

FOURTH AMENDMENT TO LEASE AGREEMENT

This FOURTH AMENDMENT TO LEASE ("Fourth Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and TORREY PINES CLUB CORPORATION, a California corporation ("LESSEE"), as lessee, to be effective when signed by the parties and approved by the San Diego City Attorney (the "Fourth Amendment Effective Date").

RECITALS

- A. CITY and LESSEE are parties to that certain PERCENTAGE LEASE AGREEMENT dated March 30, 1987, and filed in the Office of the San Diego City Clerk as Document No. RR-267979 (the "Original Lease").
- B. Subsequent to the Original Lease, CITY and LESSEE are parties to that certain FIRST AMENDMENT TO LEASE, filed on January 16, 1990 in the Office of the San Diego City Clerk as Document No. RR-274980, the SECOND AMENDMENT TO LEASE AGREEMENT, filed on August 2, 1993 in the Office of the San Diego City Clerk as Document No. RR-282439, and the THIRD AMENDMENT TO LEASE AGREEMENT, filed on April 7, 2015 in the Office of the San Diego City Clerk as Document No. RR-309584.
- C. CITY and LESSEE also executed that certain Memorandum of Understanding pertaining to the Original Lease, accepted by the City Attorney on November 4, 1991, and CITY, pursuant to letter dated February 4, 2010, acknowledged that the Lease termination date had been extended to December 31, 2022.
- D. The Original Lease, the subsequent Amendments referred to in recital B and the written understandings referred to in recital C collectively are referred to herein as the **"Original Amended Lease."** This Fourth Amendment adds a second ten (10) year extension option, and includes additional performance and leasehold improvement requirements of LESSEE. The Original Amended Lease as amended by this Fourth Amendment is collectively referred to herein as the **"Lease"**.
- E. Unless defined herein, all defined terms shall have the same definition and meaning as provided in the Lease.

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

AGREEMENT

1. Commencement. Lease Section 2.01, Commencement, is hereby deleted and replaced in its entirety with the following:

2.01 Commencement. The term of this agreement shall commence on January 1, 1988, and shall be twenty-five (25) years, with two (2) ten (10) year extension options. These options must be exercised by the LESSEE no later than twenty-four (24) months prior to the expiration of the then current term of the lease and no sooner than thirty-six (36) months before the expiration of the then current term of the lease. To exercise the extension options, the

LESSEE must be in good standing with the CITY and not in default under any of the terms of the lease agreement (as amended) and be able to prove to the reasonable satisfaction of the Mayor of San Diego, or his or her designee, that the LESSEE has the capability of operating the businesses on the leasehold.

In the event that the LESSEE sells (through stock transfer or lease assignment) assigns, conveys, or encumbers its leasehold estate and/or its improvements in accordance with Sections 4.02 Assignment and Subletting and/or 4.03 Encumbrance, the LESSEE shall pay the CITY an amount equal to five percent (5%) of the funds received from sale, assignment, or conveyance or five percent (5%) of the funds received from an encumbrance that is not specifically used for capital improvements on the leased premises.

2. **Percentage Rents.** Paragraph 3.02c, Percentage Rents, is hereby deleted and replaced in its entirety with the following:

3.02c. Percentage Rents. Percentage Rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Thirty-Five Percent (35%) of all gross income from the rental of motorized golf carts (electric & gas) and pull carts.

Eight Percent (8%) of all gross income from pro shop sales, increasing to Nine Percent (9%) on January 1, 2022, and then increasing to Ten Percent (10%) on January 1, 2023.

Ten Percent (10%) of all gross income from the rental and repair of golf clubs.

Twenty Percent (20%) of all gross income derived from the use of the driving range.

Ten Percent (10%) of all gross income from golf instruction and golf instructional rounds performed by the LESSEE or any of LESSEE's employees, affiliates, contractors, permittees, or licensees.

Ten Percent (10%) of all other income from any source derived from the use of the premises.

Fifty Percent (50%) of commissions or any other compensation paid to LESSEE or its sublessees, permittees, or licensees for the right to install or operate electronic or coin-operated vending, game, or service machines or devices on the premises, including telephones; Ten Percent (10%) of the gross income of any such electronic or coin-operated machines, or devices owned, rented, or leased by LESSEE, whether

such machines are maintained and operated by LESSEE or by sublessees, permittees, or licensees of use on the premises.

