

MASTER GROUND LEASE

This **MASTER GROUND LEASE** (this “**Lease**”) dated as of December __, 2019 (the “**Effective Date**”) is entered into by and between **CITY OF GARDEN GROVE**, a California municipal corporation (“**Landlord**”), and **MWILLOWICK LAND, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, “**Tenant**”).

RECITALS

A. Landlord owns certain real property located at 3017 West 5th Street within the corporate limits of the City of Santa Ana consisting of approximately One Hundred Two (102) acres as described in the legal description attached hereto as Exhibit A (the “**Land**”). Each party acknowledges that the land entitlement authority with respect to the “**Property**” (as hereinafter defined) is Santa Ana and that the other party has made no assurances or representations concerning the availability, nature, or scope of Entitlements that may be given by Santa Ana or the conditions that may be imposed by Santa Ana in connection therewith. Landlord hereby acknowledges that Tenant has made no representations or assurances regarding the performance of the **Property** or the “**Project**,” including the availability, nature, or scope of, or Tenant’s ability to obtain, any “**Entitlements**,” or the amount of “**Percentage Rent**” (as such terms are hereinafter defined) or any component thereof or any amount thereof that will be received by Landlord.

B. Landlord desires to lease the **Property** to Tenant, and Tenant desires to lease the **Property** from Landlord, pursuant to the terms and conditions of this Lease.

C. The **Property** is improved with and is operating as an 18-hole golf course, clubhouse, driving range and other amenities (“**Willowick Golf Course**”), pursuant to that certain Willowick Golf Course Management Agreement with Billy Casper Golf, LLC, a Virginia limited liability company (“**BCG**”), dated as of May 15, 2019 (the “**Management Agreement**”).

D. This Lease is in the vital and best interests of the City of Garden Grove, and in accordance with applicable state and local laws and requirements.

E. The foregoing Recitals constitute a substantive part of this Lease.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, Landlord and Tenant agree as follows:

ARTICLE 1 LEASE OF THE PROPERTY.

1.1 Lease of the Property. Landlord hereby leases the **Property** to Tenant, and Tenant hereby leases the **Property** from Landlord, on the terms and conditions set forth in this Lease. Subject to the provisions of Section 5.3 hereof and the “**Assignment and Assumption of Management Agreement**” (as hereinafter defined), Tenant shall, concurrent with the **Effective Date** and thereafter, be the owner of all Improvements and all Personal Property and Intangible Property (other than the **Management Agreement**). Landlord hereby covenants that Tenant shall take possession of the **Property** under this Lease concurrently with the **Commencement Date**. Landlord

hereby assigns its rights under the Management Agreement to Tenant hereunder and Tenant assumes all of Landlord's rights, obligations and liabilities as "Owner" under the Management Agreement first arising and accruing from and after the Effective Date; provided, however, that the "Excluded Liabilities" (as hereinafter defined) shall remain a liability of Landlord.

Tenant shall pay (a) all recording charges associated with the transfer of the leasehold interest by Landlord to Tenant under this Lease, (b) the title premium for any title insurance policy issued in favor of Tenant, and (c) 50% of all escrow charges payable in connection with this Lease. Landlord shall pay (x) all transfer taxes payable in connection with the transfer of the leasehold interest by Landlord to Tenant under this Lease or any other Transfer contemplated by Article 24 of this Lease, and (y) 50% of all escrow charges payable in connection with this Lease. Any other costs payable in connection with this Lease shall be allocated between the parties in accordance with local custom.

1.2 Purpose of this Lease. The purpose of this Lease is to provide for the development, ownership, master planning, operation (including, subject to Article 12, operation as a golf course), leasing and monetization of the Land in accordance with the Entitlements as will be determined by Tenant (the "**Project**"). The term "**Project**" as used herein also includes the process of obtaining the Entitlements required for the development, construction, ownership, use and operation of the Land (and the other transactions contemplated by this Lease). Tenant shall not occupy or use the Property, nor permit the Property to be occupied or used, nor do or permit anything to be done in or on the Property, in whole or in part, for any other purpose other than the Project during the Term of this Lease pursuant to the terms and provisions of this Lease.

1.3 Recorded Encumbrances. This Lease, the interests of Landlord and Tenant hereunder, and the Property, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way and easements of record as of the Effective Date or otherwise permitted pursuant to the terms of this Lease.

1.4 Memorandum of Master Ground Lease. The Memorandum of Master Ground Lease shall be executed by Landlord and Tenant concurrently herewith and recorded in the Official Records concurrently with the Commencement Date. This Lease shall be effective without regard to whether the Memorandum of Master Ground Lease has been recorded in the Official Records.

1.5 Other Documents. Concurrently herewith, Landlord or Tenant, or both, as applicable, shall execute (cause to be acknowledged by a notary, if applicable) and deliver to the other party, (1) a grant deed in the form of Exhibit C attached hereto (the "**Initial Deed**"), conveying title to the Improvements, (2) a bill of sale, assignment and assumption agreement in the form of Exhibit D attached hereto (the "**Bill of Sale**"), conveying title to the Personal Property and Intangible Property (other than the Management Agreement), and (3) an assignment and assumption of management agreement in the form of Exhibit E attached hereto (the "**Assignment and Assumption of Management Agreement**").

ARTICLE 2 DEFINITIONS.

Capitalized terms used herein are defined where first used in this Lease and/or as set forth in this Article 2.

“Additional Rent” means the additional rent which may be required to be paid by Tenant to Landlord pursuant to Section 4.1.3.

“Affiliate” means, with respect to a Person, any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Person in question.. The term **“control”** (and words of similar import, whether or not capitalized) means (a) with respect to a Person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of such Person, and (b) with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person.

“Appurtenances” means all easements, rights-of-way, and appurtenances benefiting the Land.

“Award” means any compensation or payment made or paid for the Total Taking, Substantial Taking, Partial Taking or Temporary Taking of all or any part of or interest in the Property, whether pursuant to judgment, agreement or otherwise.

“Base Rent” is defined in Section 4.1.1, and was paid concurrently herewith.

“Breach” is defined in Article 21.

“City” means City of Garden Grove, acting in its governmental capacity.

“City Attorney” means the City Attorney of the City of Garden Grove or such other legal counsel as may be designated for such purpose from time to time by the City Manager.

“City Manager” means the City Manager of the City of Garden Grove or his designee who shall represent Landlord in all matters pertaining to this Lease. Any action, approval, consent or other determination required or permitted to be undertaken by Landlord hereunder may be made by the City Manager, and City Manager is authorized, but not required, to so act (and Tenant may rely on the same), unless this Lease specifically provides otherwise.

“Commencement Date” means the Effective Date.

“Complete,” “Completes,” “Completion” or “Completed,” with reference to each Improvement, means the date on which Tenant is eligible to receive a Certificate of Occupancy for each respective Improvement.

“CPI” means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup “All Items,” for the Los Angeles-Riverside-Orange County area, 1982 – 84 = 100, or successor or equivalent index

in case such index is no longer published. CPI adjustments under this Lease shall commence in the year following the Commencement Date.

“County” means the County of Orange, California.

“Default” has the meaning set forth in Article 21.

“Entitlements” means the licenses, permits, entitlements and other approvals (including the Master Development Plan) that are issued or required to be issued by the City of Santa Ana or any other applicable governmental agency for the development, construction, ownership, use and operation of the Project.

“Entity” means any partnership (general, limited or limited liability), a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental, quasi-governmental, judicial or regulatory entity or any department, agency or political subdivision thereof.

