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Ray J. Douch

REGISTER OF DEEDS, SARPY COUNTY, NE

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GOLF COURSE CONSTRUCTION AND LEASE/PURCHASE AGREEMENT

Between the

FIRST GOLF CORPORATION

As Lessor

And

CITY OF LA VISTA, NEBRASKA

As Lessee

Dated as of September 27, 1990

THIS GOLF COURSE CONSTRUCTION AND LEASE/PURCHASE AGREEMENT, dated as of September 27, 1990, by and between FIRST GOLF CORPORATION, a corporation duly organized and existing under the laws of the State of South Dakota as Lessor ("Lessor"), whose address is 857 Grant Street, Denver, Colorado 80203, and the CITY OF LA VISTA, NEBRASKA, a municipal corporation and political subdivision of the State of Nebraska as Lessee ("City"), whose address is 8116 Park View Boulevard, Omaha, Nebraska 68128.

W I T N E S S E T H:

WHEREAS, City is authorized by law to establish, acquire and operate, or cause to be operated on its behalf, a municipal golf course; and

WHEREAS, City is authorized by law to lease and purchase and otherwise acquire property necessary for such purposes; and

WHEREAS, City and Lessor have entered into a Ground Lease Agreement of even date herewith (the "Ground Lease"), whereby City has leased certain land of the City described therein (the "Land") to Lessor for a term set forth therein; and

WHEREAS, City has determined that it is necessary and desirable to sublease the Land and to lease and acquire the improvements described in the attached Exhibit "A" (the "Improvements") in order to provide facilities needed to carry out its purposes, all pursuant to this Agreement; and

WHEREAS, Lessor is willing to sublease the Land from City, to construct and finance the Improvements and sublease the Land and lease and sell the Improvements (together, the "Project") to City, pursuant to this Agreement;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Agreement or Lease: This Golf Course Construction and Lease/Purchase Agreement, and any duly authorized and executed amendment hereto.

Architect: Wyss Associates Incorporated, or any recognized design professional with expertise in projects similar to the

Project as may be selected by Lessor with respect to the Improvements and approved by City.

Certificate of City: A certificate in the form attached hereto as Exhibit "D" executed by the officer of City named therein.

City Representative: The City Administrator or any person authorized by law to act on behalf of the City under or with respect to this Agreement, as evidenced by a certificate conferring such authority executed by the Mayor and City Clerk and given to Lessor or a Lessor Representative and the Escrow Agent.

Code: The United States Internal Revenue Code of 1986, as now or hereafter amended, and the regulations and revenue rulings and procedures issued pursuant thereto from time to time.

Completion and Acceptance Certificate: A certificate in the form attached hereto as Exhibit "C" executed by City and the Architect, stating that the Improvements (or a designated portion thereof) have been completed in accordance with the Plans and Specifications and accepted by City.

Completion Date: With respect to the Improvements, the date upon which a Completion and Acceptance Certificate is issued with respect thereto by City.

Costs or Project Costs: All capital costs incurred for the acquisition, construction and installation of the Improvements, and certain financing costs and Capitalized Rental Payments, the types and estimated amounts of which are as shown in Exhibit "A" to the Escrow Agreement.

Escrow Agent: The Bank of Nebraska, acting pursuant to the Escrow Agreement.

Escrow Agreement: The Escrow Agreement dated as of the date hereof, by and between Lessor, City and the Escrow Agent, and any duly authorized and executed amendment thereto.

Fiscal Year: Each twelve month fiscal period of City commencing on August 1 of any year and ending on July 31 of the following year.

Government Obligations: Direct obligations of, or obligations the payment of principal and interest on which is unconditionally guaranteed by the United States of America.

Ground Lease: The Ground Lease Agreement authorized by City Ordinance No. 509, by and between City and Lessor, whereby City has leased the Land to Lessor.

Improvements: The improvements to be designed, acquired, constructed and installed in accordance with the Plans and Speci-

fications and this Agreement, which are generally described in the attached Exhibit "A," and any other improvements constructed pursuant to this Agreement.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor, City or an assignee thereof.

Interest: The portion of any Rental Payment designated as interest in the attached Exhibit "B."

Land: The real property described in the attached Exhibit "A" upon which a portion of the Improvements are to be constructed.

Lessor Representative: The President or any Vice President of Lessor or any other person authorized to act on behalf; of Lessor under or with respect to this Agreement, as evidenced by a certificate conferring such authority executed by the President or any Vice President of Lessor, given to City or a City Representative and the Escrow Agent.

Net Proceeds: Any insurance proceeds or condemnation award paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

Opinion of Bond Counsel: A written opinion of an attorney or firm of attorneys, acceptable to Lessor and City, with nationally recognized expertise in municipal tax-exempt finance.

Payment Date: The date upon which any Rental Payment is due and payable as provided in the attached Exhibit "B."

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which City may, pursuant to provisions of Article VII hereof, permit to remain unpaid; (ii) this Agreement; (iii) the Ground Lease; (iv) any mechanic's laborer's, materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law or being contested in accordance with the terms of this Agreement; (v) the following easements and restrictions:

- a. Relocated outfall sewer for Thompson Creek.
- b. Agreements with the State of Nebraska Department of Water Resources and State of Nebraska Natural Resources Commission (administered by Papio Natural Resource District) for construction and maintenance of a water detention facility.
- c. Reserved easement rights to the City of La Vista for the following:

- (i) All existing storm sewers flowing from perimeter of the land into Thompson Creek;
- (ii) Reserved rights to the City of La Vista to construct storm and sanitary storm sewer extensions to serve property adjacent to the south boundary of the land, the exact location of which is to be determined by City Engineer.
- d. Existing easements to William Brothers Petroleum Pipeline, Omaha Public Power District electrical transmission line and Northwestern Bell Telephone Company telephone lines.
- e. Existing sewer along the northerly edge of the property.

said existing easements and reserved rights-of-way, to the best of City's knowledge, being identified on the "La Vista Executive Golf Course Rough Grading Plan" dated June 29, 1990, prepared by Wyss Associates, Incorporated; (vi) such additional easements as City may require from time to time but which shall not prevent the continued use of buildings or greens to be constructed; and (vii) utility, pipeline and drainage notices and easements of record.

Plans and Specifications: Architectural and engineering drawings and specifications prepared by the Architect and approved by City describing the Improvements and any changes therein similarly approved.

Principal: The portion of any Rental Payment not designated as Interest in the attached Exhibit "B."

Project: The Land and the Improvements.

Project Acquisition Fund: The fund designated as the "Project Acquisition Fund" and established by the Escrow Agent pursuant to the Escrow Agreement.

Rental Payment: Any payment due from City to Lessor under Section 6.1 of this Agreement.

State: The State of Nebraska.

State and Federal Law or Laws: The Constitution and laws of the State, and any ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

Term of the Agreement; Agreement Term; Term of the Lease: The period during which this Lease remains in effect as specified in Sections 5.1 and 5.2.

Section 1.2 Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: A description of the Land and the Improvements being leased and purchased by City from Lessor pursuant to this Agreement.

Exhibit B: The schedule of Rental Payments to be paid by City to Lessor, showing the date and amount of each Rental Payment and the amount thereof comprising Interest; and showing as of each applicable Payment Date the price at which City may exercise its option to purchase Lessor's interest in the Project in accordance with Article X.

Exhibit C: A form of Completion and Acceptance Certificate to be executed by City and the Architect, evidencing that the Improvements (or a specified portion of them) have been completed in accordance with the Plans and Specifications and this Agreement and that the Project (or a specified portion of it) has been accepted by City.

Exhibit D: A form of Certificate of City certifying various facts concerning the Agreement, the Project and related matters.

Exhibit E: A form of opinion of counsel to City relating to the organization, nature and powers of City; the validity, execution and delivery of this Agreement, the Escrow Agreement and the Ground Lease; the absence of litigation; and related matters.

Exhibit F: A form of Certificate of City certifying various facts concerning arbitration and other tax matters.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of City. City represents, covenants and warrants as follows:

(a) City is a duly formed and validly existing municipal corporation and political subdivision of the State, governed by the Constitution and laws of the State and the ordinances of the City.

