

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
--	---

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 3/14/2016
---------------------	--	--------------------

SUBJECT: Approval of a City of San Diego Consent to Assignment and Agreement and approval of a First Amendment to Percentage Lease of the Fairbanks Ranch Country Club.

PRIMARY CONTACT (NAME, PHONE): Charles Tracy Irvin, 619-235-5233	SECONDARY CONTACT (NAME, PHONE): Patti Phillips, 619-236-6766
---	--

COMPLETE FOR ACCOUNTING PURPOSES

FUND	100000				
FUNCTIONAL AREA					
COST CENTER	1613000012				
GENERAL LEDGER ACCT	418039				
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Thompson, Cybele	03/16/2016
Liaison Office	CFO		
Financial Management	DEPUTY CHIEF	Villa, Ron	04/20/2016
Comptroller	COO		
Equal Opportunity Contracting	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to execute City of San Diego the Consent to Assignment and Agreement between Fairbanks Ranch Country Club, Inc., Bay Club Fairbanks Ranch, LLC., and the Bay Clubs Company, LLC.

2. Authorize the Mayor or his designee to execute the First Amendment to Percentage Lease, between the City of San Diego and Bay Club Fairbanks Ranch, LLC.

3. Determine that activity is categorically exempt from CEQA in accordance with State CEQA Guidelines section 15301 (Existing Facilities).

STAFF RECOMMENDATIONS:

Approve the resolutions

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):

1

COMMUNITY AREA(S):

Carmel Valley

ENVIRONMENTAL IMPACT:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities.)

**CITY CLERK
INSTRUCTIONS:**

DO NOT RECORD OR FURTHER EXECUTE FOR SIGNATURES-Please call: Charles Tracy Irvin, Real Estate Assets Department (MS-51A), 619-235-52336 for document pick up.

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 3/14/2016

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Approval of a City of San Diego Consent to Assignment and Agreement and approval of a First Amendment to Percentage Lease of the Fairbanks Ranch Country Club.

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Charles Tracy Irvin/619-235-5233

DESCRIPTIVE SUMMARY OF ITEM:

This action is for approval of a Consent to Assignment and Agreement between Fairbanks Country Club, Inc. and Bay Club Fairbanks Ranch, LLC for the purchase of its leasehold interest, subject to City approval to enter into a First Amendment of Lease Agreement between the City and Bay Club Fairbanks Ranch, LLC. This action will allow Bay Club Fairbanks Ranch, LLC to take over operations of the leasehold located at 15150 San Dieguito Road, San Diego, CA.

STAFF RECOMMENDATION:

Approve the resolutions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:In 1981, Watt Industries deeded 600 acres of open space in the San Dieguito River Valley to the City in conjunction with the City's approval of Watt's residential development. In 1982, the 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, which included a 27-hole golf course, clubhouse, tennis courts and other supporting facilities. In 1986, Watt assigned its interest in the property to Fairbanks Ranch Country Club, Inc., (FRCC) a California non-profit corporation.

The lease provided for an initial development consisting of an 18-hole golf course, tennis courts, and other amenities. The 18-hole golf, country club, tennis courts and other supporting facilities were built on an approximate 193-acre portion of the leased area. The lease also required the lessee to develop the remaining 9-holes and tennis courts on the remaining 179 acre portion of the leasehold no later than December 31, 2009.

At the outset of the development required by the Percentage Lease, it was determined by the U.S. Fish and Wildlife Service that the development of the Fairbanks Ranch Country Club required a one hundred nine (109) acre habitat mitigation and monitoring plan. Seventy-one (71) acres of the mitigation requirements have been met to-date, leaving thirty-eight (38) acres still to be satisfied. As part of its due diligence investigation to determine whether it wanted to be assigned the lease from FRCC, the Bay Club Fairbanks Ranch, LLC., has received conceptual approval for the mitigation plan which was approved by the City's Development Services Department in February, 2016. As part of the proposed First Amendment, all of the outstanding habitat mitigation and monitoring plan requirements will be addressed.