“Environmental Laws” means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601, *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, Santa Ana, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Landlord, Tenant, or the Property.

“Excluded Liabilities” means each of the following: (i) any historic liabilities or other liabilities with respect to the Property or the Management Agreement attributable to the period prior the Effective Date; and (ii) any liabilities arising on or after the Effective Date as a result of any action or omission by Landlord or any other Landlord Related Person that constitutes Substandard Conduct or a breach of this Lease.

“Extension Base Rent Payment(s)” mean the First Extension Base Rent Payment and, if applicable, the Second Extension Base Rent Payment, collectively.

“Fiscal Quarter” means each three (3) calendar month period ending March 31, June 30, September 30 or December 31.

“Force Majeure Event” is defined in Article 23.

“Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County, Santa Ana, or any other political subdivision in which the Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Landlord, Tenant or the Property, as may be amended from time to time, including all applicable state and federal labor standards, all applicable Local Codes, all applicable Environmental Laws, all applicable Uniform Codes including, building, plumbing, mechanical and electrical codes, and all other applicable disabled and handicapped access requirements, and further including without limitation, all applicable governmental requirements, including without limitation, to the extent applicable, the payment of prevailing wages in compliance with Labor Code Section 1770, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.*

“Gross Revenue” has the meaning set forth therefor in Schedule 1 hereto.

“Hazardous Material” or **“Hazardous Materials”** means and includes any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, the State of California, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a “hazardous waste,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter Presley Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls; (ix) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903); (xi) methyl tertiary-butyl ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any applicable Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, *et seq.*, specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as

Governmental Requirements, including those products and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and occupancy of commercial buildings and grounds, or typically used in commercial activities in a manner typical of other comparable commercial developments (e.g., common cleaning solvents, liquid paper), or substances commonly ingested by a significant population living within the Improvements, including without limitation alcohol, aspirin, tobacco and saccharine.

“Improvements” means all buildings, structures, fixtures and other improvements currently existing or hereafter located on the Land, including, if (and to the extent) applicable, the Willowick Golf Course.

“Indemnity” is defined in Section 16.5.

“Insurance Requirements” means all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.

“Intangible Property” means all right, title and interest of Landlord in and to the Management Agreement, and to the extent assignable, the names “Willowick” and “Willowick Golf Course,” governmental permits, licenses and approvals, warranties and guarantees that Landlord has received in connection with any work or services performed with respect to, or equipment installed in, all or any portion of the Real Property, tenant lists, advertising materials, telephone exchange numbers, development plans, renderings, studies, and other intangible personal property related to all or any portion of the Real Property or Personal Property.

“Landlord Delay” shall mean any prevention, delay, nonperformance or stoppage due to (i) Landlord’s failure to comply with any provision of this Lease; (ii) Landlord’s failure to comply with the deadlines set forth in this Lease; or (iii) any Substandard Conduct by Landlord or any other Landlord Related Person.

“Landlord’s Actual Knowledge” means the actual knowledge of any one or more of Lisa Kim, Dan Candelaria and Greg Blodgett, with no duty of investigation or inquiry of any kind or nature whatsoever, and there shall be no personal liability arising out of the representations or warranties made herein.

“Landlord Related Person” means any of Landlord and the elected officials, officers, agents and representatives of Landlord.

“Major Change” means any change to the Master Development Plan or the Marketing Plan (as applicable) that (i) increases or reduces the total allowable gross building area of non-residential buildings by 20% or more in the aggregate and/or (ii) increases or reduces the total number of allowable residential dwelling units by 10% or more in the aggregate, in each case with respect to the entire Project taken as a whole.

“Master Development Plan” means the comprehensive land-use entitlement document granted by Santa Ana (e.g., a Specific Plan or PUD or similar approval) for the development of substantially all of the Project. Landlord and Tenant will mutually execute a certificate identifying the Master Development Plan promptly following completion and final approval thereof by Santa Ana. It is understood that any statements in this Lease relating to the receipt of the Master Development Plan are intended to mean the receipt by Tenant of the Master Development Plan approved by Santa Ana.

“Master Development Plan Deadline” means the date that is three (3) years after the Commencement Date, as the same may be extended as provided in Section 3.2 or on a day-to-day basis by reason of delays attributable to Force Majeure Events or Landlord Delays.

“Marketing Plan” means a high-level general plan formally proposed and adopted by Tenant and approved by Landlord (such approval not to be unreasonably withheld, delayed or conditioned) for the development and disposition of the Property addressing the anticipated range of uses, quantities, and qualifiers as to levels of quality, and provides categories of target developers, as the same may be amended or modified from time to time by Tenant in its discretion, except that any amendments or modifications that constitute a Major Change shall be subject to the approval of Landlord (such approval not to be unreasonably withheld, delayed or conditioned). Without limitation on the foregoing, the Marketing Plan need not address any other aspect of Project, including the terms and conditions of specific dispositions of property to end users or the uses or programming of specific parcels.

“Material Adverse Change” means any of the following events: (a) a voluntary or involuntary bankruptcy of Tenant (which is not dismissed within ninety (90) days of institution); or (b) a court order placing Tenant under receivership.

“Memorandum of Master Ground Lease” refers to the Memorandum of Master Ground Lease to be recorded against the Property in the Official Records, as described in Section 1.4, in the form attached hereto as Exhibit B and incorporated herein by reference.

“Mortgage” means a mortgage or deed of trust encumbering this Lease.

“Mortgagee” has the meaning set forth in Section 18.1 of this Lease.

“Net Cash Flow” has the meaning set forth therefor in Schedule 1.

“Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

“Official Records”, unless the context requires otherwise, means the Official Records of the County Recorder of Orange County, California.

“Partial Taking” means any Taking of Property that does not constitute a Total Taking or Substantial Taking.

“Parties” means Landlord and Tenant, collectively.

“Percentage Rent” is described in Schedule 1 attached hereto and incorporated herein by reference.

“Permitted Transfer” is defined in Section 17.1.1.

“Person” means an individual or an Entity.

“Personal Property” means all right, title and interest of Landlord in and to all tangible personal property now or hereafter located on or used in connection with all or any portion of the Real Property.

“Personalty” means Tenant’s or its subtenants’ trade fixtures, furniture, equipment, appliances, machinery, movable partitions, signs, inventory and other personal property located in or on the Property.

“Proceeding” means any action, litigation, arbitration, mediation, reference, condemnation, stay, moratoria, judicial challenge or other proceeding.

“Project” is defined in Section 1.2.

“Project Costs” has the meaning set forth therefor in Schedule 1 hereto.

“Property” means, collectively, the Real Property, the Personal Property and the Intangible Property. Once any portion of the Property is conveyed or transferred from time to time as permitted under this Lease, it shall no longer be deemed to be part of the “Property” under this Lease, and the term “Property” shall thereafter only mean the remaining Property, if any.

“Property Litigation” means any current or future Proceeding, where Landlord and/or Tenant is a party or party-in-interest, filed, pending or threatened prior to Tenant’s receipt of the Master Development Plan challenging any of the transactions contemplated by this Lease or any of the terms of such transactions, Landlord’s or Tenant’s authority or ability to enter into or perform under this Lease, or Tenant’s rights to receive the rights, benefits and privileges under this Lease, which Tenant reasonably determines that if such Proceeding were adversely determined would materially hinder or have a material, adverse effect on, or materially delay, this Lease or the Project. Without limitation on the foregoing, Property Litigation includes the Existing Litigation. Property Litigation shall not include any Proceeding with respect to approval of the Entitlements or litigation solely by or against Santa Ana with respect to the Property and/or the approval of the Project.