(b) The Constitution and the laws of the State and ordinances of the City, authorize City to establish, acquire, construct, operate and maintain the Project; to enter into this Agreement, the Escrow Agreement and the Ground Lease and the transactions contemplated hereby and thereby, and to carry out its obligations under this Agreement, the Escrow Agreement and the Ground Lease.

(c) The officers of City executing this Agreement, the Escrow Agreement and the Ground Lease have been duly authorized to execute and deliver this Agreement, the Escrow Agreement and the Ground Lease under the terms and provisions of an ordinance or ordinances of City's governing body or by other appropriate official action.

(d) To the extent required, City has complied with all open meeting and public bidding laws and all other State and Federal Laws applicable to this Agreement, the Ground Lease, the Escrow Agreement and the acquisition of the Project by City.

(e) Except as provided under the terms of this Agreement, City will not transfer, lease, assign, mortgage or encumber the Project.

(f) City will use the Project during the Agreement Term only as a public golf course and for such related uses and other recreational uses as will not materially interfere with its use or ability to generate revenues as a public golf course.

(g) Upon the execution of this Agreement, City will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit "E."

(h) During the Term of the Agreement, City will not knowingly take any or permit any of its officers to take any action with respect to this Agreement or the Project which would cause Interest to become includable in gross income under the Code, and will take all actions necessary to ensure that Interest remains not includable in gross income under the Code, insofar as it has the power and authority to take such actions. City's failure to appropriate funds or any termination of this Agreement resulting therefrom shall not constitute a breach of this covenant.

(i) Unless the City shall have received an Opinion of Bond Counsel stating that such action will not adversely affect the tax-exempt status of the Interest, the City shall not enter into any contract with a non-governmental person for the management or operation of the Project unless such contract meets the following requirements or such alternative requirements as may be imposed by the Code or regulations thereunder: (i) the term of such contract (including renewal options) does not exceed five (5) years; (ii) the City has the option to cancel such contract at the end of the three (3) year period; (iii) the manager under the contract is not compensated (in whole or in part) on the basis of the share of net profits; and (iv) at least fifty percent of the annual compensation of the manager under such contract shall be based upon a periodic fixed fee.

(j) There exists in respect to certain lots restrictive covenants expiring January 1, 1993, limiting said lots to single family residential use, which if attempted to be enforced, City will extinguish through eminent domain.

(k) City is a governmental unit with general taxing powers; no portion of this Agreement constitutes a "private activity bond;" 95% or more of the net proceeds of the Agreement will be used for local governmental activities of City; and the aggregate face amount of all tax-exempt obligations (other than "private activity bonds") to be issued by City in calendar year 1990 is not reasonably expected to exceed \$5,000,000.

(l) Upon the execution of this Agreement, City will provide to Lessor a certificate in the form attached hereto as Exhibit "F."

(m) During such time as City shall be in default of Rent Payments hereunder, City will not, except to repay City's General Fund for prior transfers thereto, transfer any money from its golf course enterprise fund to any other fund of City or use any money in the golf course enterprise fund for other than golf course purposes.

Section 2.2 Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:

(a) Lessor is a corporation duly organized, existing and in good standing under the laws of the State of South Dakota; is duly qualified to transact business and hold property in the State; has full and complete power to enter into this Agreement, the Ground Lease and the Escrow Agreement and to enter into and carry out the transactions contemplated hereby and thereby, and to carry out its obligations under, this Agreement, the Ground Lease and the Escrow Agreement; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Agreement, the Ground Lease and the Escrow Agreement.

(b) Neither the execution and deliver of this Agreement, the Ground Lease or the Escrow Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor except Permitted Encumbrances.

(c) Upon exercise by City of its option to prepay all Rental Payments pursuant to Article X hereof, Lessor will deliver to City all documents which are or may be necessary to vest all of Lessor's right, title and interest in and to the Project in City, and will release all liens and encumbrances in favor of Lessor created under this Agreement, the Ground Lease or the Escrow Agreement with respect to the Project, as provided in Article X.

ARTICLE III

PROJECT CONSTRUCTION AND COST

Section 3.1 Lessor's Design and Construction of Golf Course.

Lessor promises and agrees that it will design and build a fully irrigated, first rate, nine (9) hole executive golf course equaling or exceeding United States Golf Association (USGA) specifications for new golf course development, with design life of original greens, tees and fairways to be in accordance with USGA design specifications, but in no event for less than thirty (30) years, said Project is to be a fully "turnkey" operation, except for golf carts and mowers and similar movable machinery, all to be constructed/installed in conformity with plans and specifications prepared by or for Lessor and approved by City prior to Lessor's execution of contracts for such construction. The course shall be ready for play by June 15, 1991, if seeding is possible in fall of 1990, and if not, shall be ready for play by September 15, 1991. Lessor agrees to design the Improvements as aforesaid and to cause the Project to be constructed in accordance with the Construction Contract Documents and in compliance with federal, state and local laws, ordinances and regulations applicable to the construction of the Improvements. As used herein "Construction Contract Documents" shall mean Lessor's proposal for construction, this Agreement, Plans and Specifications approved by City, and the American Institute of Architects (AIA) Document A201-1976 'General Conditions of the Contract for Construction,' with modifications thereof as approved by City.

Section 3.2 City's Acceptance.

City shall accept the Improvements after completion of all Improvements in accordance with the Construction Contract Documents to the satisfaction of City, and grass tees, greens and fairways and other grassed areas are in sufficiently good condition and of sufficient grass maturity to be suitable for continuous public play. City may at its option inspect and accept the work just prior to seeding, in which event City shall have responsibility for grass maturation after the first watering, which will be performed by Lessor, and City shall be paid the sum of \$55,000.00 from the Project Acquisition Fund as compensation for the grass maturation phase of the Project. City's taking possession of the Project, in whole or in part, prior to the time the completion as aforesaid shall in no way release Lessor from its obligation to fully complete the

Project. City's acceptance of the work shall not constitute a waiver of claims of the City arising from (1) unsettled construction liens; (2) faulty or defective work not corrected at time of acceptance or appearing after final acceptance; (3) failure of the Project or the work and/or materials therein incorporated to comply with the requirements of the Construction Contract Documents; and (4) terms of any special warranties required by the Construction Contract Documents.

Section 3.3 Maintenance Guarantee. Lessor guarantees that if within one (1) year after City's acceptance of the Improvements or within such longer period of time as may be prescribed by the terms of any special warranty required by the Construction Contract Documents, any of the work is found by City's consulting Engineer to be defective or not in accordance with the Construction Contract Documents, that Lessor shall correct it promptly, after receipt of written notice from the City to do so.

Section 3.4 City shall exercise due care in the use, operation and maintenance of the Project, and shall not install, use, operate or maintain the Project improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. City shall obtain all permits and licenses necessary for the operation, possession and use of the Project. City shall comply with all State and Federal Laws applicable to the use, possession and operation of the Project, and if compliance with any such State and Federal Law requires changes or additions to be made to the Project, such changes or additions shall be made by City at its expense, unless such change or additions are the result of error or omissions in the original design.

Section 3.5 Project Cost; Payment of Cost. Lessor agrees with City that the Project Cost payable by City under such design and construction contract, the establishment of the Construction Contingency Fund under Paragraph 3.6, financing costs associated therewith, and payment of the full amount of Rental Payments coming due on or before April 1, 1993 (said Rental Payments totaling \$341,000), shall not exceed \$1,541,242, plus investment proceeds earned on the Project Acquisition Fund. Lessor and City agree that, in order to ensure that money sufficient to pay such Project Cost will be available for this purpose when required, within thirty (30) days following the date of execution of this Lease, Lessor shall deposit or cause to be deposited in the Project Acquisition Fund the sum of \$1,541,242, plus interest accrued on the total principal from October 1, 1990 to the date of such deposit. \$303,614 of said \$1,541,242 shall be allocated to Capitalized Rental Payments and \$62,300 shall be allocated to the separate Construction Contingency Fund provided for in paragraph 3.6. City reserves the right to modify or add items to the Project as listed on Exhibit "A"; however, any material changes to Exhibit "A" shall be subject to the written approval of Lessor, which written approval shall not be unreasonably withheld. No

such change in the Project shall increase the amount of money required to be deposited by City pursuant to this Section 3.5, or alter the Rental Payments or Prepayment Prices listed on Exhibit "B," but if any City directed change increases the Project Cost beyond the amount available in the Project Acquisition Fund to pay it, City shall promptly authorize the Escrow Agent to expend an amount of the Construction Contingency Account sufficient to pay such excess Project Cost.

