

DUPLICATE

FIRST AMENDMENT TO PERCENTAGE LEASE

THIS FIRST AMENDMENT TO PERCENTAGE LEASE ("First Amendment"), is made and entered into this July 18 day of 2016 ("Effective Date"), by and between The CITY OF SAN DIEGO, California municipal corporation, hereinafter sometimes referred to as "Lessor" or "CITY," and the BAY CLUB FAIRBANKS RANCH, a Delaware limited liability company, hereinafter referred to as "Bay Club" or "LESSEE," with reference to the following facts:

RECITALS

- A. CITY and Watt Industries/San Diego, Inc., a California corporation ("Watt"), entered into that certain Percentage Lease ("Lease") dated December 6, 1982, and recorded as Document 83-382965 on October 24, 1983, in the Office of the County Recorder of San Diego, California, covering premises more particularly described in the Lease.
- B. CITY, Watt, and Fairbanks Ranch Country Club, Inc., a California nonprofit corporation ("FRCC"), entered into that certain Assignment and Assumption of Lease and Consent to Assignment Agreement dated January 31, 1986, in which FRCC assumed all terms and conditions of the Lease.
- C. CITY, FRCC (as "Assignor"), and Bay Club (as "Assignee"), and THE BAY CLUBS COMPANY, LLC, a Delaware limited liability company, ("GUARANTOR"), entered into a Consent to Assignment and Agreement on July 18, 2016, in which CITY consented to Bay Club's assumption of all terms and conditions of the Lease, among other things.
- D. CITY and Bay Club now wish to amend the Lease. The parties agree that if this First Amendment is not approved by the City Council of CITY, after all appropriate process, then the Consent to Assignment and Agreement shall be considered null and void and FRCC, consistent with the terms of the Consent to Assignment and Agreement, has agreed that it will revert to being the Lessee under the Lease.
- E. All capitalized terms herein shall have the same meaning as in the Lease, unless otherwise specifically defined herein.

NOW THEREFORE, in consideration of the above recitals, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the parties agree as follows:

AGREEMENT

- 1. Section "I. LEASED PREMISES." of the Lease, along with said Section's Subsection "A.

PERMITTED USE.”, Subparagraph “(1)”, “Exhibit A” and the hand written note regarding “See Exhibit B”, are hereby deleted in their entirety and replaced with the following:

I. LEASED PREMISES. CITY hereby leases to LESSEE and LESSEE hereby leases from CITY, all of the certain real property situated in the City of San Diego, County of San Diego, State of California, described as San Diego County Assessor’s Map 10730 – Fairbanks Country Club – Unit No. 1 ROS 15403, and six (6) acres of Lot One (1) (APN 760-146-07), and three hundred seventy two and three quarters of an acre (372.75) of Lot Two (2) (APN 760-146-05), all as more specifically depicted in Exhibit “A”, attached hereto and by this reference made part of this lease. Said real property is hereinafter called the “premises” or “leased premises.” As of the Effective Date of the First Amendment to this lease, said date being _____, possession of the above-referenced six (6) acres from Lot One (1) (APN 760-146-07) cannot be delivered to LESSEE as the six (6) acres are included as part of a premises under a separate and distinct leasehold. When the above- referenced six (6) acres become available to be made a part of the premises hereunder, CITY shall notify LESSEE of its intent to deliver possession of said six (6) acres, and LESSEE shall thereafter have possession of the six (6) acres, as part of the premises, during the term of this lease. CITY shall not assume any liability for its failure to deliver possession of the six (6) acres to LESSEE, nor will the rents hereunder be affected should possession of the six (6) acres not be immediately, or ever, delivered to LESSEE. Both LESSEE and CITY acknowledge that the leasehold has not been surveyed. However, both LESSEE and CITY agree that the premises is intended to be approximately three hundred seventy eight and three quarters (378.75) acres, but that rent hereunder shall not be subject to adjustment should a future survey determine that the aforesaid approximation is actually higher or lower than the survey results.

A. PERMITTED USE. The premises are leased to LESSEE for the purpose of:

- (1) Constructing, operating and maintaining thereon a country club and 27-hole golf course facilities and related incidental uses, including, but not limited to, permanent lakes, gallery mounds, paved cart paths, and a clubhouse with locker rooms, clubrooms, banquet rooms, kitchen and snack bar facilities, parking, bar, card rooms, swimming pools and other aquatic facilities, and tennis facilities, in accordance with the General Development Plan on file with the San Diego Office of the City Clerk as Document No. RR-257594-2 and Conditional Use Permit No. 10-644-0. For purpose of this First Amendment, “incidental” is defined as “an unplanned or subordinate conjunction with something else”, and all new “related incidental uses” must be pre-approved by City, the approval of which shall not be unreasonably withheld. Additionally, LESSEE may also construct, operate and maintain open field areas, for use exclusively by members and guests of LESSEE and in no event for third party or non-LESSEE member activities. LESSEE may operate less than 27 holes of golf if such reduction in holes is in compliance with Chapter 12, Article 6, Division 1 of the

CITY's General Development Permit Procedures and Conditional Use Permit No. 10-644-0.

