

approximately 800 square feet, (b) LESSEE shall take occupancy of (and CITY shall vacate on Third Amendment Effective Date) an additional approximately 908 square feet currently consisting of the CITY's prior approximately 600 square foot lounge area and the approximately 308 square foot corridor area, and (c) CITY shall take occupancy of the approximately 265 square foot office on the north side of the building's upper level, and the approximately 224 square foot office on the lower level. LESSEE hereby grants CITY exclusive space for four (4) CITY golf carts within the main cart storage area on the lower level of the subject building.

Accordingly, upon the Third Amendment Effective Date, LESSEE's leasehold area shall be that space in and around the building (including, without limitation, the space referred to in (b) above) identified as the "TPCC Lease Area" on the attached EXHIBITS "A" and "B". Said area is hereafter referred to in this Lease as the "LESSEE Building Premises", and shall for all intents and purposes be part of the "leased premises" under the Lease unless otherwise specified herein.

Except as provided herein, all other portions of the subject building (including, without limitation, the space referred to in (a) and (c) above and the space identified as "City Offices" and "common areas" on the attached EXHIBITS "A" and "B"), are not part of the leased premises and are herein after referred to in this Lease as the "CITY Building Premises". Notwithstanding the foregoing, the rights granted to LESSEE under the Lease include, without limitation, reasonable rights to use the applicable portions of the Torrey Pines Municipal Golf Course project (including, without limitation, the common areas of the City Building Premises) by LESSEE, its licensees, invitees, customers and contractors, for parking, access to and from the leased premises, utilities, rest room facilities, and common areas, as is reasonable and customary for the use of the leased premises as contemplated by the Lease.

For the avoidance of all doubt, LESSEE is also leasing the Driving Range, which is marked on Exhibit "C".

2. Insurance Risks/Security. Sections 5.01, Indemnity, and 5.02, Insurance, are hereby deleted from the Lease and replaced in their entirety with the following:

**5.01 Indemnification & Hold Harmless.**

- a. Unless otherwise specified in this Lease, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, to the extent arising out of or which are in any manner directly or indirectly connected

with this Lease or LESSEE's occupancy, use, development, maintenance or restoration of the leased premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. Any defense by indemnitor shall be conducted with attorneys reasonably acceptable to CITY and CITY may, at its election, participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the reasonable costs related thereto, including without limitation reasonable attorney fees and costs. Notwithstanding the foregoing, CITY waives all claims against LESSEE for any incidental, consequential or punitive damages resulting from any acts or omissions (except gross negligence or willful misconduct) of LESSEE under this Lease.

**5.02 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.

**5.02.1 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.

**5.02.2 Primary & Non-Contributory**. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability 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.

**5.02.3 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 brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

- 5.02.4 **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.
- 5.02.5 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 5.02.6 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, 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.
- 5.02.7 **Modification.** To assure protection from and against the kind and extent of risk existing from use of the leased premises, 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 Allowed Uses.
- 5.02.8 **Accident Reports.** LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the leased premises or otherwise related to use of the leased

premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

**5.02.9 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 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.

3. Maintenance. Lease Section 6.03, Maintenance, is hereby deleted and replaced in its entirety with the following:

**6.03 Maintenance.** CITY agrees to maintain at CITY's sole cost and expense and be responsible for the items listed as "City's Responsibilities" on Exhibit "D" attached hereto and LESSEE agrees to maintain at LESSEE's sole cost and expense and be responsible for the items listed as "LESSEE's Responsibilities" on Exhibit "D" attached hereto. CITY agrees to maintain at CITY's sole cost and expense and be responsible for all other portions of the Torrey Pines Municipal Golf Course project (whether constituting real property or personal property), including, without limitation, all other portions of the building, the CITY Building Premises, the building exterior and structural matters, including doors, walls, ceilings, roof, electrical, heating, ventilation and air conditioning systems, plumbing, and all other mechanical and operating systems of the building, except those maintenance items allocated to LESSEE on Exhibit "D". Additionally, CITY agrees to provide janitorial services for the CITY Building Premises and common areas within the building. LESSEE shall be responsible for all janitorial services in the LESSEE Building Premises, at LESSEE's sole cost and expense. Each party agrees to maintain its allocated space in a decent, safe, healthy, and sanitary condition and in compliance with all applicable laws. Notwithstanding the foregoing, CITY agrees to maintain and repair the "deck" shown on Exhibit "A".

