

**AGREEMENT
FOR IMPROVEMENTS ON THE SOUTH COURSE
AT TORREY PINES GOLF COURSE**

THIS AGREEMENT for Improvements on the South Course at Torrey Pines Golf Course is entered into between THE CITY OF SAN DIEGO, a municipal corporation [City], and THE CENTURY CLUB OF SAN DIEGO, a California non-profit corporation [Century Club], based on the following facts:

RECITALS

A. Century Club is a non-profit corporation organized for the main purpose of administering and promoting San Diego's annual PGA TOUR event, the Buick Invitational, annually hosted at Torrey Pines Golf Course in February. The net earnings of the corporation are used solely for charitable purposes, including the primary support of the San Diego County Junior Golf Association and for donations to other charities and golf-related activities in the San Diego community.

B. The South Course of the Torrey Pines Golf Course is in need of improvements and reconstruction. The greens were last renovated nearly twenty years ago and are showing signs of compaction and deterioration consistent with many years of very heavy play; nearly 100,000 rounds of golf are played on the South Course each year.

C. The City's Proposed Golf Operations Business Plan for June 1, 2001 through June 30, 2005, identifies significant course improvements that are currently needed and proposes a plan for addressing those needs. The Plan recommends improvements to the greens at a cost of \$50,000 per green through funding to be allocated from future revenues in Fiscal Years 2003 through 2005 to bring the greens to an acceptable level of play. On April 18, 2001, the Natural Resources & Culture Committee of the San Diego City Council recommended to City Council that greens reconstruction at Torrey Pines Golf Course take first priority for future golf course improvements, and that greens fees increase immediately to finance these improvements. If the Committee's recommendations are adopted and the funds allocated, reconstruction of the greens could take place, at the earliest, during the period of July, 2001 through January, 2002.

D. Century Club is desirous of immediately proceeding with the design and reconstruction of greens and other related improvements for the eighteen greens on the South Course at the Torrey Pines Golf Course and one practice green [the Improvements]. Further, Century Club is desirous of funding additional improvements beyond those contemplated by the City's Proposed Golf Operations Business Plan, to enhance the quality of the South Course to allow championship level play. Century Club has contracted with one of the nation's top golf course architects to design the Improvements including redesign of the greens, realignment of the fairways, and the addition of new tees and bunkers to accommodate all levels of play. Century Club is actively raising funds in the community for design and reconstruction of the greens and other improvements in the targeted amount of \$3,000,000, and is prepared to contract, administer, and pay all costs of the Improvements. Without the generous contribution of Century Club, the Improvements would not be constructed at this time, and many of the Improvements

would not be possible.

E. Council Policy 700-7, Park Development by Non-City Funds, provides for improvement of parks ahead of schedule or to provide improvements which are not included in the Capital Improvements Program through the use of a written agreement approved by the City Council with a person or group willing to fund such improvements.

F. In consideration for Century Club's agreement to fund, design, and construct the Improvements ahead of schedule and in excess of those currently planned, City has agreed to reimburse Century Club in the amount of \$50,000 per green (\$950,000 total) should the City allocate funds for greens restoration as contemplated in City's Proposed Golf Operations Business Plan at any time through Fiscal Year 2008 .

G. On June __, 2001, the San Diego City Council authorized execution of this Agreement [Agreement] between City and Century Club for the design and construction of Improvements on the South Course and one practice green at the Torrey Pines Golf Course.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties herein expressed, City and Century Club agree as follows:

ARTICLE I – PROJECT DESCRIPTION AND COST

- 1.1 The Improvements.** The Improvements consist of design and reconstruction of greens and other improvements that shall be planned, designed and constructed by Century Club, including the 18 greens on the South Course and one practice green of Torrey Pines Golf Course. Construction of the Improvements shall include, where necessary, the construction of temporary greens to permit continued play on the South Course.
- 1.2 Total Improvements Cost.** The total estimated cost of the Improvements, including, but not limited to construction costs, design services, engineering, professional services, insurance premiums, bonds, and all other fees and charges, is THREE MILLION DOLLARS (\$3,000,000). Should Century Club commence work on the Improvements, Century Club agrees to administer and fund all planning, design, and construction of the Improvements.
- 1.3 City Funds For Greens Improvements.** City has included in its Proposed Golf Operations Business Plan for June 1, 2001 through June 30, 2005, a proposal for reconstruction of greens at the Torrey Pines Golf Course at a cost of \$50,000 per green. These funds, if allocated, may be used to partially reimburse Century Club, as set forth in Section 3.5.