2. Subsection "A" of Section II. TERM OF LEASE is deleted in its entirety and replaced with the following:
 - A. COMMENCEMENT AND TERMINATION. The term of the Lease shall extend for (40) years from the First Amendment Effective Date (which date is 7/18/16), and shall terminate on 7/17, 2056. A "Lease Year" shall be defined as the twelve (12) month period commencing on the First Amendment Effective Date.
3. Subparagraphs "(1)", "(2)" and "(3)" of Section III. CONSIDERATION. A. RENT of the Lease are hereby deleted in their entirety and replaced with the following:
 - A. RENT.
 - (1) LESSEE shall pay rent to CITY in the amount of the greater of: (a) a percentage rent (the "Percentage Rent," defined below); and (b) a minimum monthly rent ("Minimum Monthly Rent," defined below). Within thirty (30) days after the end of each Lease Year quarter during the term, LESSEE shall deliver to CITY a schedule of LESSEE's "Gross Revenue" (defined below) for the quarter, together with a statement of the Percentage Rent payable for that quarter, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Concurrently with the delivery of such schedule and statement, LESSEE shall pay to CITY the Percentage Rent due, if any, in excess of the Minimum Monthly Rent attributable to the prior quarter.
 - (2) Minimum Monthly Rent. The minimum monthly rent ("Minimum Monthly Rent") for the first three (3) Lease Years following the First Amendment Effective Date shall be Sixty-Two Thousand Five Hundred Dollars (\$62,500.00) per month.

The Minimum Monthly Rent shall be paid monthly on or before the first day of each calendar month during the term of the lease.

Provided, however, in the event that the combined total Percentage Rent payments and Monthly Minimum Rent payments during any Lease Year equal or exceed the required aggregate Monthly Minimum Rents for that year, then, for the balance of such year, LESSEE shall discontinue paying Monthly Minimum Rents and shall continue paying only Percentage Rents until the beginning of the ensuing Lease Year. It is the intent of this provision that the LESSEE shall pay the Monthly Minimum Rent as a guarantee against the Percentage Rent requirement and the greater of the two requirements,

Minimum or Percentage, shall prevail, whichever occurs throughout the term.

- (3) Minimum Monthly Rent Adjustment. The Minimum Monthly Rent shall be increased every five (5) years by six percent (6%) on the First Amendment Effective Date.
- (4) Percentage Rent. Percentage Rent will be calculated on a quarterly basis and in an amount equal to the percentages of Gross Revenue derived from the following designated activities:

Percentage of Gross Revenue

Business Activities

Twelve Percent (12%)

Golf and other related fees such as green fees and cart rentals.

Six Percent (6%)

Sale of food, beverages (including alcohol beverages), banquets and merchandise.

Fifty Percent (50%)

Wireless telecommunication equipment installed or operated on or from the premises.

Fifty Percent (50%)

LESSEE shall pay to CITY fifty percent (50%) of the gross revenues earned by LESSEE under any sublease or other rental agreement for the premises.

Four Percent (4%)

Initiation Fees for Fairbanks Ranch Country Club and all Qualifying Membership Dues.

Ten Percent (10%)

All other authorized activities conducted on or from the Premises.

- (5) Percentage Rent Adjustments. Upon at least one hundred eighty (180) days prior written notice to LESSEE, CITY may, but shall not be obligated to, adjust the Percentage Rent percentage rates on the first day of the tenth (10th) Lease Year following the First Amendment Effective Date and every ten (10) years thereafter to reflect the then-current fair market rent percentage rates for the premises and the Permitted Use(s), as evidenced by then-recent leases for similar premises similarly improved, operated and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. The new Percentage Rent percentage rates shall be determined by mutual consent or through appraisal as hereinafter set forth. CITY and LESSEE agree to equally share the cost of the mutually selected appraiser. In the event that such

adjustments have not been arrived at by mutual consent by ninety (90) days prior to the start of the applicable Lease Year, then the parties hereto will have the premises appraised under the terms hereinafter set forth.

In the event the parties do not agree upon the amount of adjustments to said percentage rates as provided for in the previous section, then the adjustments shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY within ten (10) days of receipt of the list of appraisers. CITY and LESSEE agree to equally share the cost of the mutually-selected appraiser ("Mutually Selected Appraiser"). In the event the parties do not reach agreement as to selection of the Mutually Selected Appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE's percentage rate adjustments. In the event that the CITY and LESSEE fail to mutually select a third appraiser within ten (10) days, then the third appraiser ("the Third Appraiser") will be appointed by the presiding President of the San Diego Chapter of the Appraisal Institute, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. Whether a Mutually Selected Appraiser or the Third Appraiser, said appraiser shall complete the appraisal assignment within sixty (60) days of receiving said appraisal assignment. Each party shall pay the cost of its own selected appraiser (used in the Third Appraiser selection process), and CITY and LESSEE agree to equally share the cost of the Mutually Selected Appraiser or the Third Appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the Mutually Selected Appraiser or the Third Appraiser. Notwithstanding the foregoing, in no event shall the percentage rates ever be determined to be lower than those set forth in subsection "(4) Percentage Rent" above.