LESSEE shall reimburse CITY for LESSEE'S pro rata share of reasonable and customary common area maintenance costs of the building containing the LESSEE Building Premises, based on its percentage of space occupied versus the total space of the subject building; provided, however, that, (i) no cost otherwise paid or payable by LESSEE under this LEASE shall be allocated to LESSEE as a common area maintenance charge, and (ii) no cost allocated to

CITY under this Lease, including, without limitation, on Exhibit D, shall be allocated to LESSEE as a common area maintenance charge or otherwise be payable by LESSEE under this Lease. LESSEE shall maintain the Driving Range. Upon ten (10) days' notice, CITY may perform, at CITY's sole cost and expense, extraordinary maintenance as may be required for significant events, such as PGA, LPGA, and USGA tournaments.

**6.03.1 Additional Improvements by LESSEE.** Subject to prior CITY approval, LESSEE may contract for reasonable and customary common area maintenance costs of the building containing the LESSEE Building Premises and CITY shall reimburse or credit LESSEE for CITY'S pro rata share of common area maintenance costs.

4. Hazardous Substances. A new Section 6.14 shall be added to the Lease and shall read as follows:

**6.14 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 without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve hazardous substances, 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 of a driving range, golf cart rental and pro shop or in *de minimus* amounts shall not be a violation of this Section. The existence of hazardous substances in, on, under or from the leased premises prior to the effective date of the Lease or resulting from the acts or omissions of persons or entities other than LESSEE or LESSEE's agents shall not constitute a violation of this Section.

**6.14.1 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.

**6.14.2 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.

**6.14.3 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, 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.

**6.14.4 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 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.

**6.14.5 Indemnity.** LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE’s Operations on the leased 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.

**6.14.6 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 Section 6.14, 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 Section 6.14 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.

**6.14.7 Environmental Assessment.** Upon reasonable cause to believe that LESSEE's Operations resulting 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 therefor.

5. Pro Shop Expansion. A new Section 6.15 shall be added to the Lease and shall read as follows:

6.15 Pro Shop Expansion. Should LESSEE decide to expand the current Pro Shop located on the leased premises, no improvements, structures, alterations or installations relating to the expansion of the Pro Shop shall be constructed without prior written approval by CITY, which approval shall not be unreasonably withheld, conditioned or delayed. The area into which LESSEE may expand the Pro Shop (subject to the CITY's prior written approval as required herein) is shown as "Expansion Area" on Exhibit "A" attached hereto. Further, LESSEE agrees that any building plans for LESSEE'S expansion of the Pro Shop shall be submitted to CITY's Development Services Department for all required permits, with appropriate review and adherence to all local building codes, including all provisions subject to ADA compliance. LESSEE will be responsible for the cost of all improvements, including those (both on and off the LESSEE Building Premises and the leased premises), required by the Americans with Disabilities Act caused by LESSEE'S expansion of the Pro Shop.

6. General Provisions. Sections 7.01, Notices, 7.04, Nondiscrimination, and 7.05, Affirmative Action, are hereby deleted in their entirety, and new Sections added to the Lease as follows:

7.19 Notices. Any notice required or permitted to be given under this Lease shall be in writing and shall be served personally against receipt therefor (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:

TORREY PINES CLUB CORP  
Attention: Susan Casagrande  
11480 North Torrey Pines Road  
La Jolla, CA 92037

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**

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.

- 7.20 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.**
- 7.21 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:**
    - (1) The dangers of drug abuse in the workplace;**

- (2) LESSEE's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) 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.

**7.22 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.

**7.22.1 NPDES.** LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Third Amendment Effective Date (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

**7.22.2 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.

**7.23 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, marital status, 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.

