

**FIRST AMENDMENT  
TO  
LEASE AGREEMENT**

THIS FIRST AMENDMENT to LEASE AGREEMENT ("**First Amendment**") is made and entered into effective as of the 1<sup>st</sup> day of June, 2016, by and CITY OF DEER PARK, a municipal corporation organized under the laws of Texas as Landlord, and (hereinafter called "**Landlord**") and TOUCHSTONE GOLF, LLC, as Tenant (hereinafter called "**Tenant**"). For and in consideration of the mutual covenants and agreements herein contained, Landlord and Tenant hereby amend as of the date of this First Amendment that certain Lease Agreement ("**Lease Agreement**") between Landlord and Tenant executed as of the May 29, 2013, related to the BATTLEGROUND AT DEER PARK GOLF COURSE, in the following respects:

Section 1.     Amendment to Lease Agreement.

**Sections 6.1** of the Lease Agreement the following is included:

6.1     Minimum Rent

(a)     Commencing with the Lease Year beginning June 1, 2016, Tenant shall pay Landlord rent in the amount of \$1.00 per year, payable on June 1st of each year until Tenant has recouped Capital Expenditure Investment Amount in the amount of \$520,854.97 ("**Capital Expenditure Investment Amount**") from Annual Capital Investment Amounts. The "**Annual Capital Investment Amount**" for each Lease Year shall be equal to Tenant's net income from the Leased Premises after a reduction equal to 2% of gross revenue capital contribution required by Section 12 hereof. Any Minimum Rent paid for the period after June 1, 2016 shall be credited back to Tenant for Landlord's reimbursements. If Tenant does not complete the full term of the lease for any reason, Tenant shall owe Landlord amounts due Landlord for the remaining time on lease due under the original terms of lease.

(b)     For any Lease Year after Tenant has received the Capital Expenditure Investment Amount in full, Tenant will pay to Landlord an annual minimum rent of sixty thousand dollars (\$60,000.00) per Lease Year, payable in twelve (12) installments of five thousand dollars (\$5,000.00) on the 15th of each month.

**Section 6.2** of the Lease Agreement is deleted and the following is substituted:

6.2     Percentage Rent

Tenant has paid Landlord payment of Percentage Rent through May 31, 2015. Landlord waives the payment of Percentage Rent for the year ending May 31, 2016. If Tenant does not complete the full term of the lease for any reason, Tenant shall owe Landlord amounts due Landlord for the remaining time on lease due under the terms below. In any Lease Year after the Tenant has recouped the Capital Expenditure Investment Amount in full, Tenant shall pay as percentage rent the amount of money that

is arrived at by calculating the percentages of gross revenue set forth below Tenant will pay to Landlord percentage rent based upon the following formula:

(a) Five percent (5%) of gross revenue from greens fees, membership fees, driving range fees including lessons and cart rentals; and

(b) Three percent (3%) of gross revenue from golf merchandise sales and food and beverage sales, derived from Tenant's operations at the Leased Premises.

**Section 11** of the Lease Agreement the following is added:

#### CAPITAL IMPROVEMENTS

For the Lease Years commencing June 1, 2016, two percent (2%) of annual gross golf revenue for the completion of capital improvements and purchase of capital equipment "Capital Improvements Funds") shall be expended for capital improvements and the purchase of capital equipment. Landlord acknowledges that Tenant has performed the obligations under Section 12 of this Lease for the periods prior to this First Amendment and has performed the obligations for the Lease Year ending May 31, 2017 Tenant may make capital improvements other than those specified in Exhibit C during the Term of this Lease and renewals thereof, however, Landlord's prior mutual agreement and approval of plans and specifications must be obtained for all capital improvements, which approval shall not be unreasonably withheld, delayed or conditioned. All capital improvements and capital equipment shall become property of Landlord at the time of purchase or completion. In constructing the specified capital improvements, Tenant may find it necessary at times to close portions of the course, but Tenant agrees that it will keep at least nine (9) holes open for play at all times. At the end of the Term, any unused portion of the Capital Improvements Funds shall be paid by Tenant to Landlord. Once the Capital Expenditure Investment Amount is recouped by tenant the percentage paid by Tenant toward the Capital Improvement Fund shall revert back to four percent (4%) of annual gross golf revenues.

Tenant will provide Landlord with a security bond in the amount of \$50,000 to cover annual capital improvements beginning June 1, 2017.

**Section 20** of the Lease Agreement is deleted and the following is substituted in its place:

#### ASSIGNMENT

Except as otherwise provided below, Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises without written consent of Landlord, provided that Tenant to this Lease shall continue to be liable for all obligations under this Lease. Tenant shall notify Landlord of any proposed assignment or subletting. In the event that any such assignment or subletting at least thirty (30) days prior to the proposed effective date of such assignment or subletting and shall provide Landlord with all financial documentation and other information required by Landlord to evaluate such proposed assignment or subletting. In the event that any such assignment or subletting is approved by Landlord, the assignee or sublessee shall agree in writing to be bound by all of the covenants of this Lease required of Tenant. Any assignment or

subletting in violation of this Section 20 shall be null and void. Landlord shall have the right to sell, convey, transfer, assign, pledge, mortgage or encumber, in whole or in part, all and every feature of Landlord's rights and obligations hereunder and in the Buildings and the Leased Premises. Upon the occurrence of any sale, conveyance, transfer or assignment, such successor in interest shall be deemed to have assumed Landlord's rights and obligations under this Lease, Landlord will be released from all obligations hereunder, and Tenant agrees to look solely to such successor-in-interest of Landlord for the performance of such obligations. Tenant shall have the right to engage independent contractors for professional golf instruction without obtaining Landlord's consent hereunder.

Tenant may sublet the food operations to a restaurateur who has a minimum of 5 years' experience providing food and beverage services to the general public and has expertise in catering. In order to gain Landlord's approval for the sublet, the Tenant will present to the Landlord's City Council at least thirty (30) days prior to the proposed effective date of such sublet, the identity and qualifications of the restaurateur for consideration. In the event the Council approves the sublet, Tenant may proceed with the sublet, but the Tenant remains responsible for the operation of the food and beverage operation as defined by this Agreement.

Section 2.     Ratification.

Except as amended hereby, the Lease Agreement shall remain unchanged and the terms, conditions, representations, warranties, and covenants of said Lease Agreement are true as of the date hereof, are ratified and confirmed in all respects and shall be continuing and binding upon the parties.

Section 3.     Defined Terms.

All terms used in this First Amendment which are defined in the Lease Agreement shall have the same meaning as in the Lease Agreement, except as otherwise indicated in this First Amendment.

Section 4.     Multiple Counterparts.

This First Amendment may be executed by the parties hereto in several separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 5.     Applicable Law.

This First Amendment shall be deemed to be a contract under and subject to, and shall be construed for all purposes in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized officers as of the \_\_\_\_\_ day of \_\_\_\_\_ 2016.

**LANDLORD:**

CITY OF DEER PARK, a municipal corporation  
organized under the laws of Texas

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

**TENANT:**

TOUCHSTONE GOLF, LLC

By: \_\_\_\_\_  
Name: Stephen T. Harker  
Title: President and Chief Executive Officer