The Mutually Selected Appraiser or the Third Appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California communities as listed above, if available. The new Percentage Rent percentage rates shall be effective and due as of the first day of the applicable Lease Year, regardless of when the appraisal is completed. In the event the appraisal is not completed in time to permit the percentage rate adjustments to be made upon the applicable commencement of the appropriate Lease Year of adjustment, LESSEE shall continue to pay Percentage Rent in accordance with the then-existing rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. If any Percentage Rent deficiencies are created by the percentage rate adjustment process set forth in this section, LESSEE shall pay to CITY any and all such rent deficiencies within ninety (90) days after CITY's notice of the Percentage Rent percentage rate adjustment.

- (6) Payment Procedure. Within 30 days following the end of each Lease Year quarter in which the Gross Revenue subject to rents was earned, LESSEE will provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate and include:
- (a) Total gross receipts for each subject month, itemized as to the separate categories for which the Percentage Rents are established. A gross receipts breakdown of each revenue-generating activity conducted on the premises must be included when a reported category shows gross receipts to be more than one business operation.
 - (b) The Percentage Rent due the CITY, computed and totaled.
 - (c) The accumulated total of all rents previously paid for the then-current Lease Year.
 - (d) Payment owing CITY, which shall be the amount equivalent to the greater of: (1) the Minimum Monthly Rent for the quarter or (2) the Percentage Rent for the quarter.
- (7) Unauthorized-Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the premises that is not allowed by this lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this lease.
4. Subparagraphs "(1)", "(2)" and "(3)" of Section III. CONSIDERATION. C. DEFINITIONS are **deleted** in their entirety and **replaced** with the following:
- C. DEFINITIONS.
- (1) Gross Revenue. "Gross Revenue" shall mean all revenue derived from all CITY-approved uses of the premises, including without limitation all revenue derived from or by sublessees, subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate

charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; or (b) refunds for goods returned for resale on the premises or refunds of deposits. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

- (2) Qualifying Membership Dues. "Qualifying Membership Dues" shall mean (a) dues paid by members for membership in the club operated on the leased premises as their home club under the applicable membership documents, and (b) the incremental dues paid by members at other Bay Club locations located within a fifteen (15) mile radius of the leased premises which entitles a member to play golf at the leased premises for no green fees. Solely for purposes of providing an example on the calculation of determining the amount of incremental dues under (b) of this paragraph, Bay Club currently has two membership classifications at Bay Club Carmel Valley (the only Bay Club location within fifteen (15) miles of the Premises as of the date of this First Amendment) that allow access to the Fairbanks Ranch Country Club without the payment of green fees and would generate Qualifying Membership Dues, the Bay Club Carmel Valley Club West Diamond Membership and the Bay Club Carmel Valley Club West Platinum Membership. Qualifying Membership Dues relative to these two types of memberships would be calculated as follows:
- (a) If the Bay Club Carmel Valley Club West Diamond Monthly Dues are \$525 (example is shown for an individual although memberships are also sold for couples and families) and the Bay Club Carmel Valley Club West Premier Monthly Dues (an Individual Membership at Bay Club Carmel Valley where the member must pay green fees to access FRCC and other Bay Club golf clubs) are \$290, the incremental dues are classified as Qualifying Membership Dues would equal \$235.
- (b) If the Bay Club Carmel Valley Club West Platinum Monthly Dues are \$375 (for an individual) and the Bay Club Carmel Valley Club West Premier Monthly Dues (an individual Membership at Bay Club Carmel Valley where the member must pay green fees to access other clubs) are \$290, the incremental dues classified as Qualifying Membership dues would equal \$85.
- (3) Place of Payment. All rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

5. Subsection "D. FINANCIAL RECORDS MAINTENANCE" of Section III. CONSIDERATION of the Lease is **deleted** in its entirety and **replaced** with the following:

D. FINANCIAL RECORDS MAINTENANCE.

- (1) CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the term of this lease, plus five (5) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the leased premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the leased premises and all financial transactions resulting from LESSEE's use of the leased premises as CITY may deem reasonably necessary, in its sole reasonable discretion, to protect CITY's rights under this lease.
- (2) Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:
 - (i) For any given lease year, if an audit reveals an underpayment of additional consideration of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
 - (ii) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this lease.
- (3) Any deficiency determined by the audit shall be considered delinquent rent, subject to all

penalties and remedies provided to CITY for delinquent rent under this lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this lease. If no future rents are then due under this lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- (4) Default. LESSEE's failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination if not cured within the applicable notice and cure period set forth in the Lease.

