

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260
Attention: Carlos L. Ortega
Tele: (760)346-0611
Fax: (760) 340-0574

DOC # 2005-0780948

09/21/2005 08:00A Fee:NC

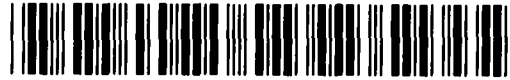
Page 1 of 24

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE SECTION 27383

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OPERATION AND MAINTENANCE AGREEMENT

by and between

CITY OF PALM DESERT
a California municipal corporation

and

DAHOON INVESTMENT COMPANY, INC.
a California corporation

2005 OCT - 6 PM 3:50

RECORDING OFFICE
COUNTY OF RIVERSIDE
CALIFORNIA

RECEIVED

OCT - 6 2005

CITY OF PALM DESERT
CITY MANAGER

THIS OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is dated as of August 31, 2005, by and between the City of Palm Desert, a California municipal corporation ("City") and Dahoon Investment Company, Inc., a California corporation ("Owner"). The City and Owner are sometimes referred to in this Agreement, each individually, as a "Party," or collectively, as the "Parties." The City and Owner enter into this Agreement with reference to the following recited facts (each a "Recital"):

RECITALS

A. Owner owns certain real property located at 77-200 California Road, in the City of Palm Desert and commonly known as "Palm Desert Golf Course" ("Property"). The Property is legally described in Exhibit "A-1" and depicted in Exhibit "A-2" attached to this Agreement and incorporated into this Agreement by reference. The Property is improved with certain improvements, including, but not limited to, an eighteen (18) hole golf course and a nine (9) hole executive course (collectively "Golf Course"), an approximately ten thousand (10,000) square foot clubhouse ("Clubhouse"), a storage area and maintenance yard ("Maintenance Yard") and Parking Lot ("Parking Lot"). The Golf Course, Clubhouse, Maintenance Yard and Parking Lot are all depicted in Exhibit "A-2" attached to this Agreement and incorporated into this Agreement by reference.

B. Owner and PDCC Development LLC, a California limited liability company, have entered into a Development Agreement with the City for the purpose of making certain improvements to the Golf Course and Clubhouse and to develop parcels that were formerly part of the Golf Course and other parcels surrounding the Property as 98 single family residences (collectively "Project").

C. For so long as Owner operates a golf course on the Property, Owner agrees to operate and maintain the Property according to the standards set forth in this Agreement, as required under the Development Agreement.

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants of the Parties set forth in this Agreement the Owner and the City agree as follows:

ARTICLE 1

EFFECTIVE DATE

1.1 Effective Date of Agreement. This Agreement is dated as of August 31, 2005 for reference purposes only. This Agreement shall take effect on the date of the last of the following to occur: (1) this Agreement is approved and executed by the authorized representatives of Owner and delivered to City; and; (2) following delivery of this Agreement by Owner, this Agreement is approved and executed by the City and delivered to Owner. Owner and City acknowledge that Owner is improving the Clubhouse, the Golf Course, the Parking Lot and the Maintenance Facility pursuant to the phased redevelopment/renovation plan set forth in the Development Agreement ("collectively the "Property Improvements"). Accordingly, Owner and City agree that the operative provisions regarding the maintenance of the Property shall become effective only after Owner's completion of the Property Improvements.

ARTICLE 2

OPERATION AND USE OF PROPERTY

2.1 Operation and Use of Property By Owner. Owner intends to operate, or cause to be operated, upon the Property, a semi-private golf course facility in accordance with this Agreement in a prudent business manner consistent with the operations of an average semi-private golf course facility allowing use by both members of the public and private members, in the Palm Desert area, and consistent and in compliance with all applicable provisions of federal, state and local laws and regulations.

2.2 Capital Reserves. Owner agrees that Owner shall maintain or caused to be maintained the Capital Reserves of the Property as follows:

2.2.1 Owner shall insure that one (1) percent of the annual gross revenue will be paid into a capital reserve account for the first two years with an increase to one point five (1.5) percent in years three and four and an increase to two point five (2.5) percent in year five and annually thereafter.

2.2.2 Owner shall insure that expenditures from the capital reserve account shall be for equipment or systems that have a minimum of seven years useful life or for major retrofit of greens, tees, bunkers, fairways, cart paths, water features, etc.

