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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92042199
Party	Plaintiff The Lodge at Torrey Pines
Correspondence Address	Lynda J. Zadra-Symes Knobbe, Martens, Olson & Bear, LLP 2040 Main Street Fourteenth Floor Irvine, CA 92614
Submission	Motion for Summary Judgment
Filer's Name	Lynda J. Zadra-Symes
Filer's e-mail	efiling@kmob.com
Signature	/Lynda J. Zadra-Symes/
Date	09/29/2004
Attachments	motion.pdf (14 pages) exhibit a.pdf (29 pages) exhibit b.pdf (45 pages) exhibit c.pdf (52 pages) exhibit d.pdf (2 pages)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TORREY PINES CLUB CORPORATION,
Respondent,

v.

THE LODGE AT TORREY PINES,
Petitioner.

THE LODGE AT TORREY PINES,
Opposer,

v.

TORREY PINES CLUB CORPORATION
Applicant.

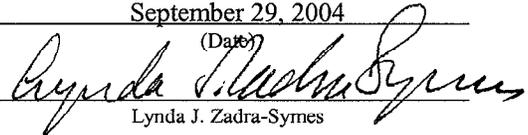
(as consolidated)

Cancellation No. 92042199

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website located at <http://estta.uspto.gov/> on:

September 29, 2004

(Date)



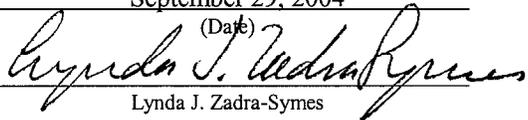
Lynda J. Zadra-Symes

Opposition Nos. 91157053 and
91157056

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(Date)



Lynda J. Zadra-Symes

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Sir:

Petitioner The Lodge At Torrey Pines respectfully moves the Trademark Trial and Appeal Board ("Board") for summary judgment pursuant to Federal Rule of Civil Procedure 56 in the above-referenced trademark cancellation. A memorandum in support of Petitioner's motion is attached hereto.

The evidence indicates that Registrant Torrey Pines Club Corporation did not own the subject TORREY PINES mark (Registration No. 2,335,620, issued March 28, 2000) at the time it applied for the subject registration. It is undisputed that the City of San Diego (the "City")

granted Registrant's predecessor a non-exclusive license to use the TORREY PINES mark prior to Registrant's application for the subject registration. The non-exclusive license was granted for use of the TORREY PINES mark in connection with Registrant's operation (pursuant to a lease from the City), of a golf pro-shop located on the Torrey Pines Municipal Golf Course, which is owned and operated by the City. It is also undisputed that Registrant's only rights in the TORREY PINES mark stem from its non-exclusive license from the City. Because Registrant was (and still is) merely a non-exclusive licensee, and not the owner, of the TORREY PINES mark at the time Registrant applied for the subject registration, the subject registration is invalid as a matter of law.

For these reasons, Petitioner respectfully submits that a grant of summary judgment for Petitioner in this proceeding is appropriate and requests that the Board enter judgment canceling the subject registration.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 29, 2004

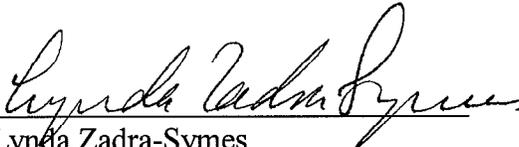
By: Lynda J. Zadra-Symes

Lynda Zadra-Symes
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for The Lodge at Torrey Pines,
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the forgoing Motion for Summary Judgment upon Respondent's counsel by depositing one copy thereof in the United States Mail, first class postage prepaid, on September 29, 2004, addressed as follows:

David V. Clark
LATHROP & GAGE L.C.
2345 Grand Ave., Suite 2500
Kansas City, MO 64108


Lynda Zadra-Symes

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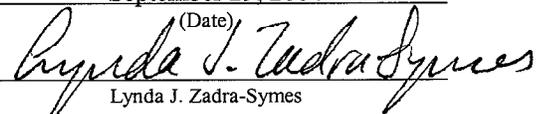
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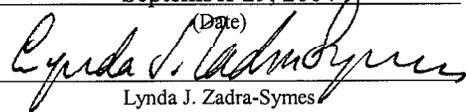
Lynda J. Zadra-Symes

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September 29, 2004

(Date)



Lynda J. Zadra-Symes

**MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

Registrant Torrey Pines Club Corporation ("TPCC") improperly applied for and registered the mark TORREY PINES (Registration No. 2,335,620, issued March 28, 2000) despite the undisputed fact that the mark is owned by the City of San Diego ("the City"), not TPCC. It is undisputed that the City of San Diego is the owner and operator of the highly acclaimed Torrey Pines Municipal Golf Course. Robert McKee, TPCC's owner, and Susan Casagrande, TPCC's president, admitted during their depositions¹ that the City owns Torrey Pines Golf Course, that TPCC's operations are leased from the City, and that TPCC requested

¹ Relevant excerpts from the depositions transcripts of Robert McKee and Susan Casagrande are attached hereto as Exhibits A and B, respectively.

and received a nonexclusive license to use the TORREY PINES mark from the City during the term of TPCC's lease. TPCC's license states explicitly that it is a *nonexclusive* license and that it terminates upon expiration of TPCC's lease. As a nonexclusive licensee, TPCC had no ownership rights in the TORREY PINES mark at the time it applied for the subject registration, and TPCC never acquired any ownership rights in the mark. The subject registration is therefore invalid.

II. BACKGROUND

A. The City Of San Diego Owns And Operates The Torrey Pines Golf Course

The following facts are undisputed. The City of San Diego opened Torrey Pines Municipal Golf Course (the "Golf Course") in 1957. Ex. A (McKee Depo., Ex. 11). Since its opening, the City of San Diego has been the only owner and operator of Torrey Pines Golf Course. See Ex. A (McKee Depo. at 107-08); Ex. B (Casagranada Depo. at 75). In addition to the golf course, the City owns much of the land and buildings adjacent to the Torrey Pines Municipal Golf Course, including the land and buildings that today house the golf course pro-shop, driving range, and golf cart rental center. See Ex. A (McKee Depo. at 53-57).

TPCC further admits that City employees maintain the golf course, take green fees, and conduct starting operations, among other operations at Torrey Pines Golf Course. Ex. B (Casagranada Depo. at 21-23, 35-38). TPCC admits that City employees are present at the golf course and at TPCC's facilities on a daily basis. *Id.* Indeed, TPCC admits that a number of City employees actually have offices inside the same building in which TPCC conducts most of its operations at the golf course. Ex. B (Casagranada Depo. at 35-38). Additionally, TPCC admits that the mark TORREY PINES refers to the golf course. Ex. A (McKee Depo. at 123) ("When you refer to Torrey Pines, it's thought of as the golf course."). TPCC admits that the golf course had the name TORREY PINES prior to TPCC's operations at the golf course. Ex. A (McKee Depo. at 29 and Ex. 11).

B. The City's Lease To TPCC

In 1987, upon termination of a lease to a third party, Wansa Enterprises, Inc. ("Wansa"),

the City leased operations of the pro-shop, driving range, and golf cart rentals to TPCC's predecessor-in-interest, Vincent/McKee Sports, Inc. (collectively "TPCC") with a percentage lease. *See* Ex. C. In assuming the existing pro-shop operations, TPCC purchased the existing pro-shop inventory, driving range equipment, and other equipment from Wansa, but TPCC did not purchase any trademark rights from Wansa. *See* Ex. A (McKee Depo. at 18).

The Lease Agreement between the City and TPCC defines TPCC's rights and obligations for TPCC's business operations at Torrey Pines. *See* Ex. C. The Lease Agreement further reserves for the City a "Right of Termination" and a right of "Entry and Inspection." Ex. C (Sections 2.04 and 6.02). The Right of Termination can be triggered by, among other things, a failure to maintain quality standards, and the City's right of entry and inspection expressly provides that the City may inspect its leased property. Ex. C (Section 6.02).

C. The City's Nonexclusive License To TPCC

In 1989, at the request of TPCC, the City granted TPCC a written, *nonexclusive* license to use the TORREY PINES mark in the course of its business operations pursuant to the Lease Agreement. Ex. D. The license came in the form of a September 13, 1989 letter from Don Barone, Property Services Supervisor for the City, to TPCC stating the following:

This letter is authorization to use the Torrey Pines logo in the conduct of your business at the Torrey Pines Golf course. This authorization is **nonexclusive** and will terminate upon the expiration of the lease. All commercial use of the logo shall be considered as sales from the leasehold, and the appropriate rents shall be due on the proceeds as per our lease agreement (RR267979).

Ex. D² (emphasis added). TPCC admits that it has no other documentation from the City giving it rights in the TORREY PINES mark. Ex. B (Casagranada Depo. at 61-66, 75-78).

D. TPCC's Application To Register The TORREY PINES Mark

Again, TPCC admits that its only right to use the TORREY PINES mark stems from a nonexclusive license it received from the City. Ex. B (Casagranada Depo. at 61-66, 75-78).

² This nonexclusive license was produced by TPCC as Bates No. TPCC 000425.

TPCC admits that it did not receive an assignment of the TORREY PINES mark from the City. *Id.* TPCC also admits that it did not inform the Patent and Trademark Office that it was a nonexclusive licensee of the City when it applied to register the TORREY PINES mark. *Id.* (Casagranada Depo. at 64). TPCC admits that it did not inform the PTO that its license limits its use of the TORREY PINES mark to TPCC's business operations it leases from the City. *Id.* TPCC admits that the City did not give it permission to apply for the subject registration and that TPCC never informed the City of its plans to apply for the subject registration. *Id.* (Casagranada Depo. at 64-65).

III. LAW AND ARGUMENT

A. Summary Judgment Standard

The Federal Rules of Civil Procedure govern summary judgment proceedings before the Trademark Trial and Appeal Board. 37 C.F.R. § 2.116(a) (1991). “The requirements for granting summary judgment in a trademark cancellation proceeding are the same as in any other case.” *Loglan Inst. Inc. v. Logical Language Group, Inc.*, 962 F.2d 1038, 1040 (Fed. Cir. 1992). Summary judgment should be granted when the evidence raises no “genuine issue of material fact” and “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323, 106 S. Ct. 2548, 2553-54 (1986); *Loglan Inst.*, 962 F.2d at 1040.

The moving party bears the initial burden to demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323, 106 S. Ct. at 2554. An issue is not “genuine” if no reasonable juror could return a verdict on that issue against the moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356 (1996). When the moving party has satisfied its burden, there is no genuine issue for trial unless the non-moving party shows that sufficient evidence would support a jury verdict for that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-251, 106 S. Ct. 2505, 2511-12 (1986); *see also Univ. Book Store v. Univ. of Wisconsin Bd. of Regents*, 33 U.S.P.Q.2d 1385, 1389 (T.T.A.B. 1994) (“A genuine dispute with respect [to a fact that could affect the decision in the case] exists

if sufficient evidence is presented such that a reasonable fact finder could decide the question in favor or the nonmoving party.”). If the evidence for the non-moving party is merely colorable or is not significantly probative, summary judgment should be granted. *Anderson*, 477 U.S. at 249-50, 106 S. Ct. at 2511; *see also Octocom Systems Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937 (Fed. Cir. 1990) (granting summary judgment where the non-moving party’s response was not supported by contradictory facts, but merely expressed disagreement with the facts). “[A]s a general rule, the resolution of Board proceedings by means of summary judgment is to be encouraged.” *Univ. Book Store*, 33 U.S.P.Q.2d at 1389.

B. Petitioner The Lodge At Torrey Pines Has Standing For This Petition To Cancel By Its Direct Commercial Interest

A party seeking cancellation of a trademark registration must prove two elements: (1) that it has standing; and (2) that there are valid grounds for canceling the registration. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000). Standing requires only that the party seeking cancellation believe that it is likely to be damaged by the registration. *Id.* “A belief in likely damage can be shown by establishing a direct commercial interest.” *Id.* In *Cunningham*, the Federal Circuit held that a petitioner had a direct commercial interest, and therefore had standing, where the subject registration was similar to the petitioner’s registrations and marks used on petitioner’s products. *Id.*

The Lodge has a direct commercial interest in the subject registration because The Lodge provides resort hotel services, restaurant services, bar services, golf tee-time reservations, and golf vacation services under the mark THE LODGE AT TORREY PINES. TPCC used the subject registration as the basis for TPCC’s Oppositions to trademark applications filed by The Lodge for The Lodge’s marks. (TPCC’s oppositions are consolidated with this proceeding). Thus, The Lodge has a direct commercial interest that is damaged by TPCC’s mark and The Lodge more than satisfies the liberal requirements for standing. *See Cunningham*, 222 F.3d at 945 (finding the liberal requirements for standing satisfied on similar facts).

C. TPCC's Lack Of Ownership In The Torrey Pines Mark Is Grounds For Cancellation

Any grounds that would have prevented registration may be grounds for cancellation of a mark before the mark becomes incontestable. *Id.* at 946. Only the owner of a mark may register the mark. *See* 15 U.S.C. § 1051; *see also In re Briggs*, 229 U.S.P.Q. 76, 76 (T.T.A.B. 1986) (discussing an examiner's rejection based on lack of ownership). "An application filed in the name of an entity that did not own the mark as of the filing date of the application is void." 37 C.F.R. §2.71(d); *see also* TMEP §1201.02(b); *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458 (Fed. Cir. 1988); *American Forests v. Sanders*, 54 USPQ2d 1860 (TTAB 1999), *aff'd*, 232 F.3d 907 (Fed. Cir. 2000); *In re Tong Yang Cement Corp.*, 19 U.S.P.Q.2d 1689 (T.T.A.B. 1991). An incorrect designation of ownership is, therefore, grounds for cancellation³. *See Cunningham*, 222 F.3d at 945.

D. The City Of San Diego Owns The Torrey Pines Mark

1. TPCC is merely a nonexclusive licensee of the TORREY PINES mark.

TPCC acknowledges that any rights it has in the TORREY PINES mark stem from the September 13, 1989 letter it received from the City. *See* Ex. B (Casagranada Depo. at 61-66, 75-78). It is beyond doubt, and indeed stated explicitly in that letter, that TPCC's only rights in the TORREY PINES mark are those of a nonexclusive license. *See id.* (Casagranada Depo. at 76-78); Ex. D.

A nonexclusive license does not grant an ownership interest to the licensee. *See, e.g., Taco Cabana Intern., Inc. v. Two Pesos, Inc.*, 932 F.2d 1113, 1121 (5th Cir. 1991) *aff'd*, 505 U.S. 763 (1993). Rather, the licensor retains ownership in the licensed trademark and the licensee's use inures for the benefit of the licensor. *See id.*; *Restatement (Third) of Unfair Competition* §33 (1995) ("If the licensor exercises reasonable control over the nature and quality of the goods, services, or business on which the designation is used by the licensee, any rights in the designation arising from the licensee's use accrue to the benefit of the licensor.").

³ TPCC's failure to disclose its status as nonexclusive licensee constitutes fraud and is a separate ground for cancellation. *See* Ex. A.