“Proposed Transfer Audit Notice” is defined in Section 4.3.1.

“Real Property” means, collectively, the Land, Appurtenances, and Improvements.

“Real Property Taxes” is defined in Section 4.5.4.

“Refinance” or **“Refinancing”** means the refinance or refinancing of the any Mortgage that encumbers Tenant’s leasehold interest.

“Related Person” means Tenant, any Affiliate, or any other entity in which Tenant or an Affiliate holds an interest of greater than fifty percent (50%).

“Remaining Parcel” means the portion of the Property that does not constitute the Sale Parcel.

“Rent” means the Base Rent, the Percentage Rent, and the Additional Rent, collectively.

“Sale” means a sale of all or any portion of the Property.

“Sale Parcel(s)” means one or more parcels of Land consisting of up to approximately thirty (30) acres (in the aggregate), to be identified by Tenant from time to time.

“Santa Ana” means the City of Santa Ana, a charter city and municipal corporation.

“Substandard Conduct” means, with respect to a Person, any act or omission by such Person constituting negligence or willful misconduct.

“Substantial Damage” means any fire or other casualty that materially interferes with Tenant’s contemplated development of the Project with respect to any one or more parcels, as reasonably determined by Tenant.

“Substantial Taking” means any Taking that materially interferes with Tenant’s contemplated development of the Project with respect to any one or more parcels, as reasonably determined by Tenant.

“Taking” means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. “Taking” does not include the voluntary dedication by Tenant of any portion of the Property necessary to obtain building permits or to comply with any other applicable governmental rule, regulation or statute.

“Taking Percentage” means a fraction, expressed as a percentage, the numerator of which is equal to the fair market value of the interest of Landlord (i.e., Landlord’s fee interest in the Land (or portion thereof subject to the Taking) as encumbered by this Lease and Landlord’s reversionary interest in the Land and then existing Improvements (or portion thereof subject to the Taking)) or Tenant (i.e., Tenant’s leasehold interest in the Property (or portion thereof subject to the taking) and Tenant’s interest in the then-existing Improvements (or portion thereof subject to the taking)),

as applicable, being taken calculated as of the time thereof, and the denominator of which is equal to the fair market value of such interest plus the fair market value of the interest of Tenant (i.e., Tenant's leasehold interest in the Property and Tenant's interest in the then-existing Improvements, taking into account the future value of any sales contemplated hereby), as of the date of the Taking.

"Temporary Taking" means a Taking of all or any part of the Property and/or the Improvements for a term that is certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period of time or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of such taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total Taking, Substantial Taking or Partial Taking in accordance with the definitions set forth herein.

"Tenant's Actual Knowledge" means the actual knowledge of Peter Lauener, with no duty of investigation or inquiry of any kind or nature whatsoever, and there shall be no personal liability arising out of the representations or warranties made herein.

"Term" has the meaning set forth in Article 3 of this Lease.

"Total Taking" means the Taking of all of the Property.

"Transfer" is defined in Section 17.1.

"Willowick Golf Course" is defined in Recital C.

ARTICLE 3 TERM.

3.1 Term. The term of this Lease (**"Term"**) shall be fifty-five (55) years and shall commence on the Commencement Date and shall end at 11:59 p.m. on the day immediately preceding the fifty-fifth (55th) anniversary of the Commencement Date, unless earlier terminated pursuant to this Lease.

3.2 Certain Time Extensions. Tenant may, at its option, extend the Master Development Plan Deadline, as follows:

3.2.1 If Tenant is not then in Default under this Lease, then Tenant may extend the Master Development Plan Deadline for a period of one (1) year by delivering to Landlord, prior to the then Master Development Plan Deadline, a payment of Five Hundred Thousand Dollars (\$500,000.00) (the **"First Extension Base Rent Payment"**), which shall become part of and constitute Base Rent.

3.2.2 If Tenant is not then in Default under this Lease, and has previously exercised its right to extend pursuant to Section 3.2.1 above, Tenant may further extend the Master Development Plan Deadline for a period of one (1) additional year by delivering to Landlord, prior to the then Master Development Plan Deadline, a payment of Five Hundred Thousand Dollars

(\$500,000.00) (the “**Second Extension Base Rent Payment**”), which shall become part of and constitute Base Rent.

3.3 Termination. In the event Tenant fails to receive the Master Development Plan by the Master Development Plan Deadline, each party shall have the right, as its sole and exclusive remedy at law or in equity, to elect to terminate this Lease by delivering written notice to the other of its election to terminate this Lease pursuant to this Section 3.3 prior to the earlier to occur of (a) the date that is one (1) business day prior to the date that Tenant actually receives the Master Development Plan, or (b) the date that is ninety (90) days after the Master Development Plan Deadline, in which case (i) this Lease, and the obligations of the parties hereunder, shall terminate, (ii) Tenant shall be responsible, at Tenant’s sole cost and expense, for delivering the Property to Landlord with title in the condition required by Section 5.4.1, and (iii) Landlord shall be entitled to keep the Base Rent. For the avoidance of doubt, Tenant has not made (and is not making) any assurances or representations concerning the Entitlements or its ability to receive the Master Development Plan by the Master Development Plan Deadline, and any failure by Tenant to receive the Master Development Plan by the Master Development Plan Deadline shall not be deemed to be a Breach or Default by Tenant of this Lease. Notwithstanding the foregoing, any cure by a Mortgagee of a failure to receive the Master Development Plan by the Master Development Plan Deadline shall be subject to the additional cure period afforded to Mortgagees pursuant to Section 18.2.1, and no termination of this Lease by Landlord may occur until after such additional cure period elapsed and in no event shall such termination by Landlord occur if Mortgagee receives the Master Development Plan within such additional cure period. Landlord shall, whenever and as often as it shall be requested so to do by Tenant, cooperate with, and as requested by, Tenant (and, if requested by Tenant, any governmental agency, including Santa Ana), in connection with Tenant’s pursuit of the Entitlements, and shall promptly execute and deliver (or cause to be executed and delivered), without further consideration, all such additional agreements, consents, affidavits, subordinations, assignments, easements, covenants, licenses, endorsements, plats and conveyance and other documents as determined by Tenant to be required, in connection with the Entitlements.

ARTICLE 4 RENT.

4.1 Rent.

4.1.1 Base Rent. Prior to or concurrently with the Commencement Date, Tenant has paid to Landlord an amount equal to Two Million Dollars (\$2,000,000.00) (the “**Initial Base Rent Payment**”; the Initial Base Rent Payment, together with, if and to the extent applicable, Extension Base Rent Payment(s), are collectively herein called the “**Base Rent**”).

4.1.2 Percentage Rent. In addition to Base Rent, Tenant shall pay to Landlord an amount equal to the Percentage Rent in accordance with Schedule 1.

4.1.3 Additional Rent. In addition to the Base Rent and Percentage Rent required by Sections 4.1.1 and 4.1.2 above, respectively, Tenant shall also pay to Landlord as “Additional Rent” under this Lease any amounts required to be paid by Tenant to Landlord pursuant to Section 20.2.

It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord and that, subject to the provisions of this Lease and the Assignment and Assumption of Management Agreement, Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property or the Improvements thereon which may arise or become due during the Term, and which, except for execution hereof, would or could have been payable by Landlord. The Base Rent, Percentage Rent, the Additional Rent, and, except as set forth in Section 3.2 with respect to the Extension Base Rent Payment(s) (if any), shall be retained by Landlord as its property without regard to whether this Lease remains in effect for the full Term.

