

RESOLUTION NO. 05-2006

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO ASSIGN THE EXISTING LEASE WITH AMERICAN GOLF CORPORATION, INC., TO MESQUITE GOLF CLUB, LLC, PURSUANT TO THE ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LEASE AND THE UNCONDITIONAL GUARANTY OF LEASE.

WHEREAS, on September 11, 1986, the City of Mesquite (the "City") entered into an agreement with American Golf Corporation, Inc. ("AGC"), for the management and operation of the Mesquite Municipal Golf Course (the "Lease"); and

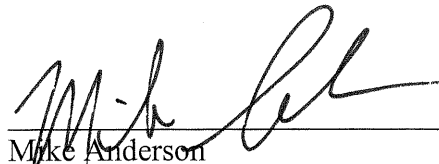
WHEREAS, AGC is requesting the City's consent to an assignment of the Lease to Mesquite Golf Club LLC ("MGC"); and

WHEREAS, Staff recommends consent of the assignment of the Lease pursuant to the attached Assignment, Assumption and Amendment of Lease (the "Assignment") and Unconditional Guaranty of Lease (the "Guaranty") and that the City Manager be authorized to execute the Assignment and accept the Guaranty as requested by AGC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Manager is hereby authorized to assign the existing Lease with American Golf Corporation, Inc., to Mesquite Golf Club, LLC, pursuant to and as amended by the Assignment and Guaranty, attached hereto as Exhibits "A" and "B," respectively.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 17th day of January, 2006.




Mike Anderson
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary

B. J. Smith
City Attorney

APPROVED BY CITY COUNCIL
DATE 1/17/06
CITY SEC. _____

**ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LEASE
(Mesquite Golf Course)**

1. Identification and Parties. This Assignment, Assumption and Amendment of Lease (this "Assignment") is made and entered into effective as of January ~~31~~, 2006 (the "Effective Date"), by and among (i) AMERICAN GOLF CORPORATION, a California corporation ("AGC" or "Assignor"); (ii) MESQUITE GOLF CLUB LLC, a TEXAS limited liability company ("Assignee"); and (iii) THE CITY OF MESQUITE, TEXAS, a Texas municipal corporation of Dallas County ("City").

2. Recitals. Assignee (as successor-in-interest to Eagle Golf, Inc., a Texas corporation ("Eagle") and AGC are parties to that certain Mesquite Golf Course and Twin Wells Golf Course Lease Assignment Agreement, dated as of November 1, 2005 (the "Agreement"), pursuant to which, among other things, AGC agreed to assign to Assignee all right, title and interest of AGC in the Lease (as defined below) arising or accruing after the Effective Date, and Assignee agreed to assume from AGC all obligations, duties, undertakings and liabilities of the tenant under the Lease arising or accruing from and after the Effective Date. City will consider approval of the assignment of the Lease provided certain amendments are agreed to as hereinafter provided. As used herein, the term "Lease" means that certain Restated and Amended Lease Agreement, City of Mesquite Municipal Golf Course, dated as of February 1, 1999 between City and AGC.

In order to consummate the transaction contemplated by the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AGC, Assignee and City desire to execute this Assignment.

3. Agreement.

3.1. Assignment. AGC hereby assigns to Assignee all of AGC's right, title and interest in, to and under the Lease arising or accruing after the Effective Date and further assumes and agrees to perform all of AGC's obligations, duties, undertakings and liabilities as hereinafter provided in this Assignment.

3.2. Acceptance and Assumption. Assignee hereby accepts the assignment set forth in Section 3.1 and the condition of the leased premises "as-is", and further assumes and agrees to perform all obligations, duties, undertakings and liabilities of the tenant under the Lease arising or accruing from and after the Effective Date, including such additional obligations, duties, undertakings and liabilities as hereinafter provided in this Assignment resulting in the amendment of the Lease. Except as amended by this Assignment, the Lease shall remain in full force and effect. In the event of any conflict between this Assignment and the Lease, the provisions and intent of this Assignment shall control.

