY currently operates Twin Creeks as a public 9-hole golf course and practice facility and is authorized to enter into subleases for the operation of the Premises, provided that the CITY complies with the requirements of the Trust Agreement and the Lease, obtains the written consent of the County of Monterey and reserves appropriate controls to assure the public use of Twin Creeks and the Premises.

3. TFTMC has proposed that the CITY enter into a sublease agreement for the operation of Twin Creeks that provides for development of a youth golf learning center, maintenance, management and scheduling, collection of fees, and provision of services such as instruction, leagues and tournaments, and containing appropriate controls to ensure public use of the facilities is consistent with said purposes.

4. The Board of Supervisors of the County of Monterey consented to the sublease herein pursuant to a Resolution dated August 17, 2004, and the CITY adopted a Resolution on August 24, 2004, authorizing the Mayor to execute this sublease agreement with TFTMC to allow TFTMC to operate a youth golf facility and learning center on the Premises.

5. The requirements of the Trust Agreement and the Lease have been satisfied.

6. To accommodate use by TFTMC of the Premises on a longer term basis pursuant to this Sublease in the event the CITY exercises its option to extend the term in accordance with Section 2 hereof, the City proposes to refinance the COP's. Pursuant to a Site Lease to be dated as of December 1, 2004 (the "2004 Site Lease") between the CITY and the Salinas Public Financing Authority (the "Authority"), and a Lease Agreement to be dated as of December 1, 2004 (the "2004 Lease") the CITY proposes to lease and lease back the Premises. The Authority will assign certain of its interests in the Lease by BNY Western Trust Company (the "Trustee") which in turn will execute and deliver certain Certificates of Participation ("Certificates") to refinance the costs of construction of the Twin Creeks Municipal Golf Course ("Twin Creeks" or the "Facility") on the Premises. The Certificates will be executed and delivered by the Trustee pursuant to a Trust Agreement to be dated as of December 1, 2004 (the "2004 Trust Agreement"), by and among the CITY, the Authority and the Trustee. TFTMC will execute a Tax Certificate ("Tax Certificate") in connection with the execution and delivery of the Certificates, if any, provided the Tax Certificate is in a form acceptable to TFTMC.

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

1. PREMISES

1.01 Premises. The CITY hereby subleases the Premises to TFTMC for its management and operation. TFTMC shall have the right to propose an alternate name for the Facility, allowing for review and approval by the CITY. The CITY shall retain the right to veto any name submitted by TFTMC for the facility or any portion thereof that the City Council reasonably determines to be inappropriate. TFTMC must use any proceeds from selling naming rights for the name of the Facility or portions thereof for the maintenance, repair or operation of the Premises or the youth program associated therewith. Referencing or including "The First Tee of Salinas," "The First Tee of Monterey County" or "The First Tee at Twin Creeks" in the name shall not require CITY approval.

1.02 Use. The Premises, as more particularly described in Exhibit A and shown on Exhibit B, shall be used only and exclusively for a youth golf facility and learning center and such other purposes as are related thereto. TFTMC shall also have the right to use the Premises for the following activities:

1. Fee-based use by the general public of the golf course and practice facilities, including golf instruction, and related uses.
2. Fee-based community use of the learning center building for community events and activities.
3. Fee-based business sponsored golf outings, leagues and tournaments.

All of the above uses shall be subject to the determination by TFTMC that such use will not adversely impact the youth golf and learning activities to be conducted on the Premises. It is also a condition to any such above use that all revenue generated from such activities be used by TFTMC to support youth golf and learning activities at the Premises or otherwise in the community in accordance with its status as a not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Service Code.

1.03 Condition of Premises. TFTMC acknowledges personal inspection of the Premises and the surrounding area and evaluation of the extent to which the physical condition will affect the operation of a youth golf facility. TFTMC acknowledges and existing easements for roadway, sewer and water lines on the Premises. TFTMC accepts the Premises in its present condition and acknowledges the CITY has made no representations or warranties as to the condition of the Premises or its fitness for the use intended hereunder. TFTMC agrees that it shall make no demands upon the CITY for any improvements or alterations thereof. Notwithstanding anything to the contrary herein, should a pre-existing environmental defect be discovered after execution of this Agreement which cannot be corrected, contained, repaired, eliminated, or otherwise made safe for public recreation uses within a reasonable cost to TFTMC, or to the CITY, using funds available for that purpose at that time by the CITY, this Agreement may be terminated by TFTMC in its discretion. Under no circumstances shall TFTMC be liable for any pre-existing conditions and CITY agrees to indemnify, defend and save harmless TFTMC from and against any and all liability arising from such pre-existing conditions.

1.04 Warranty of Title. The CITY warrants that the Ground Lease with the County of Monterey, which holds title to the Premises, is in full force and effect, that all rent due under the Ground Lease has been prepaid in full, and that the County of Monterey has consented to this Sublease as required by the Ground Lease. The CITY further warrants that the Site Lease and Lease are in full force and effect, that all rent due under the Site Lease and Lease have been paid current through the Commencement Date, and that requirements of the Trust Agreement, Site Lease and the Lease, including the prerequisites to this Sublease, have been satisfied. The CITY makes no warranties as to its title to the Premises, and no representations as to title other than those contained in the immediately preceding sentences. The CITY further warrants that the execution, delivery and performance of this Agreement will not conflict with or violate any other agreement by which the CITY is bound, or any law, rule, regulation or ordinance by which the CITY is bound.

1.05 Inspection by CITY. TFTMC agrees that it shall at all times after reasonable prior notice permit the CITY access to the Premises when necessary for inspection and testing. Should a preexisting environmental defect be discovered after implementation of this agreement that cannot be corrected, contained, repaired, eliminated, or otherwise made safe for public recreation uses within a reasonable cost to the CITY, this Agreement may be terminated by TFTMC.

2. TERM

2.01 Term. The term of this Sublease shall be for a period of one-hundred twenty days (120), commencing on November 1, 2004 ("Commencement Date") subject to extension of the option of the City for a term of twenty years ending twenty years after the Commencement Date, unless sooner terminated in the manner and under the conditions herein provided. In the event CITY prepays its obligations under the Lease or the Premises are released from the obligations under the Trust Agreement resulting in a termination of the Site Lease, this Sublease shall not be terminated or deemed merged out, but shall become a direct sublease with CITY subject only to the Ground Lease.

2.02 Termination. City shall have the option to extend this Lease for the term described in 2.01 above, effective as of February 28, 2005 by giving TFTMC not less than fifteen (15) days prior written notice. On the effective date of such termination, TFTMC and City shall be released from further liabilities and obligations under this lease and shall execute a termination of lease agreement.

2.02 Lease Year. For purposes of this Agreement, the term "Lease Year" shall mean the period beginning on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date and each 12-month period thereafter.

2.03 Holding Over. In the event TFTMC is permitted to hold over beyond the term herein provided with the consent, express or implied, of the CITY, such holding over shall be from month to month only, subject to the conditions of this Agreement, and shall not be a renewal thereof.

3. **TFTMC'S BASIC SERVICE OBLIGATIONS**

3.01 Scheduling and Use.

- A. TFTMC shall provide full organization, administration, and supervision of youth golf facility and learning center operations, including, but not limited to, opening/closing the facilities, the setting and collection of fees, taking of reservations and scheduling of tee times, monitoring play on the course, rental of equipment, sales of merchandise and equipment, instructional and pro services, and facilitation or organization of instructional programs, clinics, leagues, and/or tournament play. Services provided by TFTMC shall compare favorably to the services, standards, and practices of similar youth golf learning centers and youth oriented golf courses sponsored by The First Tee Division of the World Golf Foundation or its affiliates in other locations.
- B. TFTMC shall ensure access to the Facility and its programs to all people within the Salinas community and residents of Monterey County with special emphasis for young people within Census Tracts 05 and 07, and without regard to race, religion, color, national origin, sex, or ability.

- C. TFTMC shall work cooperatively with the CITY in the promotion and support of youth golfing opportunities at the Facility through the CITY's Recreation Parks Division and shall provide opportunities for school based golf programs and competitions.

3.02 Facility and Equipment Maintenance Services.

- A. TFTMC shall, at its expense, keep and maintain the Premises and all buildings, structures, improvements, fixtures, trade fixtures, equipment, and utility systems in good, safe, operable, useable and sanitary condition throughout the term of this Agreement providing for such repairs, replacements, rebuilding and restoration as may be required to comply with the requirements of this Agreement. All such repairs and/or any modifications or additions to the facilities costing more than the sum of \$15,000.00 shall have written approval of the CITY prior to their implementation by TFTMC, which approval shall not be unreasonably withheld.
- B. Should TFTMC fail, after sixty (60) days notice from the CITY of the need, to perform its required obligations (or develop an adequate plan to do so for seasonal items), the CITY in addition to all other available remedies may enter upon the Premises and perform TFTMC's said failed obligations, using any equipment or materials on the Premises suitable for such purposes, but shall not be obligated to exercise such Right of Entry as provided hereinafter in Section 18. TFTMC shall on demand reimburse the CITY for its cost including direct overhead costs as determined by the CITY.
- C. It is hereby understood and agreed by TFTMC that the CITY does not have any duty nor shall it be called upon to make any improvements, replacements or repairs whatsoever to the Premises and any structures, improvements, fixtures, trade fixtures, equipment and utilities during the term hereof, except as otherwise provided herein.

3.03 Grounds Maintenance Services.

- A. TFTMC is hereby required to provide grounds maintenance services, including but not limited to, the obligation to mow, edge, trim, reseed, fertilize, aerate, irrigate, and renovate turf areas designated hereunder; as well as provide weed, disease and pest control, turf maintenance, maintenance of irrigation systems, and provide the necessary maintenance of any structures and

equipment associated with the Premises in accordance with the Maintenance Standards provided in Exhibit C.

- B. All maintenance work shall be performed in a manner and of a quality equal and in accordance with the standards of other local public golf facilities, and at established frequencies designated on Exhibit C so as to maintain the aesthetic level and proper playing condition. Standards and frequencies may be modified from time to time as deemed necessary by TFTMC for the proper maintenance of the Premises. Any such permanent modifications agreed to jointly by TFTMC and the CITY shall be by revision to Exhibit C.
- C. TFTMC shall provide for the routine pick up of litter, collection of refuse in appropriate collection containers, and provide for its removal in a timely and reasonable manner.
- D. Regularly scheduled joint inspections of the Premises and of TFTMC's operations authorized shall be made by the CITY and TFTMC. A written report of such inspections shall be retained for reference by both parties. The joint inspections shall generally occur monthly on a schedule to be established and agreed upon jointly by both parties.
- E. In regard to the Premises being out of operation or play being temporarily suspended due to inclement weather conditions, the decision of when to allow use to resume will be made by TFTMC. In cases where the Premises are out of operation due to rehabilitation, facility repair, or other reason, the decision and/or schedule to allow use to resume shall be made by TFTMC provide TFTMC has complied with all of its operational and maintenance obligations under this Agreement. To the extent that TFTMC has failed to comply with all of its operational and maintenance obligations under this Agreement, the decision and/or schedule to allow use to resume shall be made jointly by TFTMC and the CITY. Since TFTMC has the maintenance obligations for the Premises, this provision is designed to allow TFTMC to determine whether the condition of the course will allow play and use to resume since it will bear the maintenance risk, but also to avoid having to resume use and play and then expend further monies to repair damage caused by premature recommencement of use.
- F. TFTMC at its sole cost and expense shall furnish all necessary equipment, supplies and material of good quality and in sufficient number to fulfill the requirements of this Agreement and to accomplish an acceptable and professional level of maintenance.