4.2 Payment of Rent. All Rent that becomes due and payable pursuant to this Lease shall be paid to Landlord at the address listed in Section 25.1.1 or such other address as Landlord may from time to time designate by written Notice to Tenant.

4.3 Audit.

4.3.1 Right to Audit. Tenant shall keep full and accurate books of account, records and other pertinent data with respect to Tenant's calculation of Gross Revenue, Net Cash Flow and such other matters as are set forth in Schedule 1. Such books of account, records, and other pertinent data shall be kept for a period of three (3) years after the end of each calendar year, and (except for Excluded Materials) shall be made available for review or audit by Landlord or its designees upon providing ten (10) days' written notification to Tenant (but no more frequently than once in any twelve (12) month period). Landlord shall be entitled within three (3) years after the end of each Tenant fiscal year to inspect and examine all of Tenant's books of account, records, and other pertinent data with respect to Tenant's calculation of Gross Revenue, Net Cash Flow and such other matters as are set forth in Schedule 1 (except for Excluded Materials), upon providing ten (10) days' written notification to Tenant (but no more frequently than once in any twelve (12) month period). Tenant shall reasonably cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within three (3) years after the end of each calendar year, at Landlord's cost and expense, to an independent audit of Tenant's books of account, records, and other pertinent data with respect to Tenant's calculation of Gross Revenue (except for Excluded Materials), upon providing ten (10) days' written notification to Tenant (but no more frequently than once in any twelve (12) month period). In the event a Transfer is proposed by Tenant, Tenant may request in writing that Landlord conduct an audit pursuant to this Section, provided that Tenant shall pay Landlord's reasonable costs and expenses, including staff time, incurred in conducting such audit. Landlord shall determine whether to conduct such audit in its sole and absolute discretion and shall notify Tenant of Landlord's decision within thirty (30) days following receipt of Tenant's written request ("**Proposed Transfer Audit Notice**"). If Landlord elects to conduct an audit under this Section, Landlord shall have ninety (90) days to complete the audit; provided that such time period shall not commence until Tenant provides Landlord with all materials and information necessary to properly conduct the audit (except for Excluded Materials). Following the earlier to occur of (a) Landlord's failure to notify Tenant in writing of Landlord's election to conduct such audit within thirty (30) days of Landlord's receipt of the Proposed Transfer Audit Notice, (b) the expiration of ninety (90) days following Landlord's receipt of the Proposed Transfer Audit Notice, as such period shall be extended until Tenant provides Landlord with all materials and information necessary to properly conduct the audit, or (c) Landlord's notification to Tenant within thirty (30) days of Landlord's receipt of the Proposed Transfer Audit Notice that Landlord waives its right to conduct the audit, Landlord shall not have the right to

request books of account, records and other pertinent data under this Section for periods (i) prior to the date of the audit, if conducted by Landlord, and if no audit is performed, then (ii) prior to the effective date of the approved Transfer. Following the date of the audit or the effective date of the approved Transfer, as applicable, Landlord shall have full audit rights under this Section with respect to the then-current Tenant entity's books of account, records and other pertinent data with respect to Tenant's calculation of Gross Revenue (except for Excluded Materials).

4.3.2 Confidential Treatment. The Parties understand that all books of account, records, other pertinent data, and other information and documents (including financial information and statements and investor names) delivered, disclosed or otherwise made available to Landlord or any other Landlord Related Person hereunder shall be kept confidential, constitute "**trade secrets**" as that term is defined in Civil Code section 3426.1(d), and are exempt by law from disclosure to third parties ("**Confidential Treatment**"). Tenant does not waive the confidentiality of any such information or documents by providing Landlord or any other Landlord Related Person original or copies of, or access to, the same. If Landlord is served with a public records request, subpoena, or other legal process concerning such information or documents, Landlord shall immediately (and in no event more than 72 hours after receipt) notify Tenant in writing of the same (together with a copy of such request, subpoena, or other legal process), and, at Tenant's request, Landlord shall object to any such disclosure request. At its election, Tenant may contest the legal validity of such request, subpoena, or other legal process, at its own cost, and Landlord shall reasonably cooperate with Tenant in connection with the same, at no cost to Landlord, provided Tenant shall indemnify and defend, with counsel mutually and reasonably acceptable to Landlord and Tenant, Landlord from all reasonable costs and expenses, including reasonable attorney's fees, related to any such contest by Tenant. Landlord hereby agrees that Tenant shall, acting reasonably, control and make all decisions with respect to such contest of the legal validity of any such request, subpoena, or other legal process or any Proceeding in connection therewith in which Tenant is so indemnifying and defending Landlord. Without limitation on the foregoing, Landlord agrees that (i) all audits are to be conducted at the offices of Tenant and any information and documents delivered, disclosed or otherwise made available to Landlord or any other Landlord Related Person in connection with any such audit shall be afforded Confidential Treatment, (ii) any reporting of such information to Landlord or among the Landlord Related Parties shall be done in a manner that includes Confidential Treatment, (iii) Landlord shall not (and shall cause each other Landlord Related Person not to) disseminate any such information or documents or cause any such information or documents to be reposed in the offices of Landlord, and (iv) any such information or documents that, despite the foregoing provisions of this Section 4.3.2, do not constitute "trade secrets," shall not be removed from the offices of Tenant or included by Landlord, the Landlord Related Persons or their respective employees, consultants or audit personnel in any document or report.

4.3.3 After Foreclosure. After the foreclosure of a Mortgage, acceptance by a Mortgagee of an assignment or deed in lieu of foreclosure, or appointment of a receiver at the request or demand of a Mortgagee, the Mortgagee shall have no obligation to produce Tenant's books and records for the periods prior to the foreclosure or appointment of the receiver.

4.4 Utility Services. Tenant shall pay or cause to be paid all charges for all public utility services rendered to or in connection with the Property or the Improvements, or any part thereof, and shall comply with all contracts executed by Tenant relating to any such utility services,

and will do all other things required for the maintenance and continuance of all such services throughout the Term of this Lease.

4.5 Taxes and Assessments.

4.5.1 Covenant to Pay Taxes and Assessments. Tenant shall pay prior to delinquency all Real Property Taxes (as defined in Section 4.5.4) levied against Tenant's ground lease interest in the Property during the Term of this Lease, subject to Tenant's right to contest same in good faith and/or seek any property tax exemptions, except as provided in Section 4.5.3. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid or that an exemption from such taxes has been obtained. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within ten (10) days after demand from Landlord together with interest at the rate set forth in Section 4.6, as Additional Rent. Landlord shall not cause or approve the Property or any portion thereof to be subject to additional taxes or assessments without Tenant's written consent.

4.5.2 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Property. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord hereby notifies Tenant that by entering into this Lease, a possessory interest subject to assessment and collection of real property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of real property taxes levied on such interest. If possessory interest taxes are assessed, Tenant agrees it is responsible for payment thereof and Landlord has no obligation or liability of any kind or nature relating to payment of property taxes. Tenant acknowledges that Landlord is a tax-exempt public entity and no property taxes will be or are legally assessable against its interest in the Property.

In addition, Tenant shall pay all property taxes and assessments levied against the fee interest of Landlord in the Property.

Notwithstanding the foregoing, in no event shall Tenant be responsible for Landlord's income taxes, profit taxes, business taxes, gross receipts taxes, business licenses fees and taxes, capital levy taxes, inheritance taxes, estate taxes, succession taxes, transfer taxes, recordation taxes, gift taxes, franchise taxes, corporation taxes, documentary stamp taxes, mortgage lien taxes, transfer gains taxes, or recording fees.