2.3 Budgets and Expenditures.

2.3.1 On or before the completion of the Property Improvements, Owner shall submit its first operating budget to the City Manager. The City's review of Owner's budget pursuant to this Paragraph shall be for the sole purpose of determining that a sufficient amount of funds are being expended for the operation of the Property in accordance with the Maintenance Standards, (as that term is defined below), such that it meets the golf course facility standard set for the in Paragraph 2.1. In the event the City disputes an amount budgeted in Owner's budget, such dispute shall be resolved in accordance with the Paragraph in this Agreement entitled Conflicts/Disputes. City acknowledges that its review of the budget and the annual expenditures for the Property shall be conducted in a commercially reasonable manner at no cost to Owner. Owner shall budget and expend in the first year of operations, and increase annually thereafter, if necessary subject to the budget review process, a minimum of (i) one million one hundred thousand dollars (\$1,100,000) for maintenance of the Golf Course and its facilities and (ii) \$275,000 for the purpose of general and administrative which will include clubhouse maintenance. After the review of Owner's initial budget for its first year of operation pursuant to this Paragraph, the City shall have the option of reviewing the budget every year thereafter during the term of this Agreement pursuant to the terms of this Paragraph. Notwithstanding anything to the contrary in this Paragraph, Owner and City shall meet and discuss in detail the then existing budget every three years commencing with the third anniversary date of this Agreement and continuing every third year thereafter. Any information supplied to City by Owner pursuant to this Paragraph shall be considered strictly confidential and used solely for the purpose of evaluating Owners' performance of its obligations pursuant to this Agreement. City shall maintain the confidentiality of such information to the extent permitted by law. City shall duplicate the information only as needed for review and return all originals and duplicates to Owner, including without limitation originals and duplicates which may be in electronic form. City shall not release the information provided by Owner pursuant to this Paragraph to any third party without written notice to Owner seven (7) days prior to release of any such information to a third party.

2.3.2 On or before the City's annual inspection of the Property pursuant to this Agreement, Owner shall submit to the City Manager a report detailing the monies spent on maintenance of the Golf Course and Golf Course facilities. The City's review of Owner's

expense information pursuant to this Paragraph shall be for the sole purpose of determining that a sufficient amount of funds were expended for the operation of the Property in accordance with the Maintenance Standards, (as that term is defined below), such that it meets the golf course facility standard set for the in Paragraph 2.1. In the event the City disputes an amount expended by Owner, such dispute shall be resolved in accordance with the Paragraph in this Agreement entitled Conflicts/Disputes. City acknowledges that its review of Owner's annual expenditures for the Property shall be conducted in a commercially reasonable manner at no cost to Owner. After the review of Owner's initial expenditures for its first year of operation pursuant to this Paragraph, the City shall have the option of reviewing the expenditures every year thereafter during the term of this Agreement pursuant to the terms of this Paragraph at the same time it reviews Owner's budget pursuant to Paragraph 2.3.1 of this Agreement. Notwithstanding anything to the contrary in this Paragraph, Owner and City shall meet and discuss in detail the then existing expenditures every three years commencing with the third anniversary date of this Agreement and continuing every third year thereafter. Any information supplied to City by Owner pursuant to this Paragraph shall be considered strictly confidential and used solely for the purpose of evaluating Owners' performance of its obligations pursuant to this Agreement. City shall maintain the confidentiality of such information to the extent permitted by law. City shall duplicate the information only as needed for review and return all originals and duplicates to Owner, including without limitation originals and duplicates which may be in electronic form. City shall not release the information provided by Owner pursuant to this Paragraph to any third party without written notice to Owner seven (7) days prior to release of any such information to a third party.

2.3.3 Owner shall maintain all maintenance records for a minimum of three years and make such records available to the City for review and/or audit during reasonable business hours with five business days prior written notice, no more often than twice a year.

2.3.4 Owner shall insure that Property and Golf Course Facility maintenance costs do not include salaries of employees not performing direct maintenance functions.

2.3.5 Whenever Owner is required to provide information pursuant to this Agreement to the City for the City's review and approval, the City shall respond within thirty (30) days of the date Owner provides such information to City, and failure to respond within such thirty (30) days period shall be deemed approval.

ARTICLE 3

MAINTENANCE OF THE PROPERTY

3.1 Maintenance of the Property by Owner. Upon Owner's completion of the Property Improvements, Owner shall maintain the Property and related improvements, including without limitation the Clubhouse, the Parking Lot, the Maintenance Facility and associated landscaping in accordance with this Agreement, including without limitation the Maintenance Standards for the Palm Desert Country Club attached to this Agreement as Exhibit B incorporated by this reference (the "Maintenance Standards").

3.2 Maintenance Program/Maintenance Deficiency Procedure. Owner shall establish and conduct an ongoing maintenance program, in accordance with the Maintenance Standards. If at any time there is an occurrence where, in the commercially reasonable opinion

of the City, a material adverse condition on any area of the Property exists in contravention of the Management Plan and/or this Agreement, (a "Maintenance Deficiency") the City shall notify Owner in writing of such Maintenance Deficiency. Within ten (10) days of Owner's receipt of the Deficiency Notice, Owner shall in writing either (i) commit to remedy the Maintenance Deficiency in a commercially reasonable time and manner, or (ii) state that it disputes the City's Deficiency Notice. If the parties are unable to agree to the timing and/or the manner of cure, then the parties shall resolve the Maintenance Deficiency issue in accordance with the Paragraph in this Agreement entitled Conflicts and Disputes.