- 7.24 **Waiver.** The property constituting the leased premises is publicly owned and held in trust for the benefit of CITY's citizens. 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.

7. **Parking.** A new Section 7.25 shall be added to the Lease and shall read as follows:

- 7.25 **Certain Parking Issues.** The number and location of employee parking spaces allocated to LESSEE staff shall be at the discretion of the CITY (in the exercise of CITY's reasonable discretion giving due consideration to the reasonable business needs of LESSEE) and shall be at no cost to LESSEE. The number and location of any 30-minute parking spaces for the Pro Shop and City Golf Division offices shall also be at the reasonable discretion of the CITY, giving due consideration to the reasonable business needs of LESSEE.

8. **Rent.** Section 3.10, **Rent Credit for Closures**, in the FIRST AMENDMENT TO LEASE AGREEMENT, is hereby deleted in its entirety.

9. **Driving Range Recycled Water System; Driving Range Metering; Driving Range Water Bill.** LESSEE may (but shall not be obligated to) install a recycled water system for the Driving Range. CITY will reimburse LESSEE for all funds paid by LESSEE for the cost of constructing and installing the new system (e.g., the cost of all plans, specifications, permits, labor, materials and related costs), through rent credits (i.e., abatement of rent) applied in the directly subsequent month(s), upon receipt by CITY from LESSEE of paid invoices for the applicable portion of the work, materials or other costs incurred, relative to the work. After the Third Amendment Effective Date, LESSEE will cause the water supplied to the Driving Range for irrigation to be separately metered at LESSEE's sole cost and expense. Once the Driving Range irrigation water is separately metered by LESSEE, CITY will cause the water bills to be issued in the name of LESSEE and to be sent to LESSEE, and LESSEE will be solely responsible for such water bills

issued based on the separate meter for the Driving Range. LESSEE shall also comply with all applicable drought or emergency restrictions applicable to the Driving Range and water usage thereon.

**9.1 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.

10. **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.

11. **CITY Mayor.** All references in the Lease to CITY’s “City Manager” shall mean the Mayor of San Diego (“Mayor”), or his or her designee, unless otherwise specified.

12. **No Other Changes.** All other terms and conditions of the Lease shall remain in full force and the Lease, First Amendment and Second Amendment shall be resolved in favor of the terms and conditions of this Third Amendment.

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

14. **Recitals; Exhibits.** The Recitals and exhibits attached hereto are incorporated into this Third Amendment and made a part hereof.

15. **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 Third Amendment is executed to be effective as of the Third Amendment Effective Date.

Date: January 27, 2015

TORREY PINES CLUB CORP, a California corporation

By: [Signature]  
Name: ROBERT H. MCKEL  
Title: CHAIRMAN OF THE BOARD

Date: 4/28/15

THE CITY OF SAN DIEGO, a California municipal corporation

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

Approved as to form and legality:

JAN I. GOLDSMITH, CITY ATTORNEY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: 4/29/15  
Third Amendment Effective Date [Signature]

Approved As To Form  
JAN I. GOLDSMITH  
[Signature] DATE 4/29/15  
NAME: Jeremy Fonseca  
TITLE: Deputy City Attorney

B-309584

## **LIST OF EXHIBITS**

|             |                                                         |
|-------------|---------------------------------------------------------|
| Exhibit "A" | Third Amendment Respective Building Areas (Upper Level) |
| Exhibit "B" | Third Amendment Respective Building Areas (Lower Level) |
| Exhibit "C" | Driving Range                                           |
| Exhibit "D" | Table of Maintenance Responsibilities                   |

**EXHIBIT A**

Third Amendment Respective Building Areas (Upper Level)

[Attached]

**EXHIBIT B**

Third Amendment Respective Building Areas (Lower Level)

[Attached]