4.5.3 Tax Reductions. Tenant shall have the right to seek a reduction in the valuation of the Property (or any portion thereof, including the fee interest) assessed for tax purposes and to prosecute any action or proceeding in connection therewith. Tenant shall be authorized to collect any tax refund obtained by reason thereof and, to the extent such refund is for Real Property Taxes or other amounts paid by Tenant, to retain the same.

4.5.4 Definition of Real Property Tax(es). As used herein, the term "Real Property Tax(es)" shall include any form of real estate tax or assessment (including, without limitation, on possessory interests), general, special, ordinary or extraordinary, and any license fee (except Landlord's business license fee), commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Property or any interest (including, without limitation, possessory interests) therein by any authority having the

direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord or Tenant in the Property or in the real property of which the Property is a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Property. The term "**Real Property Tax(es)**" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "Real Property Tax(es)," or (ii) the nature of which was hereinbefore included within the definition of "Real Property Tax(es)," or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Property or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this lease transaction, any modifications or changes hereto, or any transfers hereof. Notwithstanding the foregoing, Real Property Tax(es) shall not include Landlord's income taxes, profit taxes, business taxes, gross receipts taxes, business licenses fees and taxes, capital levy taxes, inheritance taxes, estate taxes, succession taxes, transfer taxes, recordation taxes, gift taxes, franchise taxes, corporation taxes, documentary stamp taxes, mortgage lien taxes, transfer gains taxes, or recording fees.

4.5.5 Personal Property. Tenant shall pay prior to delinquency all taxes assessed against and levied upon all Personalty of Tenant contained in the Property. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.5.6 Apportionment. If any of Tenant's said personal property shall be assessed with Landlord's real property (other than the Property), first Tenant shall advise the County of Orange Tax Assessor and Tax Collector of the same in writing, and Tenant shall pay Landlord the taxes attributable to Tenant not later than the later of (a) ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property or (b) the date said taxes are due and payable. Tenant shall only be responsible for any Real Property Tax(es) or other amounts payable by Tenant hereunder that are allocable to the period of time covered by the Term of this Lease.

4.6 Overdue Interest. Any amount due to Landlord, if not paid when due and on or before expiration of the period for cure as set forth herein, after Landlord's delivery of notice thereof to Tenant, shall bear interest from the date due until paid at the lower of: (a) the Wall Street Journal Prime Rate as published, in effect from time to time plus three percent (3%); or (b) the highest rate of interest allowed under applicable usury law.

ARTICLE 5 POSSESSION OF PROPERTY.

5.1 Acceptance of Property. Subject to "Landlord's Warranties" (as hereinafter defined), Tenant hereby accepts the Property in its "as-is" condition.

5.2 Intentionally Omitted.

5.3 Ownership of Improvements. Unless otherwise provided herein, during the Term of this Lease title to all Improvements, now existing, to be constructed, or later made, on the Property are and shall be vested in Tenant as set forth in Article 11 hereof.

5.4 Surrender of Property.

5.4.1 Expiration or Termination. Tenant agrees that on the expiration or earlier termination of the Term, whether by reason of Default or otherwise, the leasehold estate hereby granted to Tenant shall be terminated and forfeited and shall revert to Landlord, its successors and assigns, and all Improvements on the Property shall become the property of Landlord, its successors and assigns, free and clear from any liens or claims whatsoever (other than non-monetary liens previously approved or otherwise accepted in writing by Landlord and the “Permitted Encumbrances” (as hereinafter defined) and other encumbrances permitted by this Leases), in their “AS IS” condition, without further compensation therefor from Landlord to Tenant or any other person. Landlord shall be responsible for any Real Property Taxes, sales or use taxes, recordation taxes, transfer tax taxes, and any other taxes whatsoever arising from the Improvements or Property reverting to Landlord under this Section 5.4.1. Following any such expiration or termination, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed, or other document required by a reputable title company, conveying all Tenant’s right, title, and interest in and to the Property and Improvements to Landlord.

5.4.2 Condition. On expiration or earlier termination of the Term and in furtherance of the provisions relating to surrender of the Property set forth in Section 5.4.1 above, Tenant shall peaceably and quietly leave and surrender the Property and the Improvements to Landlord in their “AS IS” condition and repair. Tenant shall leave in place and in their “AS IS” condition and repair, all fixtures and machinery; except Tenant shall have the right to remove any Personalty and other Personalty that Tenant shall have installed in accordance with Section 11.1.2, in which case Tenant shall repair any damage to the Property or Improvements caused by such removal.

5.4.3 Delivery of Documents. Contemporaneously with the expiration or earlier termination of the Term and subject to the provisions of Sections 5.4.1 and 5.4.2 hereof, Tenant shall immediately deliver to Landlord the following (without any representation or warranty):

(a) Such documents, instruments and conveyances as Landlord may reasonably request to enable Landlord’s ownership of the Property to be reflected of record, including a quitclaim deed in recordable form to the Property.

(b) All construction plans, as-builts, surveys, permits, existing contracts for services, maintenance, operation, and any other documents relating to use, operation, management, and maintenance of the Improvements as may be in effect and in the possession of Tenant at the time and from time to time thereafter and further described in Section 7.6.

(c) All documents and instruments required to be delivered by Tenant to Landlord pursuant to this Section shall be the originals or copies of the same then in Tenant’s possession.

Notwithstanding the foregoing, or anything to the contrary contained herein, in no event shall Tenant be obligated to deliver any **“Excluded Materials,”** which as used herein, means (1) emails and (2) any proprietary, sensitive or confidential information, documents or negotiations, including: (a) documents that are subject to attorney-client privilege or that are attorney work product; (b) any document that Tenant is legally required not to disclose; (c) organizational, financial, employee, investor and other internal documents relating to Tenant or its future, present or prior, direct or indirect, owners or their respective Related Persons (other than any evidence of due authorization and organization required under this Lease) including, without limitation: (i) any materials relating to the background or financial condition of a future, present or prior, direct or indirect, partner, shareholder, member, director, officer, employee, investor or agent of Tenant or its future, present or prior, direct or indirect, owners or their respective Related Persons, (ii) the internal books and records of Tenant or its future, present or prior, direct or indirect, owners or their respective Related Persons relating, for example, to contributions and distributions, and (iii) financial analyses or projections (e.g., Tenant’s budgets, cost-basis information and capital account information); (d) preliminary or draft assessments, reports or studies, or assessments, reports or studies that have been superseded by final reports or studies, (e) offers, terms and agreements made to or received from third parties, and (f) any other information or documents disclosed, delivered or made available to Landlord or any other Landlord Related Person on a confidential basis.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES; MATERIAL ADVERSE CHANGE.

6.1 Landlord’s Representations. Landlord represents and warrants to Tenant, as of the Commencement Date, as follows:

6.1.1 Quiet Enjoyment. Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold, occupy and enjoy the Property, subject only to the terms of this Lease, without interference, hindrance or molestation from Landlord or any other Person claiming by, through or under Landlord or any predecessor in title. Except as identified on Schedule 2 attached hereto (the **“Exception Schedule”**), there are no agreements, contracts, restrictions, covenants, encumbrances, easements or Entitlements affecting the Property or the Project.

6.1.2 Conflict with Other Obligations. Neither the execution of this Lease nor the Memorandum of Master Ground Lease, nor the performance of the obligations herein will conflict with, or breach any of the provisions of any law, bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Landlord or the Property may be bound.