3.3. Guaranty. Concurrent with the execution and delivery of this Assignment by Assignee, Assignee hereby agrees to cause Eagle, Somerset-Lost Creek Golf Club, LTD., and Somerset-Whitestone Golf, LTD. (collectively, "Guarantor") to execute and deliver to City a guaranty of Assignee's obligations under the Lease in the form attached as Exhibit "A" hereto.

3.4 **Consent.** City hereby consents to AGC's assignment to Assignee of AGC's right, title and interest in, to and under the Lease. City agrees that it will look only to Assignee and/or Guarantor for any costs, obligations, expenses or liabilities under the Lease arising or accruing on and after the Effective Date.

3.5. **Prepayment of Golf Course Improvement Rent.**

(a) Within three (3) business days following the Effective Date, Assignor shall prepay the sum of Two Hundred Four Thousand Five Hundred and No/100 Dollars (\$204,500.00), representing the Golf Course Improvement Rent payable on February 15, 2006, under Article IV, Section C of the Lease.

(b) Article (IV), Section C of the Agreement is further amended to provide that the Golf Course Improvement Rent payment that is due and payable on February 15, 2007, shall be payable by Assignee as follows:

- (i) Commencing on April 1, 2006, and continuing on the first day of each month succeeding thereafter for a period of nine (9) months, Assignee shall pay to the City the sum of Twenty-three Thousand Seven Hundred Twenty and 83/100 Dollars (\$23,720.83);
- (ii) All Golf Course Improvement Rent payments paid by Assignee as provided above in subsection (i) shall be invested in the City's Pooled Investment Account and interest will be credited at the end of each month based on the following formula: (the daily balance of prepaid rent) X (the City's average yield on its investment portfolio for that month divided by 365).
- (iii) Any such payment, or portion thereof, for Golf Course Improvement Rent that remains unpaid after the first day of the month it is due as provided above shall bear interest at the rate of 10% per annum, or the highest lawful rate, whichever is lesser, commencing on the day after each payment is due and continuing until the entire payment is made as provided in subsection (i) above.

(c) Article (IV) Section C shall further provide that the Golf Course Improvement Rent payment due on February 15, 2008, shall be payable by Assignee as follows:

- (i) Commencing on April 1, 2007, and continuing on the first day of each succeeding month thereafter for a period of nine (9) months, Assignee shall pay to the City a payment in the amount of Twenty-four Thousand Six Hundred Sixty-Five and 28/100 Dollars (\$24,665.28).
- (ii) All Golf Course Improvement Rent payments paid by Assignee as provided above in subsection (i) shall be invested in the City's Pooled Investment Account and interest will be credited at the end of each month based on the following formula: (the daily balance of prepaid rent) X (the

City's average yield on its investment portfolio for that month divided by 365).

- (iii) Any such payment, or portion thereof, for Golf Course Improvement Rent that remains unpaid after the first day of the month it is due shall bear interest at the rate of 10% per annum, or the highest lawful rate, whichever is lesser, commencing on the day after each payment is due and continuing until the entire payment is made as provided in subsection (i) above.

3.6. **Duck Creek Erosion**. Notwithstanding anything to the contrary contained in this Assignment, City acknowledges and agrees that from and after the Effective Date, Assignee shall not have any responsibility for the stabilization of erosion caused by Duck Creek on the east side of the thirteenth (13th) hole of the Mesquite Golf Course.

3.7. **Escrow of Capital Funds**. Within three (3) business days following the Effective Date, Assignor shall deliver to City the sum of Eighty-Five Thousand Seven Hundred Forty-Three and 97/100 Dollars (\$85,743.97) (the "**Capital Funds**"), representing the remaining capital expenditures that Assignor agreed to make in accordance with Article II, Section H(3) of the Lease and which were due to be made no later than February 1, 2006. The City shall hold the Capital Funds for the benefit of Assignee until City and Assignee agree on the use of the Capital Funds for capital improvements to the leased premises, in accordance with the terms of the Lease. Upon approval of the capital improvement proposed by Assignee, then City shall release to Assignee the amount of Capital Funds Assignee has requested (and City has approved) for such capital improvements. Assignee shall be required to use the Capital Funds to complete the capital improvement approved by City within one year from the Effective Date hereof. Thereafter, Assignee will be required to construct all future capital improvements at their expense in accordance with Article II, Section H(3) of the Lease. Assignee and City acknowledge and agree (i) that once Assignor has delivered the Capital Funds to City, Assignor shall have no further responsibility with respect to the Capital Funds or any obligations under Article II, Section H(3) of the Lease.