TFTMC shall secure the CITY's [City Manager's] approval of the type of each supply, material, or equipment prior to its use or installation on the Premises if not otherwise allowed in Exhibit C. The list of items of equipment, supplies and materials shall include, but not be limited to turf, sod, seed pesticides, herbicides, and topdressing for playing surfaces, etc.

4. RENTAL

4.01. Time and Place of Payments. TFTMC shall make all rental payments in advance as provided in Section 4.02. Checks should be made payable to the City of Salinas and be delivered to the City of Salinas at 200 Lincoln Avenue, Salinas, California, 93901, Office of the Finance Director, ATTN: Golf Course Fund. Failure to pay rent within a ten (10) day time frame from due date constitutes a default, within the meaning of Section 16 of this Agreement. The place and time of payment may be changed at any time by the CITY upon thirty (30) days written notice to TFTMC. TFTMC assumes all risk of loss and responsibility for late payment charges.

4.02. Rent. Rent shall be payable in monthly installments, at the rate of \$47,916.67, commencing on November 1, 2004 and continuing through February 28, 2005. In the event the City exercises its option to extend the term of this Sublease for the term set forth in Section 2.01, commencing on March 1, 2005 through October 31, 2024, Rent shall be payable in semi-annual installments, at the rate of \$287,500.00 twice annually. Rent for the first partial six month period shall be due on March 1, 2005, prorated based on a six month period ending on June 30, 2005. . Thereafter, said payment shall be due and payable on July 1, 2005, , and every six months thereafter.

4.03. Revenue Participation.

- A. Beginning on the sixth (6th) Lease Year and continuing through the tenth (10th) Lease Year, TFTMC shall pay to the CITY an amount equal to Fifty Cents (\$0.50) per Revenue Round played at the Facility ("Revenue Participation Payments"). Beginning on the eleventh (11th) Lease Year and continuing until this Sublease is expired or terminated, Revenue Participation Payments shall increase to One Dollar (\$1.00). For purposes of this Agreement, the term "Revenue Round" means all rounds of golf played at the Facility in excess of forty-four thousand (44,000) annually for which greens fees are charged to patrons, provided, however, that rounds of golf played by patrons who are under eighteen (18) years of age shall not be included in the calculation of rounds.
- B. Revenue Participation Payments shall be payable annually. The first Revenue Participation Payment of shall be due and payable within sixty (60) days from and after the end of the sixth (6th)

Lease Year, and thereafter payments shall be due and payable within sixty days from and after the end of each succeeding Lease Year.

- C. Each payment shall be accompanied by a brief report from TFTMC showing the basis for the computation and a written statement, signed under penalty of perjury by TFTMC, which identifies in detail the sources and amounts of Revenue Participation Payments during the Lease Year for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim that the CITY may have for further or additional sums due the CITY by TFTMC.
- D. Any Revenue Participation Payments that remain unpaid after the date specified in subsection (C) above shall be delinquent, shall result in a penalty equal to 5% of the unpaid amount and the unpaid amount shall thereafter accrue interest at 10% per year, compounded daily, until paid.
- E. TFTMC or TFTMC's designated representatives shall, upon ten (10) days written notice from the CITY, make available to the CITY or City's designated representatives its accounting records for confidential inspection and audit. If the results of the audit show a Revenue Participation Payment underpayment of greater than two (2) percent, TFTMC shall pay all costs associated with the audit in addition to any other amounts owed as shown by the audit. If the results of the audit show an underpayment of greater than ten (10) percent, TFTMC shall pay the cost of the audit plus fifty (50) percent of the total error as a penalty in addition to any amount owed as shown by the audit. If the results of the audit show an underpayment of less than two (2) percent or an overpayment, the CITY shall pay its own costs associated with the audit. Any underpayment below ten (10) percent shall result in a penalty equal to 5% of the underpayment and the amount of such underpayment shall accrue interest at the rate of 10% per annum, compounded daily from the date the underpayment should have been paid pursuant to subsection (C) above until the date the underpayment is paid.
- F. If the results of the audit are disputed, either party may, at its sole discretion, elect to arbitrate the dispute. In the event the either party elects to arbitrate, the CITY and TFTMC shall each select an independent auditor at their own cost. The two auditors shall agree upon the results of the audit. If the two independent auditors

cannot agree upon the results of the audit, a third auditor shall be selected by the two independent auditors to make a final determination. The determination of the third independent auditor shall be final.

4.04. Guaranty. The Monterey Peninsula Foundation, a California nonprofit corporation ("MPF") shall guaranty all of TFTMC's obligations under this Agreement, including the payment of rent and Revenue Participation Payments when due throughout the entire term of this Agreement, pursuant to that Guaranty of Sublease, executed simultaneously herewith.

5. ACCOUNTING RECORDS

5.01. Accounting Records and Audit. All documents, books and accounting records for the Premises shall be maintained and open for inspection by CITY at any reasonable time during the term of this Agreement and for three (3) years thereafter. In addition, at its own expense, the CITY may from time to time conduct an audit of the books and operations conducted at the Premises by TFTMC and observe the operation of the business so that accuracy of the above records can be confirmed. All audits and inspections shall be conducted in a manner that minimizes the interference with TFTMC's operations. All information regarding operations obtained in connection with the CITY's inspection of records or audit shall be treated as public information pursuant and subject to California law. This shall specifically exclude any data regarding donors, donation amounts and related information, and any personal or private information regarding employees of TFTMC, which information shall be given to CITY under the condition that it remain strictly confidential.

5.02. Use Reports. TFTMC shall furnish the CITY with a monthly activity report showing the utilization of the Premises within thirty (30) days after the end of each month. These reports may include but will not be limited to number of participants in leagues, tournaments, clinics, facility usage, etc.

6. OPERATING RESPONSIBILITIES

6.01 Compliance with Laws. TFTMC's operation of the Premises shall conform to and abide by all CITY and County ordinances, rules, regulations, procedures, and policies 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 operation and/or any construction required or authorized, the same must be first obtained from the regulatory agency having jurisdiction.

6.02 TFTMC's Staff and Volunteers. TFTMC shall maintain an adequate and proper number of staff and/or volunteers to provide the services required within this Agreement. The CITY may at any time give TFTMC written notice to the effect that the conduct or action of a designated volunteer or employee of TFTMC is, in the reasonable belief of the CITY, detrimental to the interest of the public patronizing the Premises.

Following the CITY's written notice, TFTMC shall meet with representatives of the CITY to consider the appropriate action with respect to such a matter and TFTMC shall take reasonable measures under the circumstances and in its discretion consistent with applicable law to assure the CITY that the conduct and activities of TFTMC volunteers or employees will not be detrimental to the interest of the public patronizing the Premises.

6.03 Labor Peace. TFTMC shall comply in good faith with all federal and state labor laws in connection with the employment of its workforce on the Premises. In identifying this good faith requirement for labor peace, the CITY acknowledges the nonprofit status of TFTMC and the significant community benefit derived from the operation of the First Tee program in the City of Salinas. Accordingly, the intent and meaning of this section shall not be construed as a requirement for TFTMC to organize the workforce at the Facility for the purpose of collective bargaining.

CITY represents and warrants that, as of the Commencement Date, CITY's Facility workforce will be re-employed and relocated to similar or other acceptable positions within the CITY.

6.04 Signs. TFTMC shall not post permanent signs upon the Premises unless prior approval is obtained from the CITY. The parties hereto contemplate the installation by TFTMC of both permanent and temporary signs, including "Sponsor" and "Activity" signs, and approval of such signs shall not be unreasonably withheld. Approval shall be deemed given unless refused in writing within thirty (30) days after written request is provided to the CITY.

6.05 Public Use. By working jointly, TFTMC and the CITY shall each use commercially reasonable efforts to maximize the public use of the Premises and the facilities thereon.

6.06 Complaint Resolution. TFTMC shall designate a person with management responsibility over the Facility to serve as a contact person for CITY officials in the event complaints are received from community members. TFTMC shall investigate all complaints received from the CITY and make good faith efforts to resolve them. Within 45 days of receiving a complaint, TFTMC shall provide the CITY with a summary report on the disposition of the complaint.

6.07 Emergency Services. TFTMC shall provide the CITY with the names and telephone numbers of at least two (2) qualified persons who can be called by the CITY representatives when emergency maintenance conditions occur during hours when TFTMC's normal volunteer or employed work force is not present. The CITY shall call for such assistance only in the event of a genuine and substantial emergency.

6.08 Utilities. TFTMC shall provide for the establishment of all utility accounts and thereafter shall provide and pay for any necessary utilities used on the Premises.

6.09 Sanitation. Subject to the other provisions of this Agreement regarding environmental contamination, TFTMC shall ensure no offensive matter, refuse, or substance creating an unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public or environmental health shall be permitted to remain on the Premises and TFTMC shall prevent any accumulation from occurring.

6.10 Security Devices. TFTMC may provide any legal devices, installation, or equipment designed for the purpose of protecting the Premises from theft, burglary or vandalism. All purchases and installation shall be at TFTMC's expense. During the last thirty (30) days preceding the termination of this Agreement, TFTMC shall remove same from the Premises, except for those items which have been furnished by the CITY, or have been so affixed such that their removal cannot be accomplished without damage to the real property, or approved in writing by CITY to remain.

6.11 Safety. TFTMC shall promptly upon learning thereof correct any unsafe condition of the Premises, as well as any unsafe practices by its volunteers, employees, or patrons. TFTMC shall use its best efforts to obtain emergency medical care for any member of the public who is in need because of illness or injury occurring on the Premises unless such care is refused. TFTMC shall cooperate fully with the CITY in the investigation of any injury or death occurring on the Premises, including making a prompt report to the CITY.

6.12 Reporting. TFTMC or its representative shall meet with a CITY representative monthly, and at such other times as may be required by the CITY after reasonable prior notice (such actual time to be mutually acceptable) to review TFTMC's performance under this Agreement and to conduct a site inspection to review and discuss any problems or matters as determined by the CITY or TFTMC.

6.13 Equipment and Trade Fixtures. TFTMC, at its own expense, shall provide and install all fixtures and equipment that are required for operation of the Premises. During the last thirty (30) days preceding the termination of this Agreement, TFTMC shall remove same from the Premises, other than for those items which have been furnished by the CITY or so affixed such that their removal cannot be accomplished without damage to the realty or approved in writing by the CITY to remain. Should TFTMC fail to remove said fixtures and equipment within said thirty (30) day period, TFTMC shall lose all right, title and interest and the CITY may elect to keep same upon the Premises or to sell, remove or demolish same.