Formal quality control provisions are not required in trademark licenses. *Taco Cabana*, 932 F.2d at 1121. Adequate quality control exists where a licensor works closely with the licensee and no actual decline in quality standards is demonstrated. *Id.*; *In re Briggs*, 229 U.S.P.Q. 76, 77 (T.T.A.B. 1986). Likewise, adequate quality control exists where a licensor justifiably relies on the integrity of the licensee to ensure the licensee's use of the mark is of consistent quality. *Taco Cabana*, 932 F.2d at 1121; *Embedded Moments, Inc. v. Int'l Silver Co.*, 648 F.Supp. 187, 194 (E.D. N.Y. 1986); *Woodstock's Enter., Inc. v. Woodstock's Enter., Inc.*, 43 U.S.P.Q.2d 1440, 1446-47 (T.T.A.B. 1997).

Here, the Lease Agreement defines TPCC's permitted business operations at Torrey Pines Golf Course. TPCC's Lease Agreement includes quality control provisions. Ex. C. Further, TPCC acknowledges that City employees are present at the golf course and observe TPCC's facilities and operations on a daily basis. Ex. B (Casagranda Depo. at 21-23, 36-37). TPCC also acknowledges that the TORREY PINES mark has not lost its significance and, in fact, is known to refer to the City's golf course. Ex. A (McKee Depo. at 123) ("When you refer to Torrey Pines, it's thought of as the golf course."). TPCC's use of the TORREY PINES mark is therefore consistent with the use of a mere nonexclusive licensee.

2. TPCC's use of the TORREY PINES mark inures to the benefit of the City of San Diego.

A licensee acquires *no* ownership rights in the mark. 2 J. McCarthy, McCarthy on Trademarks § 18:52 ("A licensee's use inures to the benefit of the licensor-owner of the mark and the licensee acquires no ownership rights in the mark itself."). Where a landlord leases operations of an existing business, the tenant/lessee is merely a licensee of the business's trademarks and the landlord retains ownership of the marks. *See Norden Rest. Corp. v. Sons of Revolution*, 210 U.S.P.Q. 944, 945 (1980), cert. denied, 454 U.S. 825, 102 S.Ct. 115 (1981) ("Having recognized defendant's ownership of the [mark], and having accepted the licensed use of the name upon the terms dictated by the defendant, plaintiff cannot now assert ownership of it as against defendant.") (citation omitted); *see also Plitt Theaters, Inc. v. Am. Nat'l Bank and*

Trust Co. of Chicago, 697 F.Supp. 1031, 1037-38 (N.D. Ill. 1988) (finding that a landlord/licensor of a trademark sufficiently used the mark in connection with the management of the theater building and “[t]he mere fact that they chose to lease instead of occupy and operate the theatre building does not show that they failed to use the ‘Esquire’ mark”). Even where a licensee builds the value of a licensed trademark, the licensee does not obtain ownership in the pre-existing mark. *See* 15 U.S.C. § 1055; 2 J. McCarthy, *McCarthy on Trademarks* § 16:37.

TPCC’s use of the TORREY PINES mark, as a nonexclusive licensee, inures to the benefit of the City of San Diego and TPCC can have no claim of ownership. *See* 15 U.S.C. § 1055. As a matter of law, TPCC did not obtain ownership rights in the mark through its licensed use. *See, e.g., Norden Rest.*, 210 U.S.P.Q. at 945.

3. The City Of San Diego Did Not Grant TPCC A Naked License.

Remarkably, TPCC claims that it became the owner of the TORREY PINES mark because the City allegedly failed to control the quality of TPCC’s use and therefore granted TPCC a naked license. *See* Registrant’s Resp. to Mot. for Leave to Amend Pet. for Cancellation. “[T]he proponent of a claim of insufficient control must meet a high burden of proof.” *United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134, 140 (3rd Cir. 1981); *see also Taco Cabana*, 932 F.2d at 1121 (proving naked licensing is a “stringent burden”). “Abandonment [from naked licensing] occurs only when a mark loses its significance as a mark.” *Univ. Book Store*, 33 U.S.P.Q.2d at 1393; *see also Taco Cabana*, 932 F.2d at 1121 (finding no abandonment where no actual decline in quality standards was demonstrated); *United States Jaycees*, 639 F.2d at 139-40 (rejecting a naked licensing argument because the mark’s meaning remained despite owner’s failure to stop licensees from using the mark when licensees failed to maintain adequate quality); *Bd. of Governors of the Univ. of North Carolina v. Helpinstine*, 714 F.Supp. 167, 170-71 (M.D.N.C. 1989) (finding no abandonment because of no loss of significance to the trademark where the University of North Carolina did not institute a formal licensing program between its inception in 1796 and 1982).

Based on the undisputed evidence in this case, the City has not abandoned its rights in the TORREY PINES mark by naked licensing. The Lease Agreement under which TPCC operates includes adequate quality control provisions. *See* Ex. B. These provisions notwithstanding, City employees have been present at Torrey Pines, and thus have observed TPCC's operations, every day that the golf course has been open since TPCC's lease began. Exs. A (Petition for Cancellation No. 92043549, ¶ 4) and B (Casagranada Depo. at 35-38). In fact, a number of City employees actually have offices inside the same building in which TPCC conducts most of its operations at the golf course. Ex. B (Casagranada Depo. at 36-37). Further, TPCC acknowledges that the words "Torrey Pines" signify Torrey Pines Municipal Golf Course in the minds of the public. Ex. A (McKee Depo. at 123) ("When you refer to Torrey Pines, it's thought of as the golf course."). Thus, given the City's quality control measures and TPCC's acknowledgment that the TORREY PINES mark has not lost its significance, TPCC's naked licensing argument must fail. *See United States Jaycees*, 639 F.2d at 140 (rejecting a former licensee/accused infringer's naked licensing argument and noting that the accused infringer admits that it had not offered a lower quality of service).

4. As Its Licensee, TPCC Is Estopped From Challenging The City Of San Diego's Ownership In The TORREY PINES Mark

A licensee cannot challenge the validity or ownership of the licensor's trademark. *Leatherwood Scopes Int'l, Inc. v. Leatherwood*, 63 U.S.P.Q.2d 1699, 1703 (T.T.A.B. 2002) (doctrine of licensee estoppel precludes the licensee from presenting a naked licensing argument); *see also Professional Golfers Ass'n v. Bankers Life & Casualty Co.*, 515 F.Supp. 727 (licensee estoppel bars a former licensee/accused infringer of challenging licensor's ownership); *Norden Rest.*, 210 U.S.P.Q. at 945 ("Having recognized defendant's ownership of the [mark], and having accepted the licensed use of the name upon the terms dictated by the defendant, plaintiff cannot now assert ownership of it as against defendant."). As a matter of law, a licensee is estopped from arguing that its own use caused abandonment by naked licensing. *Leatherwood*, 63 U.S.P.Q.2d at 1703 ("Even accepting opposer's allegations of naked licensing

as true, we find that they fail to state a claim for relief in this case because opposer, as the alleged licensee, is estopped to challenge applicant's ownership of the mark, under the doctrine of licensee estoppel."'). Given this unambiguous legal principle, TPCC's only argument for its claim to ownership of the TORREY PINES mark fails as a matter of law. *See id.*

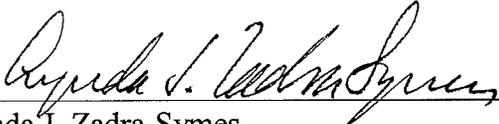
IV. CONCLUSION

Based on the undisputed facts and applicable law, TPCC has never had an ownership interest in the TORREY PINES mark and the subject registration is therefore invalid. Petitioner respectfully requests that Summary Judgment be granted in its favor and that this Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 29, 2004

By: 

Lynda J. Zadra-Symes

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

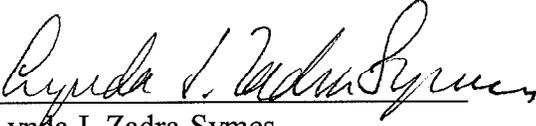
(949) 760-0404

Attorneys for The Lodge at Torrey Pines,
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the forgoing Memorandum In Support of Petitioner's Motion for Summary Judgment upon Respondent's counsel by depositing one copy thereof in the United States Mail, first class postage prepaid, on September 29, 2004, addressed as follows:

David V. Clark
LATHROP & GAGE L.C.
2345 Grand Ave., Suite 2500
Kansas City, MO 64108


Lynda J. Zadra-Symes

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EXHIBIT A

ROBERT McKEE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
THE LODGE AT TORREY PINES,)	
)	
Petitioner,)	
)	Cancellation No.
vs.)	Reg. No. 2,335,620
)	
TORREY PINES CLUB CORPORATION,)	
)	
Respondent.)	
_____)	

DEPOSITION OF ROBERT H. McKEE

March 30, 2004

D. SHARON VINT
CSR 2887
170728



Los Angeles	Orange County	San Francisco	San Diego	Inland Empire	Palm Springs	San Fernando Valley	San Jose
(310) 207.8000	(949) 955.0400	(415) 433.5777	(858) 455.5444	(909) 686.0606	(760) 322.2240	(818) 702.0202	(408) 885.0550

Exhibit A Page 1 of 28

ROBERT MCKEE

1 A. Orrin Vincent and myself and Tim Mooney.

2 Q. How did you come together to make the decision
3 to form this corporation?

4 A. It was formed to obtain the lease for Torrey
5 Pines Golf Course.

6 Q. And how did you become aware that the lease for
7 Torrey Pines Golf Course was available?

8 A. The city of San Diego advertised it in a number
9 of publications.

10 Q. Did they advertise a lease for the entire golf
11 course?

12 A. They -- as I recall, it was a lease to operate
13 exclusively the facilities at the Torrey Pines Golf
14 Course. The City of San Diego would maintain the
15 maintenance and a portion of the tee times.

16 Q. What do you mean by facilities at the Torrey
17 Pines Golf Course?

18 A. It was the pro shop for the merchandise, the
19 driving range, the carts, lessons and teaching
20 packages.

21 Q. So after carts what did you say?

22 A. The golf carts.

23 Q. And?

24 A. And teaching packages. Driving range, did I
25 mention that?

ROBERT MCKEE

1 Q. Yes. And did you have to bid for the lease?

2 A. It actually wasn't a bid; it was a proposition.
3 And there was a number of groups that gave the city a
4 proposition.

5 Q. Who were the other groups?

6 A. The only ones I recall are I think the last --
7 the last four were a group -- I don't recall. I
8 really don't.

9 Q. Okay. And was the proposition that you made to
10 the City of San Diego on behalf of Vincent/McKee in
11 writing?

12 A. Yes.

13 Q. Do you still have a deposit of copy of that
14 proposition?

15 A. No, I don't.

16 Q. Who would have a copy of that proposition?

17 A. I'm sure the city would.

18 Q. And what were the terms of that proposition?

19 A. Do you mean the monetary terms?

20 Q. Any terms. What terms do you recall from that
21 proposition?

22 A. Well, I recall that it was a 25-year lease.
23 That was the terms.

24 Q. Any other terms?

25 A. Well, there was a deposit that was required.

ROBERT MCKEE

1 Q. Did you have to purchase existing merchandise at
2 the pro shop?

3 A. Yes.

4 Q. So the pro shop already existed?

5 A. Yes.

6 Q. Who was operating it at the time that you made
7 your proposition for the lease?

8 A. I don't recall their names.

9 Q. Do you recall how long it had been operated at
10 the time you made your proposition?

11 A. No, I don't.

12 Q. Okay. Was it operated by the city?

13 A. No. By two brothers.

14 Q. You just don't remember their names?

15 A. I don't remember their names.

16 Q. Was the city maintaining the golf course at the
17 time that you made your proposition?

18 A. The maintenance, are you referring to? The
19 maintenance of the golf course?

20 Q. Yes.

21 A. I believe so.

22 Q. Did they have city employees located at the golf
23 course in 1987?

24 A. Yes.

25 Q. When Vincent/McKee Sports began -- took on the

ROBERT MCKEE

1 A. I don't know.

2 Q. Okay. Who would know that?

3 A. I guess probably the people in the pro shop if
4 they have contact with them.

5 Q. So does the -- how does the Torrey Pines Club
6 get its tee times?

7 A. They have an agreement with the City of San
8 Diego for some playing packages.

9 Q. And so if they want to use a particular tee time
10 on a particular day, do they have to deal with the
11 starter from the city?

12 A. I believe they're assigned in advance of the
13 daily basis.

14 Q. Who are they assigned by?

15 A. They would be assigned by the City of San Diego.

16 Q. And other than the lease from the San Diego
17 city, did Vincent/McKee Sports have any other business
18 at any time?

19 A. Not that I was involved with.

20 Q. Was there any other business that Vincent/McKee
21 was involved in that you personally were not involved
22 in?

23 A. Not to my knowledge.

24 Q. Did Vincent/McKee at some point change its name
25 to Torrey Pines Club Corp.?

ROBERT MCKEE

1 A. Yes.

2 Q. And how did that occur?

3 A. When I bought the interests of the other two
4 partners, we changed the name.

5 Q. Why did you change the name?

6 A. We felt that Torrey Pines Club Corporation
7 better identified the rights that we had to the goods
8 and services and, I mean, defined the golf course.

9 Q. And you say we, who do you mean?

10 A. Well, I guess I would have to say it was me.

11 Q. Okay. And you said that the name Torrey Pines
12 Club Corp. better defined the golf course; is that
13 correct?

14 A. Yes.

15 Q. Who owns the golf course?

16 A. Who owns the golf course?

17 Q. Yes.

18 A. The City of San Diego.

19 Q. How does the City of San Diego refer to that
20 golf course?

21 A. You mean in the way of the lease or --

22 Q. In any way. Whenever they want to refer to that
23 golf course, how do they refer to it?

24 A. The employees or --

25 Q. No, when the City of San Diego refers to the

ROBERT McKEE

1 land that it owns, namely the Torrey Pines Golf
2 Course, how does it refer to it?

3 MR. CLARK: I'll object to the form of the question
4 as vague, but you can answer if you understand it.

5 THE WITNESS: I don't know. I haven't -- I don't
6 recall them referring to any particular.

7 BY MS. ZADRA-SYMES:

8 Q. Sorry. Are you finished?

9 In the lease that you have for the City of San
10 Diego --

11 A. Yes.

12 Q. -- how do they define the premises that you have
13 leased?

14 A. I don't know.

15 Q. Did you approach the City of San Diego before
16 you changed the name of Vincent/McKee Sports to Torrey
17 Pines Club Corp.?

18 A. I don't recall.

19 Q. Who would know?

20 A. I don't know. I guess -- I guess we would have
21 notified them. I just don't recall when it would have
22 been.

23 Q. When the facilities that you leased in 1987 were
24 operated by the two brothers prior to your lease, what
25 was the name of the golf course?

ROBERT MCKEE

1 A. I don't know what they referred it to.

2 Q. So you don't know what the name of the golf
3 course was before 1987?

4 A. Well, I think the name of the golf course is
5 Torrey Pines.

6 Q. Okay. Was it -- was the name of the golf course
7 Torrey Pines prior to 1987?

8 A. To my knowledge, it would be.

9 Q. Okay. And do you know any of the history about
10 the various golfing events that have been held at the
11 Torrey Pines Golf Course?

12 A. Yes.

13 Q. When was the Torrey Pines Golf Course first used
14 for a major PGA event, for example?

15 A. I don't know.

16 Q. Was it prior to 1987?

17 A. Yes.

18 Q. And was it called the Torrey Pines Golf Course
19 for such events prior to 1987?

20 A. I don't know.

21 Q. How did Vincent/McKee Sports first become aware
22 of the Torrey Pines Golf Course prior to 1987?

23 A. Well, I became aware when they advertised the
24 proposition for the lease.

25 Q. And in the advertisements for the lease, how was

Exhibit A Page 8 of 28

ROBERT MCKEE

1 the golf course referred? What was the name of the
2 golf course in the advertisements?