The Mayor of San Diego, or his or her designee, in his or her sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.02 Uses, hereof as may be approved in writing by the Mayor, or his or her designee, prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the Mayor, or his or her designee, shall be subject to the requirements of Section 3.08, Unauthorized Use Charge, hereof.

3. Storm Water Pollution Prevention Program. Lease Section 7.22, Water Quality Assurances, is hereby deleted and replaced in its entirety with the following:

7.22 Storm Water Pollution Prevention Program. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312),

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

4. Bag Drop Service / Parking Lot Monitoring. A new Section 7.26 shall be added to the Lease and shall read as follows:

7.26 Bag Drop Service / Parking Lot Monitoring. LESSEE shall assume full responsibility for the complete operation of the bag drop service and parking lot monitoring, at LESSEE's sole cost and expense, without any reimbursements from CITY for all such services. LESSEE shall continuously provide at least two (2) employees each day to serve as bag drop attendants at times mutually agreed upon by CITY and LESSEE. The bag drop attendants must be positioned in the parking lot where they are able to greet all customers on arrival, offer to help customers with their golf bags, and provide general information. The bag drop attendants are responsible

for monitoring all arriving vehicles and protecting the parking lot from non-golf related use.

5. P.L.A.Y. Golf / Grow the Game. A new Section 7.27 shall be added to the Lease and shall read as follows:

7.27 "P.L.A.Y. Golf" and Other "Grow the Game" Initiatives. LESSEE shall provide on a calendar basis up to two hundred (200) hours annually of golf instruction to CITY's "P.L.A.Y. Golf" program and other "Grow the Game" initiatives. The P.L.A.Y. Golf program is designed to bring golf to youth programs that may otherwise never be involved with golf. "Grow the Game Initiatives" would include lessons and clinics to juniors and adults designed to bring more golfers into the game. Golf instructions to be performed at the Torrey Pines Golf Course, Balboa Park Municipal Golf Course, and Mission Bay Golf Course properties, as well as CITY recreational centers. Instruction activities shall be monitored by CITY's Park & Recreation/Golf Division personnel.

6. Accessibility Assessment. A new Section 7.28 shall be added to the Lease and shall read as follows:

7.28 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the premises have not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

7. Driving Range Improvements. A new Section 6.16 shall be added to the Lease and shall read as follows:

6.16 Driving Range Improvements. LESSEE shall make improvements to the practice putting green and green-side sand bunker areas located at the south end of the driving range tee area ("Driving Range Improvements"). LESSEE shall construct the Driving Range Improvements in compliance with all United States Golf Association ("USGA") recommendations and specifications and to the satisfaction of the CITY. LESSEE shall submit a

description of the proposed development of the Driving Range Improvements sufficient for the CITY to understand precisely the scope of the Driving Range Improvements, which may include plans, specifications, renderings and drawings showing interiors and exteriors of all significant buildings, landscape development and layout, and other prominent features. LESSEE shall obtain CITY's approval of all plans and specifications prior to construction of Driving Range Improvements, which approval may be withheld in the CITY's sole and absolute discretion. LESSEE shall be solely responsible for the cost of all Driving Range Improvements. All Driving Range Improvements required by this Section 6.16 shall be completed, to the CITY's satisfaction, by December 31, 2018.

LESSEE agrees that the Driving Range Improvements shall be completed before any other improvements required under section 6.17 are commenced anywhere else within the leased premises.

In addition to the maintenance obligations in Section 6.03 of this Lease, LESSEE shall repair and maintain the Driving Range Improvements to keep the Driving Range in a high level condition satisfactory to the CITY in order to meet the expectations of the USGA and PGA Tour and consistent with the condition of Torrey Pines North Course. LESSEE shall, at LESSEE's sole cost and expense, be responsible to provide all labor, material and supplies necessary to maintain the Driving Range Improvements. LESSEE shall also adhere to the CITY's agronomic plan, as may be amended from time to time, to ensure that the area is maintained in a manner that is consistent with Torrey Pines Golf Course. City may, at CITY's sole discretion and at CITY's sole cost and expense, provide periodic maintenance such as aerification, top dressing and verticutting.