6.1.3 Authority. This Lease has been duly approved by the governing board of Landlord and the individuals executing this Lease on behalf of Landlord have been duly authorized to do so. Landlord has full power and authority to execute and deliver this Lease, the Memorandum of Master Ground Lease and all other documents or instruments executed and delivered, or to be executed and delivered, by Landlord pursuant to this Lease, and to perform and observe the terms and provisions of all of the above. This Lease and any other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease

constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Landlord enforceable against it in accordance with their respective terms, subject to application of laws relating to bankruptcy, insolvency, or other laws affecting the enforcement generally of creditors' rights and remedies.

6.1.4 Bankruptcy. Landlord is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Landlord to be able to transfer an interest in the Property.

6.1.5 Litigation. Except as described in Section 6.2.7, Landlord has not been served with any notice of any Proceeding, and Landlord has not received any other written notice of any pending or threatened Proceeding, of any kind against or involving Landlord relating to the Property or any part thereof, including any condemnation action relating to the Property or any part thereof.

6.1.6 Governmental Compliance. Except as disclosed in the Exception Schedule, to Landlord's Actual Knowledge, Landlord has not received any notice from any governmental agency or authority alleging that any portion of the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation and the Property is currently in compliance with all applicable Governmental Requirements. Landlord has not been served with any notice of any (and Landlord has not received other written notice from any applicable governmental authority of any pending or threatened) condemnation action with respect to the Property.

6.1.7 Right to Possession. Except as identified on the Exception Schedule, no Person has or will have the right to possess the Property, or any portion of it, as of the Commencement Date.

6.1.8 No Commitments. Landlord has not made any commitments to any governmental authority, utility company, school board, church or other religious body, or any homeowners' association or any other organization, group or individual, relating to the Property that would impose an obligation upon Tenant to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off of the Property which, as of the Commencement Date, will not have been satisfied in full or terminated.

6.1.9 Outstanding Agreements. There are no outstanding agreements (written or oral) pursuant to which Landlord has agreed to sell or has granted an option or right of first refusal or first or last offer to lease all or any portion of the Property or any interest therein (other than as contained in this Lease).

6.1.10 Management Agreement. Landlord has delivered to Tenant a true, correct and complete copy of the Management Agreement. The Management Agreement is in full force and effect, has not been amended, modified, supplemented or terminated, and is free from default. There are no written or oral modifications or understandings or other agreements between any one or more of BCG or its Affiliates, on the one hand, and any one or more of any Landlord or any other Landlord Related Person, on the other hand. Landlord is the holder of all right, title and

interest to the interest of “Owner” under the Management Agreement, free and clear of liens, encumbrance or other rights of any direct parties. The current approved budget under the Management Agreement is attached hereto as Schedule 3.

6.1.11 Environmental. (i) To Landlord’s Actual Knowledge, there are no current or potential violations of Environmental Laws applicable to the Property or the ownership, use or occupancy thereof, and there have been no violations of any such laws, (ii) Landlord has not violated Environmental Laws applicable to the Property; (iii) there are no pending or, to Landlord’s Actual Knowledge, threatened actions arising under or pursuant to any Environmental Laws with respect to or affecting the Property, (iv) To Landlord’s Actual Knowledge: other than Hazardous Materials used as fuels, lubricants or otherwise in connection with vehicles, machinery and equipment located at the Property in commercially reasonable amounts in compliance with Environmental Laws, no Hazardous Materials are or have been present on or in the Property or any portion thereof, and the Hazardous Materials described in the foregoing clause have been and are being used and disposed of in compliance with all Environmental Laws, and (v) To Landlord’s Actual Knowledge, there are no underground or aboveground storage tanks, asbestos or PCBs located on, in or under the Property. Other than as disclosed in the Exception Schedule, Landlord does not have any other reports relating to the environmental matters pertaining to the Property, the possession or control of Landlord or any other Landlord Related Person.

6.1.12 Other Agreements. Except for the “Memorandum of Understanding” and the “Agreement to Explore Redevelopment” (as such terms are hereinafter defined), there are no agreements between or among any one or more of Landlord and any other Landlord Persons, on the one hand, and Santa Ana, on the other hand, respecting the Property. As used herein, (a) “**Memorandum of Understanding**” means that certain Memorandum of Understanding Between City of Santa Ana and City of Garden Grove, stamped with a date of November 30, 2017, and (b) “**Agreement to Explore Redevelopment**” means that certain Agreement Between City of Santa Ana and City of Garden Grove to Explore the Redevelopment of the Willowick Golf Course Site in the City of Santa Ana, stamped with a date of May 25, 2018.

6.1.13 Full Disclosure. Prior to the Effective Date, to Landlord’s Actual Knowledge, Landlord has delivered to Tenant all documents and materials, and has disclosed in writing to Tenant all information, which in either case, is known by, or in the possession or control of, Landlord in respect of the Property of the type that would be material to an institutional tenant in connection with the transactions contemplated by this Lease.

6.1.14 Survival of Certain Representations. The representations and warranties set forth in this Section 6.1 shall survive the Commencement Date. During the entire Term of this Lease, within ten (10) business days following a written request from Tenant, Landlord shall either re-affirm in writing the material truth and accuracy of the representations and warranties set forth in this Section 6.1 or identify any material inaccuracies of such representations and warranties. The fact that a representation or warranty contained in this Section 6.1 has become inaccurate or misleading shall not, in and of itself, constitute a Breach under this Lease by Landlord, however, (a) failure to notify Tenant of material inaccuracies in these representations and warranties within ten (10) business days of Tenant’s request for such information, subject to delivery of notice and expiration of the cure period provided hereunder, and (b) any overt material misrepresentation by

Landlord relating to such representations and warranties (without notice or opportunity to cure having been provided by Tenant) shall each constitute a Landlord Default hereunder.

6.2 Tenant's Representations. Tenant represents and warrants to Landlord, as of the Commencement Date, as follows:

6.2.1 Tenant is a limited liability company duly organized, validly existing, and formed under the laws of Delaware, and in good standing under the laws of the State of California that has the power and authority to own property and carry on business as is now being conducted.

6.2.2 Tenant has full power and authority to execute and deliver this Lease, the Memorandum of Master Ground Lease and all other documents or instruments executed and delivered, or to be executed and delivered, by Tenant pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

6.2.3 This Lease and any other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Tenant enforceable against it in accordance with their respective terms, subject to application of laws relating to bankruptcy, insolvency, or other laws affecting the enforcement generally of creditors' rights and remedies.

6.2.4 To Tenant's Actual Knowledge, Tenant is not in default under any law or regulation or under any order of any federal, state, or local court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to Tenant's Actual Knowledge, threatened against or affecting Tenant or the Property, at law or in equity, before or by any federal, state, or local court, board, commission or agency whatsoever which might, if determined adversely to Tenant, materially affect Tenant's ability to perform its obligations hereunder.

6.2.5 Tenant has examined the Property and acknowledges that it hereby accepts possession of the Property in its "AS IS" condition, with all faults and defects, including, without limitation, any physical condition or environmental condition of the Property. Tenant acknowledges that the land entitlement authority with respect to the Property is Santa Ana, and, subject to Landlord's Warranties, Landlord has made no assurances or representations concerning the availability, nature, or scope of Entitlements that may be given by Santa Ana or the conditions that may be imposed by Santa Ana in connection therewith. The foregoing provisions of this Section 6.2.5 shall not relieve Landlord from, nor limit, waive, release or negate, its representations, warranties, covenants, indemnities, and agreements set forth in this Lease (collectively, the "**Landlord's Warranties**") or any remedy in connection with a breach thereof.