3 A. I don't recall.

4 Q. Okay. So did the advertisements refer to the
5 Torrey Pines Golf Course?

6 A. I don't recall how it was -- how it was
7 advertised.

8 Q. But that is the first time you became aware of
9 the Torrey Pines Golf Course?

10 A. No.

11 Q. When was the first time you became aware of the
12 Torrey Pines Golf Course?

13 A. I knew of it, but I couldn't tell you when.

14 Q. Was it prior to 1987?

15 A. Yes.

16 Q. Did you know where it was?

17 A. Yes.

18 Q. How did you know where it was?

19 A. I had a home in Del Mar and we played there on
20 occasion.

21 Q. How long have you had a home in Del Mar?

22 A. I had a home in Del Mar from 1981 until about
23 1988.

24 Q. And you played at Torrey Pines Golf Course
25 during that time period?

ROBERT MCKEE

1 A. Yes.

2 Q. So you played at the Torrey Pines Golf Course
3 prior to purchasing the lease in 1987?

4 A. Yes.

5 Q. What was the name of the golf course outside the
6 golf course at that time?

7 A. I don't recall.

8 Q. You don't recall --

9 A. No.

10 Q. -- seeing the name of the golf course ever --

11 A. No.

12 Q. -- prior to 1987?

13 A. I don't recall a sign or anything out there.

14 Q. So when you went to the golf course and you were
15 going with your buddies to the golf course, where did
16 you tell them to meet you?

17 A. At the Torrey Pines Golf Course.

18 Q. Okay. And that was prior to 1987?

19 A. Yes.

20 Q. Okay. You don't remember names of the other
21 companies who competed with Vincent/McKee for the
22 lease?

23 A. I believe the final four was Vincent/McKee, Club
24 Corporation of America, and a group that Jack Vickers
25 had in Colorado, and the other was a professional and

Exhibit A Page 10 of 28

ROBERT MCKEE

1 Raines, who more or less was the founder of it, and
2 Rich Gillette, Howard Lester, John Schroeder. They're
3 the only names that come to my mind.

4 Q. Are you familiar with Torrey Pines State Beach?

5 A. No.

6 Q. Never heard of it?

7 A. I don't recall.

8 Q. Who owns the name of the Torrey Pines Golf
9 Course?

10 MR. CLARK: I'll object to that question; calls for
11 a legal conclusion, lack of foundation.

12 THE WITNESS: Do I get to give my opinion?

13 MR. CLARK: You can give your answer if you know.

14 THE WITNESS: I'm sorry. What is the question?

15 BY MS. ZADRA-SYMES:

16 Q. Who owns the name of the Torrey Pines Golf
17 Course?

18 MR. CLARK: Same objection.

19 THE WITNESS: Well, Torrey Pines Club Corporation
20 has the exclusive rights to the Torrey Pines name for
21 the goods and services that they do.

22 BY MS. ZADRA-SYMES:

23 Q. And where do those rights come from?

24 MR. CLARK: Same objection; calls for a legal
25 conclusion, lack of foundation.

ROBERT MCKEE

1 THE WITNESS: I guess the trademark commission.

2 BY MS. ZADRA-SYMES:

3 Q. Okay. Did you obtain any license from the San
4 Diego city to use exclusively the term Torrey Pines
5 Golf Course?

6 A. I believe we had a letter from the city.

7 Q. Saying?

8 A. Saying that we had the exclusive rights to -- I
9 don't recall exactly what the letter was, but we did
10 have a letter from the city saying that we had that
11 name.

12 Q. The Torrey Pines Golf Course name?

13 A. I don't recall exactly what it said.

14 Q. So would that be the basis for your statement
15 that you had an exclusive license from the city to use
16 the Torrey Pines Golf Course name, that letter from
17 the city?

18 MR. CLARK: Object to the question; calls for a
19 legal conclusion, lack of foundation.

20 THE WITNESS: Well, we have the right from the
21 federal -- or from the trade commission. I don't know
22 what more you would want than having the exclusive
23 right from them.

24 BY MS. ZADRA-SYMES:

25 Q. Did you ever ask the City of San Diego for the

ROBERT MCKEE

1 exclusive right to use the name Torrey Pines Golf
2 Course?

3 A. I don't know.

4 Q. Did you ever tell the U.S. Trademark Office that
5 you were not the owner of the Torrey Pines Golf
6 Course?

7 MR. CLARK: Objection; calls for a legal conclusion,
8 lack of foundation, speculation.

9 THE WITNESS: I don't know that either.

10 BY MS. ZADRA-SYMES:

11 Q. Did you ever tell the United States trademark
12 office that you were a non-exclusive licensee of the
13 Torrey Pines logo from the San Diego city?

14 MR. CLARK: Objection; calls for a legal conclusion,
15 speculation, lack of foundation.

16 THE WITNESS: I don't know that either.

17 BY MS. ZADRA-SYMES:

18 Q. I'm just going to turn around and get some
19 documents from my box.

20 Petitioner's Exhibit No. 1.

21 Have you had time to review the document?

22 A. Yes.

23 Q. Do you recognize it?

24 A. I may have seen it in the past.

25 Q. Is this the letter that you were referring to

ROBERT MCKEE

1 just now?

2 A. I'm not familiar if there is another document or
3 not.

4 Q. The letter says, "This letter is authorization
5 to use the Torrey Pines logo in the conduct of your
6 business at the Torrey Pines Golf Course."

7 What Torrey Pines logo is the letter referring
8 to?

9 A. I don't know.

10 Q. And it says, "This authorization is
11 non-exclusive and will terminate upon the expiration
12 of your lease."

13 Do you see that?

14 A. Yes.

15 Q. Did you understand that you had a non-exclusive
16 license for the Torrey Pines logo from the City of San
17 Diego?

18 MR. CLARK: Object to the question; calls for a
19 legal conclusion.

20 THE WITNESS: No, Orrin Vincent was the one that was
21 dealing with the city at this time.

22 BY MS. ZADRA-SYMES:

23 Q. Okay. Where is Orrin Vincent located today?

24 A. I don't know, but I believe in Las Vegas,
25 Nevada.

ROBERT MCKEE

1 Q. You are allotted tee times. Okay.

2 So the San Diego city under that agreements that
3 you referenced gives you a certain number of tee
4 times; is that correct?

5 A. That is my understanding.

6 Q. Okay. And does the San Diego city also retain
7 the right to allocate tee times to other people than
8 the Torrey Pines Club Corp.?

9 A. I don't understand the question. We discussed
10 the hotels.

11 Q. Okay. So the San Diego city then does have the
12 right to give tee times to other people who are not
13 associated with the Torrey Pines Club Corp.?

14 A. Yes.

15 MR. CLARK: When you are at a breaking point, can we
16 take a break?

17 MS. ZADRA-SYMES: We can take a break right now.

18 THE VIDEO TECHNICIAN: We are off the record at
19 11:16 a.m.

20 (Recess.)

21 THE VIDEO TECHNICIAN: We are back on the record at
22 11:32 a.m.

23 BY MS. ZADRA-SYMES:

24 Q. Mr. McKee?

25 A. Yes.

ROBERT MCKEE

1 Q. Have you ever seen any of the city employees at
2 Torrey Pines Golf Course?

3 A. I'm sorry?

4 Q. Have you seen any city employees at the Torrey
5 Pines Golf Course?

6 A. Yes.

7 Q. Do they wear uniforms?

8 A. No, not the ones that they're involved in the
9 starting or in that area. I don't believe they do.

10 Q. Do they wear any T-shirts that designate Torrey
11 Pines on them?

12 A. I see Torrey Pines Club Corporation on occasion,
13 shirts that we have sold.

14 Q. Any other shirts?

15 A. I assume there are other shirts, yes.

16 Q. Have you seen city employees wearing shirts that
17 say Torrey Pines that are not made or sold by Torrey
18 Pines Club Corporation?

19 A. I don't know. Possibly the maintenance crew.

20 Q. Okay. They possibly wear shirts that say Torrey
21 Pines that are not --

22 A. I don't know.

23 Q. -- sold by --

24 A. I don't know.

25 Q. You don't know?

ROBERT MCKEE

1 A. No.

2 Q. Okay. Does the maintenance crew have any
3 equipment? Have you ever seen them with any
4 equipment?

5 A. Yes.

6 Q. Have you ever seen any names on any of their
7 equipment?

8 A. No.

9 Q. Do they have a truck that comes to the golf
10 course?

11 A. That belongs to the city?

12 Q. Yes.

13 A. I don't know.

14 Q. You have never seen that truck?

15 A. No, I don't know.

16 Q. Who operates the parking lot at the Torrey Pines
17 Golf Course?

18 A. Well, there is not really an operator. It's
19 the -- it's there, you know, made available for the
20 golfers.

21 Q. Who owns the land that the golf course is on --
22 I mean the parking lot is on?

23 A. I assume the City of San Diego.

24 Q. And who puts the signs up in the parking lot
25 that say Torrey Pines?

ROBERT MCKEE

1 A. Do you mean the reserved spaces that we have?

2 Q. No. Who puts the sign up so that people who are
3 coming to the golf course know where the parking lot
4 is for the golf course?

5 A. The city.

6 Q. What does that sign say?

7 A. I don't know.

8 Q. You don't know what the sign says at the
9 entrance to the parking lot?

10 A. No, I don't. Sorry.

11 Q. Are there any other signs that say Torrey Pines
12 located on the golf course?

13 A. Yes.

14 Q. And where are they located?

15 A. There is a sign on the building.

16 Q. On the building?

17 A. On the building, on our building.

18 Q. Any other signs located on the golf course?

19 A. I believe on the scoreboard it says Torrey
20 Pines.

21 Q. Okay. Who puts the scoreboard up?

22 A. It's the property of the city.

23 Q. Any other signs located on the golf course that
24 say Torrey Pines?

25 A. Yes. There is a sign that says Torrey Pines

ROBERT MCKEE

1 Driving Range, open to the public.

2 Q. Any other signs that say Torrey Pines?

3 A. I don't recall any others.

4 Q. How about on the golf holes?

5 A. I don't remember there being one there.

6 Q. When did you last play golf at Torrey Pines?

7 A. Probably in January.

8 Q. Okay. If there were signs on the golf course
9 near the golf holes, who would put those signs in?

10 A. It would be the city, maintenance crew.

11 Q. And would the signs be the property of the city?

12 A. Yes.

13 Q. The court reporter has handed you what has been
14 marked as Petitioner's Exhibit 2. For the record, the
15 Bates numbers are TPCC 146 through 181.

16 And Mr. McKee, these are documents that were
17 produced by your counsel to us. Do you recognize
18 those documents?

19 A. Yes.

20 Q. Okay. What are they?

21 A. They're receipts that were given for purchases
22 in the Torrey Pines shop.

23 Q. If you would turn to Page 149. Have you seen
24 that document before?

25 A. No.

ROBERT MCKEE

1 Q. What is the basis for that denial?

2 A. It's a golf course, not a community.

3 Q. Does the golf course have a high school?

4 A. No.

5 Q. Does the golf course have an elementary school?

6 A. No.

7 Q. Have you ever driven down Del Mar Heights Road?

8 A. Yes.

9 Q. Have you never seen the Torrey Pines High School
10 on Del Mar Heights Road?

11 A. No.

12 Q. Have you never seen the sign for Torrey Pines
13 State Beach?

14 A. No.

15 Q. Have you never seen the sign for Torrey Pines
16 State Reserve?

17 A. I don't believe there is a sign.

18 Q. Okay. And according to today, you have never
19 seen -- until today you have never seen a sign for
20 Torrey Pines Bank?

21 A. No.

22 Q. Prior to applying to register the mark Torrey
23 Pines or the words Torrey Pines, you knew that Torrey
24 Pines was the name of the golf course; isn't that
25 correct?

Exhibit A Page 20 of 28

ROBERT McKEE

1 A. Yes.

2 Q. And you knew the golf course was owned by the
3 City of San Diego; is that correct?

4 A. Yes.

5 Q. In 1987 did Vincent/McKee sell any products with
6 the words Torrey Pines on them?

7 A. Yes.

8 Q. When in 1987?

9 A. I need to correct that. I believe it was 19 --
10 January of '88 that we took over.

11 Q. Okay.

12 A. No, it would not have been in '87 I don't think.

13 Q. Okay. So as far as you know, Vincent/McKee did
14 not sell any products with the words Torrey Pines on
15 them prior to January of 1988?

16 A. I believe that's correct.

17 Q. Okay. Why did Torrey Pines Club Corporation
18 oppose the Lodge at Torrey Pines' applications to
19 register the Lodge at Torrey Pines?

20 MR. CLARK: I'll object to the extent it calls for a
21 legal conclusion, lack of foundation.

22 THE WITNESS: Well, it infringed on our copyright.

23 BY MS. ZADRA-SYMES:

24 Q. In what way?

25 A. By using the Torrey Pines logo that we have a

ROBERT McKEE

1 copyright for.

2 Q. And what do you mean by the Torrey Pines logo?

3 A. The Torrey Pines logo is what we have an
4 exclusive right to use to sell our goods and services.

5 Q. What do you mean by the Torrey Pines logo? What
6 is your understanding of what the Torrey Pines logo
7 is?

8 A. It's our right, exclusive right to use in the
9 sale of our goods and services.

10 Q. What do you mean by the Torrey Pines logo?

11 MR. CLARK: I think she is asking what logo are you
12 referring to

13 THE WITNESS: The one that we use on our caps and
14 shirts and merchandise.

15 BY MS. ZADRA-SYMES:

16 Q. Which is what?

17 A. Torrey Pines.

18 Q. Just the words Torrey Pines?

19 A. On some of it.

20 Q. Okay. So you are claiming exclusive rights in
21 the words Torrey Pines?

22 A. Yes.

23 Q. In connection with what?

24 A. Caps, shirts, merchandise, all the goods and
25 services that we provide.

ROBERT McKEE

1 Q. You understand that there is a Torrey Pines
2 State Preserve?

3 A. Yes.

4 Q. So there are geographic locations using the
5 words Torrey Pines other than the golf course; is that
6 correct?

7 A. When you refer to Torrey Pines, it's thought of
8 as the golf course.

9 Q. But there are geographic locations that use the
10 words Torrey Pines other than the golf course; is that
11 correct?

12 A. I don't believe --

13 MR. CLARK: Well, I'll object to the question as
14 vague as to geographic locations.

15 BY MS. ZADRA-SYMES:

16 Q. Can you answer the question?

17 A. I don't know.

18 Q. So you don't know if the Torrey Pines State
19 Beach can be found on a map?

20 A. No.

21 Q. It can't be found on a map?

22 A. I don't know that it can.

23 Q. Okay. Do you know if the Torrey Pines State
24 Preserve can be found on a map?

25 A. No.



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INVITATIONAL
Information

The Century Club of San Diego and Buick Motor Division have joined forces to present San Diego's annual PGA Tour professional tournament at Torrey Pines. The Buick Invitational began as the San Diego Open in 1952 and moved to Torrey Pines as the Andy Williams San Diego Open in 1968. Tom Weiskopf was the first champion at Torrey Pines. Other past champions include Arnold Palmer (1957 and 1961), Gary Player (1963), Jack Nicklaus (1969), Tom Watson (1977 and 1981), Johnny Miller (1982), Mark O'Meara (1997), Tiger Woods (1999, 2003), Phil Mickelson (2000, 2001) and Jose Maria Olazabel (2002).