6.14 Advertising and Promotional Materials. TFTMC shall ensure that brochures, scorecards, and other printed advertising and marketing materials always possess the name of the Facility with the accompanying CITY Recreation and Parks Division's logos as provided by the CITY in advance. TFTMC must ensure a thorough relationship exists with the Division and its public information and marketing programs. The CITY shall also provide assistance to TFTMC in promoting the activities at the Premises through the Recreation and Parks Division public information program. If such approval is not given within five (5) working days following the request for approval,

TFTMC may proceed with the use of such materials so long as the CITY and Recreations and Parks Division names, logo, and/or theme are removed from the materials prior to publication. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials, web sites, and signage.

6.15 Concessions. TFTMC shall be authorized to provide/sell food and beverages, including beer and wine, at the Premises or to subcontract these services, provided all CITY permits and/or other requirements, such as insurance and health regulations, are adhered to.

7. DESTRUCTION OF PREMISES

7.01 Casualty. In the event the Premises shall be totally or partially destroyed by a risk covered by the insurance required by this Agreement, and the proceeds from insurance are sufficient to pay the actual costs of restoring the Premises to its prior condition, TFTMC shall restore the Premises in accordance with this section. If the destruction is from a risk for which coverage is not required or provided under said insurance, or the proceeds from such insurance are insufficient to pay the actual costs of restoring the Premises, then, if TFTMC should elect not to restore the Premises, the CITY shall either restore the Premises or terminate this Agreement.

If the proceeds of insurance are insufficient to pay the actual costs of restoration, TFTMC shall promptly raise the amount of the deficiency or terminate this Agreement. If TFTMC elects to terminate this Agreement, said insurance proceeds shall be assigned to the CITY. If TFTMC elects to restore the Premises, the plans, specifications and construction cost estimates for the restoration shall be prepared by TFTMC and forwarded to the CITY for approval prior to the performance of any work in the same manner as with the original construction. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance and any other process necessary to complete the construction. The required construction shall be performed by TFTMC and/or licensed and bondable contractor(s) who shall be required to carry builders risk, commercial general liability, bodily injury and property damage insurance, worker's compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by the CITY consistent with its then applicable standards. Said construction shall be commenced promptly following the approval by the CITY, issuance of permits by governmental agencies having jurisdiction, and posting of the construction site by the CITY with notice of non-responsibility, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes are approved in advance by the CITY. All insurance proceeds received by CITY shall be made available to TFTMC for payment of the cost to restore the Premises. Any amount in excess of the cost to reconstruct the Premises shall be the property of CITY. If TFTMC does not rebuild, the insurance proceeds shall become the property of the CITY.

7.02 Inspection of Restoration. TFTMC agrees that the CITY may have on the site at any time after reasonable prior notice during the construction period an inspector who shall have the right of access to the Premises and the occurring work. TFTMC, at the commencement of the construction work, shall notify the CITY in writing of the identity, place of business, and telephone number of the responsible person(s) in charge of the construction. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, TFTMC shall immediately record a notice of completion with the CITY.

7.03 Effect on Agreement. TFTMC shall cooperate in any restoration of the Premises performed by the CITY by vacating and removing all items of inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration. If the Premises are restored, this Agreement shall continue in full force and effect.

8. COVENANTS BY TFTMC AND CITY

8.01 Tax Exempt Status. Throughout the term of this Agreement, TFTMC shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Failure to do so shall constitute a default, within the meaning of Section 16 of this Agreement. All revenue generated from the activities to be used by TFTMC to support youth golf and learning activities at the Facility or otherwise in the community shall be used in accordance with its status as a not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Service Code.

8.02 Tax-Exempt Status of Interest on Bonds.

(a) It is the intention of the parties hereto that interest with respect to the COP's and the Certificates, if executed and delivered, shall be and remain tax-exempt, and to that end the covenants and agreements of the CITY and TFTMC in this Section and the Tax Certificates to be executed in connection with the execution and delivery of the Certificates are for the benefit of the Trustee and each and every person who at any time will be an Owner of any of the Certificates. (The Tax Certificate of TFTMC is referred to herein as the "Tax Certificate").

(b) City covenants and agrees that it will not directly or indirectly use or permit the use of any proceeds of the Certificates or other funds (which are treated as proceeds of the Certificates), or take any action that will cause any of the Certificates to be an "arbitrage bond" within the meaning of Section 148 of the Code. CITY agrees that it will not deliver or allow TFTMC to come into possession of any proceeds of the Certificates or other funds (which are treated as proceeds of the Certificates) without first notifying TFTMC that such proceeds or funds are proceeds of the Certificates. Provided CITY notifies TFTMC in writing that specific funds or proceeds TFTMC has received or is about to receive are proceeds of the Certificates, TFTMC agrees that it will not thereafter use such funds or proceeds in a manner that will cause the Certificates to be an arbitrage bond.

CITY further covenants and agrees that it will not direct the Trustee to invest any funds held under the 2004 Trust Agreement, the 2004 Lease or this Agreement, in such manner as would, or enter into or allow any related person to enter into any arrangement (formal or informal) that would, cause any Certificate to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. To such ends, the CITY will comply with all requirements of Section 148 of the Code to the extent applicable to the Certificates. In the event that at any time the CITY is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under the Trust Agreement or by any other party under this Agreement, the CITY shall so notify such party in writing. CITY and TFTMC (to the extent provided in the Tax Certificate with respect to proceeds of the Certificates held or invested by TFTMC following notification by City as provided above) agree that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any applicable Treasury Regulations. This covenant shall survive payment in full or defeasance of the Certificates.

(c) The CITY certifies, represents and agrees that it has not taken, and will not take, any action which will cause interest paid with respect to the COP's or the Certificates to become includable in gross income of the Owners of the COP's or the Certificates for federal income tax purposes pursuant to Section 103 and 141 through 150 of the Code; and TFTMC certifies and represents that it has not taken or, to the extent within its control, permitted to be taken, and TFTMC covenants and agrees that it will not take or, to the extent within its control, permit to be taken any action which will cause the interest with respect to the Certificates (if the Certificates are delivered) to become includable in gross income of the Owners of the COP's or the Certificates for federal income tax purposes pursuant to Section 103 and 141, 145, 148 and 150 of the Code; and provided, further, that none of the covenants and agreements herein contained shall require either TFTMC or the CITY to enter an appearance or intervene in any administrative, legislative or judicial proceeding in connection with any changes in applicable laws, rules or regulations or in connection with any decisions of any court or administrative agency or other governmental body affecting the taxation of interest with respect to the COP's or the Certificates. Insofar as the Tax Certificate imposes duties and responsibilities on TFTMC, they shall be specifically incorporated herein by reference.

(d) Notwithstanding any provision of this Section and the Tax Certificate, if the CITY shall provide to TFTMC and the Trustee an opinion of Bond Counsel acceptable to the CITY that any specified action required under this Section or the Tax Certificate is no longer required or that some further or different action is required to maintain the tax-exempt status of interest with respect to the Certificates, TFTMC, the Trustee and the CITY may conclusively rely on such opinion in complying with the requirements of this Section; and the covenants hereunder shall be deemed to be modified to that extent.

(e) TFTMC and the City shall comply with the requirements of Section 141 and Section 145 of the Code, as applicable, and TFTMC shall not permit subleasing, licensing, managing or any other arrangement, e.g., a concession agreement with a

nongovernmental person with respect to the Premises that gives the nongovernmental person a right or benefit that is different from the general public or constitutes a private business use absent obtaining an opinion of a nationally recognized bond counsel acceptable to the City that the exclusion from gross income of interest on the Certificates or the COPs will not be adversely affected for Federal income tax purposes.

9. SUBTENANT ONLY

9.01 TFTMC a Subtenant Only. This Agreement is by and between the CITY and TFTMC as its subtenant, and is not intended, and shall not be construed, to create the relationship of agent, contractor, servant, employee, partnership, joint venture or association.

9.02 Worker's Compensation. TFTMC understands and agrees that all persons furnishing services at TFTMC's request pursuant to this Agreement are, for purposes of Workers' Compensation liability, and all other purposes, not employees of the CITY.

10. HOLD HARMLESS AND INDEMNIFICATION

10.01 TFTMC's Indemnification. TFTMC agrees to indemnify, defend and save harmless the CITY, its agents, officers and employees from and against any and all liability, expense (including defense costs and legal fees) and claims for damages including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with TFTMC's operations, its management thereof, or its services hereunder, including any Workers' Compensation suits, liability or expense, arising from or connected with services performed on behalf of TFTMC by any person, including volunteers, pursuant to this Agreement except to the extent that such bodily injury, death, personal injury or property damage arises from or is connected with the CITY's operations or services. TFTMC's duty to indemnify the CITY shall survive the expiration or other termination of this Agreement. The officers, directors and employees of TFTMC shall have no liability under this provision.

10.02 CITY's Indemnification. CITY agrees to indemnify, defend and save harmless TFTMC, its agents, officers and employees from and against any and all liability, expense (including defense costs and legal fees) and claims for damages including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with the CITY's operations or its services hereunder, including any Workers' Compensation suits, liability or expense, arising from or connected with services performed on behalf of CITY by any person pursuant to this Agreement, except to the extent that such bodily injury, death, personal injury or property damage arises from or is connected with TFTMC's maintenance of the Premises or TFTMC's failure to properly maintain the Premises. CITY's duty to indemnify TFTMC shall survive the expiration or other termination of this Agreement.

11. INSURANCE

11.01 TFTMC's Insurance. TFTMC shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) reasonably satisfactory to the CITY as approved by the CITY and evidence of such programs satisfactory to the CITY shall be delivered to the CITY on or before the commencement of construction on the Premises or such other date as is specified below. Such evidence shall specifically identify this Agreement and shall contain express condition that the CITY is to be given written notice of at least thirty (30) days in advance of any modification or termination of any program of insurance. Such insurance, with the exception of Workers' Compensation insurance, shall be primary to, and not contributing with any other insurance maintained by CITY, and shall name the CITY, the Trustee, the Salinas Public Financing Authority and the Bond Insurer as an additional insureds as their interests may appear:

Commercial General Liability: Insurance endorsed for Independent Contractor, Professional Liability, Premises-Operations, Products/Completed Operations, Contractual, bodily injury and property damage with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

Comprehensive Auto Liability at such time as TFTMC acquires or rents in its name any vehicles: Endorsed for all owned and non-owned vehicles with a combined single limit of at least ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage.

Worker's Compensation at such time as TFTMC hires any temporary or permanent employees: A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the State of California and which specifically covers all persons providing services by or on behalf of TFTMC and all risks to such persons under this Agreement.

Property Insurance at such time as a certificate of occupancy is issued with respect to any structures: All risk insurance, fire and extended coverage, vandalism and malicious mischief insurance coverage, including all improvements, equipment and structures, in the full replacement value thereof.

Business Interruption: Business interruption insurance with sufficient policy limits to cover all lost income and expenses resulting from a covered peril.