6.2.6 [Intentionally omitted.]

6.2.7 Landlord has disclosed to Tenant, and Tenant is aware, that there is currently pending litigation (the "**Existing Litigation**") against Landlord affecting the Property, entitled Orange County Communities Organized for Responsible Development v. City of Garden Grove, et. al., Orange County Superior Court Case No. 30-2019-01102770. Tenant is aware of said litigation and that interim and/or final judgments or orders arising out of said litigation could

affect the Property and/or the validity of this Lease, and acknowledges that, subject to Section 6.1.5, Landlord has made no assurances or representations concerning the litigation or outcome of the litigation; provided, however, Tenant shall have the ongoing right to terminate this Lease by giving written notice of such termination to Landlord in connection with any adverse developments, decisions or outcomes with respect to the Existing Litigation or to new instances of Property Litigation, as reasonably determined by Tenant, in which case (i) this Lease, and the obligations of the parties hereunder, shall terminate (except as provided in clause (ii) of this Section), and (ii) Landlord shall, within five (5) business days thereof, as Tenant's sole and exclusive remedy, return to Tenant the Base Rent (less the "Base Rent Independent Consideration" (as hereinafter defined)). The foregoing provisions of this Section 6.2.7 shall not relieve Landlord from, nor limit, waive, release or negate, any of Landlord's Warranties (or any remedy in connection with a breach thereof). Notwithstanding anything to the contrary contained herein, Landlord shall in all events be entitled to retain \$200,000 (the "**Base Rent Independent Consideration**") of the Initial Base Rent Payment. The Base Rent Independent Consideration constitutes rent hereunder and, together with all amounts expended by Tenant in connection with this Lease and the Project, including its costs and other pre-development expenses incurred by Tenant, constitutes bargained-for consideration for this Lease, including Tenant's rights under this Section 6.2.7.

6.2.8 Survival of Certain Representations. The representations and warranties set forth in this Section 6.2 shall survive the Commencement Date during the Term of this Lease.

ARTICLE 7 CONSTRUCTION OF THE IMPROVEMENTS.

7.1 Construction of Improvements. Tenant shall use commercially reasonable efforts to commence and complete construction of the Improvements in accordance with applicable Governmental Requirements and to conduct any Sales of the Sale Parcels and Parcel Ground Leases of the Remaining Parcels in accordance with the Marketing Plan.

Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable Governmental Requirements, including all applicable state labor standards (including the Local Code and any other zoning and development standards, building, plumbing, mechanical and electrical codes that are applicable, and all other provisions of the Local Code, and the Fair Housing Act, 42 U.S.C. Section 3601 *et seq.* (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and the California Building Standards Code, Health and Safety Code Section 18900, *et seq.*).

7.2 Alterations. Subject to obtaining the applicable Entitlements, to the extent required therefor, Tenant may from time to time, at its sole expense, demolish, replace, rebuild and make any improvements, additions and other alterations to the Property (collectively, "**Alterations**") which Tenant determines to be necessary, desirable or beneficial, including constructing any buildings or other improvements on the Property, and razing or destroying any building and any other improvements presently or in the future located on the Property. The responsibility of Tenant in relation to Alterations or otherwise with respect to any land or other

property conveyed that constitutes a Permitted Transfer shall cease upon the payment to Landlord of an amount hereafter reasonably approved by Landlord.

7.3 Construction Cost. Tenant shall bear the entire and sole cost of constructing the Alterations, including all fees and mitigation measures.

7.4 Diligent Prosecution to Completion. Once Tenant, at its election, commences the construction of any Alterations, Tenant shall, with reasonable diligence, prosecute such Alterations to completion. All Alterations shall be constructed and completed in a good and workmanlike manner and shall comply with this Lease and all applicable Governmental Requirements.

7.5 Right of Access. During normal construction hours and subject to the rights of subtenants of the Property, upon at least three (3) business days' prior written notice to Tenant, representatives of Landlord shall have the reasonable right of access to the Property without charges or fees for the purpose of inspecting the work of the Alterations; provided, however, that such representatives shall present and identify themselves at Tenant's construction office, be accompanied by a representative of Tenant while on the Property and obey Tenant's, or its contractor's, safety rules and regulations. Landlord shall deliver written notice of the identity of its representatives to Tenant before such representatives enter the Property. Landlord hereby indemnifies and holds Tenant, and its contractors, subcontractors, agents, representatives and employees, and the Property, harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from the exercise by Landlord, or any party acting under Landlord's authority, of the rights granted by this Section 7.5.

7.6 Master Development Plan; Governmental Approvals. Tenant shall consult with Landlord and receive Landlord's approval (which shall not be unreasonably withheld, conditioned or delayed) with respect to the proposed Master Development Plan and any Major Change thereto. Tenant covenants and agrees that it will endeavor to deliver to Landlord conformed copies (and certified copies of all recorded instruments) of all material governmental approvals of the primary Entitlements for the Project (which shall not include such materials for individual Alterations, the Sale Parcels or the Remaining Parcels), within sixty (60) days following each such respective governmental approval(s) issued by Santa Ana. In no event shall Tenant commence construction of any Alterations pursuant to the provisions of this Article 7 until such time as Tenant shall have obtained all necessary governmental approvals and permits to so commence to construct such Alterations.

7.7 Landlord's Right to Discharge Lien. If Tenant does not cause to be recorded the bond described in California Civil Code Section 8424 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been entered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section, together with all Landlord's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs from the date of payment until the date of reimbursement at the rate set forth in Section 4.6.

7.8 Notice of Non-Responsibility. Tenant shall provide Landlord with prior written notice of not less than fifteen (15) days before commencing the initial vertical construction of the Project.

7.9 Provision of Information, Consultation with Landlord. Starting with the Commencement Date and continuing until the Master Development Plan is received, Tenant shall meet with City Manager and his or her designees during each Fiscal Quarter for the purpose of informing Landlord as to the progress of Tenant in performing under this Lease. Commencing as of the time the Master Development Plan is received, Tenant shall meet with City Manager and his or her designees annually. Additional consultation shall take place as mutually agreed upon by Landlord and Tenant.

ARTICLE 8 USE OF THE PROPERTY.

Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant's interest in the Property or any part thereof, that all activities undertaken by Tenant pursuant to this Lease, shall conform to all applicable Governmental Requirements. The foregoing covenants shall run with the land.

ARTICLE 9 INSURANCE AND INDEMNIFICATION.

9.1 Landlord Not Liable. Except as the result of any grossly negligent or willful act or omission by Landlord or any other Landlord Related Person, or as otherwise expressly set forth herein, Landlord, in its capacity as landlord under this Lease only, shall not be liable for injury to Tenant's business or any loss of income therefrom or for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant, or to Tenant's sublessees of each and all of the Improvements, or to Tenant's agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees or any other Person which occurs on the Property during the Term.