The Buick Invitational 2004 will be held February 9-15, 2004. Advance ticket prices are as follows:

Daily: Tuesday, February 10, 2004 \$12.00
Weekday (Wed - Fri) \$16.00
Weekend (Sat - Sun) \$20.00

Senior Discount* (Tues - Fri) \$12.00
(Sat - Sun) 15.00
*Age 60 and over

Children 12 and under are free

Weekly Passes:
Season Ticket (Tues - Sun) \$75.00

Season Parking Pass \$50.00

These prices were good for advanced ticket purchases only. Prices are increased at the gate.

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www.torreypinesgolfcourse.com

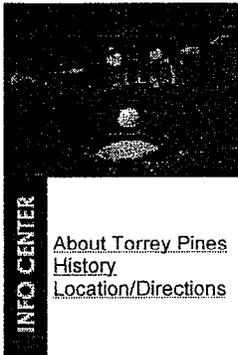
email: contact@torreypinesgolfcourse.com

Torrey Pines Club Corporation has operated the facilities at Torrey Pines Golf Course since 1988. During this time, the golf courses have improved dramatically both in popularity and condition and in customer service. It is our goal to ensure that every patron of Torrey Pines has an enjoyable experience both on the course and in utilizing all of our fine facilities.

Thank you for your support.

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Exhibit A Page 25 of 28



Located in La Jolla (pronounced "La Hoya"), California, Torrey Pines Golf Course offers two of the most picturesque championship 18-hole golf courses in the world. Torrey Pines is a well-known PGA Tour stop with the Buick Invitational held every February. We offer one of the largest on-course golf shops in the United States, expert instruction, tournaments, and advanced golf packages.

History:

Torrey Pines is long recognized as one of the nation's premier municipal golf facilities. It is a "golfer's paradise", bounded by mountains to the north and the Pacific Ocean to the west. Fog, rain and wind often sweep the seaside courses that were designed by William Bell, Sr. in 1957. Prior to becoming golf courses, the land was Camp Callan, a naval training area. The Torrey Pines Tree is indigenous to this area and to Santa Rosa Island. The tree is distinguished by having clusters of five pine needles.

Location/Directions:

—From Interstate 5 Traveling North:

- Exit Genesee Avenue and turn left (West)
- Stay on Genesee Avenue as it curves to the right (North) and becomes North Torrey Pines Road
- Look for large green Golf Course sign on the right after Science Park Way.
- Turn right at sign and follow curve under North Torrey Pines – this is Callan Rd.
- At stop sign, turn right and find a parking space.

—From Interstate 5 Traveling South:

- Exit Carmel Valley Road and turn right (West)
- Turn left on Camino Del Mar which is at the Pacific Ocean
- Stay on this road as it passes by Torrey Pines State Beach, Torrey Pines State Preserve and the Torrey Pines Golf Course Driving Range
- Turn right into the parking lot.

Exhibit A Page 26 of 28

World Tournament at Torrey Pines. The Junior World Golf Championship, held each July at Torrey Pines, attracts the best junior golfers in the world. Phil also won the Buick Invitational as a professional in 1993. Past champions along with Tiger and Phil include Ernie Els, Nick Price, John Cook, Craig Stadler, Corey Pavin, Laura Baugh, and Amy Alcott.

Invitational



Undecided? Purchase a gift certificate from Torrey Pines for every golfer on your gift-giving list! Gift certificates are available in any dollar increment and can be applied to our golf schools, golf packages or merchandise. Click here now

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EXHIBIT
Petitioners
11
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McKee



GOLF SCHOOL

One Day Golf School
Two Day Golf School
Individual Lessons
Sign Up



Torrey Pines. The name itself stirs the imagination of golf enthusiasts all over the world. Situated atop cliffs towering above the Pacific Ocean in San Diego, California, golfers marvel at the views of the coastline and deep ravines. Nature lovers can spot wildlife and the famous Torrey Pines trees that are indigenous to the area.

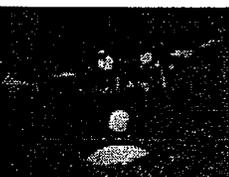


Torrey Pines boasts two 18-hole golf courses, the North and South Courses. Along with fabulous golf, the facility offers one of the largest on-course golf shops in the nation, advance golf reservations, expert instruction, driving ranges and first class lodging and dining nearby.



TEE TIMES

Information
Packages
Sign Up

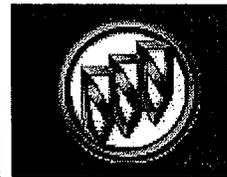
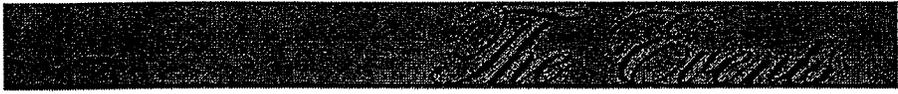


Courses

South Course
North Course



Torrey Pines, long recognized as one of the nation's foremost municipal golf facilities, is truly a "golfer's paradise". Bounded by mountains to the north and the Pacific Ocean to the west, the seaside courses are often swept by sunshine or by rain, fog and chilling winds.



The PGA Tour hosts the annual Buick Invitational at Torrey Pines. Phil Mickelson won the 2000 & 2001 Buick Invitational and Tiger Woods won the 1999 and 2003 Buick Invitational, but it was not the first time Phil and Tiger won at Torrey. At age 15, Tiger won the Optimist Junior

Information

Exhibit A Page 28 of 28

EXHIBIT B

SUSAN CASAGRANDA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
THE LODGE AT TORREY PINES,)	
)	
Petitioner,)	Cancellation No.
)	Reg. No. 2,335,620
vs.)	
)	
TORREY PINES CLUB CORPORATION,)	
)	
Respondent.)	
_____)	

DEPOSITION OF SUSAN CASAGRANDA

March 31, 2004

D. SHARON VINT
CSR 2887
170729



Exhibit B Page 1 of 44

Los Angeles	Orange County	San Francisco	San Diego	Inland Empire	Palm Springs	San Fernando Valley	San Jose
(310)	(949)	(415)	(858)	(909)	(760)	(818)	(408)
207.8000	955.0400	433.5777	455.5444	686.0606	322.2240	702.0202	885.0550

SUSAN CASAGRANDA

1 A. Yes.

2 Q. Where is that sign located?

3 A. It's in between the first tees of the two
4 courses.

5 Q. Is that a Torrey Pines Club Corporation sign?

6 A. That could be.

7 Q. And how do you know that?

8 A. We were asked to put up, pay for and put up
9 signs.

10 Q. By whom?

11 A. By John Walter.

12 Q. Who is John Walter?

13 A. He was the City of San Diego -- I don't know
14 what his title was. He was in charge of the
15 maintenance and starting at Torrey Pines Golf Course
16 and Balboa Golf Course. He worked for the City of San
17 Diego.

18 Q. And where was his office located?

19 A. His office was located in one of the offices
20 that we let him use.

21 Q. Okay. So on the Torrey Pines Golf Course?

22 A. Yes.

23 Q. Okay. And how long did he have an office on the
24 Torrey Pines Golf Course?

25 A. He used our offices from -- well, he was there

SUSAN CASAGRANDA

1 when I got there. So 1989 that I know of until he
2 left.

3 Q. And when did he leave?

4 A. I'm not sure. 1999, 19 -- maybe 2000. I'm not
5 sure.

6 Q. So at least ten years?

7 A. Yes.

8 Q. Okay. So for ten years, John Walter was a City
9 of San Diego employee and he had an office located --

10 A. In our offices.

11 Q. -- on the premises at the Torrey Pines Golf
12 Course?

13 A. Yes, that's correct.

14 Q. What did he do on a daily basis at the Torrey
15 Pines Golf Course?

16 A. He worked on the golf course a lot with the
17 maintenance crews.

18 Q. Okay. What else?

19 A. I believe he supervised the starters.

20 Q. Okay. Anything else?

21 A. Not that I am aware of.

22 Q. Did he visit the pro shop?

23 A. Did he visit the pro shop? Sure.

24 Q. Okay. Is the pro shop located close to his
25 office at the Torrey Pines Golf Course?

SUSAN CASAGRANDA

1 A. Yes.

2 Q. Do other city employees located at the Torrey
3 Pines Golf Course visit the pro shop?

4 A. Yes, I believe so.

5 Q. Do they sometimes purchase products from the pro
6 shop?

7 A. Yes.

8 Q. I will hand to you another document which will
9 be Petitioner's Exhibit 18. Petitioner's Exhibit 18
10 is a sign that says Torrey Pines North Course.

11 A. Uh-huh.

12 Q. Is that correct?

13 A. Yes.

14 Q. Is that a sign that you have seen before?

15 A. Yes.

16 Q. Where is it located?

17 A. It's located at Torrey Pines Golf Course.

18 Q. Is that the sign that is put up by the Torrey
19 Pines Club Corporation?

20 A. No.

21 Q. Who puts up that sign?

22 A. I'm not sure.

23 Q. Is it somebody from the City of San Diego?

24 A. I don't know.

25 Q. So Torrey Pines Club Corporation doesn't know

SUSAN CASAGRANDA

1 BY MS. ZADRA-SYMES:

2 Q. So did the Torrey Pines Club Corporation operate
3 the driving range prior to 1991?

4 A. Yes.

5 Q. Did the -- what involvement did the City of San
6 Diego have in the operation of the driving range prior
7 to 1991?

8 A. Really none.

9 Q. How many employees does the City of San Diego
10 have at the Torrey Pines Golf Course?

11 A. I don't know how large the maintenance crew is.
12 I don't know the number of people that work for the
13 maintenance crew. I would imagine the City of San
14 Diego staff that uses our offices and the starters
15 would be between the -- the number would be between 12
16 and 15.

17 Q. How long have there been 12 to 15 people located
18 at the city -- I'm sorry, at the Torrey Pines Golf
19 Course who are employed by the city?

20 A. I don't know how long.

21 Q. More than five years?

22 A. You know, I think I'm a little confused about
23 the question. Could you repeat the question, please.

24 Q. Okay. You said that there are currently 12 to
25 15 people employed by the City of San Diego who have

SUSAN CASAGRANDA

1 office space located in your offices at the Torrey
2 Pines Golf Course; is that correct?

3 A. No. I don't --

4 Q. Okay.

5 A. That is not what I said. There are starters.

6 Q. Okay.

7 A. And then there are five people that use our
8 offices, plus in addition to starters, and I'm not
9 entirely sure how many, but I would think that there
10 would be between seven and 10 starters all together.

11 Q. How long have the five people in your offices
12 employed by the City of San Diego been there?

13 A. I believe three have come within the last three
14 years.

15 Q. And prior to that were there other people
16 located in your offices or on the same premises who
17 were employed by the City of San Diego?

18 A. I guess you better repeat the question.

19 Q. You said that there were three people who have
20 come within the last three years.

21 A. Right.

22 Q. Three employees from the City of San Diego.

23 A. Yes.

24 Q. Prior to those three employees in the last three
25 years, were there other employees from the City of San

SUSAN CASAGRANDA

1 Diego who were located on the premises at Torrey Pines
2 Golf Course?

3 A. Well, those three are new employees, positions
4 or what-have-you.

5 Q. Okay. So in addition to those three, there are
6 other City of San Diego employees located on the same
7 premises?

8 A. Is that your -- I thought your question was were
9 there.

10 Q. Well, let's start from the beginning. You've
11 been there since 1989?

12 A. Yes.

13 Q. Okay. The office location on the Torrey Pines
14 Golf Course, how many at any one time San Diego city
15 employees have been located in those offices?

16 A. Well, there is a starter's booth.

17 Q. Okay.

18 A. And there have been between five and 10
19 positions for starters.

20 Q. Okay.

21 A. The offices that we let city staff use, at one
22 time there were two.

23 Q. Two offices?

24 A. Two people. And now I believe there are six.

25 Q. How long have there been six?

SUSAN CASAGRANDA

1 A. I believe since the three came in the last three
2 years. I believe.

3 Q. What do those employees do?

4 A. Which employees?

5 Q. The six that are in the offices at the golf
6 course, specifically the San Diego city employees.

7 A. Okay. Some of them I'm not sure at all what
8 they do. One is Jim Allen and he oversees the
9 maintenance and the groundskeeping and the starters at
10 Torrey Pines, Balboa and now I believe Mission Bay
11 Golf Course.

12 Q. Anybody else?

13 A. There is Joanne Mitchum, and Joanne I believe
14 manages the starters and she books some golf
15 tournaments. I believe she does their deposits, you
16 know, their daily deposits. So she must do some
17 reporting.

18 Q. What do starters do exactly?

19 A. They take money for the golf fees, they maintain
20 a list of people that want to play golf, and then when
21 there is an open spot if someone doesn't show up to
22 play golf, for example, then they will allocate one of
23 those persons on that list to that open spot in a
24 foursome.

25 Q. Okay.

SUSAN CASAGRANDA

1 A. And they will also call people on a microphone.

2 Q. When they receive the golf fees, what do they do
3 with them?

4 A. I don't know.

5 Q. Do they -- are they given to the Torrey Pines
6 Club Corporation?

7 A. Not if the starter receives them.

8 Q. Okay. So who else would the golf fees go to, if
9 the starters receive the golf fees?

10 A. I know they have a cash register.

11 Q. And are these golf fees received by the City of
12 San Diego?

13 A. They're -- yes.

14 Q. So the golf fees that are collected by the
15 starters who are employed by the City of San Diego go
16 to the City of San Diego; is that correct?

17 A. I hope so ultimately.

18 Q. Torrey Pines Club Corporation doesn't get any of
19 those fees that are collected by the starters?

20 A. A portion of those fees?

21 Q. Yes.

22 A. No.

23 Q. So Torrey Pines Club Corporation does not get a
24 portion of the fees that are collected by the starters
25 for the City of San Diego?

SUSAN CASAGRANDA

1 A. No.

2 Q. That statement was correct? Let me try it again
3 because I don't want a double negative.

4 Is it correct that the golf fees collected by
5 the starters employed by the City of San Diego go to
6 the City of San Diego; is that correct?

7 A. That is -- to the best of my knowledge, that is
8 correct.

9 Q. Is it correct that Torrey Pines Club Corporation
10 does not get any portion of the green fees collected
11 by the starters for the City of San Diego?

12 A. That is correct.

13 Q. How do the players who come to the Torrey Pines
14 Golf Course and pay fees to the starters employed by
15 the City of San Diego, how do those players get a tee
16 time?