The monies on hand from time to time in the Project Acquisition Fund held by the Escrow Agent shall be made available to Lessor for payment of the Project Cost, in the manner provided in the Escrow Agreement. In the event the monies in the Project Acquisition Fund are not sufficient to pay the entire Cost of the Project, including financing costs and Capitalized Rental Payments, the City shall not be required to provide additional monies for any such purpose, but Lessor shall look solely to the Project Acquisition Fund and City shall have no liability to Lessor in respect to such deficiency. Payment of additional construction cost shall be approved by the Architect and shall not alter the Rental Payments or Prepayment Prices listed on Exhibit "B."

Section 3.6 Construction Contingency Fund. The \$62,300 Construction Contingency shown on Exhibit "A" hereto is for the purpose of funding the additional cost of City initiated changes in design after City's approval of the Plans and Specifications, payment of Work, the responsibility for construction of which shall have been agreed to be that of City, and for payment (or reimbursement to City for prior advances of) City engineering, legal and architectural consulting fees incurred in connection with the Project and other City Project related costs.

Section 3.7 Lessor's Labor and Material Payment Bond. Lessor shall provide at its own expense the labor and material payment bond required by §52-118.02 of the Nebraska Statutes. Said bond shall be in the amount of not less than \$1,001,425.00.

ARTICLE IV

AGREEMENT TO LEASE

Section 4.1 Lease. Lessor hereby leases and sells the Project to City, and City hereby leases and purchases the Project from Lessor, upon the terms and conditions set forth in this Agreement.

Section 4.2 Possession and Enjoyment. Subject to compliance by City with the Ground Lease and the provisions of this Agreement, Lessor hereby covenants with respect to the Project, to provide City during the Term of the Agreement with quiet use and enjoyment of the Project, and City shall during such Agreement Term peaceably and quietly have and hold and enjoy the Project, without suite, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Lessor will, at the re-

quest of City and at City's cost, join in any legal action against a third party in which City asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so. Lessor shall have the right to enter in and upon the Project as provided in Section 4.3.

Section 4.3 Lessor Access to Project. City agrees that Lessor and any Lessor Representative shall have the right at all reasonable times to enter upon and to examine and inspect the Project. City further agrees that Lessor and any Lessor Representative shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by City to perform its obligations hereunder, or to carry out Lessor's obligations and exercise Lessor's rights under Article XII, or to determine whether City is in compliance with this Agreement.

ARTICLE V

TERM OF LEASE

Section 5.1 Term of Lease. This Lease shall be and remain in effect with respect to the Project for a Lease Term commencing on the date hereof and continuing until terminated as provided in Section 5.2

Section 5.2 Termination of Lease Term. The Term of the Lease will terminate upon the occurrence of the first of the following events:

- (a) the termination by the City of its obligation to make any further Rental Payments in accordance with Section 6.4;
- (b) the exercise by the City of its option to prepay all Rental Payments pursuant to Article X;
- (c) a default by the City and Lessor's election to terminate this Lease pursuant to Article XII; or
- (d) the payment by the City of all Rental Payments required to be paid by the City hereunder.
- (e) a default under the Ground Lease by Lessor herein (the Lessee in the Ground Lease) and City's election to exercise its remedies under Section 4.02 thereof.

ARTICLE VI**RENTAL PAYMENTS**

Section 6.1 Rental Payments. City shall pay Rental Payments with respect to the Project at the times and in the amounts as set forth in Exhibit "B". Interest with respect to each Rental Payment on each Payment Date and the total Rental Payment on each Payment Date will be adjusted on the eighth and the fifteenth anniversaries of the date of this Agreement (the Interest Rate Adjustment Dates) to reflect an annual interest rate on the remaining Principal equal to the sum of (i) the weekly Bond Buyer 20 Bond Index as set forth in the edition of The Bond Buyer published on the date which is most immediately prior to that date which is forty-five days before each Interest Rate Adjustment Date, and (ii) 1.60%. Lessor shall notify City of the new interest rate and prepare a revised Exhibit "B" to this Agreement within five (5) days after the determination of the new interest rate. City shall be entitled to a credit against such Rental Payments at the times and in the amounts, and determined in accordance with, the Escrow Agreement. The Rental Payments shall be payable to Lessor at its address specified herein, or to such other person or entity and at such other address as Lessor may designate by written notice to City, in lawful money of the United States of America.

Section 6.2 Current Expense. The obligations of the City under this Lease, including its obligation to pay the Rental Payments due with respect to the Project in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of the City for such Fiscal Year and shall not constitute an indebtedness of the City within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by the City of any taxes or other monies, other than monies lawfully appropriated from time to time by or for the benefit of the City in its annual budget and the Net Proceeds of the Project, to the payment of any Rental Payment or other amount coming due hereunder; and provided further that City shall not pledge any of the gross revenues or net revenues of the Project for the payment of any obligation or indebtedness of the City.

Section 6.3 Rental Payments to be Unconditional. Except as provided in Section 6.4, the obligation of the City to make Rental Payments due with respect to the Project or any other payments required hereunder shall as to any assignee for value of Lessor be absolute and unconditional in all events from and after Lessor's completion and City's acceptance of the Improvements. Notwithstanding any dispute between the City and Lessor or any other person, the City shall, after its said acceptance of the Improvements, make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute and City shall not, as against any assignee for value of Lessor, assert any right

of set-off or counterclaims against its obligation to make such Rental Payments or other payments required under this Lease. After City's said acceptance, the City's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, the City may institute such legal action against Lessor as the City may deem necessary to compel the performance of such obligation or to recover damages therefor.

Section 6.4 Termination of Rental Payment Obligation. The City shall have the right to cancel and terminate this Lease, in whole but not in part, at the end of any Fiscal Year of the City, in the manner and subject to the terms specified in this Section and Section 6.6, if the City is not authorized by law to appropriate or does not appropriate monies sufficient to pay the Rental Payments coming due in the next Fiscal Year. Lack of a sufficient appropriation shall be evidenced by a specific provision in the City's budget for the Fiscal Year in question so stating. The City may effect such termination by giving Lessor a written notice of termination and by paying to Lessor any Rental Payments which are due and have not been paid at or before the end of its then current Fiscal Year. The City shall endeavor to give notice of termination not less than sixty (60) days prior to the end of such Fiscal Year, and shall notify Lessor of any anticipated termination. In the event of termination of this Lease as provided in this Section, the City shall deliver possession of the Project to Lessor in accordance with Section 12.3, and release its interest in the Improvements granted under this Lease within ten (10) days after the termination of this Lease.

Section 6.5 Intent to Continue Rental Payments; Appropriations. Without obligating itself to do so or in any way limiting its right of termination reserved in Section 6.4, the City declares that it presently intends to continue this Lease for its entire Term and to pay all Rental Payments required hereunder. The appropriate City Department Head and City Administrator will include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year, and will use all reasonable and lawful means to secure the appropriation of money for such Fiscal Year sufficient to pay the Rental Payments coming due therein. The City reasonably believes that monies in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated and made available for this purpose.

Section 6.6 Effect of Termination. Upon termination of the City's obligation to make Rental Payments as provided in Section 6.4, the City's then prospective obligations of every kind under this Agreement shall cease and City shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years, but if the City has not delivered possession of the Project to Lessor in accordance with Sec-

tion 12.3 and conveyed to Lessor or released its interest in the Land and Improvements granted under this Lease within ten (10) days after the termination of this Lease, the termination shall nevertheless be effective, but the City shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due under Exhibit "B" which are attributable to the number of days (including such ten (10) day period) during which the City fails to take such actions.