3.2.1 If Owner fails to remedy the Maintenance Deficiency either (a) within the time period previously agreed in writing by the parties or (b) by the date required in a written arbitration or judicial decision stating that a disputed Maintenance Deficiency must be cured, the City shall have the right, but not the obligation, to perform the necessary maintenance to cure the Maintenance Deficiency. If the City elects to cure such Maintenance Deficiency, the City shall give written notice to the Owner, setting forth with particularity the Maintenance Deficiency work to be done and the estimated cost of curing such Maintenance Deficiency. The City shall be entitled to reimbursement with respect thereto from the Owner as provided in this Paragraph. In the event the City has performed the work necessary to cure a Maintenance Deficiency, the City shall submit a written invoice to the Owner for all costs incurred by the City to perform such work, together with a statement that if the Owner fails to pay such invoice in full within the time specified, the City will pursue collection against the Owner pursuant to the provisions of this Paragraph. The City shall only be entitled to reimbursement for those costs reasonably incurred in performing the necessary maintenance to cure such Maintenance Deficiency. Such invoice shall be due and payable within thirty (30) days of receipt by the Owner. If Owner fails to pay such invoice in full within the period specified, payment shall be deemed delinquent and shall be subject to a one time late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter the City may pursue collection by means of any remedies available at law or in equity. Without limiting the foregoing, in addition to all other rights and remedies available to the City, the City may levy an assessment against the Owner for the invoice costs incurred by the City to perform the cure of the Maintenance Deficiency, plus the late charge. Such assessment shall constitute a charge on the land and shall be a continuing lien upon the Property, which lien shall be treated as a construction lien pursuant to California law subject to foreclosure and priority as set forth in the Construction Lien Statutes. Owner hereby vests the City with the right and power to levy such assessment, to impose a lien upon the Property and to bring all legal actions and/or to pursue lien foreclosure procedures against Owner for purposes of collecting such assessment in accordance with the provisions of this Agreement.

3.3 City Right to Enter and Inspect Condition of Property. The City, its employees, and agents shall have the right to enter the Property and all portions of the Property in order to inspect and examine the Property and all fixtures and equipment located thereon for the purposes of effectuating the terms and conditions of this Agreement . Such right of entry and inspection may be exercised during normal weekday business hours, upon forty-eight (48) hours prior notice to Owner.

3.4 Owner and City Annual Site Inspections. On an annual basis, commencing on the first anniversary of execution of this Agreement, Owner, arbitrator and representative of the City shall jointly inspect the premises including the golf course, clubhouse facilities, maintenance yard, parking lot, and incidental amenities. The purpose of the inspection shall be to verify the Owner's compliance with the requirements of this Agreement. Any defects noted shall be documented by the City within ten business days of the inspection as a

Maintenance Deficiency and shall be addressed by the Owner as called for in Paragraph 3.2 of this Agreement.

3.5 Owner and HOA Bi-Annual Meetings; Forum For Complaints. Owner shall meet on a bi-annual basis with any homeowner's association of the Project ("HOA") to discuss the condition of the Property. This meeting can be part of a regularly scheduled HOA meeting. Any concerns regarding the Owner's maintenance of the Property shall be heard at such meetings. Owner shall respond to concerns relating to Owner's maintenance of the Property within fifteen (15) business days of the date the concern was presented at the meeting.

3.6 Insurance. Within ten (10) calendar days after the Effective Date, Owner shall furnish or cause to be furnished to City a certificate of insurance evidencing insurance for the Property and its operations in commercially reasonable amounts.

3.7 Mortgagee Protection. A breach of any of the terms, covenants or conditions of this Agreement shall not defeat or impair the lien of any mortgage or deed of trust made in good faith and for value, but such terms, covenants and conditions shall be binding upon any party who is entitled to any of the Property, or any portion thereof or interest therein, acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise and those claiming under any such party.

3.8 Covenant Running With the Land. Owner's covenants to maintain the Golf Course Property in accordance with this Agreement are covenants which shall run with the land, shall bind Owner's successor's and assign's and shall remain in effect for so long as the Property is used as a Golf Course facility. Owner shall ensure that any borrowing obtained by Owner in the acquisition of the Property, or any other interest granted by Buyer to any third party in the Property prior to the recordation of this Agreement, shall be subordinate and junior to this Agreement.

ARTICLE 4

CONFLICTS AND DISPUTE RESOLUTION

4.1 Conflicts/Disputes. In the event there is a dispute in connection with the interpretation of or performance under this Agreement, including without limitation a dispute regarding a Maintenance Deficiency, and the complaining party has provided written notice to the non-complaining party detailing with particularity the claimed dispute (the "Dispute Notice"), then the City and Owner will promptly endeavor in good faith to resolve such dispute. If no resolution can be reached within fifteen (15) days of the parties endeavoring in good faith to resolve such dispute, then, the dispute shall be resolved exclusively as provided in this Paragraph 4.2 in the County of Riverside. Notwithstanding anything to the contrary in this Article 4 and/or this Agreement, if a dispute between the City and Owner has an amount in controversy in excess of \$50,000, (which amount may include without limitation, any or all of the following: costs of repairs, cost of maintenance, and/or capital expenditures) then either party may litigate such dispute in a court of competent jurisdiction by providing written notice to the other party within the fifteen (15) day good faith negotiation period referenced in this Paragraph.