11.02 Breach of Contract. Failure on the part of TFTMC to procure or maintain required insurance shall constitute a breach of contract upon which the CITY may immediately terminate this Agreement.

11.03 Commencement of Operations. Conduct of TFTMC's operations shall not commence until TFTMC has complied with the aforementioned insurance requirements. Further, said operations, in whole or in part, shall be subject to suspension by the CITY during any period that TFTMC fails to maintain said policies in full force and effect.

11.04 Increase in Coverage. Unless TFTMC and CITY otherwise consent, the amount of Commercial General Liability Insurance and Comprehensive Auto Liability shall be increased on every fifth (5th) anniversary of the commencement of the term (each, an Adjustment Date) by the increase in the "Consumer Price Index for All Urban Consumers for San Francisco/Oakland/San Jose, California, All Items" (CPI-U, 1982 = 100) published by the Bureau of Labor Statistics of the United States Department of Commerce from the date of this Agreement until the relevant anniversary of the commencement of the term. If on any Adjustment Date such Index is no longer published, or if computation of the Index is discontinued, CITY shall select the most nearly equivalent index to be substituted in place of said Index from the date of this Agreement to the date on which Adjustment is to be made.

11.05 No Cancellation. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of TFTMC to furnish insurance during the term of this Agreement. No less than thirty (30) days prior to the expiration of any such policy, a signed and complete certificate of insurance coverage evidencing that such insurance has been or will be renewed or extended shall be filed with the CITY.

11.06 Waiver of Subrogation. CITY and TFTMC agree that in the event any part or parts of the Premises or property upon, in, or about the Premises are damaged or destroyed by fire or other casualty, or in the event of any damage or injury to persons or other property interest, the rights or claims of either party, its agents, successors or assigns against the other with respect to such liability for any loss, destruction, damage or injury resulting therefrom, including loss or injury suffered as a result of the negligence of either party or its agents, are hereby released and discharged to the extent such loss, destruction, damage or injury is covered by insurance, and any and all subrogation rights or claims under any insurance coverage insuring the Premises and any property upon, in or about the Premises, and/or the parties hereto are hereby waived to the extent such loss, destruction, damage or injury is covered by insurance. All policies of fire, liability and/or other insurance covering the Premises, property upon, in, or about the Premises, and/or the parties hereto shall contain a clause or endorsement providing, in substance, that the insurance shall not be prejudiced if the insured have waived any rights of recovery or subrogation against any person or persons prior to the date of such loss, destruction, damage or injury.

12. TAXES AND ASSESSMENTS

12.01 TFTMC Responsibilities. TFTMC shall pay before delinquency all lawful taxes (including possessory interest taxes), assessments, fees or charges which at any time may be levied by the State, City, or any other tax that may be levied upon the Premises, any and all buildings and improvements and other property situated therein, and any interest of TFTMC therein, for the full term of this Sublease. TFTMC shall also pay all lawful taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used by TFTMC and on the Premises.

13. TRANSFERS

13.01 No Assignment.

- (a) TFTMC shall not, without the prior written consent of the CITY, in its sole discretion, assign, hypothecate, or mortgage this Agreement or lease or license or enter into management agreements for any portion of the Premises. Any attempted assignment, hypothecation, mortgage, lease, license, or management agreement without the express written consent of the CITY shall be void, of no force or effect and a material default under this Sublease. Notwithstanding the foregoing, FTMC shall be permitted to sublease the restaurant facilities to an operator in accordance with Section 6.15.
- (b) In the event of any termination of this Agreement, the CITY acknowledges that it shall not acquire any rights in TFTMC's license from The First Tee Division of the World Golf Foundation.

13.02 Binding Effect. Each and all of the provisions, agreements, terms, covenants and conditions herein to be performed by TFTMC shall be binding upon any transferee.

13.03 No Transfer in Bankruptcy. Neither this Agreement nor any interest shall be transferable in proceedings in attachment or execution against TFTMC or voluntary or involuntary proceedings in bankruptcy or reorganization or insolvency or receivership taken by or against TFTMC, or by any process of law.

13.04 Foreclosure. The prohibition against transfers contained in this Section 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 CITY.

14. NON-DISCRIMINATION AND CIVIL RIGHTS COMPLIANCE

14.01 Use. TFTMC hereby certifies and agrees that it shall comply with the Americans with Disabilities Act, Title VII 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 laws of the State of California, to the end that no persons shall, on the grounds of race, creed, national origin, political affiliation, marital status, sex, age or handicap, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement. The establishment by TFTMC of age limits on its youth golf and learning center programs shall not be a violation of this provision.

14.02 Employees. TFTMC certifies and agrees that all persons employed with respect to the Premises are and shall be treated equally without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age or handicap and in compliance with all Federal and State laws and regulations prohibiting discrimination in employment.

14.03 Contractors. TFTMC certifies and agrees that with respect to the management of the Premises, subcontractors, bidders and vendors shall be selected without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age or handicap.

14.04 Records. Subject to applicable laws, all employment records of TFTMC with respect to the management of the Premises shall be open for inspection by CITY at any reasonable time during the term of this Agreement after prior reasonable notice for the purpose of verifying the practice of non-discrimination by TFTMC in the areas described. Such records shall be provided to CITY on the condition that all information contained therein remain strictly confidential.

14.05 Violations. If the CITY finds that any of the above provisions of this Section 14 have been violated by TFTMC with respect to the Premises, such violations shall constitute a breach of contract if not cured within sixty (60) days of such determination upon which the CITY may determine to cancel, terminate, or suspend this Agreement.

15. TERMINATION OF AGREEMENT

15.01 Default. Upon the occurrence of any one or more of the events of default hereinafter described and the continuation thereof without remedy for sixty (60) days, this Agreement shall be subject to termination, provided, however, if TFTMC is pursuing such a remedy, in CITY's sole judgment, such cure period shall be extended for so long as is reasonably necessary to effect such cure. As a condition precedent to termination, the CITY shall give TFTMC twenty-one (21) days notice by certified mail of the date set for cancellation, the grounds, and that an opportunity to be heard by the City Council shall be afforded TFTMC on or before said date, if request is made.

15.02 Possession. Upon termination after any default of TFTMC as provided herein, the CITY shall have the right to take possession of the Premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damage arising from a breach of this Agreement, except for any of such items bearing the TFTMC logo or trademark.

15.03 Termination by TFTMC. TFTMC may terminate this Agreement for any reason effective on January 1st or July 1st of any Lease Year upon not less than one (1) year's written notice.

15.04 Ownership of Improvements. All structures, buildings or improvements constructed by TFTMC upon the Premises and all alterations, additions or betterment thereto, shall be the property of TFTMC. Upon termination hereof, whether by expiration of the term, cancellation, forfeiture or otherwise, ownership thereto shall transfer to the CITY, and such structures, buildings and improvements shall be surrendered with the Premises. If TFTMC's leasehold estate is acquired during the term of this Agreement by condemnation, the structures, buildings and other improvements constructed by TFTMC upon the Premises and all alteration, additions or betterment added thereto by TFTMC shall be considered the property of TFTMC for the purpose of determining the award of condemnation proceeds.

16. EVENTS OF DEFAULT

16.01 Abandonment. The abandonment of the Premises for more than sixty (60) days.

16.02 Failure to Operate. The failure of TFTMC to operate substantially in the manner required by this Agreement, where such failure continues for more than sixty (60) days after written notice from the CITY to correct the condition therein specified. Periods of time during any reconstruction shall not constitute abandonment or a failure to operate.

16.03 Failure to Maintain. The failure to maintain the Premises and the improvements constructed in the state of repair required by this Agreement, including by **Exhibit C**, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than sixty (60) days after written notice from the CITY for corrections, provided that where fulfillment of such obligation requires activity over a period of time or during a particular season and TFTMC shall have promptly, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently or, for seasonal work, developed a plan for such work, said time limit shall be extended as is reasonably necessary to allow TFTMC to effect a cure, and may be waived in such other manner and to the extent allowed by the CITY.

16.04 Failure to Perform Other Covenants. The failure of TFTMC to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than sixty (60) days after written notice from the CITY for correction, provided that where fulfillment of such obligation requires activity over a period of time and TFTMC shall have commenced to perform whatever may be required to cure the particular default within sixty (60) days after such notice and continues such performance diligently, or, for seasonal work, developed a plan for such work, said time limit shall be extended as is reasonably necessary to allow TFTMC to effect a cure, and may be waived in the manner and to the extent allowed by the CITY.

16.05 Filing of Bankruptcy. The filing of a voluntary or involuntary petition in bankruptcy by TFTMC; the adjudication of TFTMC as a bankruptcy, the appointment of

any receiver of TFTMC's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of TFTMC; the occurrence of any act which may operate to deprive TFTMC permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Premises; the levy of any attachment or execution which substantially interferes with TFTMC's operation(s) under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of ninety (90) days.

16.06 Discrimination. An act of discrimination has been practiced by TFTMC with respect to any use or proposed use of the Premises in violation of State and/or Federal laws with respect to which TFTMC does not take appropriate action within sixty (60) days after a final finding of such discrimination to prevent from re-occurring.

17. WAIVER

17.01 No Waiver. Any waiver by the CITY of any breach of any one (1) 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, conditions, term or agreement herein contained, nor shall failure on the part of the CITY to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estopping the CITY from enforcing the full provisions.

17.02 Delay Not Waiver. No delay, failure, or omission of the 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.

17.03 Time of Essence. No notice to TFTMC shall be required to restore or revive "time of the essence" after the waiver by the CITY of any default.

17.04 Remedies Cumulative. No option, right, power, remedy or privilege of the CITY shall be construed as being exhausted by the exercise in one (1) or more instances. The rights, powers, options, privileges and remedies given the CITY by this Agreement shall be cumulative.

18. RIGHT OF ENTRY

18.01 Failure to Perform Obligations. Should TFTMC be deemed deficient in satisfying its obligations under this Agreement upon notice duly given of its obligation required and should TFTMC fail to remedy such deficiency within sixty (60) days of such notice, the CITY, in addition to all other available remedies may, but shall not be so obliged, to enter upon the Premises and correct TFTMC's deficiencies using CITY forces, equipment and materials on the Premises suitable for such purposes or by

employing a separate private contractor. The CITY's costs so incurred, including direct overhead costs as determined by the CITY, shall be reimbursed to the CITY by TFTMC and/or its sureties within thirty (30) days of demand.

18.02 Abandonment. In the event of an abandonment or discontinuance of operations for a period in excess of sixty (60) days, TFTMC hereby irrevocably appoints the CITY as an agent for continuing operation of the services granted and in connection therewith authorizes the officers and employees to: (1) take possession of the Premises, including all improvements, equipment and inventory thereon other than any of such items bearing the TFTMC name, brand, logo or trademark; and (2) remove any and all persons or property on said Premises and place any such property in storage for the account of and at the expense of TFTMC; and (3) lease the Premises; and (4) after payment of all expenses of such leasing or licensing apply all payments realized to the satisfaction and/or mitigation of all damages arising from TFTMC's breach of the Agreement. Entry by the officers and employees of the CITY upon the Premises for the purpose of exercising the authority conferred as agent of TFTMC shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

19. SURRENDER

19.01 Vacate Premises. Upon expiration of the term hereof, or termination as herein provided, TFTMC shall peaceably vacate the Premises and any and all improvements and deliver the same to the CITY in a good condition, consistent with the standards of other local public golf facilities, reasonable wear and tear and casualty excepted.