Section 6.7 Nonsubstitution. If this Agreement is terminated by the City in accordance with Section 6.4, the City agrees, to the extent permitted by law, not to purchase, lease or rent property to perform the same functions as, or functions taking the place of, those performed by the Project, and agrees, to the extent permitted by law, not to permit such functions to be performed by any agency or entity affiliated with or hired by the City, for a period of one year; provided however, that these restrictions shall not be applicable in the event Lessor shall sell its interest in the Project and the amount received from such sale, less all costs of such sale, is sufficient to pay the then applicable Prepayment Price as set forth in Exhibit "B"; or if or to the extent that the application of these restrictions would affect the validity of this Agreement.

ARTICLE VII

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 7.1 Maintenance and Modification of Project by City. From and after the Completion Date and so long as it has not been excluded from possession of the Project by Lessor or its assignee, the City shall, during the Term of the Agreement, at its own expense, maintain, preserve and keep the Project in good repair, working order and condition, and shall from time to time make all repairs, replacement and improvements necessary to keep the Project in such condition. Lessor shall have no responsibility for such maintenance or for any of these repairs, replacements or improvements. In addition, City shall, at its own expense, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Agreement. Such additions, modifications and improvements shall not in any way damage the Project nor cause it to be used for purposes other than those authorized under the provisions of State and Federal Law, and in a manner consistent with the requirements of the funding grants for the Water Detention Structure and related improvements; and the Project, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this

Section may be disposed of by City in such manner and on such terms as are determined by City in accordance with State law. City will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by City pursuant to this Section; provided that if any such lien is established and City shall first notify Lessor of City's intention to do so, City may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify City that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event City shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with City in any such contest, upon the request and at the expense of City.

Section 7.2 Taxes, Other Governmental Charges and Utility Charges. City shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project during the Term of the Agreement. If the Project shall become subject thereto, City shall also pay all property and excise taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project or any part thereof or the Rental Payments, and which become due during the Term of the Lease with respect thereto; and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease as and when the same become due. City shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon property.

City may, after notifying Lessor, at City's expense and in City's name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify City that, in the opinion of Independent Counsel, by nonpayment of any such items the interest

of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event City shall promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 7.3 Liability Insurance. From and after the Completion Date, unless self-insurance is provided by the City, as evidenced by a written certificate delivered to Lessor specifying that self-insurance will be provided in accord with applicable law, City shall procure and maintain continuously in effect with respect to the Project, insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Project or any part thereof, and Lessor will, at all times prior to Completion and City's Acceptance, cause all contractors to maintain similar insurance against all similar liabilities on their part. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds may be paid.

Section 7.4 Negligence. As between the City and Lessor, each assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of City or of third parties, and whether such property damage be to City's property or the property of others, which is proximately caused by their own negligent conduct or the negligent conduct of their officers, employees and agents; provided however, that nothing in this Article VII shall constitute a waiver by the City of any limitation on its liability established by statute or otherwise. Each hereby assumes responsibility for and agrees to reimburse the other for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the other that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the conduct of the other, to the maximum extent permitted by law.

Section 7.5 Property Insurance. From and after Completion Date and City's Acceptance, City shall have and assume the risk of loss with respect to the Project, and, unless self-insurance is provided by the City, as evidenced by a written certificate delivered to Lessor specifying that self-insurance will be provided in accord with applicable law, shall procure and maintain continuously in effect during the Term of the Lease with respect to the Project, to the extent of the full insurable value of all buildings of the Project, other than building foundations, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part

thereof damaged or destroyed and to pay the applicable portion of the Prepayment Price. City shall not be required to carry flood insurance. All policies (or endorsements or riders) evidencing insurance required in this Section shall be carried in the names of City and Lessor as their respective interests may appear and shall name Lessor as loss payee, and Lessor shall be provided with copies of such policies, endorsements or riders. The Net Proceeds of insurance required by this Section shall be applied as provided in Section 8.1.

Section 7.6 Worker's Compensation Insurance. If required by State law, and, unless self-insurance is provided by the City, as evidenced by a written certificate delivered to Lessor specifying that self-insurance will be provided in accord with applicable law, City shall carry Worker's Compensation Insurance covering all of City's employees on, in, near or about the Project, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of the Lease.

Section 7.7 Other Insurance and Requirements for All Insurance. All insurance required by this Article may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to both parties at least thirty (30) days before the cancellation or revision becomes effective; and shall name City and Lessor as insured parties. City shall deposit with Lessor or its assignee policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, City shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable, in which event such party shall notify the other party of this fact.

Section 7.8 Advances. If City shall fail to perform any of its obligations under this Agreement, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, provided however, that Lessor shall give the City reasonable notice before taking such action and shall not take any action with respect to a charge or lien that the City is contesting pursuant to the Provisions of this Agreement. City shall be obligated to repay all such advances on demand, with interest at the maximum rate permitted by law or 12% per annum, whichever is less, from the date of the advance to the date of repayment.

Section 7.9 Liens. City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Pro-

ject, other than the respective rights of Lessor and City as herein provided and Permitted Encumbrances. Except as expressly provided in this Article, City shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. City shall reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Nothing in this Section 7.9 shall require the discharge of any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, so long as the City, upon written notice to Lessor, shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings, unless Lessor shall notify the City that, in the opinion of Independent Counsel, failure to discharge such mortgage, pledge, lien, charge, encumbrance or claim shall subject the Project or any part thereof to loss or forfeiture, in which event the City shall promptly discharge the same.

ARTICLE VIII

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.1 Damage, Destruction and Condemnation. If after Completion and City's Acceptance (i) the Project or any portion thereof is destroyed or is damaged by fire or other casualty or (ii) title to or the temporary use of the Project or any part thereof, or the interest of City or Lessor in the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, City shall have the rights specified in this Section with respect to the Net Proceeds of any insurance or condemnation award and shall either: (i) apply such Net Proceeds to the prompt repair, restoration, modification or improvement of the Project by City, but City shall be obligated to continue to pay the Rental Payments due with respect to the Project, or; (ii) shall purchase the Project at the applicable Prepayment Price plus interest accrued to the date of exercise, in which event the Net Proceeds may be used for such purpose. Nothing in this section shall obligate the City to pay the cost of repair, restoration, any Rental Payment or Prepayment Price from any source other than Net Proceeds and lawful budget appropriation as set forth in Section 6.2.

Section 8.2 Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of the Project or to pay the applicable Prepayment Price, City shall either: (i) complete the work and pay any cost in excess of the amount of the Net Proceeds, and City agrees that if by reason of any such insufficiency

of the Net Proceeds, City shall make any payments pursuant to the Provisions of this Section 8.2, City shall not be entitled to any reimbursement therefor from Lessor nor shall City be entitled to any diminution of the Rental Payments due with respect to the Project; or (ii) pay any cost in excess of the amount of Net Proceeds necessary to exercise its option to purchase the Project at the applicable Prepayment Price plus interest accrued to the date of exercise. Nothing in this section shall obligate the City to pay the cost of repair, restoration, any Rental Payment or Prepayment Price from any source other than Net Proceeds and lawful budget appropriation as set forth in Section 6.2.

Section 8.3 Cooperation of Lessor. Lessor shall cooperate fully with City at the expense of City in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 8.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit City to litigate in any proceeding resulting therefrom in the name of and on behalf of Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of City.

ARTICLE IX

CITY'S EQUIPMENT; WARRANTIES

Section 9.1 Installation of City's Equipment. City may at any time and from time to time after the Completion Date, in its sole discretion and at its own expense, install items of movable machinery and equipment in or upon the Project, which items shall be identified by tags or other symbols affixed thereto or by other means of identification as property of City not included in the Project. All such items so identified shall remain the sole property of City, in which Lessor shall have no interest, and may be modified or removed by City at any time provided that City shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent City from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project.

Section 9.2 Installation and Maintenance of Project. Except in respect to Lessor's one (1) year maintenance guarantee period following Completion Date or as may otherwise be set forth in a written statement of Lessor, Lessor shall have no obligation to inspect, service or maintain the Project or any portion thereof

after Completion Date, but such actions shall be the obligation of City.

Section 9.3 Warranties. Lessor hereby assigns to City for and during the Term of the Agreement, all of its interest in all warranties and guarantees or other contract rights against any architect and any contractor, express or implied, issued on or applicable to the Project, and Lessor hereby authorizes City to obtain the customary services furnished in connection with such warranties and guarantees at City's expense.