6. Subsection "E. DELINQUENT RENT." of Section III. CONSIDERATION of the Lease is **deleted** in its entirety and **replaced** with the following:

E. DELINQUENT RENT.

If LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) (being a total of ten percent [10%]), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

7. Subparagraph "(b)" of Section IV. COVENANTS AND CONDITIONS. A. CITY COVENANTS, (3) Right to Encumber, of the Lease is **deleted** in its entirety and **replaced** with the following:

- (b) Leasehold Encumbrances. Subject to CITY's prior written consent in each instance, which consent shall not be unreasonably withheld, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of developing, improving, repairing, refurbishing and/or maintaining the premises or to finance such capital expenditures previously advanced for the premises by LESSEE. CITY's consent may be based in part on its determination that a loan does not exceed eighty percent (80%) of the appraised value of the leasehold estate and that LESSEE's net operating income to be derived from the leasehold is adequate to service the debt and LESSEE's expenses, including without limitation the payment of rent under this lease. Each such encumbrance shall be subject to

all of the terms, covenants and conditions of this lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this lease, and shall be subordinate to CITY's fee interest in the premises and any and all of CITY's encumbrances on that fee interest, now and in the future. If any such approved deed of trust or other security instrument is foreclosed upon or transferred in lieu of foreclosure, CITY shall accept the mortgagee or beneficiary thereof as its new lessee under this lease with all the rights and obligations granted and imposed in this lease.

8. Subparagraph "(4) Right to Terminate" of Section IV. COVENANTS AND CONDITIONS. A. CITY COVENANTS of Lease is hereby **deleted** in its entirety and **replaced** with the following:
 - (4) Estoppel Certificate. Upon request thirty (30) days in advance, the CITY shall furnish to LESSEE a letter and/or estoppel certificate addressed to the mortgagee or proposed mortgagee or financial institution or such other party designated by LESSEE, in the form attached as Exhibit A.
9. Subparagraphs "(3) Affirmative Action" and "(6) Construction Bond" of Section IV. COVENANTS AND CONDITIONS. B. LESSEE COVENANTS, of the Lease are **deleted** in their entirety and are each **replaced** with the designation "Reserved".
10. Subparagraph "(8) Insurance Coverage" of Section IV. COVENANTS AND CONDITIONS. B. LESSEE COVENANTS, of the Lease is hereby **deleted** in its entirety and **replaced** with the following:
 - (8) Insurance. LESSEE shall obtain and maintain throughout the term of this lease, at its sole cost and expense, all insurance required by this lease. LESSEE's liabilities under this lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this lease. Notwithstanding any provision of this lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this lease (subject to any notice and cure period provided in this lease). LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):
 - (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject

to an annual aggregate of at least Ten Million Dollars (\$10,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12'90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this lease.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this lease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against the City of San Diego and its elected officials, officers, employees, representatives and agents.
- (d) Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "the City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the leased premises.
- (e) Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by all policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- (f) Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- (g) Qualified Insurer(s). Except for the State Compensation, be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and

that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- (h) 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.
- (i) Continuity of Coverage. All policies shall be in effect at all times during the term of this lease, 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. The policies shall be kept in force for the duration of the term. 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. LESSEE shall provide proof of continuing insurance at least annually during the term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- (j) Modification. To assure protection from and against the kind and extent of risk existing from use of the leased premises or the Open Space areas, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permitted Use and LESSEE's activities under this lease.
- (k) Accident Reports. LESSEE shall as soon as reasonably practicable report to CITY any accident causing property damage or injury to persons on the leased premises, Open Space areas, or otherwise related to use of the leased premises or Open Space areas. 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.
- (l) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to use of the leased premises and Open Space areas under

this lease or the leased premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

- (8.1) LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in IV. COVENANTS AND CONDITIONS. B. LESSEE COVENANTS (14) Waste, Damage or Destruction, of the lease; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured and CITY.
- (8.2) LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the premises, buildings and appurtenances.
11. Subparagraph "(12) Nondiscrimination." of Section IV. COVENANTS AND CONDITIONS. B. LESSEE COVENANTS, of the lease is hereby **deleted** in its entirety and is **replaced** with the designation "Reserved".
12. Subparagraph "(1) Administration and Notices." of Section IV. COVENANTS AND CONDITIONS. C. CONDITIONS, of the lease is **deleted** in its entirety and **replaced** with the following:
- (1) Governmental Approvals. By entering into this lease, neither CITY nor CITY's City Council is obligating itself to LESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the premises. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
- (2) CITY's Consent, Discretion. CITY's consent or approval under this lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein. CITY's discretionary acts

hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.

13. Subparagraph "(8) Ownership of Improvement." Section IV. COVENANTS AND CONDITIONS. C. CONDITIONS of the lease is **deleted** in its entirety and replaced with the following:

(8) Ownership of Improvements and Personal Property.