20. INTERPRETATION

20.01 Governing Law/Venue. This Agreement shall be interpreted in accordance with the laws of the State of California and venue shall be situated within the County of Monterey, California.

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

22. DISPUTES

21.01 Informal Dispute Resolution. The parties to this Sublease all desire to avoid the cost and delay attendant on litigation. To that end, the parties agree that if any dispute arises relating to this Sublease, including but not limited to its meaning, interpretation, effect or the enforcement of the provisions hereof, then the party who believes a dispute has arisen shall give written notice of such to the other party. For a period of thirty (30) days after the giving of such notice (or a longer period if the parties shall so agree), the parties shall attempt to resolve the dispute by informal discussions

among themselves, using the services of a mediator, if the parties agree that such a mediator would facilitate resolution of the dispute.

21.02 Arbitration. In the event that there shall be a dispute among the parties with respect to their rights and obligations hereunder that is not resolved after following the procedures in section 22.01, the matter shall be submitted to final and binding arbitration under the Commercial Rules of Arbitration of the American Arbitration Association, and the hearing shall be held at Salinas, California. Each party shall have the rights of discovery provided in section 1283.05 of the California Code of Civil Procedure. The arbitrator(s) shall have the right to grant specific performance of this Agreement. The arbitrator(s) shall award to the prevailing party or parties an amount payable by the party or parties not prevailing, for reimbursement of all costs and expenses incurred in connection with the arbitration, and a reasonable attorney's fee to be fixed by the arbitrator(s). In the event that any party shall bring an action to enforce the award of the arbitrator(s), the court shall award to the party prevailing in such proceeding all costs and expenses and reasonable attorneys' fees.

If the issue to be arbitrated is either party's alleged breach of this Sublease and as a result thereof, the CITY or TFTMC has the right to terminate this Sublease, TFTMC shall continue to sublease the Premises pending the outcome of such arbitration, provided either party may elect to proceed without arbitration under its other remedies in this Sublease. Under such circumstances, the payment and/or acceptance of rent shall not constitute a waiver of any default or of either parties' rights or remedies.

22. NOTICES

22.01 Delivery of Notice. Except as is otherwise herein provided, all notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party shall be in writing and shall be sufficiently given and served upon the other parties if sent by mail, postage prepaid and addressed as follows:

If to the CITY, the same shall be addressed to:

City Manager
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901

or to such other place as the CITY may by such similar notice in writing designate.

If to TFTMC, the same shall be addressed to:

Attn: Executive Vice President
Future Citizens Foundation, dba
The First Tee of Monterey County
200 E. Franklin Street, Ste. 200
P.O. Box 869
Monterey, CA 93940

or to such other place as TFTMC may by such similar notice in writing designate.

In addition, the parties shall provide notice of any amendment, default, extension of the term, termination or other material event under this Sublease for which notice is required to be provided to the City or TFCTMC, as the case may be to the Trustee and the bond insurer for the COP's and the Certificates, if any are executed and delivered, at the following notice address, or at such other address as the City may provide from time to time.

If to Trustee, the same shall be addressed to:

Attn: Teresa Fructuoso
BNY Western Trust
700 South Flower St., Ste. 500
Los Angeles, CA 90017

If to Bond Insurer, the same shall be addressed to:

Attn: Phyllis Santry
Attn: David Abromowitz
AMBAC Assurance Corporation
One State Street Plaza, 15th Floor
New York NY 10004

23. ENTIRE AGREEMENT

23.01 Exhibits. The following are marked as Exhibits to this Agreement and are incorporated by reference as if fully set forth herein:

- Exhibit A - Description of Property
- Exhibit B- Twin Creeks Site
- Exhibit C - Maintenance Specifications

23.02 Inconsistencies. In the event of inconsistencies between any Exhibit and this Agreement the terms of the Agreement shall govern and control.

23.03 Entire Agreement. This document and the attached Exhibits, constitute the entire Agreement between the CITY and TFTMC. All other agreements, promises and representations with respect thereto, other than eventually contained herein, will be expressly revoked, as it will have 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 operation of the Premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

23.04 Modification. 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 TFTMC and in the case of the CITY, except as otherwise specifically authorized, until approved by the City Council and Monterey County Board of Supervisors.

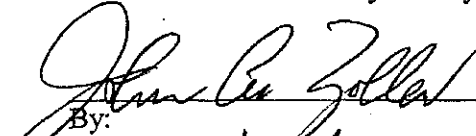
24. **MEMORANDUM OF SUBLEASE**

24.01 Recordation. TFTMC and CITY agree to execute a Memorandum of Sublease to be recorded in the Monterey County Recorder's Office within ten (10) days after execution of this Agreement.

CITY OF SALINAS,
a municipal corporation

FUTURE CITIZENS FOUNDATION, dba
The First Tee of Monterey County


ANNA CABALLERO, MAYOR


By:

Date: 11-4-04

Date: 11/5/04

APPROVED AS TO FORM:


MICHAEL F. RODRIQUEZ
Interim City Attorney

ATTEST:

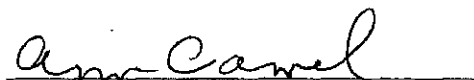

CITY CLERK

EXHIBIT A

Description of Premises

A portion of the property known as the County East Laurel Street Property, Assessor's Parcel Number 03-851-28 and shown on the survey map filed for record on March 13, 1998 in Volume 21 of Surveys, page 103.

For purposes of this Sublease, the Premises do not include any portion of said property outside the exterior fenced boundary of the Twin Creeks golf course and driving range and/or those portions of the property containing marshes, wetlands or riparian vegetation adjacent to the turf-developed portions of the golf course including, but not limited to, Gabilan Creek.

EXHIBIT B

TWIN CREEKS SITE

Attached

UPDATED

Order No. 164005-SA

PRELIMINARY REPORT

FIRST AMERICAN TITLE COMPANY

2 Salinas Street
Salinas, California 93901
(408) 424-0317

"Subject to a minimum charge required by Section
12404.1 of the Insurance code."

Property address: No street address available

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance, describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception below or not excluded from coverage pursuant to the printed schedules, conditions and stipulations of said policy forms.

The printed exceptions and exclusions from the coverage of said policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a binder or commitment should be requested.

Dated as of October 16, 2004 at 7:30 A.M.

The form of policy of title insurance contemplated by this report is:

N/A

Title to said estate or interest at the date hereof is vested in:

County of Monterey (a body politic and corporate) of the State of California

UPDATED

Order No. 164005-SA

The estate or interest in the land hereinafter described or referred to covered by this report is:
Fee

The land referred to in this report is situated in the State of California, County of Monterey, City of Salinas and is described as follows:

Parcel designated as "78.436 Acres ±" filed for record March 13, 1998 in Volume 21 of Surveys at page 103, in the office of the County Recorder, County of Monterey, State of California.

APN: 003-851-023

At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. **GENERAL AND SPECIAL COUNTY TAXES** for fiscal year 2004-2005, including special district levies and any user's fees, a lien now due and payable.

1st Installment: \$6,402.30 Due December 10, 2004
2nd Installment: \$6,402.30 Due April 11, 2005
Code Area: 005-004
Fee Assessment No.: 003-851-028-000

2. **THE LIEN OF SUPPLEMENTAL TAXES**, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

3. **AN EASEMENT** for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: Sierra and San Francisco Power Company, a corporation
Purpose: Electrical towers
Recorded: May 24, 1929 in Book 195 of Official Records, at page 10
Map reference: Volume 21 of Surveys, at page 103.
Affects: The northwesterly portion, 40 feet wide

UPDATED

Order No. 164005-SA

4. **AN EASEMENT** for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: Salinas, a municipal corporation

Purpose: Sanitary sewer

Recorded: September 8, 1988 in Reel 2271 of Official Records, at page 1109

Map reference: Volume 21 of Surveys, at page 103.

Affects: The northwesterly portion, 20 feet wide

5. **AN EASEMENT** for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: Salinas, a municipal corporation

Purpose: Construction and maintenance of sewer lines

Recorded: July 11, 1990 in Reel 2530 of Official Records, at page 999 and

re-recorded August 1, 1990 in Reel 2539 of Official Records, at page 474.

Map reference: Volume 21 of Surveys, at page 103.

Affects: The southwesterly, central and northeasterly portions, 20 feet wide

6. **MATTER(s)** for the purpose(s) shown below and rights incidental thereto as shown on the map filed in Volume 21 of Surveys at page 103.

Purpose: Purposed easement for right of way (Garner Avenue)

Affects: The southwesterly portion, 60 feet wide

7. **ANY POSSIBLE INUNDATION** of those portions of said land within the boundaries of "100 year flood line", as shown on the filed map referred to in Volume 21 of Surveys, at page 103.

8. **RIGHTS OF THE PUBLIC** and the County of Monterey in and to that portion lying within Gabilan Creek.

9. **A MEMORANDUM LEASE** with certain terms, covenants, conditions and provisions set forth therein

Lessor: The County of Monterey

Lessee: The City of Salinas

Dated: June 1, 1997

Recorded: March 15, 1999 as Recorder Series No. 99203393, Monterey County Records

UPDATED

Order No. 164005-SA

10. Terms and Provisions

Disclosed By: Assignment Agreement
Executed By: Salinas Public Financing Authority
And Between: BNY Western Trust Company, as Trustee
Recorded: March 15, 1999 as Recorder Series No. 99203396, Monterey County Records

11. Terms and Provisions

Disclosed By: Site Lease
Executed By: The City of Salinas
And Between: Salinas Public Financing Authority
Recorded: March 15, 1999 as Recorder Series No. 9920395 and re-recorded June 11, 1999 as
Recorder Series No. 9944976, Monterey County Records

12. Terms and Provisions

Disclosed By: Lease Agreement
Executed By: Salinas Public Financing Authority, a joint exercise of powers agency
And Between: The City of Salinas
Recorded: March 15, 1999 as Recorder Series No. 9920394, and re-recorded June 11, 1999 as
Recorder Series No. 9944977, Monterey County Records