**EXHIBIT C**

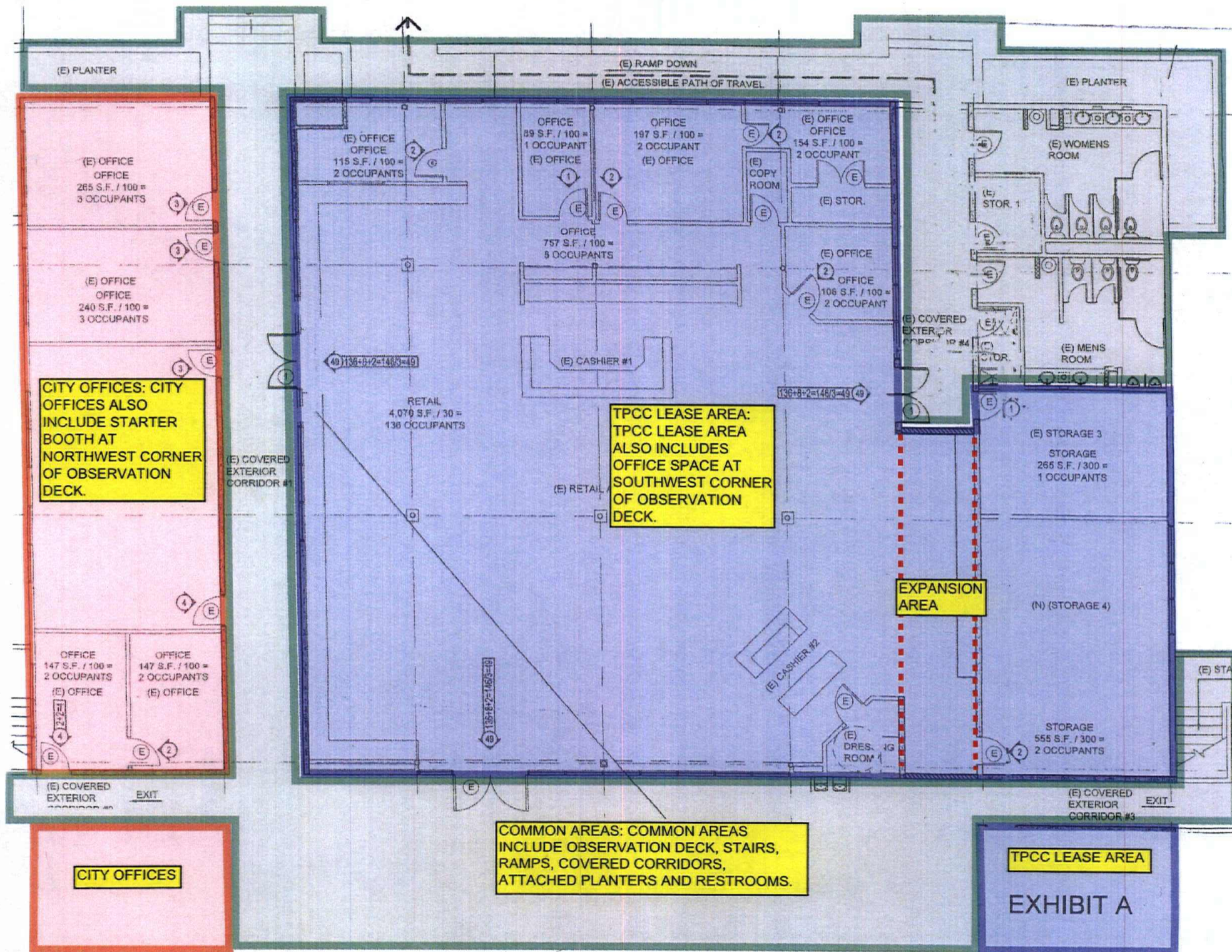
Driving Range

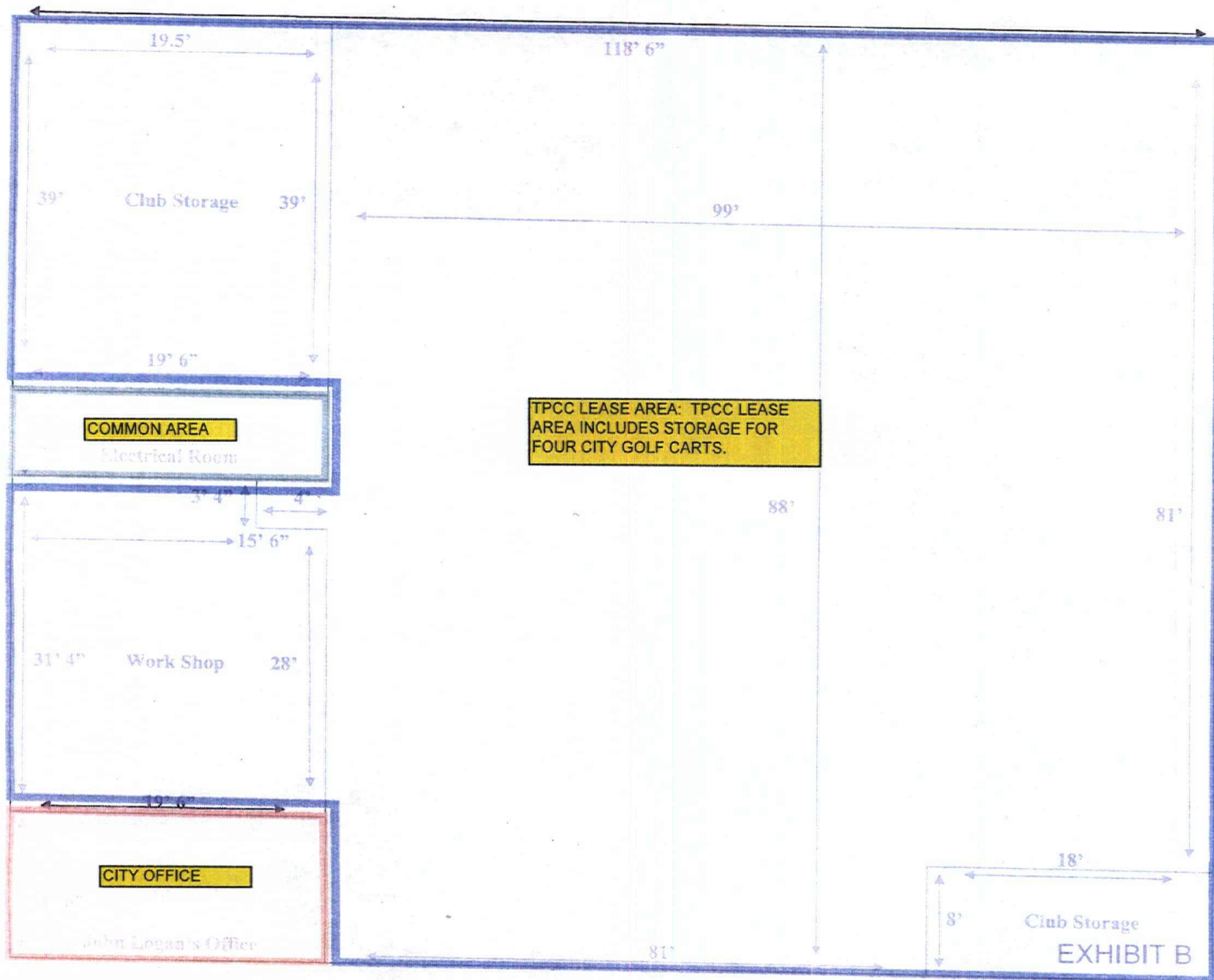
[Attached]

**EXHIBIT D**

**Table of Maintenance Responsibilities**

[Attached]