8. Required Minimum Investment in Improvements. As part of the consideration for this Fourth Amendment, which includes a ten (10) year lease extension, LESSEE shall expend a minimum of Seven Hundred Thousand Dollars (\$700,000.00) on improvements to the leased premises. A new Section 6.17 shall be added to the Lease and shall read as follows:

6.17 Required Minimum Investment in Improvements. LESSEE shall spend a minimum of Seven Hundred Thousand Dollars (\$700,000.00) on improvements to the leased premises. This required minimum investment in improvements may include the costs of the Driving Range Improvements, up to \$15,000 per lease year invested in "P.L.A.Y. Golf / Grow the Game" initiatives, the costs of future tenant improvements to the Pro Shop, and other CITY approved improvements, but shall NOT include the cost of Bag Drop Service / Parking Lot Monitoring activities. LESSEE shall submit copies of paid receipts indicating amounts spent on improvements comprising the required minimum investment to the CITY's Park & Recreation/Golf Division. LESSEE shall keep all records of expenditures related to the required minimum investment in improvements in accordance with Section 3.06 of this Lease. In addition to the audit and inspection rights

granted in Section 3 of this Lease, CITY shall have the right to audit all of LESSEE's claimed expenditures to ensure that LESSEE has satisfied its obligations in this Section.

- a. **Credit for golf instruction under the P.L.A.Y. Golf / Grow the Game initiative shall not exceed a rate of \$75.00 per hour towards the required minimum investment in improvements.**
- b. **At least fifty percent (50%) of the required minimum investment in improvements shall be completed prior to the U.S. Open Championship in June of 2021.**
- c. **One hundred percent (100%) of the required minimum investment in improvements shall be completed no later than the end of the current Lease Term on December 31, 2022.**
- d. **If LESSEE has not satisfied its obligation to spend at least Seven Hundred Thousand Dollars (\$700,000.00) on improvements to the leased premises by December 31, 2022, then LESSEE shall pay the CITY the dollar amount difference between \$700,000.00 and the actual amount spent towards the required minimum investment in improvements by December 31, 2022. The City will deposit this amount into an escrow account to benefit the leased premises.**

9. No Other Changes. All other terms and conditions of the Lease shall remain in full force and any conflict between this Fourth Amendment and the Lease, First Amendment, Second Amendment and Third Amendment shall be resolved in favor of the terms and conditions of this Fourth Amendment.

10. Authority. Each individual executing this Fourth Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Fourth 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 Fourth Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Fourth 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.

11. Recitals. The Recitals are incorporated into this Fourth Amendment and made a part hereof.

12. Estoppel. As of the date hereof, CITY acknowledges that (i) LESSEE has performed all of its obligations under the Lease, (ii) LESSEE is not currently in default under the Lease, and (iii) no event has occurred which, with the giving of notice or passage of time, or both, would constitute a default by LESSEE.

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

Date: 9-3-2017

TORREY PINES CLUB CORPORATION,
a California corporation

By: [Signature]
Name: SUSAN CASAGRANDA
Title: PRESIDENT

Date: 2/5/18

THE CITY OF SAN DIEGO, a California
municipal corporation

By: [Signature]
Name: CYNTHIA THOMPSON
Title: DIRECTOR, LEGAL AFFAIRS

Approved as to form this 6th day
of February, 2018

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Marco A. Verdugo
Title: Deputy City Attorney

Date: February 6, 2018
Fourth Amendment Effective Date

#103-A
1/23/18

(R-2018-254)

RESOLUTION NUMBER R- 311511

DATE OF FINAL PASSAGE JAN 31 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A FOURTH AMENDMENT TO THE LEASE AGREEMENT WITH TORREY PINES CLUB CORPORATION TO GRANT AN OPTION TO EXTEND THE CURRENT LEASE TERM FOR TEN YEARS UNDER THE TERMS AND CONDITIONS SET FORTH IN THE FOURTH AMENDMENT TO LEASE AGREEMENT AND AUTHORIZING A WAIVER OF COUNCIL POLICY 700-10, AS APPLICABLE TO THE FOURTH AMENDMENT TO THE LEASE AGREEMENT.