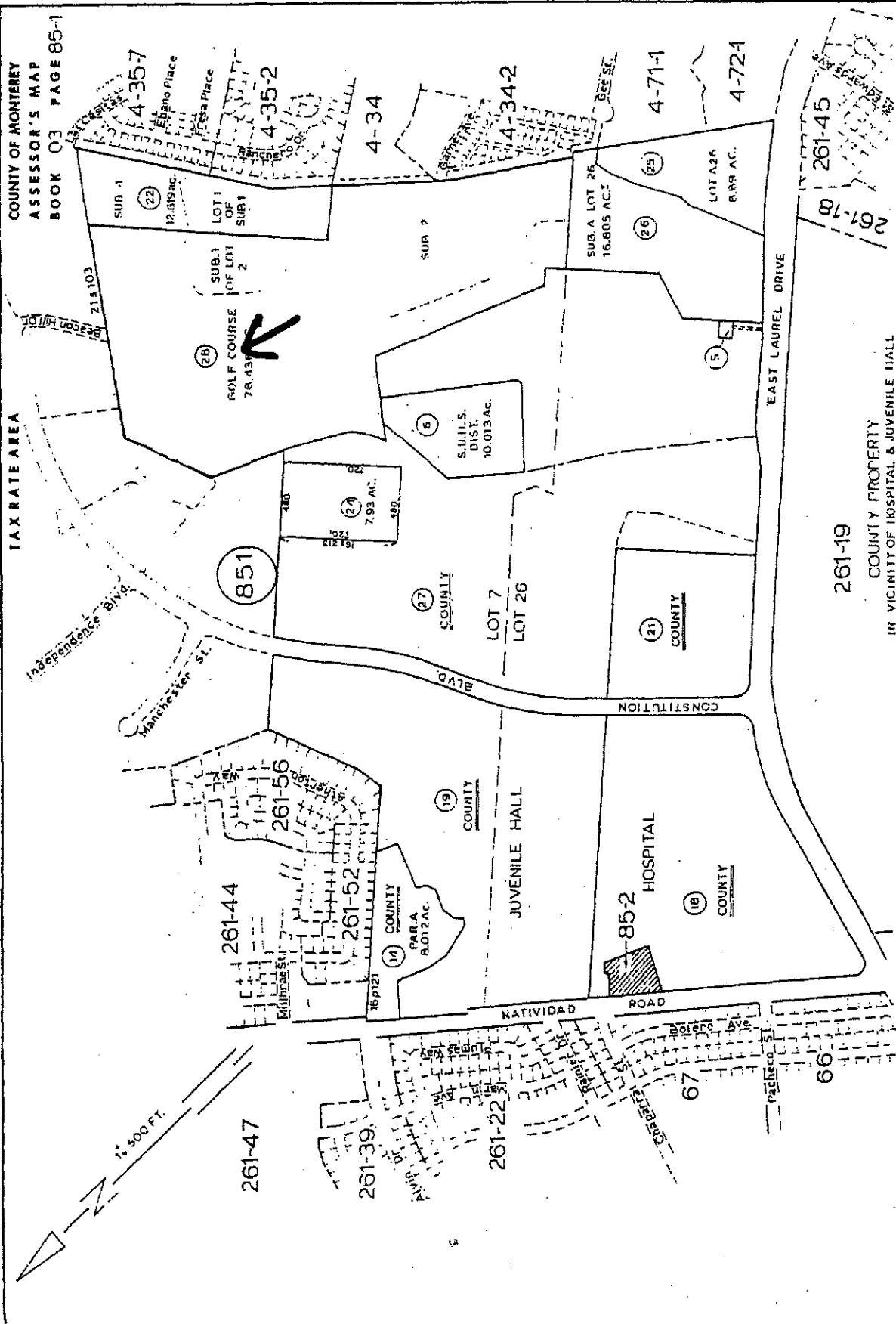
13. The effect of any failure to comply with the terms, covenants, conditions and provisions of the lease shown herein.

NOTE: There are no conveyances affecting said land, recorded within two (2) years of the date of this report.

NOTE: Short term rate does not apply.

Michael Lucero, Title Officer

TAX RATE AREA



COUNTY PROPERTY
IN VICINITY OF HOSPITAL & JUVENILE HALL

R4

EXHIBIT C

GENERAL GOLF COURSE MAINTENANCE SPECIFICATIONS

ALL MATERIALS ARE SUBJECT TO SUBSTITUTION BY MATERIALS AND PRODUCTS OF REASONABLY EQUIVALENT QUALITY.

MAINTENANCE SERVICES

1. TFTMC shall perform the following maintenance services as indicated in these specifications except where artificial turf, if any, is used. Any such turf shall be replaced and/or repaired to maintain the consistent use an appearance thereof. Standards and frequency may be modified from time to time for the proper maintenance of golf course facilities.

2. Greens Maintenance

Maintain all greens according to accepted playability as determined by the CITY and industry-wide standards at all times observing the following minimum requirements:

- a. Change location of cups and repair balls marks as needed, not allowing noticeable turf wear.
- b. Mow greens on a schedule that will produce a consistent and high quality putting surface comparable to other local courses and First Tee facilities. The frequency, schedule, and height of cut will be appropriate for the type of grass grown, season of the year, and current weather conditions. Mower will be of accepted industry standards designed specifically for mowing golf greens.
- c. Verticutting, topdressing, overseeding, and aerification will be done on a schedule that will produce a consistent and quality putting surface. The frequency and schedule of these maintenance practices will vary from season to season and from year to year.
- d. TFTMC shall have the soil analyzed within thirty (30) days after the start of the term of the Agreement and once every year thereafter. Apply fertilizer in the quantity, type and frequency recommended by soil analysis in a manner to provide uniform growth of turf.
- e. TFTMC agrees to use chemicals approved by the industry as well as the State of California and the CITY, and will follow the proper procedures in their application. Greens will be treated on an as needed basis for insect, disease, weeds, and other pests. A complete list and records of all

chemicals used will be maintained by TFTMC and open for inspection by the CITY with proper notice.

3. Tee Maintenance

Maintain all tees according to accepted playability as determined by the CITY and industry-wide standards at all times observing the following minimum requirements:

- a. Service tees daily by moving tee markers, benches, emptying trash receptacles, and servicing ball washers as needed, but not allow undue turf wear and damage.
- b. Mow tees on a schedule that will produce a quality tee surface comparable to other local courses and First Tee facilities. The frequency, schedule, and height of cut will be appropriate for the type of grass grown, season of the year, and current weather conditions. Mower will be of accepted industry standards designed specifically for mowing golf greens.
- c. Verticut tees as needed for thatch removal.
- d. Aerify tees and top dress as needed.
- e. Repair worn and damaged turf areas as they occur to ensure playable tees at all times.
- f. Treat tees for control of insects, disease, weeds and other pests as necessary to maintain healthy turf.

4. Fairway Maintenance

Maintain all fairways according to accepted playability as reasonably determined by the CITY and industry-wide standards at all times observing the following minimum requirements:

- a. Mow fairways with a reel-type mower at a height acceptable to industry standards with consideration of the time of year and type of grass.
- b. Verticut and aerify fairways as necessary for turf health and acceptable playing conditions.
- c. Top-dress or re-sod worn or bare areas of fairways as necessary.
- d. Treat turf to control weeds, diseases, insects, and other pests as necessary to maintain weed free and healthy turf.

5. Aprons/Fringes

Maintain aprons and fringes at an acceptable level as determined by the CITY at all times observing the following minimum requirements.

- a. Mow aprons with a reel-type mower depending on the type of grass and time of year.
- b. Verticut and aerify aprons (fringes) as necessary for turf health and acceptable playing conditions.
- c. Top-dress or re-sod worn or bare areas of the aprons as necessary.
- d. Treat turf to control weeds, disease, insects and other pests.

6. Maintenance of Other Turf Areas

Maintain turf and landscaped lawn areas at an acceptable level as determined by the CITY at all times observing the following minimum requirements.

- a. Mow at least once per week May through October and as growth requires November through April.
- b. Verticut and aerify as necessary to promote health growth.
- c. Re-sod, re-seed, or top-dress worn or bare areas as necessary.
- d. Treat turf to control weeds, disease, insects and other pests as necessary to maintain a healthy turf.

7. Maintenance of Accessory Equipment

Maintain all golf course accessory equipment in clean, safe, and functioning condition at all times, including but not limited to the following:

- a. All signs.
- b. Outdoor benches.
- c. Tee markers and mats
- d. Ball washers and including tee towels and soap.
- e. Out-of-Bounds markers
- f. Directional flags and poles

- g. Greens flags, poles and cups
- h. Practice green markers and cups
- i. Trash receptacles
- j. Cup-cutting equipment

8. Irrigation

Maintain entire irrigation system, including those areas of: the water delivery system, pumps, pump house (including fan and heating systems), backflow/gate valve assemblies, main lines, potential lake algae, valves, wells (e), lateral lines, and sprinkler heads and controllers in good repair, functioning property and conforming to all related codes and regulations at all times, reasonable wear and tear excepted. Irrigate as required to maintain adequate moisture for growth rate and appearance. TFTMC shall have the authority to change the irrigation schedule as the need develops. Adequate soil moisture shall be determined by visual observation, plant resiliency, turgidity, examining cores removed by soil probe, moisture sensor devices and programming irrigation controllers accordingly.

- a. Consideration must be given to soil texture, structure, porosity water retention, capacity, drainage, compaction, precipitation rate, run off, infiltration rate, percolation rate, evaporation rate, transpiration, seasonal temperature, prevailing wind conditions, time of day or night, type of grass plant and root structure. This may include syringing during the day and watering during periods of windy weather.
- b. In areas where wind creates problems of spraying onto private or other property or road rights-of-way, the controllers shall be set to operated during the period of lowest wind velocity that would normally occur at night.
- c. TFTMC shall be responsible for monitoring all irrigation systems within the demised premises and correct for coverage, adjustments, clogging of lines and removal of obstacles, including plant materials that obstruct the spray.
- d. Check system frequently and adjust and/or repair any sprinkler heads causing excessive run-off, including slope areas, or which throw directly onto roadway paving or walks within rights-of-way.
- e. All controllers shall be inspected frequently and adjusted as needed or when circumstances warrant.

- f. TFTMC shall observe and notice deficiencies occurring from the original design and review these findings with the CITY, so necessary improvements can be considered.
- g. TFTMC shall repair all leaking or defective valves within forty-eight (48) hours following written notification from the CITY of such a deficiency.
- h. TFTMC shall certify that all irrigation systems are fully operational. Such certification shall be acceptable in form and content to the CITY and shall be submitted on a quarterly basis.
- i. In the event of a reduction of the volume of water supplied to a golf course during peak demand periods, the priority of water distribution by TFTMC shall be as follows:
 - 1) Greens
 - 2) Tees
 - 3) Other turf and landscaped areas

9. Tree Maintenance

Maintain all trees on the demised premises in a safe, healthy, structurally sound and aesthetically pleasing condition at all times. Implement an on-going maintenance program to trim, top, and shape, prune, thin out, and treat. TFTMC's program shall include, but not be limited to the following:

- a. Prune trees to maintain and stimulate proper health and growth by cutting out dead, diseased, weak, insect-infested, and damaged limbs.
- b. Regularly prune trees to maintain clearance of in all areas of pedestrian and vehicular traffic such as parking lot, driveways, and tree extensions over and through fence-lines and into roadways and adjacent streets. Such pruning shall provide safe vehicular and pedestrian visibility and clearance in order to prevent or eliminate hazardous situations.
- c. Trim and shape trees to provide a symmetrical appearance typical of the species.
- d. Remove downed trees whether caused by natural causes or otherwise. Trunks shall be removed below grade and wood chips removed and the resultant hole backfilled to grade.
- e. Keep surrounding turf mowed and trimmed to the trunks of trees on the premises.