3.8. **Release**. In accordance with Article I, Section E of the Lease, City hereby releases AGC for any and all claims, obligations, liabilities, costs, expenses, causes of actions, whether known or unknown, that may be claimed by City, related to events or matters that are in any way relating to the Lease.

3.9. **Representations and Warranties**. Except as otherwise expressly set forth in the Agreement, AGC's right, title and interest under the Lease are assigned hereunder without representation or warranty of any kind or nature whatsoever, whether statutory, express or implied. Without in any way limiting the generality of the preceding sentence, Section 9.2 of the Agreement, which reads as follows, is hereby incorporated herein: Assignee agrees that, upon the Closing, Assignee shall conclusively be deemed to have accepted the Property and the Golf Courses in their then existing condition, "AS IS, WHERE IS AND WITH ALL FAULTS" without representation or warranty of any kind or nature whatsoever except as expressly set forth in this Agreement, and with all faults and problems of any kind and/or nature whatsoever that may then exist, whether the same are of a legal nature, a physical nature, or otherwise. Assignee further acknowledges that such existing conditions, faults, and problems include or may include

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(by way of illustration only, and without in any way limiting the generality of the foregoing) the following: (a) any possibility that the construction and/or use of the Golf Courses may not be in accordance with applicable statutes, ordinances, rules, regulations, building codes, zoning restrictions, master plan restrictions, or administrative or judicial orders or holdings, whether or not appearing in the public records or in material supplied to Assignee by Assignor, if any, or otherwise; (b) any possibility that construction defects may exist in the Golf Courses; and (c) any possibility that the Golf Courses are contaminated with Hazardous Materials. Without limiting the generality of the foregoing, Assignee acknowledges and agrees that Assignee is assuming the Leases and purchasing the Property based solely on Assignee's own evaluation of the past and future financial performance of the Golf Courses, that Assignor operates the Golf Courses as two of many golf courses that Assignor operates, and that Assignor obtains certain benefits as a result of operating many golf courses that Assignee may or may not be able to obtain."

3.10. **Conflicts with Agreement.** This Assignment is expressly made subject to the terms and provisions of the Agreement. The delivery of this Assignment will not affect, enlarge, diminish or otherwise impair any of the terms or provisions of the Agreement, provided however, that the amendments to the Agreement set forth herein shall be given full effect. In the event of a conflict between the terms and provisions of this Assignment and the terms and provisions of the Agreement, the terms and provisions of the Agreement as amended by this Assignment shall govern and control.

4. **Miscellaneous.**

4.1. **Entire Agreement.** This Assignment and the Agreement are the entire agreement between the parties hereto with respect to the subject matter hereof, and incorporate all prior agreements and understandings of the parties hereto.

4.2. **Amendments in Writing.** No amendment or modification of this Assignment shall be valid unless the amendment or modification is in writing and signed by AGC and Assignee.

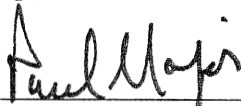
4.3. **Counterparts.** This Assignment may be executed in one or more duplicate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, AGC, Assignee and City have entered into this Assignment to be effective as of the date first set forth above.


“AGC”

AMERICAN GOLF CORPORATION,
a California corporation

By: 
Name: Paul Major
Title: President

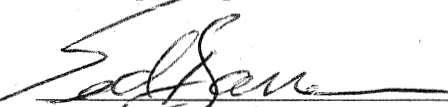
“ASSIGNEE”

MESQUITE GOLF CLUB LLC,
a TEXAS limited liability company

By: 
Name: CARY BLACK
Title: MANAGER

“CITY”

THE CITY OF MESQUITE, TEXAS,
a Texas municipal corporation of Dallas County

By: 
Name: Ted Barron
Title: City Manager

**UNCONDITIONAL GUARANTY OF LEASE
(Mesquite Golf Course)**

THIS UNCONDITIONAL GUARANTY OF LEASE ("**Guaranty**") is made as of January 17, 2006, by EAGLE GOLF, INC., a Texas corporation, SOMERSET-LOST CREEK GOLF CLUB, LTD., a Texas limited partnership, and SOMERSET-WHITESTONE GOLF, LTD., a Texas limited partnership, jointly and severally (collectively, "**Guarantor**") in favor of THE CITY OF MESQUITE, TEXAS, a Texas municipal corporation of Dallas County ("**Landlord**").