17 A. Well, there are many ways to get a tee time.

18 Q. Okay. How?

19 A. You can call a computerized tee-time-reservation
20 service seven days in advance at 7:00 p.m.

21 Q. Who operates that tee-time-reservation system?

22 A. The City of San Diego.

23 Q. How would somebody find the number to call for
24 that tee-time-reservation service?

25 A. Mostly by calling the golf shop.

SUSAN CASAGRANDA

1 Q. Okay. So the golf shop gives the number to the
2 City of San Diego reservation service?

3 A. Occasionally, yes.

4 Q. By golf shop, you mean the Torrey Pines Club
5 Corporation golf shop?

6 A. Yes, I do mean that.

7 Q. Have you ever called that number?

8 A. Yes, I have.

9 Q. What does the recording say at the other end?

10 A. Okay. I don't know verbatim.

11 Q. Okay.

12 A. But I'll try.

13 Q. Yes.

14 A. Thank you for calling the City of San Diego golf
15 reservation system. Here there may be a lot of talk
16 about Balboa Park Golf Course, renovation projects,
17 maintenance projects or Torrey Pines maintenance. I
18 think it says, if you'd like to make a Torrey Pines
19 south reservation, press one, or could be north, press
20 one, and then another golf course two, Balboa 18-hole
21 golf course is another one, the nine-hole golf course
22 is yet another.

23 Q. Okay. Does the City of San Diego have a license
24 from Torrey Pines Club Corporation to operate that
25 reservation system?

SUSAN CASAGRANDA

1 A. No.

2 Q. Is it possible for a guest at the -- I believe
3 it's now the Hilton La Jolla Torrey Pines. Is that
4 correct?

5 A. Uh-huh.

6 Q. Is it possible for a guest at the Hilton La
7 Jolla Torrey Pines to get a tee time on the Torrey
8 Pines Golf Course?

9 A. I believe so.

10 Q. How do they do that?

11 A. Well, I believe that the City of San Diego has
12 an agreement with them, but I'm not sure what it
13 states.

14 Q. And that would be an agreement to the Hilton
15 Hotel and the Hilton Hotel tee times at the Torrey
16 Pines Golf Course?

17 A. I believe so.

18 Q. What other hotels are there adjacent to the
19 Torrey Pines Golf Course?

20 A. The Lodge at Torrey Pines is adjacent to the
21 golf course.

22 Q. Are the guests at the Lodge at Torrey Pines able
23 to get tee times on the golf course?

24 A. Yes.

25 Q. And how do they do that?

SUSAN CASAGRANDA

1 A. I believe they also have an agreement with the
2 City of San Diego.

3 Q. Do you know how long they have been offering tee
4 times for their guests on the Torrey Pines Golf
5 Course?

6 A. I believe since 2002.

7 Q. But prior to 2002, the guests at the Lodge at
8 Torrey Pines could not obtain tee times on the Torrey
9 Pines Golf Course?

10 A. I believe it was closed down for --

11 Q. Oh, okay. Well, between 1995 and 1999 how did
12 the guests at the Lodge at Torrey Pines obtain tee
13 times on the golf course?

14 A. I don't know.

15 Q. Prior to the hotel being acquired in 1995, it
16 was known as the Torrey Pines Inn prior to that; is
17 that correct?

18 A. Yes.

19 Q. Were the guests at the Torrey Pines Inn able to
20 obtain tee times on the Torrey Pines Golf Course?

21 A. I don't know.

22 Q. Were you operating -- were you the president of
23 the Torrey Pines Club Corporation at that time, in
24 1995?

25 A. Yes.

SUSAN CASAGRANDA

1 A. Yes.

2 Q. So did you do a search for documents in
3 connection with this case?

4 A. Yes.

5 Q. The court reporter has exhibits in front of her.
6 Could you please take Exhibit No. 1.

7 A. Okay.

8 Q. Do you recognize that document?

9 A. Yes.

10 Q. What is it?

11 A. This is a letter to Vincent/McKee Sports from
12 Don Barone.

13 Q. Was this from your files?

14 A. Yes.

15 Q. And the letter is dated September 13, 1989?

16 A. Yes.

17 Q. And were you involved in requesting this letter
18 from the City of San Diego?

19 A. No.

20 Q. You started at Vincent/McKee in August of 1989;
21 is that correct?

22 A. Yes.

23 Q. So did you know at the time that Vincent/McKee
24 was requesting permission from the City of San Diego
25 to use the Torrey Pines logo?

SUSAN CASAGRANDA

1 A. Did I know when?

2 Q. Let's start again.

3 This letter says right in it, this letter is
4 authorization to use the Torrey Pines logo in the
5 conduct of your business at the Torrey Pines Golf
6 Course. Do you see that?

7 A. Yes.

8 Q. And it says, this authorization is non-exclusive
9 and will terminate upon the expiration of your lease.

10 A. Okay.

11 Q. Were you involved in requesting the City of San
12 Diego to send this letter to Vincent/McKee Sports?

13 A. No.

14 Q. Okay. Did you know that the City of San Diego
15 had a non-exclusive license to use the Torrey Pines
16 logo?

17 MR. CLARK: I'll object. I think it's vague and
18 calls for a legal conclusion.

19 Could you read the question back because I
20 think --

21 (The question was read.)

22 MR. CLARK: My objection stands.

23 THE WITNESS: I don't understand.

24 BY MS. ZADRA-SYMES:

25 Q. Do you understand what a license is?

SUSAN CASAGRANDA

1 A. Well, I believe I do.

2 Q. What is your understanding of that?

3 A. My understanding of a license would be
4 authorization.

5 Q. So do you understand what this letter is talking
6 about?

7 MR. CLARK: Same objection; calls for a legal
8 conclusion.

9 THE WITNESS: This letter is authorizing to use
10 Torrey Pines.

11 BY MS. ZADRA-SYMES:

12 Q. The Torrey Pines logo; is that correct?

13 A. Sure.

14 Q. And this letter has been sent to Vincent/McKee
15 from the City of San Diego?

16 A. Yes.

17 Q. And then the letter says, this authorization is
18 non-exclusive. Do you see that?

19 A. Uh-huh.

20 Q. Do you understand what that means?

21 A. No.

22 MR. CLARK: Same objection; calls for a legal
23 conclusion.

24 BY MS. ZADRA-SYMES:

25 Q. Do you understand the difference between a

SUSAN CASAGRANDA

1 non-exclusive license and an exclusive license?

2 A. I don't understand.

3 Q. Did you tell the United States Patent and
4 Trademark Office that you had a non-exclusive license
5 to use the Torrey Pines logo?

6 A. No.

7 Q. At any time?

8 MR. CLARK: Talking about her personally?

9 BY MS. ZADRA-SYMES:

10 Q. Yes. You personally as president of the Torrey
11 Pines Club Corporation, did you at any time tell the
12 United States Patent and Trademark Office that you had
13 a non-exclusive license to use the Torrey Pines logo?

14 A. No.

15 Q. Do you understand that the authorization
16 provided by the City of San Diego to use the Torrey
17 Pines logo expires when the lease is terminated?

18 MR. CLARK: Object to the question; calls for a
19 legal conclusion, lack of foundation.

20 THE WITNESS: I don't know.

21 BY MS. ZADRA-SYMES:

22 Q. You don't know?

23 Did you tell the City of San Diego that you as
24 the president of the Torrey Pines Club Corporation
25 were claiming exclusive rights to use of the name

SUSAN CASAGRANDA

1 Torrey Pines?

2 A. No.

3 Q. Why not?

4 A. I didn't feel it was necessary.

5 Q. Why did you not feel it was necessary?

6 A. Because we had built up the goods and services
7 that we offer.

8 Q. What do you mean by that?

9 A. We had increased our sales and continuously used
10 the mark for a number of years.

11 Q. And you continually used the mark but with
12 permission from the City of San Diego; is that
13 correct?

14 MR. CLARK: Well, I'll object. It calls for a legal
15 conclusion, lack of foundation.

16 THE WITNESS: We just used the mark.

17 BY MS. ZADRA-SYMES:

18 Q. You had requested permission from the City of
19 San Diego to do so; is that correct?

20 A. I had not.

21 Q. So were you aware of this letter prior to this
22 case, this letter in Petitioner's Exhibit 1?

23 A. I'm not sure.

24 Q. Are you aware of any other letter from the City
25 of San Diego that gives -- that refers to

SUSAN CASAGRANDA

1 authorization to use the Torrey Pines logo?

2 A. I don't know.

3 Q. You don't know if you are aware of anything or
4 you don't know if any other document exists?

5 A. I don't know of any other -- I'm not aware.

6 Q. You are not aware of any other document?

7 A. Yes.

8 Q. Okay. So when you checked your files for
9 documents relating to this case, did you look for any
10 letters from the City of San Diego relating to the
11 Torrey Pines logo?

12 A. I just looked through the files that were
13 requested from the -- I think it was called the
14 interrogatory requests for documents.

15 Q. Yes. So did you look for letters from the City
16 of San Diego regarding the Torrey Pines logo?

17 A. I believe so.

18 Q. Okay. So if any other letters existed in your
19 files, would you have produced them?

20 A. Yes.

21 Q. Will you please give the witness Petitioner's
22 Exhibit 2.

23 A. Oh, okay.

24 Q. This is a trademark application filed April 12,
25 1999 on behalf of Torrey Pines Club Corporation. Do

Exhibit B Page 19 of 44

SUSAN CASAGRANDA

1 you see that?

2 A. Yes.

3 Q. Do you recognize the letter dated April 12,
4 1999? It's TPCC 000149. Do you recognize it?

5 A. I'm not sure if I have seen it before, but yes,
6 I understand it.

7 Q. Okay. If you turn to the next page on 15 it
8 says cc. Ms. Susan --

9 A. Yes.

10 Q. Did you receive a copy of that letter?

11 A. I'm sure I did.

12 Q. Turning to page TPCC 151, it is the beginning of
13 the application.

14 A. Uh-huh.

15 Q. The application is for the mark Torrey Pines,
16 just the words; is that correct?

17 A. Okay.

18 Q. Is that correct?

19 A. Yes.

20 Q. And then on the next Page 152 --

21 A. Uh-huh.

22 Q. -- there is a statement, actually it's a
23 declaration signed by you; is that correct?

24 A. Yes.

25 Q. Are you Susan Lough?

SUSAN CASAGRANDA

1 A. Yes.

2 Q. And the declaration is dated March 17, 1999; is
3 that correct?

4 A. Yes.

5 Q. Do you recall signing this application?

6 A. Yes.

7 Q. There is a statement in the first full paragraph
8 on the page that says, the mark has become distinctive
9 of the goods and services of applicant by reason of
10 substantial exclusive and continuous use of the mark
11 in commerce by the applicant and its predecessor in
12 title for at least five years before the date on which
13 this claim of distinctiveness is made. Do you see
14 that?

15 A. Yes.

16 Q. At the time you made that statement, you knew
17 that San Diego city was the owner of the golf course,
18 didn't you?

19 A. What was the question?

20 Q. At the time you made this statement, you knew
21 that the City of San Diego was the owner of the Torrey
22 Pines Golf Course?

23 A. If you are talking about the land, yes.

24 Q. And you knew that the San Diego city employed
25 people at the golf course to give tee times, didn't

SUSAN CASAGRANDA

1 you?

2 A. Yes.

3 Q. And you knew that consumers who wanted to obtain
4 tee times at the Torrey Pines Golf Course could do so
5 without going through Torrey Pines Club Corporation?

6 A. Yes.

7 Q. And the services to which you claim exclusive
8 use include -- they're listed on Page TPCC 000151.
9 They include rental of golf carts, golf driving range
10 services, golf packages services consisting of
11 guaranteed tee times, golf cart rentals, green fees
12 and golf professional escorts.

13 A. Yes.

14 Q. But it's not true that you had exclusive use of
15 the words Torrey Pines in connection with tee times at
16 the Torrey Pines Golf Course, is it?

17 MR. CLARK: Well, I'll object to that; calls for a
18 legal conclusion and I think it misstates what the
19 services entail.

20 BY MS. ZADRA-SYMES:

21 Q. It's not factually correct that Torrey Pines
22 Club Corporation had exclusive use of the words Torrey
23 Pines in connection with golf tee times at Torrey
24 Pines Golf Course, is it?

25 MR. CLARK: Same objection.

SUSAN CASAGRANDA

1 THE WITNESS: I don't think that this is saying
2 that.

3 BY MS. ZADRA-SYMES:

4 Q. Well, is it factually correct that Torrey Pines
5 Club Corporation had exclusive use of the words Torrey
6 Pines in connection with golf tee times?

7 A. Ask the question again.

8 Q. Okay. In 1999, did Torrey Pines Club
9 Corporation have exclusive use of the words Torrey
10 Pines in connection with tee times at Torrey Pines
11 Golf Course?

12 A. No.

13 Q. In 1989 did Torrey Pines Club Corporation have
14 exclusive use of the words Torrey Pines in connection
15 with the collection of green fees at Torrey Pines Golf
16 Course?

17 MR. CLARK: You just said '89.

18 BY MS. ZADRA-SYMES:

19 Q. 1999.

20 MR. CLARK: I'll object; calls for a legal
21 conclusion.

22 BY MS. ZADRA-SYMES:

23 Q. Let me say the question again.

24 In 1999, did Torrey Pines Club Corporation have
25 exclusive use of the words Torrey Pines in connection

SUSAN CASAGRANDA

1 When you applied for the trademark application
2 for the words Torrey Pines, did you tell the trademark
3 office that Torrey Pines was a geographic area in La
4 Jolla, California?

5 A. No.

6 Q. Why not?

7 A. Because it's a golf course.

8 Q. Did you tell them there was a state beach called
9 Torrey Pines State Beach?

10 A. No.

11 Q. Why not?

12 A. Because it's a golf course.

13 Q. Did you tell them there was a Torrey Pines State
14 Reserve?

15 A. No.

16 Q. Why not?

17 A. Because --

18 MR. CLARK: I'll object; lack of foundation.

19 THE WITNESS: I consider Torrey Pines to be the golf
20 course.

21 BY MS. ZADRA-SYMES:

22 Q. You are familiar with the Torrey Pines State
23 Reserve down there?

24 A. Yes.

25 Q. You also are familiar with the Torrey Pines

SUSAN CASAGRANDA

1 State Beach?

2 A. Sort of, yes.

3 Q. So Torrey Pines refers to more than a golf
4 course?

5 A. Could refer to a tree.

6 Q. Could also refer to a beach?

7 A. Maybe the beach refers to the tree. I don't
8 know.

9 Q. What was the name of the golf course before
10 Vincent/McKee obtained a lease on the golf course in
11 1987?

12 A. Torrey Pines.

13 Q. And who owned the golf course at that time?

14 A. If you are referring to the land, the City of
15 San Diego.

16 Q. And who owned the building on the golf course at
17 that time?

18 MR. CLARK: Well, I'll object. Before
19 Vincent/McKee? Lack of foundation.

20 BY MS. ZADRA-SYMES:

21 Q. If you know.

22 A. I don't know.

23 Q. Are you aware of any trademark assignment for
24 the words Torrey Pines ever acquired by Torrey Pines
25 Club Corporation?

SUSAN CASAGRANDA

1 MR. CLARK: Objection; calls for a legal conclusion.

2 THE WITNESS: I don't understand the question.

3 BY MS. ZADRA-SYMES:

4 Q. Are you aware of any document that has stated
5 that the rights to the words Torrey Pines were being
6 transferred by assignment to Torrey Pines Club
7 Corporation?

8 MR. CLARK: Same objection.

9 THE WITNESS: I don't know.

10 BY MS. ZADRA-SYMES:

11 Q. Have you ever seen any document like that?

12 A. I don't think so.

13 Q. Okay. Have you ever seen any document that
14 transferred the right to the words Torrey Pines to
15 Vincent/McKee Sports?