- f. TFTMC shall, within one year from the commencement of the term of this agreement, prepare and submit for CITY's approval, a comprehensive tree maintenance program.

10. Other Required Duties

- a. Remove all litter daily from golf course grounds including the golf course proper, golf course car/cart yard, service road, perimeter fence-lines, parking areas and landscaped areas. Remove all trash and debris resulting from golf course maintenance as it occurs. Clean, repair and replace trash receptacles as necessary to maintain clean, safe and sanitary conditions at all times.
- b. Maintain shrub and groundcover plantings and lawn areas in a manner to promote healthy growth and an aesthetically pleasing appearance at all times.
- c. Maintain all sand traps in raked, edged, and weed free condition at all times, replacing sand as necessary to maintain a consistent depth. Replace rakes as necessary.
- d. Take whatever preventative steps are necessary to protect all slope areas from erosion, fire and rodent damage at all times.
- e. Control rodent and other animal pests as necessary to prevent erosion and destruction of planting on golf course property and migration to surrounding neighborhoods.
- f. Maintain and repair as necessary surface flow lines, swells, catch basins, grates, sub-surface drainage system and other drainage structures in clear, wee-free and property functioning condition at all times.
- g. Observe all legal requirements and safety regulations in the use and storage of chemicals, hazardous materials, supplies, and equipment at all times according to National/State OSHA standards and local IRMA policies.
- h. Protect the golf course from damage during periods of frost, rainy weather and other unusual conditions.
- i. Maintain walkways, steps, handrails on walkways and cart paths in a safe, clean edged, weed-free condition at all times.
- j. Maintain and repair all fencing and fence lines in pleasing condition at all times.

- k. Maintain parking lots, fencing, service road areas and driveways in a safe, clean and weed-free condition at all times.
- l. Maintain the interior, unpaved and paved service roads in a safe and useable condition at all times.
- m. Inspect the following frequently and repair as needed:
 - 1) All area lighting systems for safe and functioning conditions.
 - 2) All golf course buildings and accessory structures for clean, safe and secure conditions.
 - 3) All golf course parking lots, walkways, interior paved and/or unpaved roads, and service roads.
- n. Approaches: TFTMC shall maintain all approaches and accessory structures within the golf course in a safe and stable condition at all times.
- o. Drainage: TFTMC shall maintain and keep in good repair all drainage swells and structures that traverse the golf course. All surface drains and swales shall be kept clear of debris so that water will have unimpeded passage to their outlets. All inlets to sub-drains shall be kept clear of leaves, paper and other debris to insure unimpeded passage of water.
- p. Park Corridor Maintenance: TFTMC shall maintain all park areas and trees thereon between the golf course fence-lines and the roadways.
- q. Fence-Lines: TFTMC shall maintain, replace and repair the fence lines within and around the golf course including, but not limited to, those fences designed to control the flight of the golf balls and those fences separating the demised premises from adjacent property.

GUARANTY OF SUBLEASE

THIS GUARANTY OF SUBSUBLEASE ("Guaranty" or "Agreement" is made by and between the **CITY OF SALINAS**, a California municipal corporation (the "CITY") and the **MONTEREY PENINSULA FOUNDATION**, a California nonprofit corporation ("MPF").

RECITALS

WHEREAS, the CITY and the Future Citizens Foundation, a California nonprofit corporation and licensee of the First Tee Division of the World Golf Foundation, dba the First Tee of Monterey County ("FTMC") have executed a document entitled "Sublease Agreement for Operation of Youth Golf Learning Center" dated November 5, 2004 (the "Sublease"), concerning premises located at the Twin Creeks Municipal Golf Course, Salinas, California; and

WHEREAS, the CITY required this Guaranty of MPF as a condition of the Sublease;

NOW, THEREFORE, for and in consideration of the execution of the Sublease by the CITY and as a material inducement of the CITY to execute the Sublease:

AGREEMENT

1. MPF hereby unconditionally and irrevocably guarantees to the CITY, its successors and assigns, without deduction by reason of setoff, defense, or counterclaim, the prompt payment by FTMC of all rent and Revenue Participation Payments (as defined in the Sublease) payable by FTMC under the Sublease. If FTMC shall fail at any time to pay when due any such obligation payable by FTMC under the Sublease, then MPF, on demand by the CITY (each, a "Demand"), shall fully and promptly pay to the CITY (subject to the terms, conditions, and limitations set forth in this Guaranty) all such amounts specified in any such Demand, together with interest thereon at the maximum rate allowed by law from the date of such Demand.
2. This Guaranty shall not be released, modified or affected by failure or delay on the part of the CITY to enforce any of the rights or remedies of the CITY under the Sublease, whether pursuant to the terms thereof or at law or in equity.
3. No notice of default need be given to MPF, it being specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which the CITY may proceed forthwith and immediately against FTMC or against MPF following any breach or default by FTMC of its obligations to pay rent and Revenue Participation Payments pursuant to or under the terms of the Sublease.
4. The obligations of MPF hereunder are independent of the obligations of FTMC. A separate action or actions may, at the CITY's option, be brought and prosecuted against

MPF, whether or not any action is first or subsequently brought against FTMC or any other MPF of FTMC's obligations under the Sublease, or whether or not FTMC or any such other MPF is joined in any such action, and MPF may be joined in any action or proceeding commenced by the CITY against FTMC arising out of, in connection with, or based on the Sublease.

5. MPF hereby waives all rights to assert or plead at any time any and all surety or other defenses in the nature thereof, including the provisions of California Civil Code Section 2845 or any similar, related or successor provision of law. In addition, MPF hereby waives any rights to (a) require the CITY to proceed against FTMC or any other person or entity or pursue any other remedy in the CITY's power whatsoever; (b) complain of delay in the enforcement of the CITY's rights under the Sublease or under this Guaranty; and (c) require the CITY to proceed against or exhaust any security held from FTMC or MPF. MPF waives any defense arising by reason of any disability or other defense of FTMC or by reason of the cessation from any cause whatsoever of the liability of FTMC.

6. Any act of the CITY, or its successors or assigns, consisting of a waiver of any of the terms or conditions of the Sublease, or the giving of any consent to any matter or thing relating to the Sublease, or the granting of any indulgences or extensions of time to FTMC, may be done without notice to MPF and without releasing MPF from any of its obligations hereunder; provided, however, that such waiver or consent does not materially impair MPF's rights of subrogation under this Guaranty.

7. MPF's liability hereunder shall in no way be affected by (a) the release or discharge of FTMC in any creditors', receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of FTMC or the estate of FTMC in bankruptcy, or any remedy for the enforcement of FTMC's liability under the Sublease resulting from the operation of any present or future provision of the Bankruptcy Code or any successor statute or any other statute or from the decision of any court; (c) the CITY's receipt, application or release of any security given for FTMC's performance and observance of FTMC's obligations under the Sublease; (d) the rejection or disaffirmance of the Sublease in any proceedings; (e) the assignment or transfer of the Sublease or subletting of the Premises by FTMC to an affiliate of FTMC; (f) the assignment or transfer of the Sublease or this Guaranty of Sublease by the CITY to an affiliate of the CITY; (g) the exercise by the CITY of any of its rights or remedies reserved under the Sublease or by law; or (h) any termination of the Sublease.

8. MPF does hereby subordinate all existing or future indebtedness of FTMC to MPF to the obligations owed to the CITY under the Sublease.

9. The term "the CITY" whenever used in this Guaranty refers to and means the CITY in the foregoing Sublease specifically named, and also any successor to the interest of said the CITY in such Sublease.

10. The term "FTMC" whenever used in this Guaranty refers to and means the FTMC specifically named in the Sublease and also any assignee or sublessee of the FTMC, and also any successor to the FTMC, assignee or sublessee of such Sublease, whether by assignment, sublease or otherwise.

11. Should the CITY desire to give notice to MPF, such notice shall be in writing and may be given by personal service or by certified or registered mail, postage prepaid, return receipt requested, to MPF at the address indicated below. MPF may by written notice given in the manner described in the preceding sentence designate a different address for notice purposes. Any notice sent by mail shall be deemed delivered three (3) days after mailing.

12. Any action to declare or enforce any rights or obligations under this Guaranty may be commenced by the CITY in the Monterey County Superior Court. MPF hereby consents to the jurisdiction of such court for such purposes and agrees that any notice, complaint or other legal process therein may be delivered to MPF in accordance with the above notice provisions and that any notice, complaint or other legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject MPF to the jurisdiction of such court for purposes of adjudicating any matter related to this Guaranty.

13. In the event of any dispute or controversy arising out of or relating to this Guaranty, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees, incurred in connection with such dispute or controversy.

14. This instrument constitutes the entire agreement between the CITY and MPF with respect to the subject matter hereof.

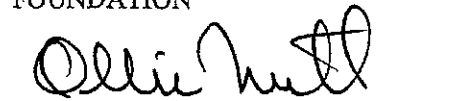
15. This Guaranty shall be governed and construed in accordance with the laws of the State of California.

CITY OF SALINAS,
a municipal corporation


ANNA CABALLERO, MAYOR

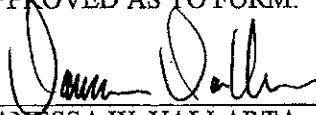
Date: 9-16-05

MONTEREY PENINSULA
FOUNDATION


By: Ollie Nutt, Executive Vice-President

Date: August 31, 2005

APPROVED AS TO FORM:



VANESSA W. VALLARTA
City Attorney

ATTEST:

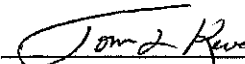

CITY CLERK

\$8,005,000
CITY OF SALINAS
REFUNDING CERTIFICATES OF PARTICIPATION
(TWIN CREEKS GOLF COURSE)
SERIES 2005A

CERTIFICATE OF CITY EVIDENCING OPTION OF LEASE

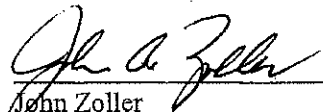
The undersigned, Director of Finance of the City of Salinas (the "City"), a duly authorized representative of the City, pursuant to Section 2.01 of that certain Sublease Agreement for Operation of Youth Golf Learning Center (the "Sublease"), effective as of November 1, 2004, (the "Commencement Date") by and between the City and Future Citizens Foundation, a California nonprofit public benefit corporation, hereby exercises the City's option to extend the Sublease for a term of twenty years from Commencement Date.

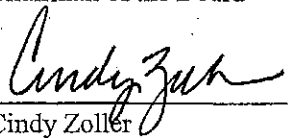
CITY OF SALINAS

By: 
Its: Director of Finance

ACKNOWLEDGED AND ACCEPTED:

FUTURE CITIZEN'S FOUNDATION,
a California nonprofit public benefit corporation

By: 
John Zoller
Its: Chairman of the Board

By: 
Cindy Zoller
Its: Secretary

Ambac Assurance Corporation
One State Street Plaza
New York, NY 10004
212.668.0340

A member of Ambac Financial Group, Inc.