4.2 Arbitration. After complying with the provisions of Paragraph 4.1 regarding attempting to resolve the dispute in good faith, in the event the dispute has not been resolved by the parties, and provided that neither Owner or City has elected to refer the matter to litigation under the terms set forth in Paragraph 4.1 of this Agreement, such dispute shall be

submitted to, and conclusively determined by binding arbitration conducted by an arbitrator who shall be an arbitrator selected by the parties within five (5) days of the expiration of the good faith negotiation period referenced in Paragraph 4.1, or in the event the parties are unable to agree on an arbitrator, then the arbitrator shall be selected in accordance with the Commercial Rules of the American Arbitration Association. Owner shall supply copies of current and two previous years' annual financial statements, including balance sheet and P/L statement in any arbitration or court proceeding in which the commercial reasonableness of any budgeted or expended item for maintenance results in a Maintenance Deficiency which Maintenance Deficiency is the subject of the arbitration or court proceeding. Any copies of Owner's Financial Documents provided pursuant to this Paragraph shall be subject to a protective order. The arbitrator shall award costs and attorney fees to the prevailing party. The provisions of this Paragraph 4.2 shall not preclude any party from seeking injunctive or other provisional or equitable relief to preserve the status quo pending the parties' resolution of their dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights. The arbitrator(s) shall not have the power to modify any of the provisions of this Agreement. The arbitrator(s)' decision shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE WHICH ARISES UNDER THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE DISPUTE RESOLUTION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION" PROVISION TO NEUTRAL ARBITRATION.

Initials: _____

4.3 Relief to Preclude Immediate Significant Deterioration of the Golf Course.

If the City identifies a Maintenance Deficiency which the City believes in its commercially reasonable opinion will result in immediate significant deterioration of the Golf Course if not cured within a commercially reasonable time ("Urgent Maintenance Deficiency"), the City shall provide immediate written notice to Owner. If within two business days of Owner's receipt of City's written notice of the Urgent Maintenance Deficiency, Owner fails to commit to cure the Urgent Maintenance Deficiency or disputes the existence of the Urgent Maintenance Deficiency, then the City may seek injunctive relief upon proper statutory notice to Owner in addition to instituting any arbitration to resolve the dispute pursuant to the Paragraph 4.2 of this Agreement. Any judgment or award issued as a result of the injunctive relief sought by the City pursuant to this Paragraph shall contain a specific provision for the recovery of actual attorneys' and expert witness fees and costs.

ARTICLE 5

GENERAL PROVISIONS

5.1 Notice to the Parties. For the purpose of this Agreement, communications and notices among the Parties shall be in writing and shall be deemed to have been given when actually delivered, if given by hand delivery or transmitted by overnight courier service, or if mailed, when deposited in the United States Mail, First Class, postage prepaid, return receipt requested and delivered to or addressed as follows:

To the City:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260
Attention: City Manager
Telephone: (760) 346-0611
Facsimile: (760) 340-0574

To the Owner:

Dahoon Investment Company, Inc.
77-200 California Drive
Palm Desert, California 92211
Attention: Sung Sang Cho
Telephone: 626.643.7516

with a copy to:

Best Best & Krieger
74760 Highway 111, Suite 200
Indian Wells, California 92210
Attention: David Erwin, Esq.
Telephone: (760) 586-2611
Facsimile: (760) 340-6698

with a copy to:

Sullivan, Hill Lewin Rez & Engel
550 West C Street, Suite 1500
San Diego, CA 92101
Attention: Madeline Clark Cahill, Esq.
Telephone: (619) 233-4100
Facsimile: (619) 231-4372

5.2 Indemnity of the City by Owner

5.2.1 Owner shall fully indemnify, protect, hold harmless, and defend (with counsel reasonably selected and approved by the City, which approval shall not be unreasonably conditioned, withheld or delayed) the City and its elected or appointed officials, officers, agents, attorneys, consultants and employees and each of them (each individually, an "Entity" and collectively, the "Entities"), from and against all "Indemnified Liabilities" (as defined in subparagraph 5.2.2); provided however such indemnity shall not apply to a particular Entity to the extent that such Indemnified Liabilities are caused by the active negligence or willful misconduct of the City. The City shall immediately notify the Owner, in writing, of any claim for which the City seeks indemnification (an "Indemnification Claim")

5.2.2 For the purposes of this Paragraph 5.2.2 the term " Indemnified Liabilities" means and refers to any and all claims demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, fees, disbursements and fees and costs of attorneys, consultants and experts, and all damages of any kind or of any nature whatsoever that may, at any time, be imposed upon, incurred or suffered by, or asserted or

awarded against an indemnified party, directly or indirectly relating to or arising from this Agreement.