- (a) Improvements. During the term of this lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the leased premises. Upon expiration or earlier termination of this lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the leased premises and thereafter shall be owned by CITY. Such improvements shall include, but are not limited to, the welcome center building, the clubhouse, the maintenance building, the tennis annex building, the tennis courts, the swimming pool, the swimming pool cabanas, the swimming pool equipment building, and patio improvements. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at lease termination or at any time prior to the expiration of the term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the term. Removal of said improvements does not include removal of the golf course or the mitigation areas. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove these items designated for removal in CITY's notice and restore the leased premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- (b) Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property (collectively "Lessee's Property") upon the expiration or earlier termination of the lease, or as soon as practicable after said expiration or earlier termination of the lease, but in no event later than thirty (30) days after the expiration or earlier termination of this lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and shall be handled according to applicable law, and shall include CITY's right to recover all costs and damages incurred as a result of any Lessee's Property being left on the premises. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the leased premises.

- (c) Late Removal. Notwithstanding any provision of this lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or earlier termination of this lease needed to remove improvements or personal property as required and/or allowed by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.
- (d) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the leased premises upon expiration or earlier termination of this lease, CITY shall have the first right to acquire such personal property.
14. A new subparagraph "(13) Hazardous Substances." to Section IV. COVENANTS AND CONDITIONS. C. CONDITIONS, shall be added to the lease and shall read as follows:
- (13) Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under or from the leased premises in any amount or type prohibited by law or regulation. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the leased premises in any amount or type prohibited by law or regulation without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve hazardous substances in any amount or type prohibited by law or regulation, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a hazardous substance or hazardous waste. The customary use of hazardous substances in the operation and conduct of the activities allowed pursuant to the "Permitted Uses" provisions of this lease or in *de minimis* amounts, or any other use in compliance with applicable laws and regulations shall not be a violation of this Section and shall not require CITY's prior written consent. The existence of hazardous substances in, on, under or from the leased premises prior to the effective date of this lease or resulting from the acts or omissions of persons or entities other than LESSEE or LESSEE's contractors and agents shall not constitute a violation of this Section. All references to "leased premises" in these Hazardous Substances provisions shall include the Open Space areas, and respective rights and responsibilities under these provisions shall apply equally to the Open Space areas.

- (a) Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- (b) Hazardous Substance. "Hazardous substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- (c) Remediation. If LESSEE's occupancy, use, development, maintenance or restoration ("LESSEE's Operations") of the leased premises causes a release of a hazardous substance in violation of law, other than to the extent of a release of a pre-existing hazardous substance, LESSEE shall pay all costs of remediation and removal in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities, to the CITY's reasonable satisfaction.
- (d) Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring hazardous materials or hazardous wastes to the leased premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment or device from the leased premises immediately upon or prior to the expiration or earlier termination of this lease. CITY upon reasonable prior written notice reserves the right to conduct inspections of the leased premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the leased premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- (e) Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to hazardous substances resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- (f) Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance has been released on, from or beneath the leased premises in violation of this lease, LESSEE shall immediately notify CITY and any appropriate

regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that a release in violation of this lease is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any environmental violation, notice to comply, or notice of environmental violation received or the initiation of environmental actions or private suits related to the environmental condition of the leased premises.

- (g) Environmental Assessment. Upon reasonable cause to believe that LESSEE's Operations have resulted in any hazardous substance being released on, from or beneath the leased premises, CITY shall notify LESSEE of such belief and allow LESSEE fifteen (15) days after such notice (or a shorter but reasonable period in the case of an emergency), to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced within the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the leased premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the leased premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use (for its current use) and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the leased premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

15. Section V. EXTENSION OF TERM of the lease is **deleted** in its entirety and **replaced** with the designation "Reserved".

16. A new section, Section VI. GENERAL CONDITIONS, along with its sub-sections, shall be added to the lease as follows:

VI. GENERAL CONDITIONS.

- (1) Notices. Any notice required or permitted to be given under this lease shall be in writing and shall be served personally (including by recognized courier service such as FedEx) or by United States Postal Service ("USPS"), certified mail, return receipt requested, postage prepaid. Notice shall be deemed given as of the date when actually delivered. Notices shall be addressed as follows:

If to LESSEE:

BAY CLUB FAIRBANKS RANCH
1 Lombard Street
San Francisco, CA 94111
(415) 901-9254

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A) San
Diego, California 92101
(619) 236-6020

Any party entitled or required to receive notices may designate by notice to the other party a different address to which notices shall be sent.

- (2) Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this lease so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501 through 22.3517, as amended from time to time), and upon CITY's request LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting

false information in response to these requirements may result in termination of this lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- (3) CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- (4) Disabled Access Compliance. LESSEE shall, as applicable to the leased premises and LESSEE's possession, use and occupancy thereof, comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 (ADA); and all other applicable local, state and federal laws and regulations enacted, or hereafter enacted, protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
 - (a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - (c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - (d) Where required by law, any improvements made to the leased premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the leased premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessee's shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this

lease.