FRCC has been having financial difficulties due to the 2008 recession and a declining membership base. FRCC reported that its membership declined from 500 to 374 members in

2015. In 2015 FRCC conducted a competitive bidding process for the sale of its leasehold and selected Bay Club Fairbanks Ranch, LLC.

The Bay Club Company (Bay Club) 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. Bay Club has a network of 24 country clubs across 10 campuses including five in Northern California and 5 in Southern California. Headquartered in San Francisco, Bay Club has 56,000 members and 3,400 employees. The Bay Club has owned and operated the Bay Club Carmel Valley since 2003.

FRCC has requested that the City consent to an assignment of its leasehold interest to Bay Club Fairbanks Ranch, LLC. As a condition of the proposed assignment, the proposed First Amendment must be approved by the Council or the proposed assignment shall be voided and FRCC will continue as the City's Lessee.

Conditions of the First Amendment include:

- 1) The LEASED PREMISES clause of the Percentage Lease shall be amended to include an additional six (6) acres from the adjacent City-owned land. The six (6) acres are being added to the Premises as part of the mitigation plan and monitoring plan.
- 2) The PERMITTED USE clause of the Percentage Lease shall be amended to define "incidental" and to provide that all new "related incidental uses" must be pre-approved by the City.
- 3) The Term shall be amended to add an additional nine (9) years to the Term, extended the lease termination date from 2044 to 2056. The additional Term years are warranted due to the anticipated Tenant Improvements and required habitat mitigation work that Bay Club will be required to conduct under the First Amendment.
- 4) The minimum monthly rent shall be increased from \$29,397.87 to \$62,500 and the percentage rents have adjusted to current market standards.
- 5) The mitigation and monitoring plan project represents a habitat mitigation, restoration and enhancement program that is intended to resolve the original mitigation obligations associated with FRCC. The project includes restoration of native wetland and riparian habitat through the conversion of upland ornamental portions of the Golf Course to wetlands, well as the enhancement of existing wetland and riparian habitat through the removal of non-native species. No new impacts to wetlands or other sensitive habitats will be incurred by this project.
- 6) The inclusion of certain new or updated City-standard lease provisions into the Percentage Lease.
- 7) The Consent to Assignment requires that the outstanding rent of \$559,275.84 to the City be paid in full subject to the rent audit provisions of the lease.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2 Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #4. Foster services that improve the quality of life.

Objective #5. Cultivate civic engagement and participation.

Goal #3. Create and sustain a resilient and economically prosperous City.

Objective #3. Diversify and grow the local economy.

Objective #5. Enhance San Diego's global standing.

Goal 1: Professionally manage real estate assets

Objective: Exercise effective lease administration

Improve the value of City-owned assets

Goal 2: Optimize the City's assets

Objective: Maximize lease revenue

FISCAL CONSIDERATIONS:

As a term of the Percentage Lease, the City receives percentage rent quarterly in an amount equal to ten percent (10%) of the Gross Receipts. Commencing on January 1, 2030, and continuing thereafter through the remainder of the term of the Percentage Lease, the percentage rent amount shall increase to twelve percent (12%) of the Gross Receipts. The minimum monthly rent shall be increased from \$29,397.87 to \$62,500 and the percentage rents have adjusted to current market standards. The Consent to Assignment requires that the outstanding rent of \$634,532.76 to the City be paid in full subject to the rent audit provisions of the lease. The rent revenue will be deposited to the general fund 100000.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This will be heard at SG&LU committee prior to Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The Council's authorization for the City to execute the proposed First Amendment to Percentage Lease between the City of San Diego and Fairbanks Ranch Country Club, LLC. will put in

Thompson, Cybele

Originating Department

Villa, Ron

Deputy Chief/Chief Operating Officer



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
 1200 Third Avenue • Suite 200 • San Diego, CA 92101
 Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED
 CONTRACTOR IDENTIFICATION**

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Bay Club Fairbanks Ranch, LLC