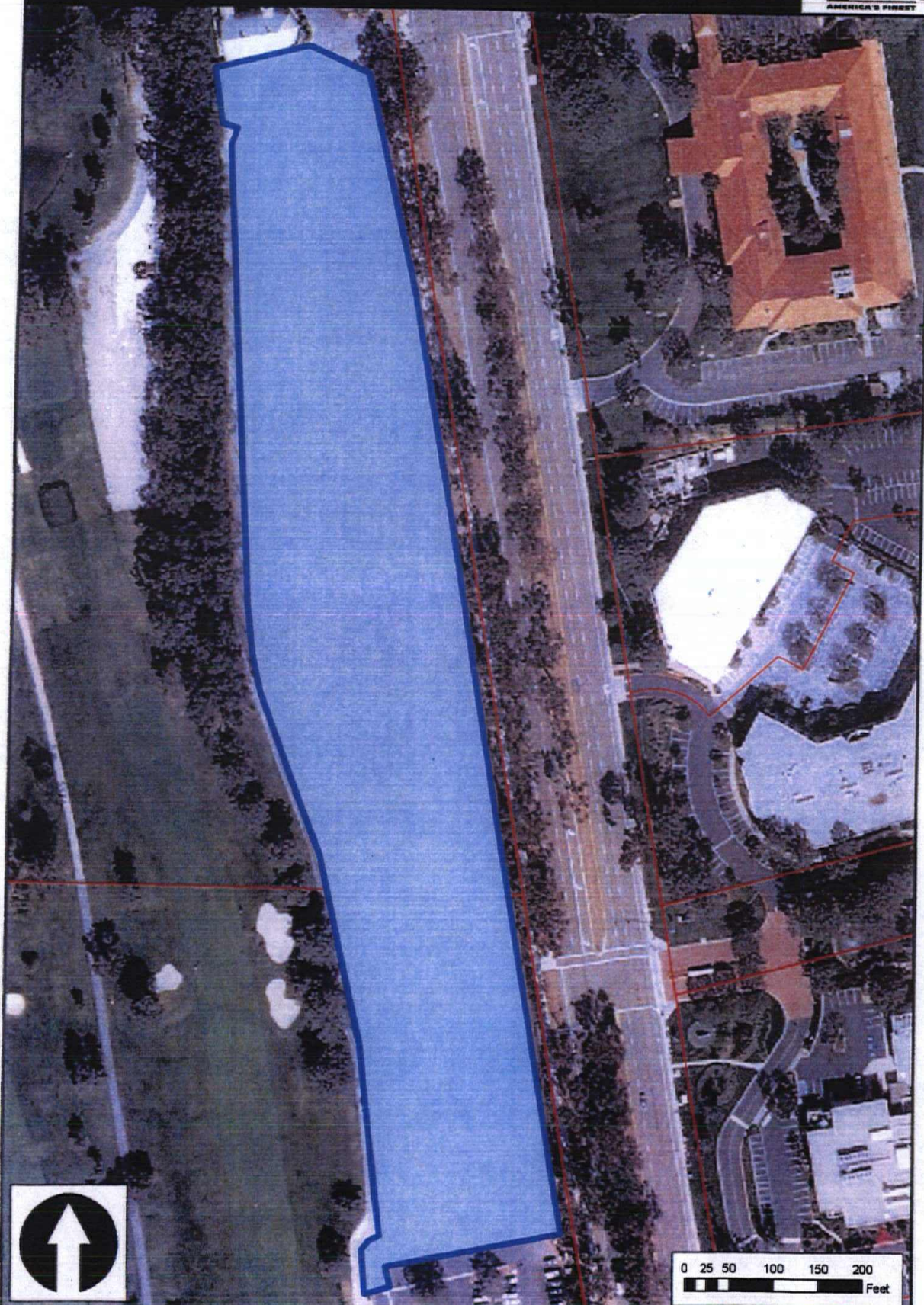




# TORREY PINES GOLF COURSE

## EXHIBIT C - DRIVING RANGE

2011



0 25 50 100 150 200  
Feet



Every year multiple effort has been made to service the accuracy of the map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use. This map contains information from the San Diego Association of Governments (SANDAG) Geographic Information System. This map cannot be reproduced without written permission of SANDAG.