ARTICLE II – CENTURY CLUB OBLIGATIONS

- 2.1 Plans, Specifications, and Performance Schedule.** Century Club shall provide complete plans, specifications, and a performance schedule for design and construction of the Project.

- 2.1.1 City Approval.** Design, plans, and specifications shall be subject to City approval, which approval shall not be unreasonably withheld. Promptly following receipt of the plans and specifications, City shall notify Century Club in writing of any objections it may have to the documents. The objections having been addressed in the construction documents to the satisfaction of City, City shall thereafter diligently and expeditiously process the documents for approval. In case of disagreement on acceptability of the construction documents the City Manager shall have final approval.
- 2.1.2 Disruption of Play.** The Parties acknowledge the importance of continued play on the South Course during construction of the Improvements. Century Club agrees to use its best efforts, in coordination with its consultants and contractors, to minimize the disruption of play on the South Course during construction. Further, Century Club agrees to use quality temporary greens and efficient sequencing of construction (as provided in the plans submitted to the City) to avoid disruption of play.
- 2.1.3 Performance Schedule.** Design and construction of the Improvements shall be performed by Century Club pursuant to a Performance Schedule, approved by City. The Performance Schedule shall be designed in consultation with City's Golf Operations Manager to minimize interference with play on the South Course.
- 2.1.4 Design or Construction Changes.** Century Club shall obtain the prior written approval of City to any material changes to the design or construction of the Improvements from that previously approved by City.
- 2.1.5 Weekly Consultation.** Century Club, its Consultant or other designee, shall meet with the Golf Operations Manager, or if unavailable, the acting Golf Course Superintendent at Torrey Pines Golf Course, each week during construction of the Improvements to coordinate the work schedule, review progress, resolve any potential conflicts between construction and play, and discuss any other matters pertaining to performance of this Agreement. The weekly meeting shall take place at Torrey Pines Golf Course, unless another venue is agreed to by the parties.
- 2.2 Project Design.** Century Club shall at its sole expense contract with a golf course design professional to design and oversee construction of the Improvements. Century Club shall cause the following provisions to be included in its contract(s) with any design professionals for design of the Improvements (referred to below as "Consultant"), or such other similar provisions as may first be approved in writing by City:
- 2.2.1 Third Party Beneficiary.** "The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and construction, the City will become the owner of the project improvements, and the City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no

other intended third party beneficiaries of this contract.”

2.2.2 Professional Liability Insurance. “For all of the Consultant’s employees who are subject to this agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of 3 million dollars per claim and 3 million dollars aggregate. Consultant shall ensure both that (1) this policy retroactive date is on or before the date of commencement of the work to be performed under this agreement; and (2) this policy has a reporting period of three years after the date of completion or termination of this agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego’s or the Century Club’s exposure to loss.”

2.2.3 CGL Insurance. “Consultant shall keep in full force and effect, during any and all work performed in accordance with this agreement, all applicable commercial general liability insurance to cover personal injury, bodily injury, and property damage, providing coverage to a combined single limit of 3 million dollars per occurrence, subject to an annual aggregate of 3 million dollars for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.”

2.2.4 Insurance Policy Requirements. “Except for professional liability insurance and workers compensation, the City of San Diego and the Century Club and their respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego and Century Club. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an “A” or “A-“ and “VII” rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by Consultant or Consultant’s insurer to the City of San Diego and Century Club by certified mail, as reflected on an endorsement which shall be submitted to the City of San Diego and Century Club, except for non-payment of premium, in which case ten days notice must be provided. Before performing any work in accordance with this agreement, Consultant shall provide the City of San Diego and Century Club with all Certificates of Insurance accompanied with all endorsements.”