ARTICLE X

OPTION TO PREPAY; DEFEASANCE

Section 10.1 Prepayment in Full, When Available. City shall have the option to prepay, without penalty, all remaining Rental payments on October 1, 1993, or at any time thereafter for the then applicable purchase option price ("Prepayment Price") set forth in Exhibit "B", in the manner provided in this Article.

Section 10.2 Exercise of Option. City shall give notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option is to be exercised, and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due and the applicable Prepayment Price as shown in Exhibit "B" less the amount on hand on such date in the Project Acquisition Fund. The closing shall be on the Payment Date on which the option is to be exercised at the office of Lessor.

Section 10.3 Release of Lessor's Interest. Upon exercise by City of its option to purchase, City shall have no further obligations under this Agreement and the Ground Lease and Lessor and its officers shall take all actions necessary to authorize, execute and deliver to City any and all documents necessary to vest in City, all of Lessor's right, title and interest in and to the Project, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens or interests created under the provisions of this Agreement or the Ground Lease.

Section 10.4 Defeasance. If and when the provision shall have been made for the payment of all remaining Rental Payments hereunder by the deposit of cash or by the deposit with an escrow agent of Government Obligations, none of which are subject to redemption prior to maturity, in an amount sufficient (together with interest earnings thereon) to provide for payment of said Rental Payments, and all administrative expenses shall have been paid or provided for, then, in either such event, the right, title and interest of City and Lessor under this Agreement shall there-

upon cease, terminate and become void, and Lessor shall assign and transfer to or upon the order of City property, money, investments and rights in the Project (in excess of the amounts required for the foregoing) then held by Lessor and the Escrow Agent (including the Agreement and all payments thereunder and all balances in the Project Acquisition Fund, if any) and shall execute such documents as may be reasonably required by City in this regard. All investments made pursuant to this Section shall be made in a manner which will not violate the provisions of Section 148 of the Code.

Section 10.5 Option to Make Partial Prepayment. City shall have the option to make, without penalty, partial prepayments of the principal portion of the Rental Payments on October 1, 1993, or any Payment Date, by paying in addition to the Rental Payment then due, such additional principal sums of not less than Ten Thousand Dollars (\$10,000) as the City may choose, provided City shall have given Lessor notice of City's intent to make such partial prepayment at least thirty (30) days prior to Payment Date on which the prepayment is to be made. Any such prepayment shall be applied against Rental Payments in inverse order of Payment Dates and Lessor shall recompute the then-remaining Rental Payments and reduce prospective interest by reason thereof.

Section 10.6 Computation of Prepayment Price. If Prepayment be made on any Payment Date, the prepayment price shall be the unpaid principal portion of remaining Rental Payments as of that date. If prepayment be made other than on a Payment Date, the prepayment price shall be the principal balance owing on the preceding Payment Date plus interest to date of prepayment at the appropriate applicable rate. There shall be no premium or penalty charged to City in respect to any prepayment on or after October 1, 1993.

ARTICLE XI

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1 Assignment by Lessor. Lessor shall not assign its obligations under this Agreement, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Agreement, the Rental Payments and other amounts due hereunder and the Project and may be reassigned in whole or in part in conjunction with assignment of Lessor's interest under the Ground Lease to one or more assignees or subassignees by Lessor or its assignee at any time, without the consent of City. No such assignment shall be effective as against City unless and until the assignor shall have filed with City. During the Agreement Term, City shall keep a complete and accurate record of all such assignments.

Section 11.2 Assignment and Subleasing by City. This Agreement may not be assigned or subleased by City without the written consent of Lessor.

Section 11.3 Restriction on Mortgage or Sale of Project by City. City will not mortgage, sell, assign, transfer or convey the Project or any portion thereof during the Term of the Agreement without the written consent of Lessor.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.1 Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement with respect to the Project, any one or more of the following events:

(a) Failure by City to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein and the continuation of said failure for a period of ten (10) business days after telegraphic or other written notice given by Lessor that the payment referred to in such notice has not been received, such telegraphic or other written notice, and if telegraphic, to be immediately confirmed in writing, or after written notice.

(b) Failure by City to observe and perform any covenant, condition or agreement on its part to be observed or performed other than as referred to in clause (a) of this Section, for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to City by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by City within the applicable period and diligently pursued until the default is corrected.

(c) The filing by City of a voluntary petition in bankruptcy, or failure by City promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of City to carry on its operations at the Project, or adjudication of City as a bankrupt, or assignment by City for the benefit of creditors, or the entry by City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to City in any proceedings instituted under the provisions of

the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: If by reason of force majeure City or Lessor is unable in whole or in part to carry out its obligations under this Agreement with respect to the Project, other than the obligation of City to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessor or City shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence of the force majeure inability, and the time for completion of the Project shall be extended to cover such delays. The term "force majeure" as used herein shall mean, without limitation, the following: Acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or the State of Nebraska, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessor or City and not resulting from its negligence. Lessor and City agree, however, to remedy with all reasonable dispatch the cause or causes preventing them from carrying out their obligation under this Agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of Lessor or City and they shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in their judgment unfavorable to them.

Section 12.2 Remedies on Default. Whenever any event of default referred to in Section 12.1 hereof shall have happened and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) With or without terminating this Agreement, reenter and take possession of the Land and the Improvements and exclude City from using it; provided however, that if this Agreement has not been terminated, Lessor shall return possession of the Land and the Improvements to City when the event of default is cured; and provided further that City shall continue to be responsible for the Rental Payments due with respect to the periods when the City is in possession of the Project; or

(b) With or without terminating this Agreement, reenter and take possession of the Land and the Improvements and sublease the Land and the Improvements or sell its leasehold interest therein for the remaining term of the Ground Lease

(or any portion thereof); provided however, that nothing contained herein shall impose an obligation upon Lessor so to sublease or sell its interest in the Land and the Improvements;

(c) With or without terminating this Agreement, declare all Rental Payments due or to become due during the then current Fiscal Year of the City to be immediately due and payable by City, whereupon such amount shall be immediately due and payable; or

(d) Take whatever action at law or in equity may appear necessary or desirable to collect the Rental Payments then due and thereafter to become due during the then current Fiscal Year of the City, or enforce performance and observation of any obligation, agreement or covenant of City under this Lease.

Nothing in this Section 12.2 shall create an obligation of the City to pay Rental Payments or any other amounts under this Lease other than as required by Article VI hereof.

Section 12.3 Return of Possession of the Project. Upon an Event of Default, City agrees that it will, at the request of Lessor, promptly deliver possession of the Land and the Improvements constructed thereon to Lessor in the condition, repair, appearance and working order required in Section 7.1.

Section 12.4 Delay; Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party to exercise any remedy reserved to it in this Agreement it shall not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 12.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right an power may be exercised from time to time and as often as may be deemed expedient. Nothing in this Section 12.5 shall create an obligation of the City to make Rental Payments or any other amount payable to Lessor from any source other than revenues pledged pursuant to Section 6.3 hereof.

Section 12.6 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party,

such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 12.7 Late Charges. Whenever any event of default referred to in Section 12.1, clause (a) hereof shall have happened and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal to twelve percent (12%) per annum of the delinquent Rental Payment, and City shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; but only from the sources set forth in Section 6.3 and provided, however, that this Section 12.8 shall not be applicable if or to the extent that the application thereof would affect the validity of this Agreement.

ARTICLE XIII

TITLE

Section 13.1 Title. During the Term of the Agreement, legal title to the Project and any and all repairs, replacements, substitutions and modifications to it shall be in City, subject to Lessor's interest therein granted by the Ground Lease. City shall not permit any lien or encumbrance of any kind to exist against the title to the Project, other than Permitted Encumbrances. Upon termination of this Agreement for the reasons specified in Section 5.2, clauses (b) and (d), full and unencumbered legal title to the Project shall be in City, and Lessor shall execute and deliver to City such documents as City may request to evidence the termination of Lessor's interest in the Project created under the Agreement and the Ground Lease.