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## EXHIBIT "D"

### TORREY PINES CLUB CORP. BUILDING MAINTENANCE RESPONSIBILITIES

| <b>System/Area</b>                        | <b>City's Responsibilities</b>                                                                                                                                                                                                                                                                                                                            | <b>Club Corp's Responsibilities</b>                                                                                                                                                                                                                                           |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Electrical/Lighting and Power             | In the CITY Building Premises, the wiring, conduit, breakers and light fixtures (as a complete item). All permanent exterior lighting, including lamps, security lights, and safety fixed lights. CITY responsible for wiring, conduit, breakers and light fixtures (as a complete item). EXCLUDES decorative or movable lights used in outdoor displays. | In the LESSEE Building Premises, troubleshoot to identify problem as feasible. Replace switch and outlet plates, fixture lenses and bulbs, ballasts and tubes. All specialized exhibit lighting and service, including decorative or movable lights used in outdoor displays. |
| Gas and Electric Bill                     | Will be as energy efficient as possible by purchasing energy efficient products and equipment which meet or exceed City's policy for energy efficiency.                                                                                                                                                                                                   | Club Corp pays SDG&E bill. This includes charging 6-8 City-owned electric carts, all HVAC units and lights for entire building.                                                                                                                                               |
| Emergency Electrical System and Lighting  | Central circuit. Repair parts and/or system wiring, conduit, fixtures, controls, batteries, etc. Periodic operational check-out.                                                                                                                                                                                                                          | None                                                                                                                                                                                                                                                                          |
| Heating, Ventilation and Air Conditioning | All equipment, controls, filters, water treatment, etc.                                                                                                                                                                                                                                                                                                   | Check and observe daily. Identify and report problems to City and maintain operational log.                                                                                                                                                                                   |
| Plumbing                                  | All pipes, valves, and plumbing fixtures, hot water heaters, etc., in the water service system. All waste and vent systems, roof drains, etc., including pipe replacement INCLUDING the clearing of blockages.                                                                                                                                            | Check and observe daily. Identify and report problems to the City. Report leaky faucets.                                                                                                                                                                                      |
| Sewer/Water Bill                          | City pays sewer & water bill for the clubhouse and common areas.                                                                                                                                                                                                                                                                                          | TPCC pays water bill for the driving range. Will also comply with any and all drought restrictions or emergency restrictions.                                                                                                                                                 |
| Alarms                                    | In the CITY Building Premises, all sensors, alarms, wiring, etc. for security and fire alarm system including heat, smoke, motion and intrusion systems.                                                                                                                                                                                                  | All sensors, alarms, wiring etc., for security and fire alarm system in the LESSEE Building Premises. Including heat, smoke, motion and intrusion systems.                                                                                                                    |

## EXHIBIT "D" (page 2)

| <b>System/Area</b>                            | <b>City's Responsibilities</b>                                                                                                                                                                                                                                             | <b>Club Corp's Responsibilities</b>                                                                                                                                                                                                                    |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Security                                      | Exterior building envelope including aid in emergency situations such as boarding windows, repairing doors and locks, etc. Security for designated City offices including lock installation and maintenance.                                                               | All other security including lock installation and maintenance.                                                                                                                                                                                        |
| Floors/Floor Covering                         | All permanent floors, concrete, wood, cork, vinyl tile and sheet vinyl. Floors in CITY Building Premises. Cost for repairs/replacement to rubber matting in shared corridors and patio area will be split between City and TPCC based on % of total area occupied by each. | Temporary floor coverings such as carpet and repairs to floor when carpet is removed. Cost for repairs/replacement to rubber matting in shared corridors and patio area will be split between City and TPCC based on % of total area occupied by each. |
| Windows/Glass                                 | All glass in windows and doors in CITY Building Premises.                                                                                                                                                                                                                  | In LESSEE Building Premises, all glass in partitions, displays, etc. Includes tinting film on windows.                                                                                                                                                 |
| Doors, Walls, Ceilings, Roof and Metal Shades | All permanent items installed by City                                                                                                                                                                                                                                      | Any additions or modifications to existing equipment, structures or systems, displays and temporary installations, window coverings (film, shades, drapes).                                                                                            |
| Restrooms                                     | All including providing paper products, soaps, light bulbs and tubes. Cleaning adjacent to structure.                                                                                                                                                                      |                                                                                                                                                                                                                                                        |
| Vandalism                                     | All exterior, including window and courtyard and any interior that occurs in CITY Building Premises.                                                                                                                                                                       | Interior vandalism repair                                                                                                                                                                                                                              |
| Paint                                         | All exterior painting, including the exterior walls of the inner corridors. Interior painting of all space designated to City use.                                                                                                                                         | All interior painting of permanent and other walls which are part of displays within the LESSEE Building Premises.                                                                                                                                     |
| Pest Control                                  | Termites, bees in structure.                                                                                                                                                                                                                                               | All other pests                                                                                                                                                                                                                                        |