- (5) Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leased premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - (b) Establish a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) LESSEE's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each contract related to this lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- (6) Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this lease and to the extent legally possible, LESSEE shall use its commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- (7) Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all applicable laws, rules, regulations and directives of competent governmental authorities (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management in connection with its possession, use and occupancy of the leased premises. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

- (a) NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the First Amendment Effective Date (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
- (b) Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices", as that term is defined by the Stormwater Code, and as approved by the CITY of San Diego, in its governmental capacity, under its Stormwater Management Program, and as approved by the CITY of San Diego, in its governmental capacity, under its Stormwater Management Program.
- (8) Nondiscrimination. This lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, age, gender identity, gender expression, medical condition, national origin, ethnicity, ancestry, familial status or source of income in the possession, use and occupancy of the leased premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the leased premises.
- (9) Waiver. CITY's failure to insist upon the strict performance of any of LESSEE's obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this lease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- (10) Prevailing Wage. In the event that LESSEE initiates work or procures services in qualifying amounts and which constitute a "public works contract" or a "maintenance contract" pursuant to CITY's "Compliance with State Prevailing Wage Laws" Ordinance (SDMC section 22.3019, which may be amended from time to time), LESSEE shall ensure, including by providing for such in all agreement(s) for such work or services, that the contractor shall comply with said Ordinance and all applicable California Labor Code

provisions regarding prevailing wages. LESSEE shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions regarding said Ordinance and applicable California Labor Code provisions, for use by LESSEE in ensuring that such contractors comply with these provisions.

- (11) Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308 as amended from time to time, which require LESSEES of CITY- owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this lease. LESSEE's failure to maintain equal benefits shall be a default of this lease.
- (12) CITY Mayor. All references in this lease to CITY's "CITY Manager" shall mean the Mayor of San Diego ("Mayor"), or his or her designee, unless otherwise specified.
- (13) Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the leased premises have not been inspected by a Certified Access Specialist (CASP).
- (14) Unavoidable Delay. Except as otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act or rendering any service required under this lease, by reason of strikes, inability to procure materials, riot, insurrection, war or other reasons of a similar nature which are beyond the reasonable control of the party required to perform (collectively referred to herein as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period equivalent to the period of such delay. Notwithstanding the foregoing, nothing contained in this section shall be applied so as to: (i) permit any delay or time extension due to shortage of funds, or (ii) excuse any nonpayment or delay in payment of any type of rent. It shall be a condition to either party's claim of the benefit of this section that such party ("Claiming Party") notify the other in writing within 48 hours after the occurrence of the Event, and within 24 hours after request shall advise the other party in writing of its good faith estimate of the time which will be required until the delay is ended. Claiming Party shall advise the other in writing whenever Claiming Party learns that any material additional time shall be required, and promptly upon request shall advise the other party of any latest estimated time of cure of the delay and the actions being taken to cure the delay.
- (15) Boundary Adjustments. LESSEE has been advised and acknowledges that CITY reserves the right, such right being determined by CITY in its sole discretion, to reduce the LESSEE's leased premises and adjust the legal boundaries on the western portion of the leased

premises, for CITY purposes related to the El Camino Real Bridge Improvement project, but in no event shall such right allow CITY to reduce the leasehold area or adjust the boundary for purposes of creating habitat mitigation area to mitigate impacts associated with the El Camino Real Bridge Improvement project. LESSEE agrees that it shall not be entitled to any consideration or rent adjustment in connection with any such adjustment of or reduction to the leased premises related to the El Camino Real Bridge Improvement project unless: (a) CITY is in agreement with LESSEE's determination that Hole Four (4) of the premises' Oceans Nine Golf Course is impacted in such a way that it is impossible to reconfigure the Hole, and that said impact to the Hole has rendered the Hole no longer playable, and (b) an appraisal has determined that said adjustment of or reduction to the leased premises has a material effect on the Minimum Monthly Rent value. If LESSEE elects to seek some type of consideration or a rent reduction, LESSEE may, at its sole cost and expense, utilizing the appraiser selection methodology set forth under this lease's Percentage Rent Adjustment provision (excepting therefrom any obligation for CITY to pay for the appraisal), have a fair market rent appraisal completed based on such adjustment of or reduction to the legal boundaries of the leased premises.

- (16) Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the premises during the term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LESSEE, or levied by reason of LESSEE's occupancy, use, development, maintenance or restoration of the premises, including without limitation licensing and permitting costs and fees. LESSEE acknowledges that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on that interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.

