

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90807-4664

FIFTH AMENDMENT TO LEASE NO. 17448

**17448**

This Fifth Amendment to Lease No. 17448 ("Fifth Amendment"), dated for reference purposes only as of July 2, 2007 is made and entered, in duplicate, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on June 5, 2007, by and between the CITY OF LONG BEACH, a municipal corporation ("Landlord"), and AMERICAN GOLF CORPORATION, a California corporation ("Tenant").

**RECITALS**

A. The parties entered into Lease No. 17448 on July 18, 1984 (the "Original Lease") and subsequently amended and supplemented the Original Lease pursuant to: (i) the Supplement to Lease dated April 5, 1985 (the "Supplement"); (ii) the Amendment to Lease dated August 18, 1987 (the "Amendment"); (iii) the First Amendment of Lease dated March 22, 1989 (the "First Amendment"); (iv) the Second Amendment of Lease dated June 13, 1989 (the "Second Amendment"); (v) the Third Amendment to Lease No. 17448 dated March 22, 1999 (the "Third Amendment"); and (vi) the Fourth Amendment to Lease No. 17448 dated July 9, 2005 (the "Fourth Amendment"). The Original Lease, as modified by the Supplement, the Amendment, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are referred to in this Fifth Amendment as the "Lease."

B. Attachment "A," depicts the Heartwell Park Golf Course, commonly known as 6730 East Carson Street, within which rests approximately 38,760 square feet of land and building designated as "Special Olympics," hereafter known as "the Special Olympics Leasehold." Landlord and Tenant wish to terminate Tenant's leasehold rights and obligations to the Special Olympics Leasehold. Tenant may enter into a landscape maintenance agreement with any new tenant of the Special Olympics Leasehold.

1           Additionally, Tenant in order to help facilitate the lease of the Special Olympics  
2 Leasehold will agree to share its rights over fifteen (15) unspecified parking spaces within  
3 the parking lot, including ingress and egress to and from the parking lot, at 6730 East  
4 Carson Street (the "Parking Lot").

5           NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
6 conditions contained in this Fifth Amendment, Landlord and Tenant agree as follows:

7           1. Lease No. 17448 is hereby amended to terminate all of Tenant's  
8 leasehold rights and obligations, as they pertain to the "Special Olympics Leasehold."  
9 Tenant will use good faith efforts to enter into a landscape and parking lot maintenance  
10 agreement with any new tenant of the Special Olympics Leasehold.

11           2. Tenant shall share the rights to fifteen (15) unspecified parking  
12 spaces within the Parking Lot, including ingress and egress to and from the Parking Lot,  
13 with any new tenant of the Special Olympics Leasehold. Tenant's indemnity obligation  
14 under the Lease shall not apply to third party claims brought by any new tenant of the  
15 Special Olympics Leasehold, its employee, representative or invitees arising from or  
16 relating to the new tenant's use of the Parking Lot except to the extent Tenant's gross  
17 negligence or willful misconduct. Landlord and Tenant shall share equally in the  
18 maintenance costs associated with maintaining the Parking Lot.

19           3. Landlord shall include the following term in the Indemnity section of the  
20 lease pertaining to the Special Olympics Leasehold:

21           "In addition, Lessee shall assume the risk of damage and injury and hereby  
22 releases Lessor and American Golf Corporation from any and all liability for damage or  
23 injury specifically caused by errant golf balls in, on, or around the Premises, and agrees  
24 to indemnify and hold harmless Lessor and American Golf Corporation, from any and all  
25 claims, actions, costs, or liability arising from any damage or injury caused, directly or  
26 indirectly, by golf balls flying, landing, hitting, or resting in or around the Premises."  
27  
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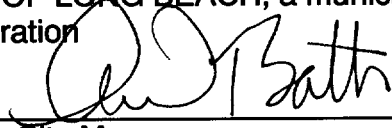
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4. Except as expressly amended herein, all of the terms and conditions in Lease Agreement No. 17448 are ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Fifth Amendment with all formalities required by law as of the date first stated above.

CITY OF LONG BEACH, a municipal corporation

By:   
City Manager

"Landlord"

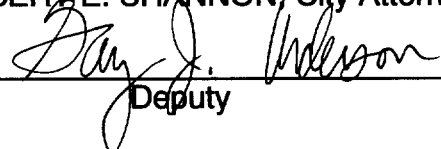
AMERICAN GOLF CORPORATION, a California corporation

By:   
Chief Operations Officer Executive/Vice/President /  
West  
By:   
Chief Financial Officer  
Secretary

"Tenant"

This Fifth Amendment to Lease No. 17448 is approved as to form on September 6, 2007.

ROBERT E. SHANNON, City Attorney

By:   
Deputy



**Heartwell Park Golf Course**  
 Leased Area Revision