16 A. Other than this?

17 Q. Other than Exhibit No. 1.

18 A. This letter? I don't think so.

19 Q. Is it your understanding that Exhibit No. 1
20 transferred the rights to the words Torrey Pines to
21 Vincent/McKee Sports?

22 MR. CLARK: I'll object; calls for a legal
23 conclusion, lack of foundation.

24 BY MS. ZADRA-SYMES:

25 Q. I'm asking for your understanding. Is it your

SUSAN CASAGRANDA

1 understanding that Petitioner's Exhibit No. 1
2 transfers the rights to the words Torrey Pines to
3 Vincent/McKee Sports?

4 MR. CLARK: Same objection. You can answer.

5 THE WITNESS: I can answer?

6 Yes.

7 BY MS. ZADRA-SYMES:

8 Q. So is it your understanding that the result of
9 Exhibit No. 1 is that Vincent/McKee Sports has the
10 exclusive rights to Torrey Pines logo?

11 MR. CLARK: Well, I'll object to the question; calls
12 for a legal conclusion, lack of foundation and vague.

13 BY MS. ZADRA-SYMES:

14 Q. I'm asking for your understanding.

15 A. Can you repeat the question, please.

16 MS. ZADRA-SYMES: Can you read the question for her.

17 (The question was read.)

18 THE WITNESS: The result, yes.

19 BY MS. ZADRA-SYMES:

20 Q. Where does it say in this exhibit that
21 Vincent/McKee Sports has exclusive rights to the
22 Torrey Pines logo?

23 A. I don't believe it says exclusive.

24 Q. In fact it says non-exclusive, doesn't it?

25 A. Yes, it does say that.

SUSAN CASAGRANDA

1 MS. ZADRA-SYMES: Do you want to just go off the
2 record right now since the tape is almost ended?

3 THE VIDEO TECHNICIAN: This concludes video tape No.
4 1 in the video-taped deposition of Susan Casagranda.
5 The time is 12:16 p.m., the date is March 31, 2004.
6 We are off the record.

7 (Luncheon recess taken from 12:16 to 1:24 p.m.)
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SUSAN CASAGRANDA

1 the goods and services listed in the application?

2 MR. CLARK: Objection; calls for a legal conclusion.

3 THE WITNESS: Can you repeat the question.

4 MS. ZADRA-SYMES: Can you read the question back,
5 please.

6 (The question was read.)

7 THE WITNESS: No, this application does not.

8 BY MS. ZADRA-SYMES:

9 Q. Does -- in connection with Trademark Application
10 76351389 that is shown in Exhibit No. 6, does Torrey
11 Pines Club Corporation claim that this trademark
12 application gives it exclusive rights over the words
13 Torrey Pines in connection with the goods and services
14 listed in this application?

15 MR. CLARK: I'll object; calls for a legal
16 conclusion. You are asking her to give an opinion on
17 what the effect of this legal document is.

18 THE WITNESS: I don't know.

19 BY MS. ZADRA-SYMES:

20 Q. Does Torrey Pines Club Corporation rely on this
21 trademark with the tree design to prevent other people
22 using the words Torrey Pines?

23 A. Do we rely upon this to prevent other people?
24 No.

25 Q. Okay. Did you tell the City of San Diego that

Exhibit B Page 29 of 44

SUSAN CASAGRANDA

1 you were filing a trademark application for the words
2 Torrey Pines with the tree design?

3 A. No.

4 Q. Why not?

5 A. I didn't feel it was necessary.

6 Q. Did you tell the United States Patent and
7 Trademark Office that in this application for Torrey
8 Pines that the City of San Diego owned the Torrey
9 Pines Golf Course?

10 A. I haven't even read this application.

11 Q. Oh, you can read it. That is fine.

12 MR. CLARK: I'll object; calls for a legal
13 conclusion, calls for her comment on the legal effect
14 of that document.

15 THE WITNESS: I just don't understand.

16 MS. ZADRA-SYMES: What was my question, please?

17 (The question was read.)

18 THE WITNESS: I don't know.

19 BY MS. ZADRA-SYMES:

20 Q. Who would know?

21 A. I don't know.

22 Q. Who at Torrey Pines Club Corporation was
23 involved in requesting these applications to be filed
24 with the United States Patent and Trademark Office?

25 A. Well, I retained the services of the attorney.

SUSAN CASAGRANDA

1 Q. Okay. So did you tell the United States Patent
2 and Trademark Office during this application procedure
3 that the City of San Diego owned the Torrey Pines Golf
4 Course?

5 A. No.

6 Q. Okay. Did you tell the United States Patent and
7 Trademark Office during the process of this
8 application that you had a non-exclusive license from
9 the City of San Diego to use the words Torrey Pines?

10 A. No.

11 MR. CLARK: Object; calls for a legal conclusion,
12 lack of foundation.

13 BY MS. ZADRA-SYMES:

14 Q. Are there any documents that you have not seen
15 today that you rely on for your position that you have
16 an exclusive license from the City of San Diego to use
17 the words Torrey Pines?

18 MR. CLARK: Same objection; calls for a legal
19 conclusion.

20 THE WITNESS: Did you ask are there any documents
21 other than?

22 BY MS. ZADRA-SYMES:

23 Q. Other than what is here today.

24 MR. CLARK: Well, I'll object. I think that is
25 vague.

SUSAN CASAGRANDA

1 BY MS. ZADRA-SYMES:

2 Q. Are you aware of any documents other than --
3 that are not in front of you that have not been made
4 exhibits in either Mr. McKee's deposition or in your
5 deposition, are you aware of any documents other than
6 those exhibits that you rely on for the position that
7 Torrey Pines Club Corporation has an exclusive license
8 to use the words Torrey Pines?

9 A. Documents or agreements?

10 Q. Either. A written piece of paper.

11 A. Oh, not written.

12 Q. Nothing written?

13 A. Nothing written.

14 Q. So are you relying on something oral from the
15 City of San Diego that gives you an exclusive license
16 to use the words Torrey Pines?

17 MR. CLARK: Same objection; calls for a legal
18 conclusion.

19 THE WITNESS: I'm relying on the fact that we built
20 up over a number of years the goods and services that
21 we provide at Torrey Pines.

22 BY MS. ZADRA-SYMES:

23 Q. Has San Diego -- has the City of San Diego ever
24 told you orally that you have an exclusive license to
25 use the words Torrey Pines?

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SUSAN CASAGRANDA

1 A. Not orally.

2 Q. And has San Diego -- the City of San Diego ever
3 told you in a written document that you have an
4 exclusive license to use the words Torrey Pines?

5 A. Not written.

6 Q. Okay. Has the San Diego -- the City of San
7 Diego ever given you in writing an agreement
8 transferring all rights in the words Torrey Pines to
9 the Torrey Pines Club Corporation?

10 MR. CLARK: Objection; calls for a legal conclusion.

11 THE WITNESS: No.

12 BY MS. ZADRA-SYMES:

13 Q. Has the City of San Diego ever told you orally
14 that it was transferring to Torrey Pines Club
15 Corporation all rights in the words Torrey Pines?

16 A. Not all rights.

17 MS. ZADRA-SYMES: Can we take a quick break.

18 THE VIDEO TECHNICIAN: We are off the record at 2:01
19 p.m.

20 (Recess.)

21 THE VIDEO TECHNICIAN: We are back on the record at
22 2:15 p.m.

23 BY MS. ZADRA-SYMES:

24 Q. Would you please look at Exhibit No. 8. This is
25 a document entitled Lease Agreement. Do you see that?

SUSAN CASAGRANDA

1 A. Yes.

2 Q. And the first paragraph says, this lease
3 agreement entered into as of October 14, 2002 is
4 entered into between the City of San Diego, a
5 municipal corporation, and the Friends of Torrey
6 Pines. Do you see that?

7 A. Yes.

8 Q. Who are the Friends of Torrey Pines?

9 A. They're a group of individuals that put money
10 into improving the south golf course at Torrey Pines.

11 Q. It says here in Paragraph A, lessee, which means
12 the Friends of Torrey Pines, is a limited liability
13 corporation organized for the main purpose of
14 promoting San Diego as a venue for the United States
15 Open Championship conducted annually by the United
16 States Golf Association.

17 A. Uh-huh.

18 Q. And for the purposes of organizing and operating
19 a United States Open Championship in San Diego...

20 A. Okay.

21 Q. Do you have any reason to disagree with that?

22 MR. CLARK: I'll object; calls for a legal
23 conclusion.

24 THE WITNESS: I have no idea.
25

SUSAN CASAGRANDA

1 BY MS. ZADRA-SYMES:

2 Q. In Paragraph C it says, the City is the owner
3 and operator of Torrey Pines Golf Course located at
4 11480 North Torrey Pines Road in the City of San
5 Diego, California. Do you see that?

6 A. Yes, I do.

7 Q. In Paragraph E it says, the USGA has indicated a
8 desire to use Torrey Pines Golf Course as the venue
9 for the 2008 United States Open Championship to be
10 held from June 12, 2008 to on or after June 15, 2008,
11 and has agreed to enter into an agreement with lessee,
12 the Friends of Torrey Pines, to govern the USGA's
13 production of the championship. Do you see that?

14 A. Yes.

15 Q. Would you turn to Page -- it's Page 30 of the
16 lease document, in Paragraph 29.1 it says, City grants
17 to lessee and the USGA the non-exclusive right to
18 those rights owned or controlled by City to use the
19 Torrey Pines name and its generally recognizable
20 symbols, images of the championship course and the
21 leased property and the championship course design in
22 connection with the conduct of the championship, and
23 then it goes on, and in any advertising or promotion
24 of or other references to the championship. Do you
25 see that?

SUSAN CASAGRANDA

1 A. I see that.

2 Q. Does the Torrey Pines Club Corporation grant
3 licenses to the USGA for use of the Torrey Pines name?

4 MR. CLARK: I'll object; calls for a legal
5 conclusion.

6 THE WITNESS: The Torrey Pines Club Corporation
7 entered into an agreement with the USGA.

8 BY MS. ZADRA-SYMES:

9 Q. Does the Torrey Pines Club Corporation grant a
10 license to the USGA to use the Torrey Pines name?

11 A. The agreement I believe states that we give them
12 permission to use Torrey Pines name.

13 Q. Okay. Referring -- can I refer to that part of
14 the agreement or does Robert have to leave the room?

15 MR. CLARK: I'd like him to leave the room please.

16 (Mr. Gleason left the deposition.)

17

18 (Page 106 is designated confidential and is bound
19 separately. The non-confidential transcript continues
20 on Page 108.)

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SUSAN CASAGRANDA

1 (Mr. Gleason rejoined the deposition.)

2 MS. ZADRA-SYMES: What was the exhibit number for
3 the website?

4 Q. Which exhibit was that?

5 A. 11.

6 Q. Referring to Petitioner's Exhibit 11, which is a
7 printout from the Torrey Pines Golf Course dot com
8 website --

9 A. Yes.

10 Q. -- do you recognize that document?

11 A. Yes.

12 Q. Okay. What is it?

13 A. This is a printing of our website.

14 Q. Whose decision was it to register the domain
15 name Torrey Pines Golf Course dot com?

16 A. That was my decision.

17 Q. Did you request permission from the City of San
18 Diego to do that?

19 A. No, I did not.

20 Q. When did you register that domain name?

21 A. I'm not sure.

22 Q. Was it a year ago, more than a year ago?

23 A. Oh, yes.

24 Q. More than five years ago?

25 A. I don't know.

SUSAN CASAGRANDA

1 Q. Who wrote the text for the website?

2 A. JDS Solutions.

3 Q. They wrote the actual text of the website?

4 A. Oh, they put the website together. The text was
5 written by -- some of it was written by me and some
6 was written by other employees of Torrey Pines Club
7 Corporation.

8 Q. When did Torrey Pines Club Corporation start
9 calling itself Torrey Pines Golf Course?

10 A. Since as long as I can remember.

11 Q. Torrey Pines Club Corporation has always
12 referred to itself as Torrey Pines Golf Course?

13 A. Yes.

14 Q. Is that a registered business name that you use?

15 A. No.

16 Q. Do you always use Torrey Pines Golf Course in
17 your business materials?

18 A. Yes.

19 Q. Who wrote the text that includes the directions
20 to the golf course?

21 A. I'm not sure who wrote those directions. That
22 could have actually been JDS Solutions.

23 Q. And on the third page of the document under the
24 heading Locations and Directions, it says, from
25 Interstate 5 traveling south --

SUSAN CASAGRANDA

1 A. Uh-huh.

2 Q. -- exit Carmel Valley Road and turn right, west.

3 A. Yes.

4 Q. Turn left on Camino Del Mar, which is at the
5 Pacific Ocean.

6 A. Yes.

7 Q. Stay on this road as it passes by Torrey Pines
8 State Beach.

9 A. Uh-huh.

10 Q. And Torrey Pines State Preserve. Do you see
11 that?

12 A. Yes, I see that.

13 Q. Are those locations that can be found on a map
14 in San Diego county?

15 MR. CLARK: Objection; calls for speculation.

16 THE WITNESS: I'm not sure.

17 BY MS. ZADRA-SYMES:

18 Q. Have you never seen -- well, I think it's asked.

19 I asked that earlier.

20 Did you approve these directions?

21 A. I don't know.

22 Q. Who was responsible for approving the content of
23 this website?

24 A. Well, as I recall, several employees worked on
25 the website, the content, together.



Welcome to

Torrey Pines

Municipal Golf Course

City of San Diego Park & Recreation Department

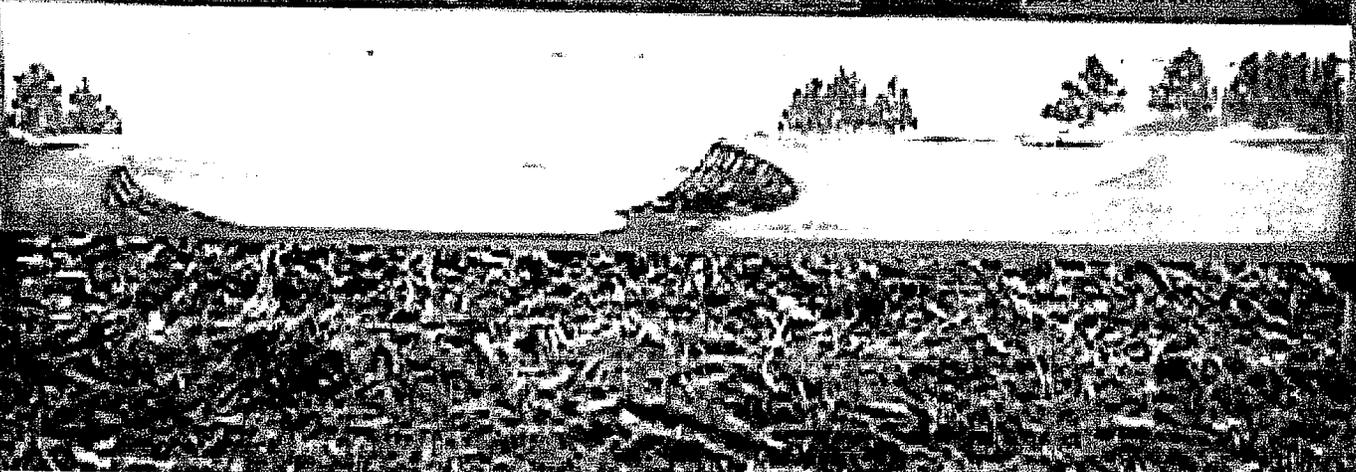


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EXHIBIT
Petitioner
15
3-3-04

PENGAD 800-631-6983



EXHIBIT
Petitioners
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3-31-04
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PENGAD 800-631-6689

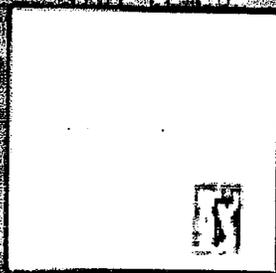
Home of the

Thank-you
for Playing
Torrey Pines
Municipal Golf Course

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EXHIBIT
Petitioner
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Petitioner
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3-31-04

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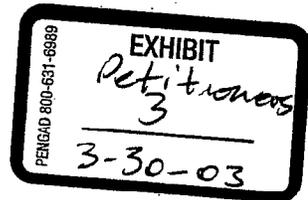
EXHIBIT
Petitioners
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3-31-04
Casagrande

EXHIBIT C

TORREY PINES MUNICIPAL GOLF
COURSE PRO SHOP, DRIVING RANGE
AND CART RENTAL

THE CITY OF SAN DIEGO

Percentage Lease



McKee

Exhibit C Page 1 of 51

DOCUMENT NO. RR-267979

FILED MAR 30 1987

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

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LEASE OUTLINE

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CITY OF SAN DIEGO
PERCENTAGE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and _____, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, known as the pro shop, driving range and cart storage areas of the Torrey Pines Municipal Golf Course, and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises," as shown on attached Exhibit A.