5.3 Controlling Regulations/Governing Law. If a conflict arises between applicable governmental regulations relating to the operation and maintenance of the Property, the most stringent regulatory requirement shall control. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in California. The Parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California and if controlling, by the laws of the United States. Further, the Parties to this Agreement hereby agree that any legal actions arising from this Agreement shall be filed in California Superior Court, in the Court of Riverside, Central District or the appropriate federal court in such district.

5.4 Partial Invalidity. If any term or provision or portion of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision or portion thereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

5.5 No Intent to Create Third Party Beneficiaries. The Parties intend that the rights and obligations under this Agreement shall benefit and burden only the Parties hereto, and do not intend to create any rights in, or right of action to or for the use or benefit of any third Party, who is not one of the Parties to this Agreement.

5.6 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of the time for performance of any obligation or act to be performed herein shall be deemed to be an extension of the time for performance of any other obligation or act to be performed under this Agreement.

5.7 Professional Fees. In the event any litigation, arbitration, mediation or other proceeding ("Proceeding") is initiated by any party against the other party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with this Agreement, the prevailing party in such Proceeding shall be entitled to recover from the unsuccessful party all costs, expenses, actual attorneys' and expert witness fees relating to or arising out of such Proceeding (whether or not such Proceeding proceeds to judgment) and any post-judgment or post-award proceeding including without limitation one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, actual attorneys' and expert witness fees. The arbitrator(s) or court shall determine who is the prevailing party, whether or not the dispute or controversy proceeds to final judgment. City and Owner expressly acknowledge that this Paragraph is not intended to in any way alter the parties' agreement regarding dispute resolution pursuant to Article 4.2 of this Agreement. City and Owner agree that the reference to litigation in this Paragraph is included so that the prevailing party can recover their attorneys' fees and costs if (a) either party files a lawsuit in violation of Paragraph 4.1 (e.g., fees and costs incurred obtaining a court order compelling mediation/arbitration); or (b) a court rules that the arbitration provision in Paragraph 4.1 is unenforceable for any reason.

5.8 Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may

any obligations hereunder be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto.

5.9 Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared the same. Unless otherwise indicated, all references to Paragraphs are to this Agreement. All exhibits referred to in this Agreement are attached hereto and incorporated herein by this reference. If the date on which any action is required to be performed under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.


5.10 Time is of the Essence. Time and strict punctual performance is of the essence of this Agreement and each of its provisions in which a time for performance is specified.

5.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. This Agreement may be executed by facsimile signatures, and each facsimile counterpart, when taken together, shall be deemed an original.

IN WITNESS WHEREOF, Owner and the City hereby execute this Agreement by the signatures of their authorized representatives, as follow:

OWNER:

Dahoon Investment Company, Inc.
a California corporation

Date: July 7, 2005 By: 
Its: CEO

By: _____

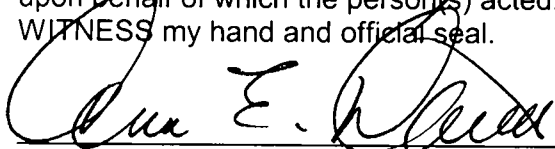
Its: _____

[Remaining Signatures on Following Page]

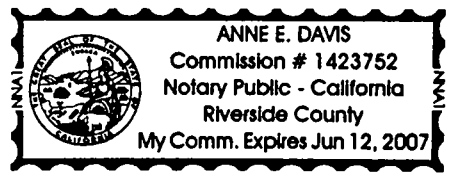


STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On July 7, 2005, before me, the undersigned notary public, personally appeared Sung Sang Cho, personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.



Signature of Notary Public



SIGNATURE PAGE
TO
OPERATION AND MAINTENANCE AGREEMENT
(Palm Desert Golf Club)

CITY:

City of Palm Desert
a California municipal corporation

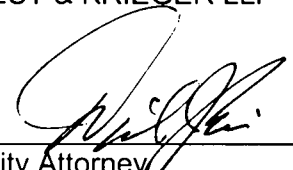
Date: 8-31-05

By: 
Buford A. Crites, Mayor

ATTEST:


By: 
City Clerk

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

By: 
City Attorney

**EXHIBIT A-1
TO
OPERATION AND MAINTENANCE AGREEMENT**

LEGAL DESCRIPTION OF PALM DESERT GOLF COURSE

EXHIBIT A-1

PARCEL 1:

LOT A OF TRACT 3860 AS SHOWN BY MAP ON FILE IN BOOK 60, PAGES 55 THROUGH 57 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

PARCEL 2:

LOTS A AND B OF TRACT 4079 AS SHOWN BY MAP ON FILE IN BOOK 66, PAGES 67 THROUGH 69 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

PARCEL 3:

LOTS 72, 73, 261 AND 405 OF TRACT 2137, AS SHOWN BY MAP ON FILE IN BOOK 41, PAGES 29 THROUGH 36 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

PARCEL 4:

LOT 199 OF TRACT 2137, AS SHOWN BY MAP ON FILE IN BOOK 41, PAGES 29 THROUGH 36 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 262 OF SAID TRACT 2137;
THENCE NORTH 0° 8' 10" EAST ALONG THE WEST LINE OF SAID LOT 262, 70 FEET TO THE MOST NORTHWESTERLY CORNER THEREOF;
THENCE SOUTH 45° 0' 31" WEST, 40 FEET;
THENCE SOUTH 33° 59' EAST, 50.31 FEET, TO THE POINT OF BEGINNING.