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): 1 Lombard Street

City: San Francisco County: San Francisco State: CA Zip: 94111

Telephone Number: (415) 781-1874 Fax Number: () 415-394-5570

Name of Company CEO: Matthew J. Stevens

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 15750 San Dieguito Road

City: Rancho Santa Fe County: San Diego State: CA Zip: 92067

Telephone Number: () 858-259-8811 Fax Number: () 858-259-8593

Type of Business: Country & Social Club Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

*Check the box above that applies to this WFR.
 Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of Bay Club Fairbanks Ranch, LLC

San Diego, CA (Firm Name) hereby certify that information provided

herein is true and correct. This document was executed on this _____ day of February, 2014

[Signature]
 (Authorized Signature)

Matthew J. Stevens
 (Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial												3	3	
Professional														
A&E, Science, Computer														
Technical	1		1											
Sales												1		
Administrative Support				1								3		
Services	1		3	7					1		4	13	2	
Crafts														
Operative Workers														
Transportation														
Laborers*			2	5							3			

*Construction laborers and other field employees are not to be included on this page

Totals Each Column	2		57	8					1		49	20	2	
--------------------	---	--	----	---	--	--	--	--	---	--	----	----	---	--

Grand Total All Employees 139

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled			2	1										
----------	--	--	---	---	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers											4			
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column											4			
Grand Total All Employees	4													
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:														
Disabled														

WORK FORCE REPORT - Page 3

NAME OF FIRM: Bay Club Fairbanks Ranch, LLC

DATE: February 25th 2016

OFFICE(S) or BRANCH(ES): Fairbanks Ranch Country Club COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers											4			
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column											4			
Grand Total All Employees	4													
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:														
Disabled														



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION**

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: FAIRBANKS RANCH COUNTRY CLUB, INC.

ADA/DBA: FAIRBANKS RANCH COUNTRY CLUB

Address (Corporate Headquarters, where applicable): 15150 SAN DIEGUITO ROAD

City: RANCHO SANTA FE County: SAN DIEGO State: CA Zip: 92067

Telephone Number: (858) 259-8811 Fax Number: (858) 259-8593

Name of Company CEO: STEVE FOSTER

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Type of Business: COUNTRY & SOCIAL CLUB Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of FAIRBANKS RANCH COUNTRY CLUB, INC.

(Firm Name)

SAN DIEGO, CA hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 14TH day of APRIL, 2016

(Authorized Signature)

STEVE FOSTER

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: FAIRBANKS RANCH COUNTRY CLUB, INC.

DATE: APRIL 14, 2016

OFFICE(S) or BRANCH(ES): FAIRBANKS RANCH COUNTRY CLUB

COUNTY: SAN DIEGO

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial												3	3		
Professional															
A&E, Science, Computer															
Technical	1		1												
Sales													1		
Administrative Support				1									3		
Services	1		31	7					1			43	13	2	
Crafts															
Operative Workers															
Transportation															
Laborers*			25									3			

*Construction laborers and other field employees are not to be included on this page

Totals Each Column	2		57	8					1			49	20	2	
--------------------	---	--	----	---	--	--	--	--	---	--	--	----	----	---	--

Grand Total All Employees 139

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled			2	1											
----------	--	--	---	---	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															

WORK FORCE REPORT – Page 3

NAME OF FIRM: FAIRBANKS RANCH COUNTRY CLUB. INC.

DATE: APRIL 14, 2016

OFFICE(S) or BRANCH(ES): FAIRBANKS RANCH COUNTRY CLUB

COUNTY: SAN DIEGO

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers										4				
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column										4				
Grand Total All Employees	4													
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:														
Disabled														



CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one¹, two² & three³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

FIRST AMENDMENT TO PERCENTAGE LEASE

THIS FIRST AMENDMENT TO PERCENTAGE LEASE ("First Amendment"), is made and entered into this _____ 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 _____, 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 _____), and shall terminate on ____, 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:

<u>Percentage of Gross Revenue</u>	<u>Business Activities</u>
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 with 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.