RESOLUTION NUMBER R- **309584**

DATE OF FINAL PASSAGE **APR 22 2015**

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING AND DIRECTING THE EXECUTION  
OF A THIRD AMENDMENT TO THE PERCENTAGE LEASE  
WITH TORREY PINES CLUB CORPORATION, WITH REGARD  
TO THE PRO SHOP, CLUB HOUSE, AND DRIVING RANGE AT  
THE TORREY PINES GOLF COURSE, SAN DIEGO,  
CALIFORNIA.

WHEREAS, the City of San Diego (City) owns the Torrey Pines Golf Course. The Golf Course is improved with a Clubhouse, Pro Shop, driving range, and other golf facilities; and

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

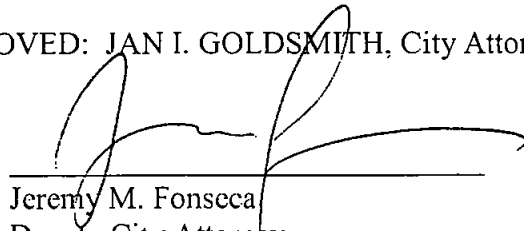
WHEREAS, City staff and TPCC have negotiated that certain "Third Amendment to Lease Agreement," on file in the Office of the City Clerk as Document No. **RR-309584**, which will, among other things, amend the Lease to clarify respective City and TPCC office, common area, and leased premises boundaries in the Pro Shop and Clubhouse; clarify respective maintenance responsibilities between the City and TPCC as to the leased premises; and to provide for agreement regarding potential future improvements to the Pro Shop and driving range; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute, for and on behalf of the City, the "Third Amendment to Lease Agreement," on file in the Office of the City Clerk as Document No. **RR-309584**, between the City and Torrey Pines Club Corporation, a California

corporation, to amend the current "Percentage Lease" with TPCC for certain facilities at the Torrey Pines Golf Course, San Diego, California.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
\_\_\_\_\_  
Jeremy M. Fonseca  
Deputy City Attorney

JMF: meb  
March 17, 2015  
Or.Dept: Real Estate Assets  
Doc. No.: 976286

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 07 2015.

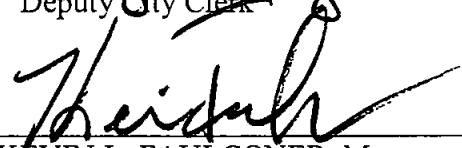
ELIZABETH S. MALAND  
City Clerk

By

  
\_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_

4/21/15  
(date)

  
\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_

(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 07 2015, by the following vote:

| Councilmembers  | Yeas                                | Nays                     | Not Present              | Recused                  |
|-----------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Sherri Lightner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lorie Zapf      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Todd Gloria     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Myrtle Cole     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mark Kersey     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Cate      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Scott Sherman   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| David Alvarez   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marti Emerald   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage APR 22 2015.

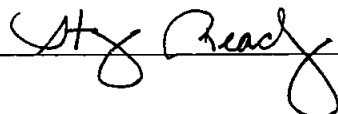
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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- **309584**

Passed by the Council of The City of San Diego on April 7, 2015 by the following vote:

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

**NAYS:**                   **NONE.**

**NOT PRESENT:**   **NONE.**

**RECUSED:**           **NONE.**

**VACANT:**             **NONE.**

AUTHENTICATED BY:

**KEVIN FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

**(Seal)**

By: Stacy Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. **R-309584** approved by the Council of the City of San Diego, California on ,  
April 7, 2015 and approved by the Mayor of the City of San Diego on April 22, 2015.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

**(SEAL)**

By: Stacy Ready, Deputy