

Lease # 145B

**LEASE TERMINATION AGREEMENT**

This Lease Termination Agreement ("Agreement"), which supersedes and replaces the Lease Termination Agreement dated November 16, 2007, is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between King County, a political subdivision of the State of Washington ("Lessor"), and Covington Golf Course, Inc, a Washington Corporation ("Lessee"), as follows:

**RECITALS**

- A. Lessor, acting in the capacity of and therein referred to as "Lessor," has entered into the Lease Agreement dated April 14, 1993 with Lessee, acting in the capacity of and therein referred to as "Lessee;" and Lessor, acting in the capacity of and therein referred to as "County" has entered into the Agreement and Amendment of Lease dated June 14, 2001 ("Amendment") with Lessee, acting in the capacity of and therein referred to as "Golf Course" (collectively the April 14, 1993 and June 14, 2004 agreements are referred to as the "Lease"), for certain premises known as the Elk Run Golf Course consisting of a strip of land approximately 300 feet in width located on the perimeter of Summit Pit containing approximately 58 acres, and legally described on attached Exhibit A and shown on a drawing attached as Exhibit B.
- B. The Lease provided that fair market value would be the basis of the rent, and acknowledged that a leasehold appraisal indicated a "most probable specific rent of \$64,800 per year," but reduced the rental rate for the first three years to allow the golf course to mature with limited levels of play.
- C. The Lease provided that the Lessor could adjust the rent every three years, but that rent in years 6, 7 and 8 would be set at a reduced rent of approximately 80% of fair market value, or \$4,320 per month.
- D. It was agreed that future fair market rental values would be based on golf course use or other uses compatible with low density residential zoning, and not on potential future high intensity uses. It was agreed that a probable method of setting future rents would be based on a percentage of greens fees against a specified minimum and that other alternative methods would be considered.
- E. The County and the Golf Course disagreed over the fair market rental value for years 6 and 7, the period April 14, 1999 through April 13, 2001. The June 14, 2001 Amendment established rent for that two-year period at \$67,170 per year, with rent adjusting to fair market value under the lease on April 14, 2001.
- F. Since that time, the County and the Golf Course have been unable to agree on the fair market rental value and have been in dispute over the amount of rent due and owing under the Lease. The County has demanded payment and given default notices on August 24, 2005, August 6, 2006, September 7, 2006 and December 8, 2006. The Golf Course has failed to pay the amounts demanded and the Lease account balance is currently approximately \$80,000.

G. To resolve this dispute, Lessor and Lessee agreed on November 16, 2007, to amend the Lease and to provide for its termination effective December 1, 2007, subject to approval of the transaction by the County Council.

H. The previously stated effective date for the lease termination has passed while Council approval is still pending.

I. The project timeframe for Summit Pit surplus property sale has been revised substantially so that Lessee's occupancy can be extended for a longer period than previously anticipated.

NOW, THEREFORE, in consideration of resolving the rent dispute, terminating the Lease and removing the Lease as an encumbrance to the property and premises, and of the other mutual covenants herein contained Lessor and Lessee agree as follows:

### SECTION 1 TERMINATION OF LEASE

a. **Termination of Lease.** Lessor and Lessee agree that Section 3 of the Lease is amended and the Lease shall terminate as of the King County Council's approval of this Agreement (the "Termination Date"). By signing where indicated below, the undersigned Daryl Connell and Roy Humphreys represent and warrant to Lessor that they (d/b/a Covington Golf Course) are the only "Lessee" under the Lease, the Lease has not been assigned or transferred to any other person or entity, and that they have the authority to terminate the Lease without the consent of any other person or entity.

### SECTION 2 SETTLEMENT OF RENT

Lessor and Lessee agree that this Lease Termination constitutes full settlement and satisfaction of Lessor's claim for unpaid rent, through and including the date of execution of this Agreement.