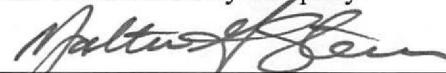
Date: _____

BAY CLUB FAIRBANKS RANCH, a
Delaware limited liability company

By: _____

Name: _____

Title: _____



Matthew J. Stevens

CEO

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

Date: _____

THE CITY OF SAN DIEGO, a California
municipal corporation

By: _____
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

Date: _____

By: _____
Name: _____
Title: _____

Approved as to form this _____ day
of _____, 2016.

JAN I. GOLDSMITH, CITY ATTORNEY

Date: _____
First Amendment Effective Date

By: _____
Name: _____
Title: _____

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT AND AGREEMENT

[Fairbanks Ranch Country Club, Inc., 15150 San Dieguito Road, San Diego, CA 92130]

THIS CITY OF SAN DIEGO CONSENT TO ASSIGNMENT AND AGREEMENT (“Consent”) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), and FAIRBANKS RANCH COUNTRY CLUB, INC., a California nonprofit corporation (“ASSIGNOR”), and BAY CLUB FAIRBANKS RANCH, LLC, a Delaware limited liability company, (“ASSIGNEE”), and THE BAY CLUBS COMPANY, LLC, a Delaware limited liability company, (“GUARANTOR”), to be effective as of the later date upon which this Consent is signed by the parties and approved by the San Diego City Attorney (“Effective Date”), and shall be contingent upon the terms and conditions set forth herein.

RECITALS

- A. CITY, as the lessor, and ASSIGNOR, as the lessee, are parties to that certain PERCENTAGE LEASE (“Lease”) dated December 6, 1982, and recorded as Document No. 83-382965 on October 24, 1983, as assigned and consented to by an ASSIGNMENT AND ASSUMPTION OF LEASE AND CONSENT TO ASSIGNMENT AGREEMENT dated January 31, 1986, and filed in the Office of the San Diego City Clerk as Document No. 769333, relating to certain CITY-owned real property commonly known as “Fairbanks Ranch Country Club” and located at 15150 San Dieguito Road, San Diego, CA 92130, and more particularly described in the Lease.
- B. ASSIGNOR and ASSIGNEE are parties to that certain “Agreement for Purchase and Sale,” dated February 23, 2015, as amended (“Purchase Agreement”), relating to the purchase and sale of the Fairbanks Ranch Country Club assets and property, including the Lease and interests on the subject property.
- C. Pursuant to Lease section IV., A. (2) Right to Assign and Sublet, ASSIGNOR and ASSIGNEE seek CITY’s consent to the assignment contemplated by the Purchase Agreement. In consideration for such consent, GUARANTOR separately has executed a certain Guaranty in favor of CITY, among other things guaranteeing performance of all lessee obligations and responsibilities under the Lease.
- D. ASSIGNEE also desires to amend the Lease. CITY staff has agreed to present the desired proposed amendments to the Lease (First Amendment) to the City Council for its consideration. If the proposed First Amendment is approved by the City Council, then this Consent shall be and remain valid. However, if the First Amendment is not approved by the City Council, then this Consent shall be considered null and void by all the parties hereto, and FRCC will revert to being the lessee under the Lease.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency and receipt of which is acknowledged, the parties agree as follows:

1. Consent. Subject to the terms and conditions stated herein, including those set forth in Recital D which are incorporated herein by this reference, CITY hereby consents to the assignment of ASSIGNOR's leasehold interest in the Lease, and all ASSIGNOR's rights and obligations under the Lease and as to the leased property, to ASSIGNEE. By this Consent, CITY does not release, discharge or modify ASSIGNOR's obligations to CITY under the Lease. As set forth in applicable law, ASSIGNOR's obligations shall survive said assignment and shall continue through the termination dates of the Lease. It is a condition of all parties that Closing under the Purchase Agreement shall have occurred prior to this Consent becoming effective.
2. Lease Controls. The terms and conditions of this Consent shall be subject and subordinate to the terms and conditions of the Lease, unless otherwise explicitly set forth in this Consent. This Consent is a consent of the CITY to the assignment of the Lease to ASSIGNEE made pursuant to, and in accordance with, Section (IV)(A)(2) (Right to Assign and Sublet) of the Lease. The CITY is not bound by any term or condition in the Purchase Agreement.
3. Notices.
 - a) ASSIGNOR'S address for notices after the Effective Date will be:

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
525 B STREET, SUITE 2200
SAN DIEGO, CA 92101
619.515.3251
 - b) ASSIGNEE'S address for notices after the Effective Date will be:

THE BAY CLUBS COMPANY, LLC
c/o BAY CLUB FAIRBANKS RANCH, LLC
1 LOMBARD STREET
SAN FRANCISCO, CALIFORNIA 94111
415.901.9254
4. Additional Consideration to CITY. None.
5. Other Rents and Fees Owed to CITY. A condition of this Consent is that all outstanding rents and fees owed to CITY under the Lease, in the amount of Two Hundred Fifteen Thousand Eight Hundred Seventy-Three Dollars and Ninety-Seven Cents (\$215,873.97) for the Third Quarter 2015, Two Hundred Fourteen Thousand Six Hundred and Three Dollars and Eighty-Seven Cents (\$214,603.87) for the Fourth Quarter 2015, and Two Hundred Four Thousand and Fifty Four Dollars and Ninety Two Cents (\$204,054.92) for First Quarter 2016, shall be paid to CITY concurrent with the closing of the Purchase Agreement. Forgoing and all additional outstanding rents and fees owed to CITY are subject to the rent and audit provisions under the Lease.
6. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the Purchase

Agreement which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

7. Joint and Several Liability. If a party to this Consent is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of such party under this Consent.
8. Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and shall be governed by, the laws of the State of California, without reference to the choice of law or conflicts of law principles thereof.
9. Authority to Contract. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Consent 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 Consent, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent 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.
10. Counterparts. This Consent may be executed in two or more counterparts (delivery of which may occur via facsimile, .pdf or other electronic means), each of which shall be binding as of the Effective Date, and, when delivered, all of which shall constitute one and the same instrument.

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

FAIRBANKS RANCH COUNTRY CLUB, Inc.,
a California nonprofit corporation

Date: April 20, 2016

BY: [Signature]
Name: STEPHEN FERRIS
Title: PRESIDENT BOARD OF DIRECTORS

BAY CLUB FAIRBANKS RANCH, LLC
a Delaware limited liability company

Date: _____

BY: _____
Name: _____
Title: _____

Agreement which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

7. Joint and Several Liability. If a party to this Consent is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of such party under this Consent.
8. Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and shall be governed by, the laws of the State of California, without reference to the choice of law or conflicts of law principles thereof.
9. Authority to Contract. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Consent 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 Consent, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent 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.
10. Counterparts. This Consent may be executed in two or more counterparts (delivery of which may occur via facsimile, .pdf or other electronic means), each of which shall be binding as of the Effective Date, and, when delivered, all of which shall constitute one and the same instrument.

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

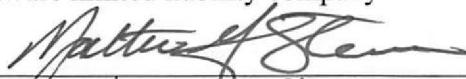
FAIRBANKS RANCH COUNTRY CLUB, Inc.,
a California nonprofit corporation

Date: _____

BY: _____
Name: _____
Title: _____

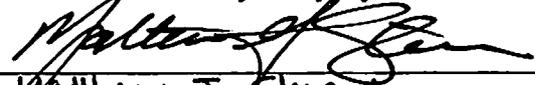
BAY CLUB FAIRBANKS RANCH, LLC
a Delaware limited liability company

Date: _____

BY: 
Name: Matthew J. Stevens
Title: CEO

THE BAY CLUBS COMPANY, LLC
a Delaware limited liability company

Date: _____

BY: 
Name: Matthew J. Steven
Title: CEO

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: _____

BY: _____
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance: _____

_____.

Date: _____

By: _____
Name: _____
Title: _____

Approved as to form this _____
day of _____, 2016

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____