Section 13.2 Release of Land. The City and the Lessor agree to release from this Agreement and from the Ground Lease certain portions of the Land, but only in compliance with State law and upon the conditions hereinafter set forth:

(a) The City shall provide to the Lessor a written certification from an independent architect certifying that the (i) portion of the Land to be released is not then needed and is not reasonably expected to be needed during the term of the Agreement for the operation and maintenance of the Project; and (ii) the proposed use of such portion of the Land will not adversely affect the operation of or the revenues derived from the Project;

(b) If such portion of the Land is sold by the City to any third party, the City shall certify that it reasonably believes that the sale price is the market value of such land and the proceeds of such sale, less any direct expenses of the City, shall be paid to Lessor and used to prepay a portion of Principal in inverse order of Payment Dates and

Lessor shall recompute the remaining Rental Payments so as to credit the principal balance and reduce their prospective interest by reason thereof; and

(c) If the City uses such portion of the Land for its own purposes, it shall pay to Lessor an amount equal to the appraised value of such portion of the Land which amount shall be used to prepay a portion of Principal in inverse order of Payment Dates and Lessor shall recompute the remaining Rental Payments so as to credit the principal balance and reduce their prospective interest by reason thereof.

Section 13.3 No Merger. There shall be no merger of this Agreement or of the leasehold estate hereby created with either the Ground Lease or the fee estate in the Land by reason of the fact that the same person acquires or holds, directly or indirectly, this Agreement or the leasehold estate hereby created or any interest herein or in such leasehold estate as well as either or both (a) the Ground Lease or the leasehold estate thereby created or any interest in the Ground Lease or such leasehold estate or (b) the fee estate and the Land or any interest in such fee estate.

Section 13.4 Security Interest. Lessor shall have and retain a security interest under the Uniform Commercial Code in the Improvements, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof, in order to secure City's payment of all Rental Payments due during the Term of this Agreement and the performance of all other obligations herein to be performed by City. City will execute such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Improvements.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 14.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the earlier of (i) delivery or (ii) three days following deposit in the United States mail in certified or registered form with postage fully prepaid to the addresses shown in the first paragraph hereof. Lessor and City, by notice given hereunder, may designate difference addresses to which subsequent notices, certificates or other communications will be sent.

Section 14.2 Binding Effect. This Agreement shall insure to the benefit of and shall be binding upon Lessor and City and their respective successors and assigns.

Section 14.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 14.4 Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by City and Lessor.

Section 14.5 Further Assurances and Corrective Instruments. Lessor and City agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be or for carrying out the expressed intention of this Agreement.

Section 14.6 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.8 Lessor and City Representatives. Whenever under the provisions of this Agreement the approval of Lessor or City is required, or Lessor or City is required to take some action at the request of the other, such approval of such request shall be given for Lessor by a Lessor Representative and for City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 14.9 Approvals Not to be Unreasonably Withheld. Whenever under the provisions of this Agreement the approval of Lessor or City is required, such approval shall not be unreasonably withheld.

Section 14.10 Financing Costs Not Considered Construction Costs. Professional fees of Bond Counsel, Independent Counsel and other professional fees and costs of financing incurred by Lessor, except architects' fees, shall for the purposes of this Agreement be deemed to be costs of Lessor's financing and shall not be costs chargeable to the project or paid out of the Project Acquisition Fund, but shall be paid independently of this Agreement by Lessor and/or its financier. The fees of the Architect shall be paid from the Project Acquisition Fund to the extent of actual charges related to the Project, not exceeding the amount reserved in Exhibit "A" hereto for that purpose.

Section 14.11 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

On this 27th day of September, 1990, before me, a Notary Public in and for said county, personally appeared Harold Anderson and Dorothy McGinnis, known to me to be the Mayor and City Clerk/Treasurer, respectively, of the City of La Vista, Nebraska; that the seal affixed to the foregoing instrument is the corporate seal of the City; and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and notarial seal the day and year last above written.

Pamela M. Morton
Notary Public

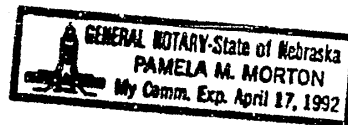


EXHIBIT "A"
TO
GOLF COURSE CONSTRUCTION AND LEASE/PURCHASE AGREEMENT

Part I Legal Description of the Premises:

Lots 879 and 880, Lots 1010 thru 1013 inclusive, Lots 1302 thru 1311 inclusive, Lots 1340 thru 1352 inclusive, Lots 1355 thru 1440 inclusive, and part of Out Lots 1923 thru 1925 inclusive, in La Vista, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, together with a part of the adjoining streets, all more particularly described as follows: Beginning at the SW corner of said Lot 1369: thence N5°08'33"E on the West line of said Lots 1364 thru 1369 inclusive, 319.00 feet (plat) 317.73 feet (measured); thence N5°36'59"W on the West line of said Lots 1360 thru 1364 inclusive, 273.5 feet (plat) 272.42 feet (measured); thence N0°10'38"E on the West line of said Lots 1356 thru 1360 inclusive, 400.00 feet (plat) 398.42 feet (measured); thence S89°49'22"E, 8.00 feet (plat and measured); thence N01°49'56"E on the West line of said Lots 1355 and 1356, 196.85 feet (plat) 205.74 feet (measured) to the Southwest corner of Lot 1354, said La Vista; thence S89°50'31"E on the South line of Lot 1354, said La Vista, 143.88 feet (plat) 140.36 feet (measured) to the Southeast corner of Lot 1354, said La Vista; thence Northeasterly on the Easterly curved line of Lot 1354, said La Vista on a curve to the right (radius being 675.56 feet, chord bearing N16°43'49"E, chord distance 170.96 feet) an arc distance of 171.42 feet (plat and measured) to a point of reverse curve; thence Northeasterly on the Easterly line of Lot 1354, said La Vista on a curve to the left (radius being 290.59 feet, chord bearing N12°07'44"E, chord distance 119.55 feet) an arc distance of 120.41 feet (plat and measured); thence S89°44'31"E, 50.00 feet (plat and measured) to a point on the Westerly line of Lot 1353, said La Vista; thence Southwesterly on the Westerly curved line of lot 1353, said La Vista on a curve to the right (radius being 340.59 feet, chord bearing S08°44'36"W, chord distance 100.51 feet) an arc distance of 100.88 feet (plat and measured) to the Southwest corner of Lot 1353, said La Vista; thence S45°10'07"E on the South line of Lot 1353, said La Vista, 182.85 feet (plat) 184.23 feet (measured) to the Southeast corner of Lot 1353, said La Vista; thence S41°34'23"E on the Easterly line of said Lots 1340 thru 1351, inclusive, 869.41 feet (plat) 869.65 feet (measured) to the Southwest corner of Lot 1339, said La Vista; thence Northeasterly on the Southerly curved line of Lot 1339, said La Vista, on a curve to the left (radius being 180.00 feet, chord bearing N57°08'05"E, chord distance 55.51 feet (plat) 55.70 (measured) an arc distance of 55.73 feet (plat) 55.92

(measured) to a point of tangency; thence $N48^{\circ}21'43''E$ on the Southerly line of Lot 1339, said La Vista, 70.00 feet (plat and measured) to the Southeast corner of Lot 1339, said La Vista; thence $N74^{\circ}02'21''E$, 55.44 feet to the Northwest corner of Lot 1311, said La Vista; thence $N48^{\circ}32'33''E$ 110.00 feet (platted) to the Northern corner of Lot 1311, said La Vista; thence $S41^{\circ}33'58''E$ on the Westerly line of Lots 1292 thru 1301, inclusive, said La Vista, 605.00 feet (platted) to the Southwest corner of Lot 1301, said La Vista; thence $N48^{\circ}28'45''E$ on the Southerly line of Lot 1301, said La Vista, 45.0 feet (plat) 44.75 feet (measured); thence $S41^{\circ}49'18''E$ on the Westerly line of Lot 881 said La Vista and its Northwesterly extension, 177.9 feet (plat) 177.71 feet (measured) to the Southwest corner of Lot 881, said La Vista; thence $S53^{\circ}00'04''W$ on the Northerly line of Lot 882, said La Vista, 60.7 feet (plat) 60.65 feet (measured) to the Northwest corner of Lot 882, said La Vista; thence $S41^{\circ}32'13''E$ on the Westerly line of Lot 882, said La Vista, 20.94 feet (plat and measured); thence $S21^{\circ}39'32''E$ on the Westerly line of Lots 882 thru 884, inclusive, said La Vista, 206.64 feet (plat) 206.59 feet (measured) to the Southwest corner of Lot 884, said La Vista; thence $S68^{\circ}20'24''W$ on the Northerly line of Lot 1009, said La Vista and its Southwesterly extension, 175.00 feet (plat) 175.46 feet (measured) to a point on the Easterly line of Lot 1441, said La Vista; thence $N21^{\circ}37'03''W$ on the Easterly line of Lot 1441, said La Vista, 49.85 feet (plat and measured) to the Northeast corner of Lot 1441, said La Vista; thence $S68^{\circ}59'04''W$ on the Northerly line of Lots 1441 and 1950, said La Vista, 259.2 feet (plat) 259.14 feet (measured) to the Northwest corner of Lot 1950, said La Vista; thence $S00^{\circ}06'34''W$ on the East line of said Out Lot 1925, 30.02 feet; thence $N42^{\circ}02'20''W$, 243.48 feet to a point on the South line of said Lot 1435; thence $N89^{\circ}50'34''W$ on the South line of said Lots 1369 and 1421 thru 1435, inclusive, 1220.09 feet (plat) 1217.99 (measured) to the point of beginning. (Containing 34.13 acres more or less.)