17. A new section, Section VII. MITIGATION PLAN, along with its subsections, shall be added to the lease as follows:

VII. MITIGATION PLAN.

CITY has accepted the Conceptual Wetland and Riparian Habitat Mitigation, Monitoring, and Reporting Plan (the "Mitigation Plan") dated February 2016, submitted by LESSEE for the leased premises. The Mitigation Plan is intended to resolve all claims that the habitat mitigation obligations for the leased premises have not yet been satisfied (the "habitat mitigation claims"), including but not limited to claims arising out of the lease, 1981 Final Environmental Impact Report No. 81-04-01, and 2003 Grading Permit No. 50939. CITY agrees that the Mitigation Plan fully satisfies all habitat mitigation claims. Accordingly, so long as LESSEE fully complies with the Mitigation Plan, LESSEE shall not be deemed in default of the lease for any issue relating to

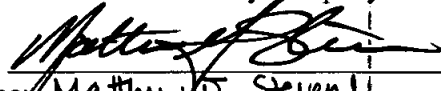
or arising out of the habitat mitigation obligations as of the First Amendment's Effective Date. LESSEE shall implement the Mitigation Plan following the issuance of, and subject to the conditions included in, any necessary permits from any relevant governmental agency. Assuming that any such application is proper in all respects, CITY agrees to support LESSEE's application for such necessary permit(s). Lessee is financially obligated for payment of all necessary permit(s) fees. If any governmental agency refuses to issue a permit required to implement the Mitigation Plan, or conditions the issuance of such a permit on LESSEE's implementation of additional habitat mitigation beyond that described in the Mitigation Plan, CITY will work with LESSEE to resolve, if possible, that agency's issues. Notwithstanding the foregoing, LESSEE shall remain responsible, at its sole cost, for compliance with the Mitigation Plan and any additional habitat mitigation measures required by other governmental agencies.

18. No Other Changes. All other terms and conditions of the lease shall remain in full force and if there are any conflicts between the lease and this First Amendment, said conflicts shall be resolved in favor of the terms and conditions of this First Amendment.
19. Authority. Each individual executing this First Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this First Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this First Amendment is binding upon such person or entity in accordance with its terms. Each person executing this First Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, Limited Liability Company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
20. Recitals; Exhibits. The Recitals and Exhibits attached hereto are incorporated into this First Amendment and made a part hereof.

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

Date: _____

BAY CLUB FAIRBANKS RANCH, a
Delaware limited liability company

By: 
Name: Matthew J. Stevens
Title: CEO

(Signatures continued for the **FIRST AMENDMENT TO PERCENTAGE LEASE**)

Date: 6/7/16

THE CITY OF SAN DIEGO, a California
municipal corporation

By: [Signature]
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

**ADDENDUM TO EIR No 81-04-01 (PROJ. No. 44037) WAS
ADOPTED BY THE CITY COUNCIL PURSUANT TO SECTION 15164
OF CEQA GUIDELINES.**

Date: 6/7/16

By: [Signature]
Name: MARK BRUNETTE
Title: SENIOR PLANNER

Approved as to form this 9th day
of June, 2016.

JAN I. GOLDSMITH, CITY ATTORNEY

By: [Signature]
Name: Debra J. Bevier
Title: Deputy City Attorney

Date: _____
First Amendment Effective Date

Exhibit "A"



RESOLUTION NUMBER R- 310421DATE OF FINAL PASSAGE MAY 27, 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE CITY OF SAN DIEGO CONSENT TO ASSIGNMENT AND AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND FAIRBANKS RANCH COUNTRY CLUB, INC., BAY CLUB FAIRBANKS RANCH, LLC, AND THE BAY CLUBS COMPANY; AND TO EXECUTE THE FIRST AMENDMENT TO PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND BAY CLUB FAIRBANKS RANCH, LLC.

WHEREAS, in 1981, Watt Industries deeded 600 acres of open space in the San Dieguito River Valley to the City of San Diego (City) in conjunction with the City's approval of Watt Industries' residential development. In 1982, City and Watt Industries entered into a 61 year lease for approximately 372 acres of City-owned land for the development of the Fairbanks Country Club. In 1986, Watt Industries assigned its interest in the leasehold to Fairbanks Ranch Country Club, Inc. (Fairbanks Inc.); and

WHEREAS, Fairbanks Inc. has been having financial difficulties due to the 2008 recession and a declining membership base. As a result, in 2015, Fairbanks Inc. sought a purchaser to purchase its leasehold interest in its lease with City. Fairbanks Inc. selected Bay Club Fairbanks Ranch, LLC as its purchaser, and now seeks City's consent to assign its leasehold interest to Bay Club Fairbanks Ranch, LLC; and

WHEREAS, Bay Club Fairbanks Ranch, LLC is an affiliate of The Bay Club Company which was founded in 1977, as an owner and operator of Sports Resorts clubs. Sports Resorts is an active lifestyle and hospitality company geared at fitness elements for the entire family. The Bay Club Company has a network of 24 Country Clubs across ten campuses including five in

Northern California and five in Southern California. Headquartered in San Francisco, The Bay Club Company has 56,000 members and 3,400 employees. The Bay Club Company has owned and operated the Bay Club Carmel Valley in San Diego County since 2003; and

WHEREAS, along with the request for the City's consent to assign the subject lease from Fairbanks Inc. to Bay Club Fairbanks Ranch, LLC, Bay Club Fairbanks Ranch, LLC is requesting, if the City consents to the requested assignment, that the City Council authorize the execution of a proposed First Amendment to the subject lease; and