PARCEL 5:

LOT 453 OF TRACT 2137, AS SHOWN BY MAP ON FILE IN BOOK 41, PAGES 29 THROUGH 36, INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 454 OF SAID TRACT 2137;
THENCE ALONG THE EASTERLY LINE OF SAID LOT 454, SOUTH 36° 21' 15" EAST, 101.37 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 454;
THENCE NORTH 43° 10' 31" EAST, A DISTANCE OF 2 FEET TO A POINT;
THENCE NORTHWESTERLY IN A DIRECT LINE, TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF LOT 392, AS SHOWN BY SAID MAP;
THENCE NORTH 80° 30' 14" EAST, 102.80 FEET ON THE SOUTHERLY LINE OF SAID LOT TO THE SOUTHEAST CORNER THEREOF;
THENCE SOUTH 33° 04' 58" WEST, 15 FEET ON THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF SAID LOT;
THENCE NORTHWESTERLY, IN A DIRECT LINE, TO THE POINT OF BEGINNING.

PARCEL 6:

LOTS 3, 5, 6, 7 AND 466 OF TRACT 2283 AS SHOWN BY MAP ON FILE IN BOOK 42, PAGES 82 THROUGH 89 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

PARCEL 7:

LOT 2 OF TRACT 2283, AS SHOWN BY MAP ON FILE IN BOOK 42, PAGES 82 THROUGH 89 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 287, SHOWN BY MAP ON SAID TRACT;
THENCE NORTH 86° 49' 53" EAST, 30 FEET ON THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 287;
THENCE SOUTH 8° 02' 43" WEST, 62.91 FEET TO THE SOUTHEAST CORNER OF SAID LOT 287;
THENCE NORTH 32° 35' 25" WEST, 71.96 FEET ON THE NORTHEASTERLY LINE OF SAID LOT 287, TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2;
THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 2, NORTH 87° 27' 23" EAST, 366.59 FEET;
THENCE NORTH 28° 37' 50" WEST, 80.28 FEET;
THENCE NORTH 81° 10' 50" WEST, 139.78 FEET;
THENCE SOUTH 67° 45' 56" WEST, 161.33 FEET;
THENCE SOUTH 40° 32' 05" WEST, 62.00 FEET TO THE POINT OF BEGINNING.

PARCEL 8:

LOT 4 OF TRACT 2283, AS SHOWN BY MAP ON FILE IN BOOK 42, PAGES 82 THROUGH 89 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 246 OF SAID TRACT 2283;
THENCE ALONG THE NORTHERLY LINE OF SAID LOT 246, NORTH 40° 36' 15" WEST, A DISTANCE OF 92.20 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 246;
THENCE SOUTH 83° 18' 30" EAST, A DISTANCE OF 60.41 FEET TO THE NORTHWESTERLY CORNER OF LOT 248 OF SAID TRACT NO. 2283;
THENCE ALONG THE WESTERLY LINE OF SAID LOT 248, SOUTH 0° 00' 10" EAST, A DISTANCE OF 62.96 FEET TO THE POINT OF BEGINNING.

PARCEL 9:

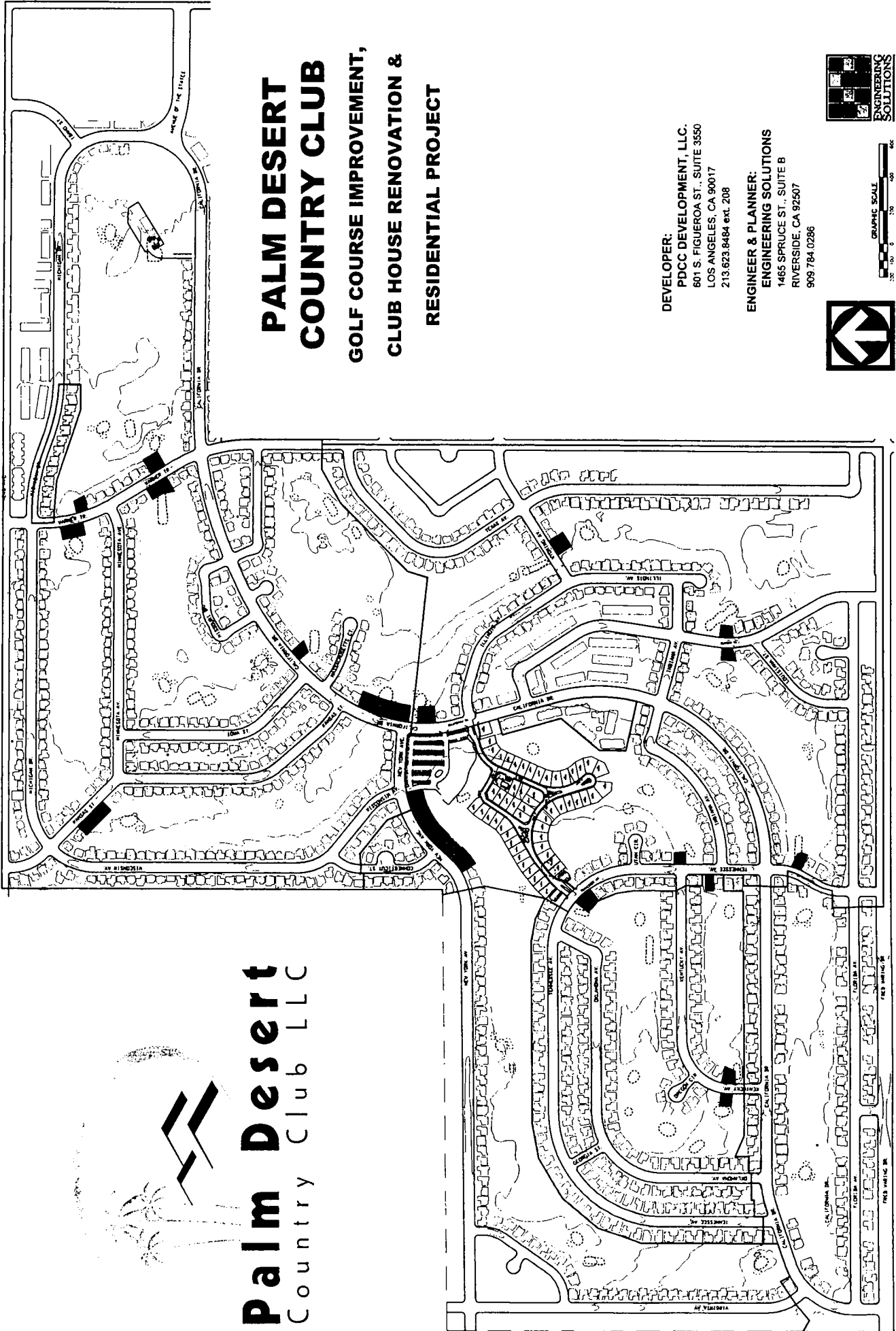
LOTS H, I, J AND K. OF TRACT 4871, AS SHOWN BY MAP ON FILE IN BOOK 77, PAGES 16 THROUGH 18 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

EXCEPTING THAT PORTION OF LOT J OF TRACT 4871, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 166 OF SAID TRACT 4871;
THENCE SOUTH 43° 27' EAST, 74.20 FEET TO AN INTERSECTION WITH A NORTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 166;
THENCE SOUTH 24° 09' 34" WEST, 9.89 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 166;
THENCE NORTH 36° 20' 44" WEST, 78.57 FEET TO THE POINT OF BEGINNING.

**EXHIBIT A-2
TO
OPERATION AND MAINTENANCE AGREEMENT**

SITE MAP OF PALM DESERT GOLF COURSE



Palm Desert
Country Club LLC

**PALM DESERT
COUNTRY CLUB
GOLF COURSE IMPROVEMENT,
CLUB HOUSE RENOVATION &
RESIDENTIAL PROJECT**

DEVELOPER:
PDCC DEVELOPMENT, LLC.
601 S. FIGUEROA ST., SUITE 3550
LOS ANGELES, CA 90017
213.623.8484 ext. 208

ENGINEER & PLANNER:
ENGINEERING SOLUTIONS
1465 SPRUCE ST., SUITE B
RIVERSIDE, CA 92507
909.784.0286



**MAINTENANCE
STANDARDS**

FOR THE

**PALM DESERT
COUNTRY CLUB**

GOLF COURSE MAINTENANCE STANDARDS

The following are the minimum standards by which the Palm Desert golf course (27 holes) will be managed:

A Golf Course That Is Maintained Equal to or Greater Than:

- *"Neat, Clean, and Green Golf Course" Everyday*
- *The Highest Quality Conditions Possible To Play The Game Of Golf*
- *Maintained Sand Traps (All with complete rakes)*
- *Serviced Ball Washers on carts (Clean Water and Towels)*
- *Yardage Markers at Regular Intervals*
- *Tee Markers and Cups Rotated Daily*
- *Identify Address and Remedy Work Areas (i.e., Irrigation Breaks, Cart Trails, Etc.)*
- *Report Golf Course Work (Aerification, Etc.) In Advance to Players*
- *Clean, Serviced, Sanitary Restrooms*
- *Litter Free - Serviced Trash Cans*
- *Attentive, Motivated, Uniformed Staff*
- *Trees and Shrubbery Trimmed in Accordance with recommendation of a certified arborist, or City of Palm Desert landscape management guide*
- *Consistent Mowing Patterns*
- *Adequate Number of Clean Golf Carts*
- *Extra Scorecards - Pencils on 2nd Tee*
- *Divot Repair Program*
- *Ball Mark Repair Program*
- *Adequate Communication*
- *Practice Area*
 - *Clean, Quality Practice Balls, Replaced on a Regular Basis*

- *Turf Maintained and Rotated Tee Areas*
- *Targets at Regular Intervals*
- *Greens for the Purpose of Targets*
- *Flags for the Purpose of Target Points*
- *Billboards for Information*
- *Informed, Attentive, Motivated Personnel with Name Tags*
- *Adequate Communication from the Operators to the Patrons*
- *Litter Free*

BASIC GOLF SHOP SET UP

- *Informed, Attentive, Motivated Personnel with Name Tags*
- *Adequate Communications between the Operators and Patrons*
 - *Posted Hours of Operation*
 - *Posted Fee Schedules*
 - *Posted Golf Course Condition, "Right-to-Know" Information, (i.e. Reclaimed Water, Use of Pesticides, etc.)*
 - *Posted Pictures of Shop Staff*
 - *Posted Play Restrictions*
 - *Posted Calendar of Events*
 - *Ladies Club and Men's Club*
- *Clean, Litter Free Area*
- *Plants (If Space Allows)*
- *Communication of Golf Maintenance, Driving Range, and Cart Staging Area.*
- *Score Posting Area Easily Accessed*
- *At least one (1) full-time Property crew member shall have a current pesticide applicator's license.*

CLUBHOUSE, YARD AND PARKING LOT MAINTENANCE

- *Owner shall insure that the water feature shall be operational and managed to avoid buildup of algae or mineral deposits.*
- *Owner shall insure that all landscaped planter areas shall be kept weeded, watered, fertilized, and raked in accordance with the City of Palm Desert Landscape Maintenance Standards.*
- *Owner shall insure that all trees and shrubs shall be pruned as necessary to provide ease of play on the course and to provide aesthetic value throughout. The crew shall replace trees damaged by wind, etc., and provide staking as necessary. Tree pruning shall be performed under supervision of certified arborist.*
- *Owner shall insure that marred painted surfaces shall be promptly touched up to match adjacent areas.*
- *Owner shall insure that facility be adequately managed to avoid pest infestation. Rodent and insect control shall be performed as necessary.*
- *Owner shall insure that custodial services, including emptying of trash receptacles, replacement of soaps and paper supplies in restrooms, cleaning of spills, and mopping or vacuuming of floors shall be performed daily.*
- *Owner shall insure that mechanical system filters shall be replaced routinely.*
- *Owner shall assure that the food and beverage facilities at the Golf Course are at all times operated in such a manner as to qualify for and maintain no less than a "Class B" rating as administered by the Riverside County Health Department.*
- *Owner shall insure that the ventilation systems, electrical equipment, toilet facilities, and work areas shall be maintained properly to provide a decent, safe, and sanitary work area.*
- *Owner shall insure that chemicals shall be clearly labeled and properly stored in compliance with all regulations for proper disposal of materials.*
- *Owner shall resurface any cracked asphalt as necessary.*
- *Owner shall properly mark the parking lot with visible striping and signs in place.*
- *Owner shall sweep the parking lot and keep it weeded, and free of brush, junk or trash piles.*
- *Owner shall insure that all exterior and parking lot lights shall be operational and time controlled appropriately for the season.*
- *Landscape maintenance shall be maintained according to the current version of City of Palm Desert Landscape Maintenance Guide.*

- *Owner shall monitor local evapotranspiration rates and provide appropriate watering solutions for the golf course after accounting for the evaporative losses. Perform repairs as needed.*

¹ Numeral refers to percent or pounds of active ingredient.

² Diquat has a state label in Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee and Texas for winter annual weed control in dormant bermudagrass.

³ Mocap 10G is labelled for commercial turf only (golf courses, sod farms).

⁴ Diazinon is not labeled for use on golf courses or sod farms.

⁵ Triumph 4E is restricted to certain soil types and several applicaiton techniques must be followed. It is labeled for use on lawns, sod farms, and golf courses (only tees, greens, and aprons). A maximum of one application per year is permitted for the higher surface insect rate and a maximum of two applications per year at least 60 days apart for the lower surface insect rate.

⁶ For use only by commercial lawn pest control personnel, and only on golf course tees, greens and aprons, and on sod farms. See soil restrictions

⁷ Diazinon may not be used on golf courses or sod farms

⁷ For use in professional turf areas such as golf courses and commercial sod.