2.3 Project Construction. Century Club shall cause the following provisions to be included in its contract(s) with any contractors for construction of the Improvements (referred to below as “Contractor”), or such other similar provisions as may first be approved in writing by City:

2.3.1 Third Party Beneficiary.“The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and construction, the City will become the owner of the project improvements, and the City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.”

2.3.2 CGL Insurance.“Contractor shall keep in full force and effect, during any and all work performed in accordance with this agreement, all applicable commercial general liability insurance to cover personal injury, bodily injury, and property damage, providing coverage to a combined single limit of 3 million dollars per occurrence, subject to an annual aggregate of 3 million dollars for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.”

2.3.3 Insurance Policy Requirements.“Except for professional liability insurance and workers compensation, the City of San Diego and the Century Club and their respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego and Century Club. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an “A” or “A-“ and “VII” rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by Contractor or Contractor’s insurer to the City of San Diego and Century Club by certified mail, as reflected on an endorsement which shall be submitted to the City of San Diego and Century Club, except for non-payment of premium, in which case ten days notice must be provided. Before performing any work in accordance with this agreement, Contractor shall provide the City of San Diego and Century Club with all Certificates of Insurance accompanied with all endorsements.”

2.4 Compliance with Law. Century Club shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. Century Club shall, at its sole cost and expense, comply with all review, permitting, and other requirements of applicable municipal, state, and federal agencies and laws now in effect or which may hereafter be in effect, including but not limited to the following:

2.4.1 Compliance with the California Environmental Quality Act.

2.4.2 Obtain any review or permits required by the California Coastal Commission.

- 2.4.3 Obtain all applicable permits required during construction.
- 2.4.4 Compliance 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 any other applicable federal and state laws and regulations hereinafter enacted.

ARTICLE III – CITY OBLIGATIONS

- 3.1 **Right of Entry for Construction.** City shall grant Century Club a Right of Entry Permit, substantially in the form of Attachment 1, for the entry of Century Club, its consultants and contractors, onto the Torrey Pines Golf Course, solely for the purpose of design and construction of the Improvements. City may, by the terms of the Right of Entry Permit and as more specifically set forth in this Agreement, limit or restrict access to all or parts of the Golf Course at specified times to minimize disruption of Golf Course operations.
- 3.2 **Water.** City shall pay for the water necessary to irrigate the greens during construction and for other water used for the purpose of construction.
- 3.3 **Use of City Employees.** The City shall, to the extent practicable, perform regular maintenance activities in conjunction with construction of the Improvements using regular golf course staff.
- 3.4 **Review and Permits.** City shall use its best efforts to assist Century Club in obtaining any required review of or permits for the Improvements.
- 3.5 **Reimbursement**
 - 3.5.1 **Right to Reimbursement.** The total cost of planning, designing and constructing the Improvements shall be advanced by the Century Club. If the improvements are constructed by Century Club, City shall reimburse Century Club \$50,000 per green for a total of not more than NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) from funds budgeted for capital improvements to the greens on the South Course of Torrey Pines Golf Course in Fiscal Years 2003 through 2005, pursuant to City's Proposed Golf Operations Business Plan.
 - 3.5.2 **Availability of Funds.** City will reimburse Century Club from available funds. Availability of funds is subject to an annual appropriation by the San Diego City Council. The City Manager will recommend to the San Diego City Council that funds for greens improvements be appropriated as contemplated in the Proposed Golf Operations Business Plan. If the San Diego City Council fails to appropriate the funds necessary to provide the reimbursement to the Century Club by the end of Fiscal Year 2008, and if City does not identify and allocate other funding sources, then this Agreement and City's obligation to reimburse Century Club shall be terminated and Century Club shall bear all costs experienced up to the time of termination.