WHEREAS, the proposed First Amendment includes provisions which will include: the addition of six (6) acres to the leasehold premises - the additional acreage is being added as part of a mitigation and monitoring plan under which Bay Club Fairbanks Ranch, LLC, will resolve the original mitigation obligations of Fairbanks Inc.; the lease Term will be extended by an additional twelve (12) years; the minimum monthly rent will be increased to \$62,500 per month and the percentage rents will be adjusted to current market standards; and, the lease will be updated with current City lease provisions; and

WHEREAS, the proposed Consent to Assignment and Agreement includes a provision that will require that the past due rent of \$634,532.76 be paid, in full, to City; and

WHEREAS, the market value of the underlying fee of the leased property is \$17,500,000; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized to execute the City of San Diego Consent to Assignment and Agreement between the City of San Diego and Fairbanks Ranch Country Club, Inc., Bay Club Fairbanks Ranch, LLC, and The Bay Clubs Company, the terms and conditions of which are more fully set forth in Document No. RR-310421-1, which is on file with the City Clerk.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute the First Amendment to Percentage Lease between the City of San Diego and Bay Club Fairbanks Ranch, LLC, the terms and conditions of which are more fully set forth in Document No. RR-310421⁻², which is on file with the City Clerk.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Debra J. Bevier
Deputy City Attorney

DJB:mcm
05/03/2016
05/12/2016 Cor. Copy
Or.Dept: Real Estate Assets Dept.
Doc. No.: 1278845

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 17 2016.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/27/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 17 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☐	☐	☒	☐

Date of final passage MAY 27 2016

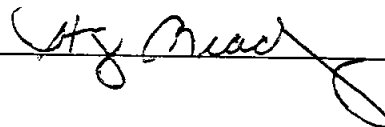
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310421

Passed by the Council of The City of San Diego on May 17, 2016, by the following vote:

YEAS: LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE,
SHERMAN, ALVAREZ.

NAYS: NONE.

NOT PRESENT: EMERALD.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

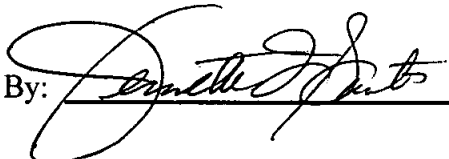
By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-310421, approved on May 27, 2016. The date of final passage is
May 27, 2016.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

**Brownstein Hyatt
Farber Schreck**

August 12, 2016

Ryan R. Waterman
Attorney at Law
619.702.7569 tel
619.239.4333 fax
rwaterman@bhfs.com

VIA U.S. MAIL AND E-MAIL
(pphillips@sandiego.gov)

Mr. Patti Phillips, Asset Manager
City of San Diego, Real Estate Assets Department
1200 Third Avenue
Suite 1700, MS 51A
San Diego, CA 92101

RE: Fairbanks Ranch Country Club Closing Date

Dear Patti:

I am happy to report that the Bay Club Fairbanks Ranch, LLC (Bay Club) and Fairbanks Ranch Country Club, Inc. closed on their deal for the Bay Club to acquire the Fairbanks Ranch Country Club (FRCC) effective **July 18, 2016**.

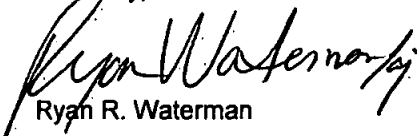
This means that the effective date of the Consent to Assignment and Agreement (Document No. RR-310421-1) is **July 18, 2016**, because the Consent to Assignment and Agreement did not take effect until the deal closed (see Consent to Assignment, ¶ 1). Accordingly, the effective date of the First Amendment to the Percentage Lease (Document No. 310421-2) is also **July 18, 2016**, because the First Amendment could not take effect until the Consent to Assignment became effective.

This letter memorializes our mutual understanding that the effective date of the First Amendment is **July 18, 2016**, not June 9, 2016, as interlineated on the copy of the First Amendment we were provided, and that the First Amendment will terminate on **July 17, 2056**, not June 8, 2056, as interlineated on the copy of the First Amendment we were provided;

We sincerely appreciate your consistent leadership throughout the process of assigning and amending the FRCC lease to the Bay Club, and the time and attention to detail the Real Estate Assets Department as a whole paid to this complicated project.

If you have any questions about the foregoing material, please do not hesitate to call me at 619.702.7569.

Sincerely,



Ryan R. Waterman

Enclosures

225 Broadway, Suite 1670
San Diego, CA 92101-5000
main 619.702.6100

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Ms. Patti Phillips
August 12, 2016
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cc: Mr. Matthew Stevens (Matthew.Stevens@thebayclubs.com)
Mr. Pete Jones (Pete.Jones@thebayclubs.com)
Mr. Chris Frahm (CFrahm@bhfs.com)
Ms. Nicole Ament (NAment@bhfs.com)
Ms. Kristen MacDonald (KMacDonald@bhfs.com)

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