WHEREAS, pursuant to that certain Restated and Amended Lease Agreement City of Mesquite Municipal Golf Course, dated February 1, 1999 (the "**Original Lease**"), Landlord leased to American Golf Corporation, a California corporation ("**Assignor**"), the premises improved with an 18-hole daily fee golf course, clubhouse, tournament pavilion, maintenance building, cart bar, and other improvements, commonly known as the Mesquite Golf Course ("**Premises**"), located in Mesquite, Texas.

WHEREAS, concurrently herewith, Landlord, Assignor, and MESQUITE GOLF CLUB LLC, a Texas limited liability company ("**Assignee**"), are entering into that certain Assignment, Assumption and Amendment of Lease ("**Assignment**") dated on or about the date hereof pursuant to which, among other things, (i) Assignor assigns to Assignee all of Assignor's right, title and interest in and to the Original Lease, as amended by the Assignment, and (ii) Assignee accepts such assignment and assumes Assignor's duties and obligations under the Original Lease, as amended by the Assignment. The Original Lease, as amended by the Assignment, is referred to herein as the "**Lease.**"

WHEREAS, Landlord's consent is required as a condition to the assignment of the Lease from Assignor to Assignee;

WHEREAS, Guarantor has a financial interest in Assignee and acknowledges that by virtue of such interest, Guarantor will derive a valuable benefit from Landlord's consent to the assignment of the Lease from Assignor to Assignee; and

WHEREAS, Landlord would not consent to the assignment of the Lease to Assignee and Assignor would not assign its interest in the Lease to Assignee if Guarantor did not execute and deliver to Landlord this Guaranty.

NOW, THEREFORE, for and in consideration of, and as a material inducement to, Landlord's consent to the assignment of the Lease by Assignor to Assignee, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Guaranty.

1.1 Guaranty of Lease. Guarantor hereby absolutely, presently, continually, unconditionally and irrevocably guarantees the prompt payment by Assignee of all rentals and other sums payable by Assignee under the Lease and the faithful and prompt performance by Assignee of each and every one of the terms, conditions and covenants of the Lease to be kept

GUARANTY OF LEASE -MESQUITE GOLF COURSE

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and performed by Assignee. It is expressly understood and agreed that Guarantor's liability hereunder shall be no greater than Assignee's liability pursuant to the Lease and to the extent Assignor is released from further liability under the Lease pursuant to payment, amendment, settlement or permitted termination, Guarantor's liability hereunder shall be likewise released.

1.2 Joint and Several Liability. The obligation and liability of each Guarantor shall be joint and several. Guarantor agrees that, without releasing, diminishing or otherwise affecting the liability of Guarantor under this Guaranty or the performance of any obligation contained here, and without affecting the rights of Landlord, Landlord may enforce this Guaranty without the necessity of proceeding against Assignee or any other guarantor. Guarantor hereby waives the right to require Landlord to proceed against Assignee, to proceed against any other guarantor, to exercise any right or remedy under the Lease or to pursue any other remedy or to enforce any other right. Guarantor agrees that nothing contained herein shall prevent Landlord from suing on the Lease or from exercising any rights available to it thereunder and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Furthermore, Guarantor agrees that Landlord may, at any time and from time to time, and without notice to or further consent of any Guarantor: (a) accept any additional security, collateral or guaranty, or other assurance of payment of any kind from Assignee or any Guarantor; (b) accept any full or partial release, surrender, exchange, subordination, deterioration, waste, loss or impairment of any collateral, property or security; (c) release, elect not to exercise any right it may have with respect to, or settle with, any Guarantor without affecting Landlord's rights as against any other Guarantor; and (d) neglect, delay, omit, fail or refuse to i) foreclose or take or prosecute any action to foreclose on any collateral or security, or ii) exercise diligence, commercial reasonableness or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral or security.