3.5.3 Schedule of Reimbursement. In accordance with the reimbursement method described in Section 3.5.2 of this Agreement and if such funds are allocated, City shall reimburse Century Club as such funds are allocated and made available.

ARTICLE IV – CONSTRUCTION AND IMPROVEMENTS

- 4.1 Improvements.** Century Club, upon execution of this Agreement by both parties, shall have the right to cause Improvements construction to commence. If such construction is commenced, Century Club will use its best efforts to expedite completion of the Improvements, in consultation with the Golf Operations Manager, provided, however, that if construction of the Improvements is not commenced by March 1, 2002, then this Agreement shall terminate without liability to either party. Improvements shall be deemed completed at such time as it is finally inspected and accepted by City (through its designated representative) and Century Club. Acceptance by City of the completed Improvements shall not be unreasonably withheld. Upon completion of the Improvements, Century Club will provide record drawings by the design consultants verifying that the improvements were constructed in accordance with City approved plans and any subsequent approved change orders.
- 4.2 Inspections.** The construction shall be inspected by a team composed of representatives from City (including the Golf Operations Manager) and Century Club.
- 4.3 City Right of Inspection.** City shall have the right to have its representative, upon reasonable notice, enter the project area at any time prior to its acceptance of the completion of construction of the Improvements. City's right to enter and inspect the project shall in no way create City responsibility for inspection and approval of the project. Such on-going inspections shall remain the responsibility of Century Club through its architect or qualified consultant.
- 4.4 Record Keeping.** Century Club shall keep an accurate record of the actual cost of the construction of the project in accordance with generally accepted accounting procedures. Century Club shall allow the City's authorized representatives to examine and duplicate any records relevant to the verification of the actual cost of constructing the Improvements including, without limitation, all contract bids and invoices. City, upon reasonable notice, shall have the right to inspect all books and records of Century Club relating solely to construction of the Improvements and audit during the construction period and for a period of three (3) years following City's acceptance of the Improvements. Century Club shall retain all such records for those three (3) years.
- 4.5 Time is of the Essence.** The parties agree and acknowledge that time is of the essence in the construction of the Improvements and the performance of all other duties and obligations contained in this Agreement.
- 4.6 Termination of Agreement.** City shall provide Century Club (and its consultant(s) and contractor(s), if requested) with a written release of Agreement upon fulfillment of

Century Club's obligations (and those of its consultant(s) and contractor(s)) as set forth herein to the satisfaction of City. Said release shall be in recordable form if requested by Century Club.

ARTICLE V – ASSIGNMENT

- 5.1 Assignment of Agreement.** Century Club may assign or transfer any of its rights, and delegate its duties and obligations under this Agreement only with the prior written consent of City, which consent shall not be unreasonably withheld. Assignment without the prior written consent of City shall constitute grounds for termination of this Agreement.
- 5.2 Successors in Interest** This Agreement shall inure to the benefit of and be binding upon the Parties and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all terms and provisions of this Agreement shall extend to and bind any successor(s) of the Parties.

ARTICLE VI - INDEMNIFICATION AND INSURANCE

- 6.1 Indemnification.** With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of Century Club or Century Club's employees, agents, and officers, arising out of any obligations, work, or services involved in the performance of this Agreement, Century Club agrees to defend, indemnify, protect, and hold harmless City and its agents, officers, or employees from and against all liability. Century Club's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the established gross negligence or willful misconduct of City and its agents, officers or employees.
- 6.2 Insurance.** Century Club shall at its sole expense keep in full force and effect, at all times during the term of this Agreement, all applicable commercial general liability insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of 3 million dollars per occurrence, subject to an annual aggregate of 3 million dollars for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable. City and District and their respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to City and District. Further, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by City and District. The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by Century Club or Century Club's insurer to City and District by

certified mail, as reflected on an endorsement which shall be submitted to City and District, except for non-payment of premium, in which case ten days notice must be provided. Further, the policies must be primary and non-contributing to any insurance that may be carried by City or District, as reflected in an endorsement which shall be submitted to City and District. Century Club shall provide City and District with all Certificates of Insurance accompanied with all endorsements prior to execution of this Agreement by City.

