

FIRST AMENDMENT TO CITY OF SAN DIEGO PERCENTAGE RATE LEASE

THIS FIRST AMENDMENT TO CITY OF SAN DIEGO PERCENTAGE RATE LEASE ("Amendment") is made by and between HODGES GOLF IMPROVEMENT CENTER LLC, a California limited liability company ("HODGES"), and THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of the date of execution by CITY (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. HODGES, as lessee, and CITY, as lessor, are parties to that certain CITY OF SAN DIEGO PERCENTAGE RATE LEASE by and between CITY and HODGES, and recorded in the Office of the San Diego City Clerk on April 10, 2000, as Document No. RR-292941 (the "Lease"), attached hereto as **EXHIBIT A: Lease**, under which HODGES leases from CITY that certain real property (the "Lease Property") consisting of approximately 17.47 acres commonly known as the "Hodges Golf Center" located at 12675 Sunset Drive in Escondido, California, and more particularly described in the Lease.
- B. Lease section 4.7 MBE/WBE Assignment purports to require HODGES to comply with a certain Minority and Women Business Enterprise Program (the "Program," which was adopted by CITY'S City Council on March 4, 1985, as Resolution No. R-262633). On November 29, 1993, CITY'S City Council acted to rescind the Program pursuant to Resolution No. R-283089. Therefore, HODGES has requested that Lease section 4.7 be deleted from the Lease.
- C. HODGES has requested CITY'S consent to an assignment of the Lease to PAK AND PARK, LLC, a California limited liability company ("PAK & PARK"). This Amendment is made pursuant to Lease section 4.2 Assignment and Subletting, whereby CITY may, as a condition to its approval of any assignment, require that the Lease be revised to comply with current, standard CITY lease requirements. This Amendment is expressly contingent, and shall only be effective, upon the closing of the proposed assignment of the Lease by HODGES to PAK & PARK.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. MBE/WBE Assignment. Lease section 4.7 MBE/WBE Assignment shall be deleted in its entirety.
- 2. Insurance. Lease section 5.2 Insurance shall be deleted and replaced with the following, to be effective sixty (60) days from the Effective Date of this Amendment:
 - 5.2 Insurance. LESSEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage

with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000).

5.2.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

5.2.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the term of this lease ("Term") and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

5.2.3 Qualified Insurer(s). All insurance required by the terms of this lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

5.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

5.2.5 Continuity of Coverage. All policies shall be in effect throughout the Term and any extended use, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement.

5.2.5.1 At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this lease.

5.2.5.2 Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on LESSEE'S leasehold in accordance with section 4.4 Encumbrance of this lease, the proceeds may be paid to

the approved mortgagee or beneficiary, provided adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the leased premises.

- 5.2.6 Modification. To assure protection from and against the kind and extent of risk existing on the leased premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- 5.2.7 Accident Reports. LESSEE shall report to CITY any accident causing property damage or injury to persons on the leased premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 5.2.8 Failure to Comply. Notwithstanding any other provision of this lease, if LESSEE fails or refuses to obtain or maintain insurance as required by this lease, or fails to provide proof of insurance, CITY may terminate this lease immediately upon such breach. Upon such termination, LESSEE shall immediately cease its use of the leased premises and commence and diligently pursue the removal of its property from the leased premises.
- 5.2.9 All-Risk Property Insurance. LESSEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the leased premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
3. San Diego's Strong Mayor Form of Governance. The Lease shall be amended by adding section 8.12, as follows:
- 8.12 San Diego's Strong Mayor Form of Governance. From and after the Effective Date, all references to "City Manager" in this Lease shall be deemed to refer to "Mayor." This provision became effective January 1, 2006, and shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

4. Storm Water Pollution Prevention Plan. CITY and HODGES have agreed that HODGES may implement a Storm Water Pollution Prevention Plan in lieu of the Resource Management Plan identified in the Lease. Accordingly, from and after the Effective Date, Lease section 8.1 Resource Management Plan shall be deleted and replaced with the following:

8.1 Water Quality Assurances. LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control ("Code"), and employ "Best Management Practices" including development and implementation of a "Storm Water Pollution Prevention Plan" as those terms are defined by the Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. On or before September 1, 2007, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY'S satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

5. No Other Changes. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the Effective Date.

Date: _____

HODGES GOLF IMPROVEMENT CENTER LLC, a
California limited liability company

BY: _____

Name: CAM L. BARNER

Title: _____

Date: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: _____

Title: _____

5. No Other Changes. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the Effective Date.

Date: _____

HODGES GOLF IMPROVEMENT CENTER LLC, a
California limited liability company

BY: _____

Name: _____

Title: _____

Date: 6/27/07

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: David A. Sandoval

Name: David A. Sandoval, CCIM

Title: Deputy Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 6/28/07

MICHAEL J. AGUIRRE, City Attorney

BY: Brock Ladewig

Name: Brock Ladewig

Title: CHIEF DEPUTY CITY ATTORNEY