1.3 Modification. It is specifically agreed and understood that the terms, covenants and conditions of the Lease may be altered, affected, modified, amended, compromised, released or otherwise changed by agreement between Landlord and Assignee, and Guarantor does guaranty and promise to perform all of the obligations of Assignee under the Lease as so altered, affected, modified, amended, compromised, released or changed and the Lease may not be assigned without consent of Guarantor, provided however, such consent shall not be unreasonably withheld, and that upon such assignment this Guaranty shall thereupon and thereafter guaranty the performance of the Lease as so changed, modified, amended, compromised, released, altered or assigned.

1.4 Enforcement. This Guaranty shall not be released, modified or affected by failure or delay on the part of Landlord to enforce any of the rights or remedies of Landlord under the Lease, whether pursuant to the terms thereof or at law or in equity.

1.5 Continuing Liability. Guarantor's liability under this Guaranty shall continue until all rents due under the Lease have been paid in full in cash and until all other obligations to Landlord have been satisfied, and shall not be reduced by virtue of any payment by Assignee of any amount due under the Lease.

1.6 Payment. Guarantor hereby covenants and agrees with Landlord that if a default shall at any time occur in the payment of any sums due under the Lease by Assignee or in the

performance of any other obligation of Assignee under the Lease, Guarantor shall and will forthwith upon demand pay such sums and any arrears thereof, to Landlord in legal currency of the United States of America for payment of public and private debts, and take all other actions necessary to cure such default and perform such obligations of Assignee.

1.7 Scope. The liability of Guarantor under this Guaranty is a guaranty of payment and performance and not of collectibility, and is not conditioned or contingent upon the genuineness, validity, regularity or enforceability of the Lease or the pursuit by Landlord of any remedies which it now has or may hereafter have with respect thereto, at law, in equity or otherwise.

1.8 Waivers and Enforcement. Guarantor hereby waives and agrees not to assert or take advantage of to the extent permitted by law: (i) all notices to Guarantor, to Assignee, or to any other person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, assignment, modification or accrual of any of the obligations owed to Landlord under the Lease and enforcement of any right or remedy with respect thereto, and notice of any other matters relating thereto; (ii) notice of acceptance of this Guaranty; (iii) demand of payment, presentation and protest; (iv) any right to require Landlord to apply to any default any security deposit or other security it may hold under the Lease or this Guaranty; and (v) any right or defense that may arise by reason of the incapability, lack of authority, death or disability of Assignee or any other person.

1.9 Subrogation. Guarantor agrees that rights of subrogation Guarantor may have against Assignee shall be junior and subordinate to any rights Landlord may have against Assignee and any rights of contribution Guarantor may have against any other guarantor shall be junior and subordinate to any rights Landlord may have against such other guarantor.

1.10 Bankruptcy. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any case, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Assignee or any defense which Assignee may have by reason of order, decree or decision of any court or administrative body resulting from any such case. Landlord shall have the sole right to accept or reject any plan on behalf of Guarantor proposed in such case and to take any other action which Guarantor would be entitled to take, including, without limitation, the decision to file or not file a claim. Guarantor acknowledges and agrees that any payment which accrues with respect to Assignee's obligations under the Lease (including, without limitation, the payment of rent) after the commencement of any such proceeding (or, if any such payment ceases to accrue by operation of law by reason of the commencement of such proceeding, such payment as would have accrued if said proceedings had not been commenced) shall be included in Guarantor's obligations hereunder because it is the intention of the parties that said obligations should be determined without regard to any rule or law or order which may relieve Assignee of any of its obligations under the Lease. Guarantor hereby permits any trustee in bankruptcy, receiver, debtor-in-possession, assignee for the benefit of creditors or similar person to pay Landlord, or allow the claim of Landlord in respect of, any such payment accruing after the date on which such proceeding is commenced.