### SECTION 3 SETTLEMENT OF TENANCY

Lessor and Lessee agree that in full settlement and satisfaction of Lessee's claim to a right of occupancy under the original Lease:

(1) Lessor shall allow continued use and occupancy under a Special Use Permit, to be separately executed by the County. Such permit shall be for a term expiring January 1, 2012, renewable for such additional period or periods as Lessor may determine, but not to exceed beyond the date that King County Roads Maintenance moves its operations from Summit Pit (Vacate Date). Lessee shall have the option to terminate the Special Use Permit early upon the giving of 30-days notice, which early termination shall have no effect on Lessor's obligation to pay Lessee compensation for termination of the Lease.

(2) Lessee shall vacate the premises on or before January 1, 2012, unless arrangements for continued occupancy are made, pursuant to Subsection 3(1) above.  
 (2) Lessor shall pay to Lessee \$ 4,000,000 as compensation for lease termination. Such amount shall be payable on the Vacate Date.

**SECTION 4  
 IMPROVEMENTS**

All buildings and other improvements on the premises shall become the property of Lessor on the Vacate Date without compensation to the Lessee.

**SECTION 5  
 MUTUAL RELEASE**

In consideration of this Agreement, and subject to Section 3 above, Lessor and Lessee hereby release and forever discharge each other, and their respective partners, officers, directors, agents, trustees, beneficiaries, and employees, of and from any and all claims, acts, damages, demands, rights of action and causes of action which each party ever had, now has, or in the future may have, against the other, arising from or in any way connected with the leased premises or the Lease; provided, nothing herein shall be deemed to release either party from their respective obligations under this Agreement.

**SECTION 6  
 COUNCIL APPROVAL CONTINGENCY**

This Agreement and each of Lessor's and Lessee's rights and obligations hereunder are subject to and contingent upon approval of this Agreement by the King County Council, notwithstanding Lessor's execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Termination Agreement as of the date first hereinabove written.

**LESSEE:**

Covington Golf Course, Inc., a Washington Corporation

By: \_\_\_\_\_  
 President

By: \_\_\_\_\_  
 Managing Partner

**LESSOR:**

King County, a political subdivision of the State of Washington

By: \_\_\_\_\_  
 Manager, Real Estate Services

By: \_\_\_\_\_  
 Linda Dougherty  
 Manager, Road Services Division

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this day personally appeared before me Wayne Richardson the person who signed this instrument on behalf of King County, to me known to be the Manager of King County Real Estate Services, Facilities Management Division, King County, Washington and said person stated that he is authorized to execute said instrument and acknowledged the said instrument to be the free and voluntary act and deed of said County for the uses and purposes therein mentioned..

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this day personally appeared before me Daryl Connell and Roy Humphreys, to me known to be the President and Secretary of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

### Special Use Permit Use of County Owned Property

Permit Number: 5-\_\_\_\_\_

Date: \_\_\_\_\_

Permittee: **Covington Golf Course, Inc, a Washington Corporation**  
22500 SE 275th Place  
Maple Valley, Washington 98038-8185

Purpose: To use a portion of King County property as a golf course.

Legal Description: The NW Quarter of Section 34, Township 22 North, Range 6 East, Willamette Meridian, commonly known as Summit Pit, being approximately 156 acres of County owned land used for County Roads maintenance operations. This permit relates to approximately 58 acres that constitutes a 300 foot buffer strip around the perimeter of this property.

Expiration: This permit expires January 1, 2012, and may be renewed for additional one year periods at the option of the County.

Termination: This permit may be terminated at any time by Permittee upon 30 days written notice to the County. Permittee shall surrender possession upon termination or expiration of the permit and all buildings and other improvements on the premises shall become the property of County without compensation to the Permittee.

**Permit Fee:**

For 2008: \$58,496.28 annually

- to be paid monthly in payments of \$4,874.69 on the 20<sup>th</sup> of each month of the Permit period.

Permit fees for future years shall be recalculated based upon the formula: 8.25% of previous year greens fees, ~~and maintenance fees.~~

**PERMITTEE:**

**Covington Golf Course, Inc., a Washington Corporation**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Managing Partner

**PERMITTOR:**

**King County, a political subdivision of the State of Washington**

By: \_\_\_\_\_  
Manager, Real Estate Services  
Facilities Management Division  
Department of Executive Services

**CUSTODIAL AGENCY:**

By: \_\_\_\_\_  
Linda Dougherty  
Manager, Road Services Division  
Department of Transportation