WHEREAS, the City of San Diego (City) owns the property at 11480 North Torrey Pines Road in La Jolla, California, known as the Torrey Pines Golf Course; and

WHEREAS, the Torrey Pines Golf Course is improved with a clubhouse, pro shop, driving range, and other golf facilities; and

WHEREAS, the City leases a portion of the Torrey Pines Golf Course facilities to Torrey Pines Club Corporation (TPCC), a California corporation, pursuant to that certain Percentage Lease (Lease) on file with the Office of the City Clerk as Document No. RR-267979, as amended; and

WHEREAS, City staff and TPCC have negotiated that certain Fourth Amendment to the Lease Agreement, on file with the Office of the City Clerk as Document No. RR-311511, which will, among other things, increase several percentage rent categories paid to the City as rent, require TPCC to operate a bag drop and parking lot monitoring service, require TPCC to make certain improvements to the driving range, require TPCC to invest a minimum of \$700,000 on improvements to the leased premises, and add an option to extend the Lease term for ten years beyond the current expiration date of December 31, 2022; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is authorized to execute and deliver that certain Fourth Amendment to the Lease Agreement, on file with the Office of the City Clerk as Document No. RR-311511, between the City and Torrey Pines Club Corporation, a California corporation, to amend the current Percentage Lease with Torrey Pines Club Corporation for certain facilities at the Torrey Pines Golf Course.

BE IT FURTHER RESOLVED, that Council Policy 700-10, Disposition of City-Owned Real Property, is hereby waived with respect to Torrey Pines Club Corporation and the Fourth Amendment to the Lease Agreement.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Marco A. Verdugo
Deputy City Attorney

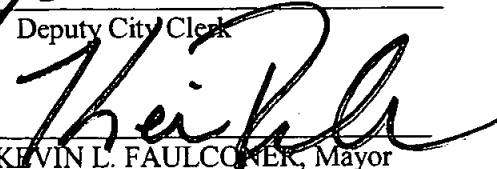
MAV:sc
12/19/17
Or.Dept: READ
Doc. No.: 1647494

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 23 2018.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1/31/18
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JAN 23 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☐	☒	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage JAN 31 2018

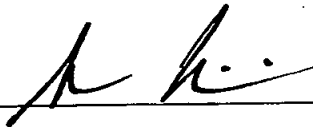
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

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

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

By , Deputy

Office of the City Clerk, San Diego, California

311511

Resolution Number R-_____

RESOLUTION NUMBER R- 311512

DATE OF FINAL PASSAGE JAN 31 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT THE APPROVAL OF THE FOURTH AMENDMENT TO LEASE AGREEMENT WITH TORREY PINES CLUB CORPORATION FOR THE OPERATION OF A PRO SHOP AND DRIVING RANGE AT THE TORREY PINES GOLF COURSE IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES SECTION 15301.

WHEREAS, the City of San Diego (City) is considering a Fourth Amendment to Lease Agreement (Fourth Amendment) with Torrey Pines Club Corporation (TPCC) for the operation of a pro shop and driving range at the Torrey Pines Golf Course (Project); and

WHEREAS, the proposed Fourth Amendment includes: (a) an option to extend the Lease by ten (10) years beyond the current expiration date of December 31, 2022; (b) increases several of the percentage rent categories paid to the City as rent; and (c) requires TPCC to operate a bag drop and parking lot monitoring service and invest a minimum of \$700,000 on improvements to the leased premises, which will include improving the driving range practice facility; and

WHEREAS, the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, *et seq.*), section 21084, states that the CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000, *et seq.*) shall list those classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from CEQA; and

WHEREAS, pursuant to that authority, CEQA Guidelines sections 15300-15333 list the categorical exemptions promulgated by the California Office of Planning and Research and

adopted by the Secretary of the California Natural Resources Agency for those classes of Projects which have been determined not to have a significant effect on the environment; and

WHEREAS, the Development Services Department has established that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301 and that no exception to the exemption, as set forth in CEQA Guidelines section 15300.2, applies to the Project; and

WHEREAS, the Council of the City of San Diego (City Council) has considered the potential environmental effects of the Project, and

WHEREAS, the City Council held a duly noticed public meeting and considered the written record for the Project as well as public comment; and

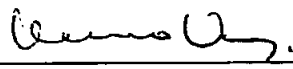
WHEREAS, the City Council, using its independent judgment, has determined that the Project will not have a significant effect on the environment because it involves the operation of an existing facility with negligible or no expansion of use; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego determines that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego has determined that an exception to the exemption as set forth in CEQA Guidelines section 15300.2 does not apply.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Marco A. Verdugo
Deputy City Attorney

MAV:ccm:sc
12/19/17
Or.Dept:READ
Doc. No. 1647933

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 23 2018.

ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved:

1/31/18
(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

JAN 23 2018

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☐	☒	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage JAN 31 2018

(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.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311512