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the operation and maintenance of a professional golf shop, golf driving range, power and pull cart rental concession, providing golf instruction, repair, sale and rental of golf equipment and supplies, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises for each of the above-specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use of the premises for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.
- d. CITY reserves the right to relocate or make modifications to the driving range, pro shop, golf cart storage facility or any other physical structure on the premises.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of the golf course facilities as specified in this lease and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be twenty-five (25) years commencing on the first day of the calendar month following execution by the City Manager; or the first day of the calendar month following the City's possession of the premises subsequent to the exercising of the Wansa Option, whichever date or event shall last occur. If both events have not occurred by December 31, 1988, this lease shall not commence and shall be of no force or effect whatsoever. CITY, however, agrees to use its best good faith efforts to obtain possession in a timely manner subsequent to an exercise of the Wansa Option. "Lease year" as used in this lease shall mean the 12-month period immediately following the commencement of the term.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.
- At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.
- 2.04 Right of Termination. In addition to CITY'S remedies for default in this lease, LESSEE agrees that six months prior to the expiration of the first five years of this lease, and six months prior to the expiration of each succeeding five years, City, upon resolution of its City Council setting forth its desire to do so, shall have the right to terminate this lease, subject to the following conditions:

Conditions for Termination:

1. Failure to maintain physical facilities in a "first-class" manner.
2. Failure to promote Torrey Pines and its golf tournaments, i.e., Andy Williams/San Diego Open.
3. Once new facilities are open, failure to meet projected rent levels as projected in the Vincent/McKee Proposal.

In the case of deficiencies, these must be specific and be submitted to LESSEE in writing six (6) months prior to each five year increment. The lessee would then have time to make the required corrections. If, in the opinion of the CITY, these deficiencies have not been corrected within the prescribed time, an arbitrator, agreed upon by both parties would be selected to make the final decision.

If the LESSEE is found at fault, the CITY shall have the right to cancel the lease under the following conditions:

1. Refund of the unamortized portion of the pro shop interior construction cost as defined in Condition 6.07, and the initial consideration as defined in Condition 3.03.
2. Purchase golf car fleet at current depreciated market value, and
3. Purchase all "Torrey Pines" logo merchandise at current market value.

If arbitration sides with the LESSEE, the CITY would incur all said arbitration expenses and would not be eligible for a grievance claim for a five-year period.

SECTION 3: RENT

- 3.01 Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, ~~92112-8135~~

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Minimum Rent. The annual minimum rent established for the first three (3) years following the effective date of this lease is Two Hundred Thousand Dollars (\$200,000) which is payable at the rate of Sixteen Thousand Six Hundred and Sixty-seven Dollars (\$16,667) per month.

If the minimum rent is greater than the percentage rent, on a calendar month basis, then the minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.03.

Provided, however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceeds the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the annual minimum rent shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term shall prevail on an annual basis.

- b. Minimum Rent Adjustment. Effective on the first day of the first month following the initial three-year period of this lease and at the beginning of each four-year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the three (3) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any

additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid at the prior rate shall be immediately paid to CITY. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

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

Thirty Percent (30%) of all gross income from the rental of motorized golf carts (electric & gas), and pull carts.

Seven Percent (7%) of all gross income from pro shop sales.

Seven Percent (7%) of all gross income from the rental and repair of golf clubs.

Thirty Percent (30%) of all gross income derived from the use of the driving range.

Five Percent (5%) of all gross income from golf instructions performed by the LESSEE or any employees or licensees of the LESSEE.

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

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

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Use, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the

premises without prior approval by the City Manager shall be subject to the requirements of Section 3.07, UNAUTHORIZED USE CHARGE, hereof.

- d. Percentage Rate Adjustment. At least four (4) months prior to the end of the tenth year of the term of this agreement and each subsequent ten-year period, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Paragraph e below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable 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 who will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity, upon application by either CITY or LESSEE with prior notice ~~to either party~~ to ~~each~~ party. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment. IN NO EVENT, HOWEVER, SHALL ANY RENT

ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term equal to the initial full term of this lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s).

3.03 Initial Consideration. The amount of Initial Consideration to purchase this lease is Four Hundred Thousand Dollars (\$400,000), and is payable by LESSEE as follows: One Hundred Thousand Dollars (\$100,000) within 30 days of the Lease Agreement signed by the City Manager, and Three Hundred Thousand Dollars (\$300,000) within 30 days of the City's notification to exercise the Option Agreement to acquire the existing leasehold interest.

3.04 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income 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 or include:

- a. ~~One-fifth of the~~ minimum rent until the full annual rent is achieved in any lease year.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.

- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts: One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease, and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.05 Gross Income. "Gross income or receipts" as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and ~~all gross income~~ received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.06 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.05a. Records will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its

discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

On CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%), or more than \$10,000 whichever is less between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit plus interest on such amount as defined in Delinquent Rent provision of this lease within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit findings.

e. 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.

3.07 Delinquent Rent and Audit(s) Fees. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional 5 percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event CITY audit(s) if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.08 Unauthorized Use Charge. LESSEE will pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to ~~terminate service~~ use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

3.09 Development as Additional Consideration. LESSEE agrees that as additional and substantial consideration for granting this lease is LESSEE'S obligation to develop the lease premises in accordance with the CITY-approved Development Plan identified in Section 6.12, and Exhibit B, Development Plan, of this agreement.

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease ^{AM 12} any interest therein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

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The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

4.03 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with a Development Plan to be approved by the City Manager. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to

the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon, must first have the approval, in writing, of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed, or transferred in lieu of foreclosure, the CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease.

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Such approval shall not be unreasonably withheld. Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or modify any of the terms, covenants or condition hereof.

This section is subject to all other provisions of this lease, including the provisions of Section 4.04 below.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Paragraph a.(1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then ~~this lease shall not terminate pursuant to the default.~~ In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05. Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 Indemnity. LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:
- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;

- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit Liability. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- b. Fire legal liability, in the minimum amount of ONE MILLION DOLLARS (\$1,000,000), fire coverage for contents and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY or LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of

each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Sub-section f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Hundred Thousand Dollars (\$100,000) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below: ~~_____~~ ~~_____~~

- a. Cash. Cash deposits shall be deposited with CITY and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

- b. Instrument(s) of Credit: An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment, and agree that any or all funds shall be paid to CITY upon demand by CITY.

The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises. It is intended that new premises (pro shop, driving range and cart storage area) will be constructed by the Sheraton Hotel in the near future. LESSEE agrees to relocate to the new premises upon their completion at no cost to the Sheraton Hotel or CITY, and will comply with the provisions of Section 6.07 and the Development Plan as described in Exhibit B of this lease.

- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to the CITY and with all applicable laws.
- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. Except for such installation or utilities as CITY herein expressly agrees to provide; LESSEE agrees to order, obtain, and pay all utilities necessary for operation of the premises. All utilities will be installed underground.

6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.07 Pro Shop Interior Construction. Proposer shall assume the full responsibility for the design, construction, including all applicable permits and licenses, and total cost of the interior of the proposed new pro shop, subject to the prior approval of the City Manager in accordance with Section 6.04 hereof. Within one (1) week of the completion of the exterior shell of the new pro shop, LESSEE'S contractor shall commence physical interior construction.

6.08 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.09 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees 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 such interest, and that LESSEE shall pay all such possessory interest taxes.

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.10 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.11 Ownership of Improvements and Personal Property.

- a. All and any improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove shall be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.12 Development Plan. See attached Exhibit B.

6.13 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.02 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.03 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.05 Affirmative Action. LESSEE agrees to abide by CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Schedule of Prices. All prices of merchandise, equipment and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment and services offered in the San Diego area. All prices charged by LESSEE and its sublessees shall be approved in writing by City Manager; provided, however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.
- 7.11 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public. The days and hours of operation of LESSEE'S concession shall be the same as the days and hours of operation of the Torrey Pines Municipal Golf Course, unless otherwise required by the City Manager upon occasions of special events. Such schedule shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego. LESSEE shall maintain and have fully operational a minimum of 140 golf carts at all times during the entire term of this lease.
- LESSEE shall maintain a fully-stocked pro shop, with merchandise appropriate to the intent of this lease and consistent with Section 1.02 Uses hereof to the satisfaction of the City Manager.
- LESSEE shall perform in the capacity of or shall engage a full-time qualified Call "A," P.G.A. golf professional and shall employ an adequate number and quality of personnel as necessary to diligently and creditably provide a high standard of services in the opinion of the City Manager.
- 7.12 Warranty. The CITY does not warrant that said premises are suitable for the purposes for which they are leased as stated herein.

- 7.13 Pro Shop Inventory Purchase. LESSEE shall purchase the existing pro shop merchandise inventory, providing that subject inventory is of marketable quality, and that subject purchase price is at present LESSEE'S "cost," with proper receipts to substantiate cost. It is mutually agreed that the CITY shall not participate in, nor be responsible for, subject purchase. Any failure to consummate subject inventory purchase shall not invalidate, nor postpone the commencement of the lease with the City of San Diego. This paragraph is subject to amendment or deletion at the sole discretion of the parties hereto and shall not constitute or create a third party beneficiary. The owner of the existing pro shop inventory shall have no rights as a result of this provision and if LESSEE is unable to complete a purchase of the pro shop inventory on reasonable terms, the City Manager may, at his sole discretion, waive the requirements of this paragraph.
- 7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.15 CITY First Right to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.16 Real Estate Broker's Commission. No broker's commission will be paid by the CITY in connection with this lease.
- 7.17 Tournament Cooperation. ~~LESSEE~~ expressly understood that the annual P.G.A. Tournament, currently called the Sheraton Lehman Bros. Andy Williams Open is conducted on the premises. The LESSEE agrees to cooperate with the tournament's sponsors, the organizing entity (presently the Century Club), the Torrey Pines Inn, the City of San Diego, and any other entity directly connected with this tournament. Subject cooperation pertains to the uses and the premises, and related services performed, covered under this lease and any amendments to this lease.

7.18 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

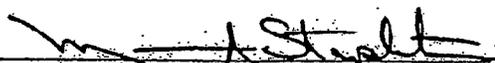
The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

SECTION 8: SIGNATURES

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

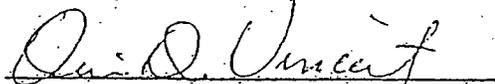
Date 8/4/87

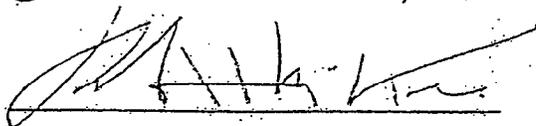
By 
Deputy City Manager

LESSEE:

VINCENT-McKEE SPORTS, INC.

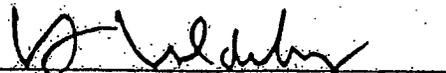
Date 7/7/87

By 

By 

APPROVED as to form and legality this 5 day of August, 1987.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

LDL:baa(4)61
6-4-87

9.01 EXHIBIT B - DEVELOPMENT PLAN

Passed and adopted by the Council of The City of San Diego on
March 30, 1987 by the following votes:

YEAS: Cleator, McColl, Jones, Struiksma, Gotch, Ballesteros.

NAYS: Wolfsheimer.

NOT PRESENT: McCarty, O'Connor.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By BARBARA BAXTER

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and
correct copy of RESOLUTION NO. R- 267379 passed and adopted by
the Council of The City of San Diego, California, on March 30, 1987.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By Barbara Baxter
Deputy

bb

(R-87-1618 REV.1)

RESOLUTION NUMBER R- 267979

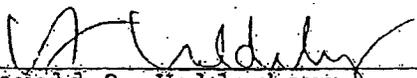
ADOPTED ON MAR 30 1987

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a twenty-five (25)-year lease agreement with VINCENT/MCKEE for the operation of the Torrey Pines Municipal Golf Course pro shop, driving range and golf carts, at a minimum annual rental of \$200,000 against various percentages of gross income of the pro shop, driving range, cart rentals and golf lessons, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 267979.

BE IT FURTHER RESOLVED, that this authorization is made with the specific condition that the said lease agreement shall not become effective unless and until the City exercises its option to buy out the existing Wansa leasehold and that, if the City does not exercise its right to buy the Wansa lease, and if the City does not obtain possession of the premises by December 31, 1988, the above lease will not commence and this authorization shall terminate, as set forth in Section 2.01 of said proposed lease.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps

02/09/87

04/06/87 REV.1

Or.Dept:Prop.

Job:218954

R-87-1618

Form=r.none

EXHIBIT 4

DUPLICATE

FIRST AMENDMENT TO LEASE AGREEMENT

The First Amendment executed by and between the City of San Diego, a municipal corporation (CITY), Lessor, and Vincent-McKee Sports, Inc., Lessee.

WHEREAS, the parties heretofore have entered into that certain lease agreement dated March 30, 1987 and filed as Document RR-267979 in the Office of the City Clerk.

WHEREAS, the City has closed the Torrey Pines Golf Course periodically for maintenance, construction and renovation during the period from August 1988 to June 1989.

WHEREAS, these closures have had a significant fiscal impact on Lessee's operations.

WHEREAS, the parties wish to provide Lessee rent relief for future golf course closures resulting from Lessor's construction, maintenance and renovation of the golf course.

NOW, THEREFORE, CITY and Lessee hereby agree:

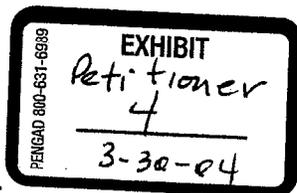
1. That Section 3, Rent, Paragraph 3.10, is hereby added to the lease.

3.10 Rent Credit for Closures

For each day 9 holes, or more, are closed on either course for maintenance, construction or renovation work the Lessee shall receive a rent credit of \$700 per day.