Part II Improvements to be Constructed by Lessor:

The Lessor shall design and build a fully irrigated, first rate, nine (9) hole executive golf course equaling or exceeding United States Golf Association (USGA) specifications for new golf course development, with design life of original greens, tees and fairways to be in accordance with USGA specifications, but in no event less than thirty (30) years, said project to be built in accordance with plans and specifications approved by

City and to be a fully "turn key" operation, including grass maturation, ready for public play by September 15, 1991, with the exception of the following items which are excluded from the contract:

1. club house furniture, furnishings and equipment not constituting a part of the building;
2. golf carts and mowers and similar movable machinery;
3. perimeter security fence;
4. paved golf cart paths;
5. the following amenities:
 - a. entry signage;
 - b. course signage;
 - c. benches and ball washers that are associated with the tee boxes;
 - d. flags and cups for greens.

Provided, City may direct any of the above excluded items to be constructed by Lessor as a part of the turn key contract, for which such additionally included items contractor shall be paid from the Construction Contingency Fund an amount mutually agreeable to the City and Lessor.

Project construction costs by category are:

Golf Course	\$ 838,025
Engineering and Surveying	55,000
Advertising & Promotion	5,000
Course Maturation	55,000
Infra-Structure	13,500
Parking Lot	39,900
Cart Storage Building	15,000
Clubhouse	60,000
Maintenance Building	35,000
Construction Contingency Fund	<u>62,300</u>
TOTAL	<u>\$1,178,725</u>

City reserves the right to designate a different clubhouse design and/or combine clubhouse and golf cart storage functions into a single building. Should City use such an alternate design differ-

ent than shown per the plans and specifications, an allowance for the Lessor designed clubhouse and golf cart storage building in the amount of \$60,000 and \$15,000, respectively, shall be given by Lessor toward the cost of such alternate design, with any excess over such allowances to be paid in a mutually agreeable amount from the Construction Contingency Fund. Any third party supplier and/or contractor utilized shall become a subcontractor of Lessor under the Lessor's turn-key contract without any general contractor or other add-on charge.

Part III Total Project Costs: Total Project Costs are:

Architectural and Engineering Costs	55,000	
Construction Costs (per plans and specs)	1,056,425	
Advertising and Promotions	5,000	
Construction Contingency Fund	<u>62,300</u>	
CONSTRUCTION COSTS		1,178,725
Underwriter's Discount	60,108	
Issuance/Financing Related Costs	<u>10,000</u>	
FINANCING & ISSUANCE COSTS		70,108
Capitalized Rental Payments		<u>341,000</u>
TOTAL PROJECT COSTS		<u><u>1,589,833</u></u>

It is anticipated that income earned on the Project Acquisition Fund will defray that portion of project construction costs in excess of the \$1,167,520 of principal allocated thereto and that portion of the \$341,000 in Capitalized Rental Payments in excess of the \$303,614 of principal allocated thereto. To the extent there shall be an insufficient amount in the Project Acquisition Fund to pay such amounts in full, the Lessor shall make up any deficiency and City shall have no liability to Lessor in respect thereto.

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EXHIBIT B
PAYMENT SCHEDULE

NE-CITY OF LA VISTA

PAYMENT NUMBER	PAYMENT DATE	PAYMENT AMOUNT	PRINCIPAL PORTION	INTEREST PORTION	OPTION TO PURCHASE
1	04/01/91	68,200.00	0.00	68,200.00	
2	10/01/91	68,200.00	0.00	68,200.00	
3	04/01/92	68,200.00	0.00	68,200.00	
4	10/01/92	68,200.00	0.00	68,200.00	
5	04/01/93	68,200.00	0.00	68,200.00	
6	10/01/93	80,250.00	12,049.16	68,200.84	1,529,193.58
7	04/01/94	80,250.00	12,582.35	67,667.65	1,516,611.23
8	10/01/94	80,250.00	13,139.12	67,110.88	1,503,472.11
9	04/01/95	80,250.00	13,720.53	66,529.47	1,489,751.57
10	10/01/95	80,250.00	14,327.68	65,922.32	1,475,423.90
11	04/01/96	80,250.00	14,961.68	65,288.32	1,460,462.22
12	10/01/96	80,250.00	15,623.75	64,626.25	1,444,838.47
13	04/01/97	80,250.00	16,315.11	63,934.89	1,428,523.36
14	10/01/97	80,250.00	17,037.06	63,212.94	1,411,486.31
15	04/01/98	80,250.00	17,790.96	62,459.04	1,393,695.35
16	10/01/98	89,800.00	28,128.22	61,671.78	1,365,567.13
17	04/01/99	89,800.00	29,372.91	60,427.09	1,336,194.23
18	10/01/99	89,800.00	30,672.67	59,127.33	1,305,521.56
19	04/01/2000	89,800.00	32,029.96	57,770.04	1,273,491.60
20	10/01/2000	89,800.00	33,447.30	56,352.70	1,240,044.30
21	04/01/2001	91,950.00	37,077.36	54,872.64	1,202,966.94
22	10/01/2001	91,950.00	38,718.05	53,231.95	1,164,248.89
23	04/01/2002	91,950.00	40,431.35	51,518.65	1,123,817.54
24	10/01/2002	91,950.00	42,220.46	49,729.54	1,081,597.08
25	04/01/2003	91,950.00	44,088.74	47,861.26	1,037,508.35
26	10/01/2003	94,000.00	48,089.69	45,910.31	989,418.66
27	04/01/2004	94,000.00	50,217.68	43,782.32	939,200.98
28	10/01/2004	94,000.00	52,459.84	41,560.16	886,761.14
29	04/01/2005	94,000.00	54,760.33	39,239.67	832,000.80
30	10/01/2005	94,000.00	57,183.51	36,816.49	774,817.30
31	04/01/2006	97,560.00	63,273.91	34,286.09	711,543.39
32	10/01/2006	97,560.00	66,073.81	31,486.19	645,469.57
33	04/01/2007	97,560.00	68,997.62	28,562.38	576,471.95
34	10/01/2007	97,560.00	72,050.80	25,509.20	504,421.15
35	04/01/2008	97,560.00	75,239.09	22,320.91	429,182.07
36	10/01/2008	97,560.00	78,568.46	18,991.54	350,613.61
37	04/01/2009	97,560.00	82,045.16	15,514.84	268,568.45
38	10/01/2009	97,560.00	85,675.70	11,884.30	182,892.75
39	04/01/2010	97,560.00	89,466.90	8,093.10	93,425.86
40	10/01/2010	97,560.00	93,425.85	4,134.15	0.00
TOTAL		\$3,497,850.00	\$1,541,242.74	\$1,956,607.26	

NE-CITY OF LA VISTA

BY: _____

EXHIBIT C

COMPLETION AND ACCEPTANCE CERTIFICATE

The undersigned, being respectively a duly appointed City Representative under the Golf Course Construction and Lease/Purchase Agreement dated as of _____, 1990 (the Agreement), by and between First Golf Corporation (Lessor), and the City of La Vista, Nebraska (City), and the Architect (as that term is defined in the Agreement) hereby certify on behalf of Lessor and City with respect to the Project to be acquired under said Agreement, that the portion of the Improvements described in the Agreement has been constructed pursuant to and in accordance with said Agreement and the Plans and Specifications, and has been accepted and is now available for occupancy and use by City.