2. Notices.

Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Guaranty or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Guaranty) and shall be deemed to have been properly given, rendered or made only if hand-delivered or sent by first-class mail, postage pre-paid, addressed to the other party at its respective address set forth below, and shall be deemed to have been given, rendered or made on the day it is hand-delivered or one day after it is mailed, unless it is mailed outside of Dallas County, Texas, in which case it shall be deemed to have been given, rendered or made on the third business day after the day it is mailed. By giving notice as provided above, either party may designate a different address for notices, statements, demands, consents, approvals or other communications intended for it.

To Guarantor:

Eagle Golf, Inc.
Somerset-Lost Creek Golf Club, LTD.
Somerset-Whitestone Golf, LTD.
c/o Eagle Golf, Inc.
5539 Yale Boulevard
Suite 300
Dallas, Texas 75206
Attn: Mr. Garry Black

To Landlord:

The City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149
Attn: Director of Parks & Recreation

3. Representations, Warranties and Covenants.

Guarantor represents and warrants to Landlord and Assignor as follows:

3.1 Benefit. Guarantor has received, or will receive, direct or indirect benefit from the making and acceptance of this Guaranty and the approval of the Assignment of Lease to Assignee.

3.2 Consent and Authority. No consent of any other person, including, without limitation, any creditors of Guarantor, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by Guarantor in connection with this Guaranty or the execution, delivery, performance, validity or enforceability of this Guaranty, including the security and all

obligations required hereunder. This Guaranty has been duly executed and delivered by Guarantor, and constitutes the legally valid and binding obligation of Guarantor enforceable against such Guarantor in accordance with its terms.

3.3 No Violations. The execution, delivery and performance of this Guaranty will not violate any provision of any existing law or regulation binding on Guarantor, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on Guarantor, or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which Guarantor is a party or by which Guarantor or any of Guarantor's assets may be bound.

3.4 Estoppel Statements. The obligations of Assignee under the Lease to execute and deliver estoppel statements, as therein provided, shall be deemed to also require Guarantor hereunder to do and provide the same relative to Guarantor.

3.5 Financial Condition of Assignee. Guarantor warrants and represents to Landlord that Guarantor now has and will continue to have full and complete access to any and all information concerning the Lease, the value of the assets owned or to be acquired by Assignee, Assignee's financial status and its ability to pay and perform the obligations owed to Landlord under the Lease. Guarantor further warrants and represents that Guarantor has reviewed and approved copies of the Lease and is fully informed of the remedies Landlord may pursue, with or without notice to Assignee, in the event of default under the Lease. So long as any of Guarantor's obligations hereunder remains unsatisfied or owing to Landlord, Guarantor shall keep fully informed as to all aspects of Assignee's financial condition and the performance of said obligations.

3.6 Guarantor's Financial Condition. As of the date of this Guaranty, and after giving effect to this Guaranty, Guarantor is, and will be, solvent, and has and will have assets which, fairly valued, exceed Guarantor's obligations, liabilities and debts, and has and will have property and assets in the State of Texas sufficient to satisfy and repay Guarantor's obligations and liabilities. Each of the financial statements delivered to Landlord by or on behalf of Guarantor in connection with this Guaranty and Assignment was prepared in accordance with principles and practices generally accepted for the cash method of accounting, consistently applied. Each such financial statement is and was true and correct as of its date, and accurately discloses Guarantor's financial condition (including all contingent liabilities) as of its date and there has been no material adverse change in Guarantor's financial condition subsequent to the date of the most recent of the financial statements delivered to Landlord. No proceedings under any bankruptcy, insolvency or other debtor relief law are contemplated or threatened by or against Guarantor.

3.7 Disclosures. No representation or warranty made by Guarantor in any of the financial statements, and (to the best of Guarantor's knowledge, after due and diligent inquiry) no document, instrument or certificate furnished by Guarantor to Landlord, and (to the best of Guarantor's knowledge, after due and diligent inquiry) no statement now or previously made by Guarantor to Landlord in anticipation of or pursuant to this Guaranty and subsequent Assignment of Lease or in connection with the transactions contemplated thereby contains any untrue

statement of a material fact or omits any material fact necessary to keep the statements contained therein from being misleading.