This rent credit shall apply only for closures due to construction, maintenance or renovation work. Rent credits will not be granted for inclement weather closures, events beyond the City's control such as Acts of God, or for tournaments, etc. Rent credits will not apply to closure after 3 p.m. or the "twilight time," namely four hours before sunset. Rent credits will not be given if work is being done on the one hole and temporary arrangements are made to play around or thru the work area.

2. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.
3. This amendment shall be effective July 1, 1989.



DOCUMENT NO. RR-274980
FILED JAN 16 1990
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Date JAN 16. 1990

The CITY OF SAN DIEGO

By Robert J. Cohen
Supervising Property Agent
for the City Manager

VINCENT-MCKEE SPORTS, INC.

Date 11/24/89

By Tim Noonan

Date 11/24/89

By J. M. Tucker

APPROVED as to form and legality this 22 day of January, ~~1989~~ ¹⁹⁹⁰

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

CVS:baa(6)108
10-18-89

R- 274980

(R-90-892)

RESOLUTION NUMBER R- 274980

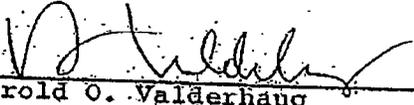
ADOPTED ON JAN 16 1990

BE IT RESOLVED, by the Council of The City of San Diego, that a rent credit in the amount of \$75,000 to Vincent-McKee Sports, Inc., the golf shop concessionaire at the Torrey Pines Golf Course, for losses incurred due to closures of the golf course for maintenance, construction and renovation projects from August 1988 to June 1989, is hereby authorized

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a First Amendment to the lease agreement to require the City to grant a rent credit of \$700 per day for each day nine or more holes are closed in the future for maintenance, construction or renovation projects at Torrey Pines Golf Course, under the terms and conditions set forth in that first amendment on file in the office of the City Clerk as Document No. RR- 274980.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:skc
12/01/89
Or.Dept:Prop.
Job:220593
R-90-892
Form=r.none

-PAGE 1 OF 1-

Passed and adopted by the Council of The City of San Diego on
JAN 16 1990 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Pratt, Bernhardt, Henderson,
McCarty, Filner, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: TENA M. MARTIN, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 274980, passed
and adopted by the Council of The City of San Diego, California
on JAN 16 1990

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Tena Martin, Deputy

ORIGINAL

Second Amendment to Lease Agreement
(CITY Document RR-267979)

This copy must be
returned to City
Clerk, San Diego

This Second Amendment to Lease Agreement is executed by and between the City of San Diego, ("CITY"), as Lessor, and TORREY PINES CLUB CORP., formally known as Vincent McKee Sports, Inc. ("LESSEE"), as Lessee.

The above parties have entered into a lease agreement dated March 30, 1987 and filed in the Office of the City Clerk of the City of San Diego as Document RR-267979. The CITY and LESSEE wish to modify and clarify certain provisions of this lease.

The original agreement limited the LESSEE's involvement of the driving range to that of operator only. It is now desired by both parties to modify this arrangement to have the LESSEE take the complete responsibility of all of the operations of the driving range. This includes but is not limited to: maintenance of the facility, including tees and landing areas; maintenance of all fences and buildings at the driving range; responsibility for errant golf balls hit from the driving range; and all other normal duties and responsibilities of operating a first class driving range.

CITY and LESSEE hereby agree to amend the above referenced lease as follows:

- Section 1, Uses, Paragraph 1.06, is hereby amended to read; Throughout the term of this Lease Agreement, LESSEE shall provide competent management and operation of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean managing and operating the leased facilities in accordance with the terms of this lease in a manner that is fiscally responsible and comparable to the operation of similar municipal operations.
- Section 2, Term, Paragraph 2.01, is hereby amended to read; The term of this agreement shall commence on January 1, 1988, and shall be twenty-five (25) years, with one (1) ten (10) year renewal option. This option must be exercised by the LESSEE no later than twenty-four (24) months prior to the expiration of the original term of the lease and no sooner than thirty-six (36) months before the expiration of the original term of this lease. To exercise this option, the LESSEE must be in good standing with the City and not in default under any of the terms of the lease agreement (as amended) and be able to prove to the reasonable satisfaction of the City Manager that the LESSEE has the capability of operating the businesses on the leasehold.

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

- Section 2, Term, Paragraph 2.04, is hereby amended to read; Failure to maintain physical facilities and provide competent management of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean managing and operating the leased facilities

[Handwritten Signature]
INITIAL

DOCUMENT NO. RR282439
FILED
AUG 02 1993
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

in accordance with the terms of this lease in a manner that is fiscally responsible and comparable to the operation of similar municipal operations.

4. Section 3, Rent, Paragraph 3.02c., item 4 be amended to read; Eleven Percent (11%) of all gross income derived from the use of the driving range. Commencing on January 1, 1998, and every five (5) years thereafter, the percentage rent for the driving range activity shall be increased by 1/2%. For example, on January 1, 1998 the rent will be increased to 11 1/2%, 2003 to 12%, 2008 to 12 1/2%, etc. However, until gross revenues reach \$26,000.00 for two (2) consecutive months or until July 1, 1993, whichever occurs first, the rent shall be calculated at five percent (5%) of the gross revenues derived from the driving range.
5. Section 3, Rent, Paragraph 3.02c., items 1, 2, 3, 5, 6, 7; all the percentages in the hereinmentioned section shall remain the same and in full force and effect as follows:
 - A. THIRTY PERCENT (30%) of all gross income from the rental of motorized golf carts (electrical and gas), and pull carts.
 - B. SEVEN PERCENT (7%) of all gross income from pro shop sales.
 - C. SEVEN PERCENT (7%) of all gross income from the rental and repair of golf clubs.
 - D. FIVE PERCENT (5%) of all gross income from golf instruction and golf instructional rounds performed by the LESSEE.
 - E. TEN PERCENT (10%) of all other income from any source derived from the use of the premises.
 - F. FIFTY PERCENT (50%) of commissions or any other compensation paid to LESSEE, or its sublessees, permittees or licensees for the right to install or operate coin-operated vending, game, or service machines or devises on the premises, including telephones, 10% of the gross income of any such coin-operated machines or devises owned, rented, or leases by LESSEE, whether such machines are maintained and operated by LESSEE or by sublessees of the use on the premises.
6. LESSEE shall construct and install the fence extensions along the west and east fences bordering the driving range described in Exhibit A (proposal from Manhire Construction, Inc.) attached hereto and incorporated by reference herein. In consideration for same, CITY shall provide a one-time rent credit in an amount not to exceed Twenty-five Thousand Dollars (\$25,000.00) or Fifty Percent (50%) of the actual construction costs for the fence improvements whichever is less.
7. Section 3, Rent, Paragraph 3.02f., is hereby added to the lease;
(f) "With prior written approval by the City Manager, which approval may or may not be granted at the sole and absolute discretion of the City Manager, ticket sales

[Signature]
INITIAL

[Signature]
INITIAL

- for charitable purposes, may be excluded from gross sales for the calculation of percentage rents. However, said sales shall not exceed 5% of gross income in any given month.
8. Section 5, Insurance Risk, Paragraph 5.05, is hereby added to the lease; 5.05 "It is expressly agreed by the parties hereto that any and all claims hereafter arising from the use of the driving range are the sole responsibility of the LESSEE and his insurance carrier, as specified in Section 5.02a. LESSEE agrees to hold the CITY harmless from all such claims.
 9. Section 7, General Provisions, Paragraph 7.04, Nondiscrimination, is hereby amended to read; LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or physical disability in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
 10. Section 7, General Provisions, Paragraph 7.05, Affirmative Action, is hereby deleted and is restated as follows: Equal Opportunity; LESSEE shall comply with the City's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. LESSEE shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal or State laws and regulations hereinafter enacted. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement.
 11. Section 7, General Provisions, Paragraph 7.10, second sentence, is hereby amended to read; The City Manager reserves the right to approve all prices for goods and services charged by LESSEE and its sublessees, provided however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.
 12. Section 7, General Provisions; Paragraph 7.13, is hereby deleted in its entirety.
 13. Section 7, General Provisions, Paragraph 7.17, Tournament Operation, first sentence is hereby amended to read; It is expressly understood that any PGA, LPGA or Senior PGA Tournament, such as the Buick Invitational of California will be conducted on the premises.
 14. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.
 15. This amendment shall be effective on January 1, 1993.

R.H.M.
INITIAL

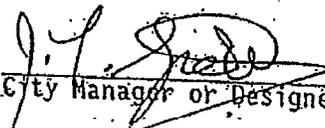
R.H.M.
INITIAL

M.L.P.
INITIAL *R.H.M.*
INITIAL

Signatures:

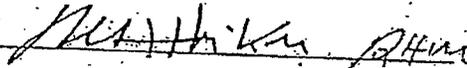
City of San Diego

Date AUG 02 1993

By 
City Manager or Designee

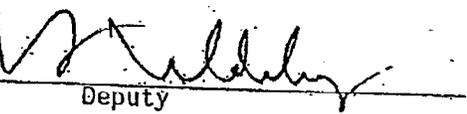
TORREY PINES CLUB CORP.

Date DECEMBER 30-92

By 

APPROVED AS TO FORM AND LEGALITY THIS 10 DAY OF August, 1993.

JOHN W. WITT, CITY Attorney

By 
Deputy

NRS:rc(i)
11-17-92

(R-94-84)

RESOLUTION NUMBER R- 282439

ADOPTED ON AUG 02 1993

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a Second Amendment to Lease Agreement with TORREY PINES CLUB CORPORATION for the operation and maintenance of Torrey Pines Golf Course, which amendment provides that the lessee shall assume maintenance responsibilities and provide liability insurance for the driving range operations at Torrey Pines Golf Course, and which amendment further provides for a decrease from thirty percent of gross income to eleven percent of gross income in the rent from the driving range operations, and which amendment includes an option to extend the lease term for ten years beyond the current expiration date of 2012, under the terms and conditions set forth in that Second Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 282439.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
07/19/94
Or. Dept: Prop.
Job: 220593
R-94-84
Form=r-t

Passed and adopted by the Council of The City of San Diego on August 2, 1993 by the following vote:

YEAS: Wolfsheimer, Hartley, Stevens, McCarty, Vargas, Mayor Golding

NAYS: None

NOT PRESENT: Roberts, Behr, Stallings

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: RHONDA R. BARNES, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 282439, passed and adopted by the Council of The City of San Diego, California, on August 2, 1993.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Bronda B. Barnes, Deputy

CC-1628 (10-90)

MEMORANDUM OF UNDERSTANDING
Between the City of San Diego and the
Torrey Pines Club Corporation

This MEMORANDUM OF UNDERSTANDING is executed between the CITY OF SAN DIEGO, hereinafter called "CITY", and Torrey Pines Club Corporation, hereinafter called "LESSEE", in order to clarify provisions of LEASE AGREEMENT, Document RR-267979.

CITY and LESSEE mutually desire to improve the operation and revenues of the Torrey Pines Golf Course and related facilities. This MEMORANDUM OF UNDERSTANDING is intended to clarify changes in office space to be used by CITY, and operations that effect cart and golf school revenues.

1. OFFICE SPACE. LESSEE shall permit CITY to have free use of the following office space located on the north side of the Clubhouse building that is leased by LESSEE:

- a.) The office on the northeast corner of the building formerly used by the LESSEE's Head Golf Professional approximately 20' x 12'.
- b.) The office space on the north side of the building formerly used by the LESSEE's administrative personnel approximately 20' x 30'.

CITY shall permit the LESSEE to have free use of the office space approximately 20' x 16', formerly used by the CITY's Golf Course Manager and Business Manager.

2. CARTS. CITY will require the use of golf carts for all private, non-City sponsored tournaments effective January 1, 1992. City-sponsored tournaments include the following:

- a.) Men's Club events;
- b.) Women's Club events;
- c.) San Diego Men's Golf Championship tournament;
- d.) San Diego Women's Golf Championship tournament;
- e.) San Diego Senior's Golf Championship tournament;
- f.) PGA, LPGA, SPGA sponsored events;
- g.) College and high school golf team events;
- h.) Junior Golf sponsored events.

3. GOLF INSTRUCTIONAL PLAYING ROUNDS. LESSEE desires to institute and offer an enhanced golf instructional program. In order to facilitate playing instructional rounds on the golf course, CITY will make available to the LESSEE tee reservations under the following stipulations:

- a.) CITY will block out weekday tee reservations for specified times on a daily basis. The number of tee times will not exceed fifteen (15) for longer weekdays of the year (April through October) and twelve (12) tee times for shorter weekdays (November through May).

- b.) The total number of weekday tee times reserved for the golf school will be reduced on a prorated basis whenever a tournament is scheduled or the course is closed. For example, tee times normally allotted for a particular weekday, at particular times, would not be available to the golf school if a tournament booking occupies those times.
- c.) CITY will block out no more than ten (10) tee reservations for weekends (average 5 per day) except when courses are closed due to inclement weather, maintenance, or major tournaments that use both courses.
- d.) LESSEE will book tee times with CITY for all instructional rounds at least eight (8) days in advance.
- e.) A professional instructor will accompany one or two foursomes.
- f.) LESSEE agrees to cancel tee times at least 24 hours in advance. LESSEE will pay green fees for any golf instructional reservations not cancelled 24 hours in advance.
- g.) CITY will not reserve more than two consecutive tee times for the golf school.
- h.) All playing lessons will be charged the County resident 18-hole rate.
- i.) CITY will prepare a schedule of tee times for the LESSEE to use for the golf school on a monthly basis.

Both parties agree that either party shall have the authority to discontinue this MEMORANDUM OF UNDERSTANDING with a minimum of not less than 90 days advance written notice.

The City Manager has entered into this MEMORANDUM OF UNDERSTANDING with the intent that the original terms of the lease between the City of San Diego and Vincent/McKee Sports, Inc. (Torrey Pines Club Corporation's previous name), Document RR-2267979, shall remain in force. This MEMORANDUM OF UNDERSTANDING is meant only to clarify operational issues that have arisen in the operation of the golf course and not to modify the terms of the lease.

Date October 30, 1991

THE CITY OF SAN DIEGO
By [Signature]
Park and Recreation Director

Date October 24, 1991

By [Signature]
Torrey Pines Club Corporation

APPROVED AS TO FORM AND LEGALITY THIS 4 DAY OF November, 1991

JOHN W. WITT, City Attorney

By [Signature]
Deputy

EXHIBIT D



THE CITY OF

SAN DIEGO

PROPERTY DEPARTMENT, MAIL STATION 51-A
SECURITY PACIFIC PLAZA, 1200 THIRD AVENUE, SUITE 1700
SAN DIEGO, CALIFORNIA 92101 TELEPHONE: (619) 236-6020

September 13, 1989

File: Vincent/McKee Sports, Inc.

Vincent/McKee Sports, Inc.
11480 North Torrey Pines Road
La Jolla, CA 92137

Attention Orrin Vincent

Re: Torrey Pines Logo

This letter is authorization to use the Torrey Pines logo in the conduct of your business at the Torrey Pines Golf course. This authorization is nonexclusive and will terminate upon the expiration of your lease. All commercial use of the logo shall be considered as sales from the leasehold, and the appropriate rents shall be due on the proceeds as per our lease agreement (RR267979).

If you have any questions, please contact C. V. Svensson, Property Agent, at (619) 236-7073.


Don Barone
Property Services Supervisor

DSB:CVS:jw(43-2)