ARTICLE VII - DEFAULT AND NOTICES

- 7.1. Default.** If either Party defaults in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that party and shall fail to cure the default within ten days following service on the defaulting party of a written notice from the second party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this Agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above, if any default cannot be cured within ten days after the service of written notice upon the defaulting party, the second party shall not terminate this Agreement if upon service of notice the defaulting party immediately commenced to cure the default and diligently pursues such cure to completion.
- 7.2 Notices.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective [a] on personal delivery, [b] on the fourth business day after mailing by certified or registered U.S. Mail, return receipt requested, [c] on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use [e.g., Federal Express] postage or fee prepaid as appropriate, or [d] upon confirmed transmission of facsimile, addressed to the Party at the address shown below:

Notice to the City shall be addressed to:

Director, Park and Recreation Department
City of San Diego
City Administration Building
202 C Street, M.S. 9B
San Diego, California 92101
Facsimile No: [619] 236-6219

AND

Golf Operations Manager
City of San Diego
11480 North Torrey Pines Road
La Jolla, California 92037
Facsimile No: [858] 552-1789

Notice to the Century Club shall be addressed to:

Century Club
3333 Camino Del Rio South, Suite 100
San Diego, CA 92108
Attn: Executive Director
Facsimile No: [619] 521-2137

Notice of change of address shall be given in the manner set forth in this Section.

ARTICLE VIII - MISCELLANEOUS

- 8.1 City Approval.** Whenever City approval or consent is required by the terms of this Agreement, that approval shall be made by the Golf Operations Manager as designee for the City Manager. City shall reply to any approval or consent request in a reasonably prompt manner so as to facilitate the approval process.
- 8.2 Headings.** All article and section headings are for convenience only and shall not affect the interpretation of this Agreement.
- 8.3 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions shall be deemed to be both covenants and conditions.
- 8.4 Controlling Law.** The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 8.5 Jurisdiction, Venue, and Attorney's Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.
- 8.6 Integration.** This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees, with respect to the subject matter hereof, shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements with respect to the subject matter hereof are merged into this Agreement.
- 8.7 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

- 8.8 No Waiver.** No failure of City or Century Club to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term, or condition. Any waiver of a breach must be in writing and signed by the waiving party in order to constitute a valid and binding waiver. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 8.9 Severability.** The un-enforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 8.10 Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 8.11 Corporate Authority.** The individual(s) executing this Agreement on behalf of Century Club represents and warrants that he or she is duly authorized to execute this Agreement on behalf of Century Club, and that this Agreement is binding upon Century Club in accordance with its terms.
- 8.12 Time is Essential.** Time is of the essence for all terms and provisions of this Agreement.
- 8.14 Attorney's Fees.** In the event either party commences a litigation for specific performance or damages for the breach hereof, the prevailing party shall be entitled to a judgement against the other for an amount equal to reasonable attorney's fees and court costs incurred.
- 8.15 Nondiscrimination.** Century Club shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Century Club shall provide equal opportunity in all employment practices. Century Club shall ensure that its consultants and contractors, if any, comply with this Section. Nothing in this Section shall be interpreted to hold Century Club liable for any discriminatory practice of its consultants and contractors.

IN WITNESS WHEREOF, this Agreement is executed by the City, acting by and through its City Manager pursuant to Resolution No. _____, and by Century Club, acting by and through its lawfully authorized officer(s).

The City of San Diego

DATED: _____

By: _____
Marcia C. McLatchy
Director, Park and Recreation

The Century Club

DATED: _____

By: _____
Name:
Title:

Approved as to form and legality this ____ day of _____, 2001.

CASEY GWINN, City Attorney

By: _____
Carrie L. Gleeson
Deputy City Attorney

**RIGHT OF ENTRY PERMIT
BETWEEN CITY OF SAN DIEGO AND
CENTURY CLUB OF SAN DIEGO**

This Right of Entry Permit is entered into by and between the City of San Diego, a municipal corporation [CITY], and the Century Club of San Diego, a nonprofit corporation [PERMITTEE], collectively referred to herein as the "Parties."