3.8 No Litigation. To the best of Guarantor's knowledge, after due and diligent inquiry, no litigation or proceeding the results of which, in the event of an unfavorable outcome, could have material and adverse effect against Assignee or any Guarantor is pending or threatened against or affecting Assignee or any Guarantor or involving or affecting the validity or enforceability of any of the security given or the priority of the liens, security interests and assignments created by them.

4. Other Provisions.

4.1 Successors and Assigns. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, representatives, administrators, executors, successors and assigns and shall inure to the benefit of and shall be enforceable by Landlord, its successors, endorsees and assigns. As used herein, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

4.2 "Landlord". The term "Landlord" whenever used herein refers to and means the Landlord specifically named in the Lease and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee in the Lease or any part thereof, whether by assignment or otherwise. So long as the Landlord's interest in or to the Premises (as that term is used in the Lease) or the rents, issues and profits therefrom, or in, to or under the Lease, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantor of the Landlord's interest in the Premises or under the Lease shall affect the continuing obligations of Guarantor under this Guaranty, which obligations shall continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment, or any purchaser at sale by judicial foreclosure or under private power of sale, and of the successors and assigns of any such mortgagee, beneficiary, trustee, assignee or purchaser.

4.3 "Assignee". The term "Assignee" whenever used herein refers to and means the Assignee in the Lease specifically named and also any assignee or sublessee of said Lease and also any successor to the interests of said Assignee, assignee or sublessee of such Lease or any part thereof, whether by assignment, sublease or otherwise.

4.4 Attorney's Fees. In the event of any dispute or litigation regarding the enforcement or validity of this Guaranty, Guarantor shall be obligated to pay all charges, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord, whether or not any action or proceeding is commenced regarding such dispute and whether or not such litigation is prosecuted to judgment.

4.5 Governing Law, Jurisdiction and Venue. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas, and in a case involving diversity of citizenship, shall be litigated in and subject to the jurisdiction of the courts of Texas. Furthermore, this Guaranty is to be performed in Dallas County and venue for enforcement of this Guaranty shall be in the courts of Dallas County, Texas.

4.6 Severability. Every provision of this Guaranty is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

4.7 Counterparts. This Guaranty may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same Guaranty with the same effect as if all parties had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty and re-attached to any other counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

4.8 No Waiver. No failure or delay on the part of Landlord to exercise any power, right or privilege under this Guaranty shall impair any such power, right or privilege, or be construed to be a waiver of any default or any acquiescence therein, nor shall any single or partial exercise of such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

4.9 Entire Agreement. This Guaranty shall constitute the entire agreement between Guarantor and Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may Guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer, director or trustee of Landlord.

4.10 Remedies. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law.

[Signature Page Follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

"GUARANTOR"

EAGLE GOLF, INC.,
a Texas corporation

By: *Garry Black*
Name: GARRY BLACK
Title: PRESIDENT

**SOMERSET-LOST CREEK GOLF CLUB,
LTD.,**
a TEXAS LLP

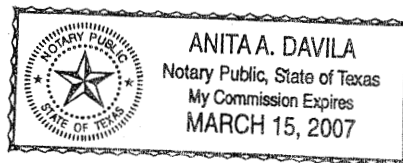
By: *Berni Ariz*
Name: Berni Ariz
Title: PRESIDENT

SOMERSET-WHITESTONE GOLF, LTD.,
a TEXAS LLP

By: *Berni Ariz*
Name: Berni Ariz
Title: PRESIDENT

STATE OF TEXAS §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 3rd day of February, 2006 by Garry Black, of **EAGLE GOLF, INC.**, a Texas corporation, on behalf of said corporation.



Anita A. Davila
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the 3rd day of February, 2006 by
Bergal Realty, of **SOMERSET-LOST CREEK GOLF CLUB, LTD.**, a
TEXAS LLP, on behalf of Mesquite Golf Club.

Anita A. Davila
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 3rd day of February, 2006 by
Bergal Realty, of **SOMERSET-WHITESTONE GOLF, LTD.**, a
TEXAS LLP, on behalf of Mesquite Golf Club.

Anita A. Davila
Notary Public, State of Texas