July 1, 2005

City of Salinas
Salinas, California

BNY Western Trust Company
Los Angeles, California

Ambac

Re: \$14,315,000 City of Salinas Certificates of Participation (Golf Course and Animal Shelter Project) Series A of 1999 – Consent to Sublease

Ladies and Gentlemen:

We are the Certificate Insurer of the above captioned certificates of participation (the "Certificates"), and in that capacity our consent to that certain extension to the Sublease (referenced below) has been requested by the City. All capitalized terms not defined herein shall have the meanings set forth in the trust agreement dated as of February 1, 1999 (the "Trust Agreement") by and among the City, the Salinas Public Financing Authority (the "Authority") and BNY Western Trust Company, as Trustee. The Certificates represent interests of the owners thereof in certain Lease Payments to be made by the City under that certain Lease Agreement between the City and the Authority dated as of February 1, 1999 (the "Lease Agreement"). The City has advised us it proposes to enter into that certain Sublease by and between the City and Future Citizen's Foundation, d/b/a The First Tee of Monterey County ("First Tee of Monterey County"), an executed copy of which has been submitted to us for an extended term of one hundred twenty (120) days, commencing July 1, 2005 with respect to the Twin Creeks Project (as defined in the Lease Agreement). This consent is delivered pursuant to the requirement of Section 8.2 of the Lease Agreement.

We acknowledge receipt of the other matters required to be submitted to us pursuant to Section 8.2 of the Lease Agreement. This letter constitutes the written consent of Ambac Assurance Corporation to the Sublease pursuant to Section 8.2 of the Lease Agreement, provided such consent applies only to the extended 120-day term; any subsequent extension will be subject to our further consent, to the extent required by the Lease Agreement.

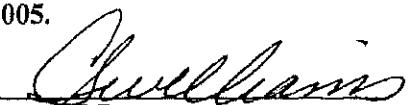
Sincerely,

AMBAC ASSURANCE CORPORATION

By: 

This is to certify that the foregoing is a full, true, and correct copy of Resolution No. 18820 (NCS) as regularly adopted by the Salinas City Council on July 12, 2005 as appears of record in my office.

Dated this 26th day of September 2005.


Cathy Williams, Deputy City Clerk

RESOLUTION NO. 18820

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SALINAS AUTHORIZING THE CITY MANAGER TO EXTEND
THE INTERIM SUBLEASE FOR THE OPERATION OF TWIN
CREEKS GOLF COURSE AND YOUTH GOLF LEARNING
CENTER

WHEREAS, the City Council (the "City Council") of the City of Salinas (the "City") has previously determined to acquire and construct certain golf course and animal shelter improvement projects of the City consisting of the improvement of a nine hole facility known as Twin Creeks Golf Course (the "Project"), and related improvements located on land leased from Monterey County at 1551 Beacon Hill Drive in the City, the improvement and reconstruction of the Salinas Fairways eighteen hole golf facility and the construction, equipping, furnishing and improvement of an approximately 10,000 square foot animal shelter facility; and

WHEREAS, in order to accomplish the financing of these projects, the City and the Salinas Public Financing Authority (the "Authority") have entered into that certain Lease Agreement, by and between the City and the Authority (the "Lease Agreement"), dated as of February 1, 1999 and the City and the Authority have caused those certain \$14,315,000 Certificates of Participation (Golf Course and Animal Shelter Projects) Series A of 1999 (the "1999 Certificates") to be executed and delivered pursuant to a Trust Agreement, to be dated as of February 1, 1999, by and among BNY Western Trust Company, as trustee (the "Trustee"), the City and the Authority (the "Trust Agreement"); and


WHEREAS, for valid public purposes, the City Council desires to refinance the portion of the 1999 Certificates attributable to the Project and to sublease the Twin Creeks Golf Course to Future Citizen's Foundation, a California non-profit public benefit corporation ("Future Citizen's") pursuant to a Sublease Agreement for Operation of Youth Golf Learning Center approved by action of the City Council on August 24, 2004 (the "Sublease"), as modified herein, which Sublease is to be guaranteed by Monterey Peninsula Foundation; and

WHEREAS, pending receipt from Future Citizen's of adequate assurance that its operation of the Project pursuant to the Sublease will not adversely affect the federal tax status of the interest paid with respect to the Certificates, the City has previously rescinded its previous approval of the Sublease and provided for the operation of the Project by Future Citizen's pursuant to a new Sublease (the "Interim Sublease"), which shall be on substantially the same terms as the Sublease, but for a term of 120 days from inception subject to (1) extension in the sole discretion of the City for a term not to exceed the term (twenty years) of the Sublease, and (2) termination by Future Citizen's on substantially the same terms as the Sublease; and whereas, the City Council extended the term of the sublease for an additional 120 day term, from March 1 through June 30, 2005; and whereas, the City Council wishes to extend the term of the sublease for an additional 120 day term, from July 1 through October 31, 2005.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Salinas that:

The City Manager is authorized to extend the Interim Sublease between the City and Future Citizen's/First Tee for the operation of Twin Creeks Golf Course and Youth Golf Learning Center an additional 120 day, commencing on July 1, 2005.

ADOPTED, SIGNED AND APPROVED this 12th day of JULY 2005.



Mayor


AYES: Councilmembers Barnes, De La Rosa, Giuriato, Lutes, Ocampo,
Sanchez, and Mayor Caballero

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:



City Clerk

AGREEMENT

BY AND BETWEEN

CITY OF SALINAS

AND

FUTURE CITIZENS FOUNDATION
a California non-profit corporation

RELATED TO TWIN CREEKS MUNICIPAL GOLF COURSE SUBLEASE

AGREEMENT

BY AND BETWEEN

CITY OF SALINAS

AND

FUTURE CITIZENS FOUNDATION,

A CALIFORNIA NON-PROFIT CORPORATION

RELATED TO TWIN CREEKS MUNICIPAL GOLF COURSE SUBLEASE

This **SERVICES AGREEMENT** ("Agreement") is made by and between the **CITY OF SALINAS**, a California municipal corporation ("CITY"), and the **FUTURE CITIZENS FOUNDATION**, a California non-profit corporation and licensee of the First Tee division of the World Golf Foundation, dba **THE FIRST TEE OF MONTEREY COUNTY** ("TFTMC").

RECITALS

A. Pursuant to a Sublease Agreement for operation of Youth Golf Learning Center executed by TFTMC on November 5, 2004 ("Sublease Agreement") TFTMC subleases and operates the City's Twin Creeks Municipal Golf Course ("Twin Creeks") for a youth character development program through the operation of a youth golf facility and learning center and fee based public golf course.

B. Pursuant to the Sublease Agreement, TFTMC agrees to provide a youth golf facility and learning center operation which compares favorably to the services, standards and practices of similar youth character development programs as set forth in the Sublease Agreement.

C. Pursuant to Section 15.03 of the Sublease TFTMC may terminate the Sublease Agreement on twelve months prior notice (the "Termination Right") and has given notice of such termination to be effective June 30, 2012, based on financial hardship associated with the Sublease Agreement.

D. In exchange for the agreement of TFTMC to rescind its current notice of termination and to not exercise its right to give notice of termination of the Sublease Agreement prior to July 1, 2014 for any period on or after July 1, 2015 the CITY wishes to agree that the payments under the Sublease shall be reduced to \$125,000 per year for the period from July 1, 2012 through June 30, 2015, as set forth below.

NOW, based on the Recitals, which are a substantive part of this Agreement, and agreed mutual consideration, CITY and TFTMC agree as follows:

1. FORBEARANCE TERMINATION. (a) In exchange for the adjustment for the rental payment described in subsection (b) hereof, TFTMC agrees that it shall not exercise its right to terminate the Sublease Agreement pursuant to Section 15.03 of the Sublease Agreement for any period prior to July 1, 2015. (b) In exchange for the forbearance described in subsection (a), pursuant to Section 4.02 of the Sublease Agreement, for the period from July 1, 2012 through

June 30, 2015, rent shall be payable in semi-annual installments at the rate of \$62,500 twice annually (and not at the rate of \$287,500.00 as set forth in Section 4.02).

2. IMPACT ON SUBLEASE AGREEMENT. This Agreement is in addition to and separate from the Sublease Agreement and except as Sections 4.02 and 15.03 are expressly modified herein, no other terms or conditions of the Sublease shall be affected hereby. Except as modified hereby, the parties hereunder shall remain bound by the terms of the Sublease Agreement to the full extent thereof.

3. REPRESENTATIONS AND WARRANTIES OF TFTMC. TFTMC makes the following representations and warranties to CITY. These representations and warranties are ongoing and TFTMC shall advise ADMINISTRATOR in writing if there is any change pertaining to any matters set forth or referenced in the following Subparagraphs 10.1 through 10.6, inclusive.

3.1 No Conflict. To the best of TFTMC's knowledge, TFTMC's negotiation, consideration and action on this Agreement and TFTMC's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which TFTMC is a party or by which it is bound.

3.1.1 TFTMC agrees that no officer, employee, agent or assignee of CITY having direct or indirect control of any monies allocated by CITY, inclusive of the subject funds, shall serve as an officer or director of TFTMC without the express written acknowledgement of CITY.

3.1.2 Further, any conflict or potential conflict of interest of any officer or director of TFTMC shall be fully disclosed in writing prior to the execution of this Agreement and shall be attached to and become a part of this Agreement.

3.1.3 TFTMC is in full compliance with its obligations under the Sublease Agreement and no event has occurred which, but for the giving of notice or lapse of time, or both would constitute an event of default thereunder.

4. GENERAL TERMS AND CONDITIONS.

4.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance in accordance with the laws of the State of California. Legal actions concerning any default, dispute, interpretation, declaration of rights, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Monterey, State of California, or any other appropriate court in the county, and TFTMC covenants and agrees to submit to the personal jurisdiction of the court in the event of any action.

4.2 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

4.3 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the non-prevailing party.

4.4 Time of Essence. Time is of the essence in the performance of this Agreement.

4.5 No Broker or Finders Fee. TFTMC warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

4.6 No Bankruptcy. TFTMC is not the subject of any current or threatened bankruptcy.

4.7 No Pending Legal Proceedings. TFTMC is not the subject of a current or threatened litigation that would or may materially affect TFTMC's performance under this Agreement.

4.8 No Pending Investigation. TFTMC is not aware that it is the subject of any current or threatened criminal or civil action investigation by any public agency, including without limitation a police agency or prosecuting authority, related, directly or indirectly, to the provision of Services under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS, CITY and TFTMC have executed this Agreement in the County of Monterey, State of California.

CITY

CITY OF SALINAS, a municipal corporation

Dated: _____

By: _____
Mayor

Attest:

By: _____
City Clerk

APPROVED AS TO FORM:

Vanessa Vallarta, Esq.

By: _____
City Attorney

[Signature block for TFTMC on next page.]

[Signature block continued from previous page.]

TFTMC

a California non-profit corporation

Dated: _____

By: _____

Its: _____

By: _____

Its: _____

Accepted and Acknowledged:

By: _____
Monterey Peninsula Foundation
as Sublease Agreement Guarantor

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