Recitals

- A. Whereas, CITY is the owner of Torrey Pines Golf Course; and
- B. Whereas, PERMITTEE is a non-profit corporation organized for the main purpose of administering and promoting San Diego's annual PGA TOUR event, the Buick Invitational, annually hosted at Torrey Pines Golf Course, the proceeds of which benefit various charitable organizations; and
- C. Whereas, PERMITTEE desires to design and construct, at its sole cost and expense, improvements to the South Course of Torrey Pines Golf Course that will benefit the course and the public; and
- D. Whereas, CITY has agreed to allow PERMITTEE to construct Improvements as defined in the Agreement for Improvements on the South Course at Torrey Pines Golf Course [Agreement] entered into by CITY and PERMITTEE; and
- E. Whereas, the PERMITTEE requires a Right of Entry Permit in order to construct the Improvements contemplated by the Agreement;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the Parties as herein expressed, CITY and PERMITTEE agree as follows:

Agreement

- I. CITY hereby grants permission to PERMITTEE to enter upon the Torrey Pines Golf Course [Permit Area].
- II. PERMITTEE's use of the Permit Area shall be limited to access required for construction of Improvements, as set forth in and pursuant to the Agreement, the terms of which are incorporated herein. All construction shall be coordinated with the Golf Operations Manager and performed so as to minimize disruption of play on the course.
- III. This permit shall be in effect upon execution hereof by City and shall expire on completion of performance of the Agreement by PERMITTEE.
- IV. PERMITTEE shall maintain a policy of liability insurance in an amount satisfactory to the CITY in order to protect CITY from any potential claims which may arise from PERMITTEE's use of the Permit Area. PERMITTEE certifies that a policy of commercial general liability insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$3 million combined

single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. All insurance required by express provision of this permit shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by CITY. A certificate of said insurance is attached to this Agreement as Exhibit "A."

VI. PERMITTEE agrees to defend, indemnify, protect, and hold CITY, its agents, officers, and employees harmless from and against any and all claims asserted, demands, losses, damages, expenses or liability established for damages or injuries, including death, to any person or property, including injury to PERMITTEE's employees, contractors, consultants, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the construction of the Improvements, use of the Permit Area, or work to be performed under the Agreement, and all expenses of investigating and defending against same; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence or sole willful misconduct of CITY, its agents, officers, or employees.

VII. PERMITTEE shall not discriminate in any manner against any person or persons in any manner prohibited by law in PERMITTEE's use of the Permit Area.

VIII. All risks in connection with PERMITTEE's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof, shall be borne in full by PERMITTEE.

IX. This permit is revocable with a thirty (30) day notice by CITY. It is mutually agreed that CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of termination of this permit, and, further, that PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of termination of this permit.

X. PERMITTEE recognizes and understands that this permit may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of property taxes levied on such interest. PERMITTEE further agrees that such tax shall be paid by PERMITTEE before becoming delinquent.

XI. PERMITTEE shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.

XII. PERMITTEE shall not assign any rights granted by this permit nor any interest therein without the prior written approval of CITY. Approval of any such proposed assignment shall not be unreasonably withheld.

XIII. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301. The activity qualifies under the categorical exemption for existing facilities because it entails only the repair, maintenance and minor alteration of topographical features of the Torrey Pines Golf Course that will result in no expansion of use.

XIV. Whenever the terms of this permit require an act or approval by CITY, that

act or approval shall be performed by the City Manager or designee.

IN WITNESS WHEREOF, this permit is executed by the City of San Diego, acting by and through its City Manager, and by the Century Club of San Diego.

THE CITY OF SAN DIEGO

By: _____
City Manager

Date: _____

CENTURY CLUB OF SAN DIEGO

By: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

DATE _____

By _____
Deputy City Attorney

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

DATE _____

By _____

draft: May 29, 2001