Dated: _____, 199_.

CITY OF LA VISTA, NEBRASKA

By _____
City Representative

Architect

By _____

EXHIBIT D

CERTIFICATE OF OFFICERS

The undersigned, being the duly qualified and acting _____ and _____ of the City of La Vista, Nebraska (City), do hereby certify that City is a duly constituted and existing municipal corporation and political subdivision of the State of Nebraska, and do further certify as follows:

1. We are the duly elected or appointed, qualified and acting _____ and _____ of City and, as such officers, are familiar with the authority, actions and books and records of City.

2. Attached hereto and marked Exhibit A are true and correct copies of Resolution No. ___ of the City and Resolution No. ___ of the City adopted at meetings of the City Council of City, duly called and held on _____, 1990 and _____, 1990, respectively, at which meetings a quorum was present and acting throughout. The action taken by the Council at such meetings, insofar as it relates to the contracts described in paragraph 3 hereof, has not since been rescinded, amended or repealed.

3. The Golf Course Construction and Lease/Purchase Agreement dated as of _____, 1990 (the Agreement), by and between First Golf Corporation (Lessor) and City, the Escrow Agreement dated as of _____, 1990 (the Escrow Agreement) by and between City, Lessor and _____, as escrow agent and the Ground Lease Agreement dated as of _____, 1990 (the Ground Lease) between City and Lessor, have been duly authorized by City, have been executed and delivered by authorized officers of City, and are legal, valid and binding contracts of City.

4. The execution and delivery of the Agreement, the Escrow Agreement and the Ground Lease and the compliance by City with the provisions thereof will not conflict with, or constitute on the part of City a breach of, or a default under, any existing law, court or administrative regulation, decree or order or any agreement or other instrument to which City is subject or by which it or its properties are or may be bound.

5. To our knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or threatened against City (or, to my knowledge, any meritorious

basis therefor) contesting the due organization and valid existence of City or the authority of its officers; challenging the validity, due authorization and execution of the Agreement, the Ground Lease or the Escrow Agreement; or attempting to limit, enjoin or otherwise restrict or prevent City from entering into the Agreement, the Ground Lease or the Escrow Agreement and the transactions contemplated thereby.

6. To the best of our knowledge, no member of the City Council and no officer or employee of City have any pecuniary interest, directly or indirectly, in any contract, employment, lease, purchase or sale made or to be made in connection with the Agreement, the Ground Lease or the Escrow Agreement or the transactions contemplated thereby.

7. City is exempt from real estate sales and/or use taxes with respect to the Project and the Rental Payments.

IN WITNESS WHEREOF, We have hereunto set our hands as of the ____ day of _____, 1990.

CITY OF LA VISTA, NEBRASKA

By _____
Its _____

And _____
Its _____

EXHIBIT E

OPINION OF COUNSEL

First Golf Corporation
857 Grant Street
Denver, Colorado 80203

Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402

Re: Golf Course Construction and Lease/Purchase Agreement dated as of _____, 1990, by and between First Golf Corporation (Lessor) and the City of La Vista, Nebraska (City)

Gentlemen:

I have acted as counsel to City with respect to the Golf Course Construction and Lease/Purchase Agreement described above (the Agreement) and various related matters, and in this capacity I have reviewed a duplicate original of the Agreement and various other documents, including an Escrow Agreement dated as of _____, 1990 (the Escrow Agreement), between Lessor, City and _____, as Escrow Agent and a Ground Lease dated as of _____, 1990 (the Ground Lease) between City and Lessor.

Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. City is a municipal corporation and political subdivision of the State of Nebraska (the State), duly organized, existing and operating under the Constitution and laws of the State.
2. City is authorized and has power under State law to enter into the Agreement, the Ground Lease and the Escrow Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Agreement, the Ground Lease and the Escrow Agreement have been duly authorized, approved, executed and delivered by and on behalf of City, and the Agreement, the Ground Lease and the Escrow Agreement are valid and binding contracts of City enforceable in accordance with their terms, except to the extent such enforceability is limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The authorization, approval and execution of the Agreement, the Ground Lease and the Escrow Agreement and all other proceedings of City relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting and public bidding laws, and all other applicable laws, rules and regulations of the State.

5. The execution of the Agreement and the appropriation of moneys to pay the Rental Payments coming due thereunder, does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by City.

6. There is no litigation, action, suit or proceeding pending before any court, administrative agency, arbitrator or governmental body, or, to best of my knowledge, threatened, that challenges the organization or existence of City; the authority of its officers; the proper authorization, approval and execution of the Agreement, the Ground Lease, the Escrow Agreement and the other documents contemplated thereby; the appropriation of money to make Rental Payments under the Agreement for City's current Fiscal Year; or the ability of City otherwise to perform its obligations under the Agreement, the Ground Lease, the Escrow Agreement and the transactions contemplated thereby.

Dated: _____, ____.

Very truly yours,

EXHIBIT F

ARBITRAGE AND TAX CERTIFICATE

We, Harold Anderson and Dorothy A. McGinnis, hereby certify that we are the duly qualified and acting Mayor and City Clerk, respectively, of the City of La Vista, Nebraska (the "City"), and that in our official capacity as such officers we are responsible for executing and delivering on behalf of the City, the Golf Course Construction and Lease/Purchase Agreement dated September 27, 1990 (the "Agreement"), by and between First Golf Corporation as lessor (the "Lessor") and the City as lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986 (the "Code"), and Treasury Regulations, Sections 1.103-13, 1.103-14 and 1.103-15 promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. Under the Agreement, the Lessor is required to acquire, construct and install certain Improvements described in Agreement Exhibit A (the "Project"), and to lease and sell the Project to the City; and the City is required to lease and purchase the Project from Lessor by making Rental Payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth in Agreement Exhibit B.

2. Pursuant to the Agreement and for the purpose of meeting its obligations thereunder and assuring the City and the contractors of the availability of moneys needed to pay the cost of the Project when due, Lessor and the City have entered into an Escrow Agreement dated as of September 27, 1990 (the "Escrow Agreement") with Bank of Nebraska (the "Escrow Agent").

3. On the date hereof the Escrow Agent will receive not less than \$_____ from Lessor or its assignee, comprising \$_____ for principal, and \$_____ for interest accrued from October 1, 1990, until the date hereof. Such money will be deposited in the Project Acquisition Fund established by the Escrow Agreement and used, together with interest earnings thereon (estimated to be \$48,591), to pay the cost of the Project, which is estimated to be \$1,589,833, including \$70,108 constituting the costs of issuance and \$341,000 constituting capitalized interest which will be used to pay a portion of the Rental Payments due on or before April 1, 1993.

4. Pursuant to the Agreement and for the purpose of meeting its obligations thereunder, the Lessor and/or City will have, within six months of the date hereof, expended or entered into contracts providing for the acquisition, construction and installation of the Project in an aggregate amount of not less than \$1,055,925.

5. The Lessor will proceed to acquire, construct and install the Project with due diligence and, based upon the provisions of the contracts described in paragraph 4 hereof, the Project will be acquired, constructed and installed on or before April 1, 1993.

6. All of the spendable proceeds of the Agreement will be expended on the Project within three years from the date of execution of the Agreement.

7. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed, or in any event do not exceed by more than 5%, the amount necessary for the governmental purpose for which the Agreement is entered into by the City.

8. No sinking fund will be maintained for the payment of the Rental Payments due under the Agreement.

9. The Project has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the City.

10. To the best of the knowledge and belief of the undersigned, the expectations of the City, as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would change the foregoing expectations.

11. The City has not been notified of the listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

WITNESS our hands this _____ day of _____, 1990.

CITY OF LA VISTA, NEBRASKA

By _____
Harold Anderson, Mayor

And _____
Dorothy A. McGinnis, City Clerk