9.2 Indemnification. Tenant shall defend, indemnify, pay for, assume all responsibility for, and hold the Landlord Related Persons harmless from, all third party claims or demands, and actual out-of-pocket damages, defense costs or liability of any kind or nature caused by the performance by Tenant or Tenant's employees, agents, contractors, and/or consultants under this Lease, including compliance with all applicable Governmental Requirements, and any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are caused by any acts or omissions of Tenant under this Lease, whether such activities or performance thereof be by Tenant or by anyone directly or indirectly employed or controlled by Tenant and whether such damage shall accrue or be discovered before or after termination of this Lease and arising prior to the expiration or earlier termination of the Term of this Lease. However, notwithstanding the foregoing, in no event shall the foregoing indemnity cover any matter arising or accruing or related to any Property Litigation or any action or omission by Landlord or any other Landlord Related Person which constitutes a breach of this Lease or Substandard Conduct. Tenant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Tenant

determines in its reasonable discretion that such action is not meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Tenant shall compromise or settle such action in a way that fully protects Landlord Related Persons from any liability or obligation. In this regard, Tenant's obligation and right to defend shall include the right to hire (subject to written reasonable approval by Landlord) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Landlord Related Persons. If Tenant defends any such action, as set forth above, (i) Tenant shall indemnify and hold harmless Landlord Related Persons from and against any third party claims and actual out-of-pocket losses, damages or liabilities assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Landlord shall be entitled to settle any such claim only with the written consent of Tenant and any settlement without Tenant's consent shall release Tenant's obligations under this Section 9.2 with respect to such settled claim. This Section notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 16.5 hereof.

9.3 Insurance.

9.3.1 Tenant's Insurance. Commencing as of the Effective Date and continuing for so long as this Lease remains in effect, Tenant shall maintain at Tenant's sole expense, or cause to be maintained, the following policies of insurance in form and substance reasonably satisfactory to Landlord:

(a) workers' compensation as required by law and employer's liability insurance with a limit of not less than \$1,000,000 per accident;

(b) prior to commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder's risk-all risk insurance covering 100% of the replacement cost of all Improvements (including all materials, whether stored on or offsite) during the course of construction in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard "all risk" (currently called "special form – causes of losses) insurance covering 100% of the replacement cost of the Improvements (excluding foundations, footings, excavations and other uninsurable improvements) in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Property is located and, if the Property is in an area designated as a Special Flood Zone, flood insurance with the maximum limits available under the NFIP program. Tenant shall have the right, but not the obligation, to maintain or caused to be maintained earthquake insurance; and

(d) a Commercial General Liability ("CGL") policy combined single limit policy for both personal injury and property damage in the amount of \$5,000,000, as the same may be increased as determined by Tenant. These limits may be satisfied through a combination

of primary, excess, and/or umbrella policies and which will be considered equivalent to the required minimum limits.

9.3.2 Insurance Requirements. All insurance required under Section 9.3.1 may be satisfied by blanket insurance policies. Certificates of insurance for the above policies shall be delivered to Landlord from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. Prior to the expiration of each policy, upon Landlord's written request in each instance, Tenant shall deliver to Landlord evidence of renewal or replacement of such policy reasonably satisfactory to the City Attorney. Coverage provided hereunder by Tenant shall be primary insurance and not be contributing with any insurance maintained by Landlord, and the policy shall contain such an endorsement. The above-described policies shall have a commercially reasonable deductible or self-insured retention amount. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A:VI or better in the most recent edition of "Best's Key Rating Guide -- Property and Casualty." The required certificate shall be furnished by Tenant at the time set forth herein.

9.3.3 Minimum Coverage/Endorsements. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection afforded by these policies shall be written on an occurrence basis in which Landlord (the "**Additional Insured**") is named as an additional insured on all coverage, except for (i) Workers' Compensation coverage, but including Employers Liability coverage, and (ii) the policies required under Section 9.3(b) and (c), and shall:

(a) Name the Additional Insured (from above) as an additional insured on the CGL policy;

(b) Include an endorsement to the CGL policy naming the Additional Insured as an additional insured, and said endorsement shall be delivered to Landlord prior to the Effective Date (and maintained as required herein); provided, however, that an individual endorsement specifically naming the Additional Insured shall not be required if Tenant provides documentation which demonstrates that the Additional Insured is otherwise automatically covered under some sort of blanket policy language that clearly establishes the Additional Insured's status as an additional insured under the policy, without the need for a separate endorsement in favor of the Additional Insured;

(c) Tenant shall also file with Landlord the following signed certification:

"Tenant is aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

(d) All Additional Insureds shall not be responsible for any claims in law or equity occasioned by the failure of Tenant to comply with this Section 9.3.3. Landlord shall have the right, but not the obligation, to pay a premium on behalf of Tenant and be reimbursed by Tenant as Additional Rent.

(e) [Intentionally omitted].

(f) Notwithstanding any other provision of this Lease, any policy of property insurance procured pursuant to this Section 9.3 of this Lease may contain a mortgage loss payable clauses and any proceeds of a claim thereunder shall be paid over to Mortgagee (and if there is more than one Mortgagee, in the order of priority of their liens), to be applied against the indebtedness which Mortgagee's security instruments on the interest of Tenant in the Property secures. Furthermore, Mortgagee shall have the right to participate in the adjustment of any losses with respect to insurance proceeds, subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage.

9.3.4 Reduction in Requirements. Landlord's City Manager is hereby authorized to reduce the requirements set forth herein, on a temporary or permanent basis, in the event he determines, in his sole discretion, that such reduction is in Landlord's best interest.

9.4 Contractors. All contractors employed by Tenant with contracts of Fifty Thousand Dollars (\$50,000.00) or more shall be required to furnish evidence of Commercial General Liability insurance to Tenant subject to all the requirements stated herein with limits of not less than One Million Dollars (\$1,000,000.00) each occurrence. The foregoing dollar amount limitation shall be increased as determined by Tenant. Landlord Related Persons shall have the right to receive evidence of compliance with the foregoing by contractors at any time upon written request therefor.

9.5 Waiver of Subrogation. Each policy of property insurance procured pursuant to Article 9 shall contain, if obtainable upon commercially reasonable terms, either (i) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy. Notwithstanding anything to the contrary contained herein, each of the parties hereto waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of such other party, for loss or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the form of insurance policies required to be carried pursuant to Article 9 of this Lease or under any other policy of insurance carried by such waiving party.

ARTICLE 10 MAINTENANCE OF THE PROPERTY.

10.1 General Maintenance by Tenant. Prior to the discontinuation of the existing golf course located on the Property, Tenant shall maintain or cause to be maintained the Property as a public golf course facility in conformity with the standard that exists as of the Effective Date. Upon Tenant's receipt of the Master Development Plan, and thereafter, Tenant shall cause the Property to be maintained in conformity with all applicable Governmental Requirements (the "**Maintenance Standard**"). To accomplish the maintenance, Tenant may, at its option, either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease; provided, however, Tenant shall

have the right to permit any subtenant of the Property to maintain or cause to be maintained any and all Improvements constructed by such subtenant or located on such subtenants' premises.

Landlord agrees to notify Tenant in writing if the condition of the Property does not meet with the Maintenance Standard and to specify the deficiencies and the actions required to be taken by Tenant to cure the deficiencies. Upon notification of any maintenance deficiency, Tenant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent and material relating to the public health and safety, then Tenant shall have two (2) business days to rectify the problem. In the event Tenant does not maintain the Property in accordance with the Maintenance Standard, Landlord shall have, in addition to any other rights and remedies hereunder, the right to contract for the correction of such deficiencies, after written notice to Tenant and the applicable cure periods set forth herein, and Tenant shall be responsible for the payment of all such costs incurred by Landlord within thirty (30) days after Tenant's receipt of copies of contractor's invoices or other written evidence of the costs incurred by Landlord or such other evidence as Tenant may request.

10.2 Inspections of the Property. Landlord shall have the right (but not the obligation) to conduct annual inspections of the Property to confirm Tenant's compliance with Section 10.2. Landlord shall provide at least two (2) business days' written notice prior to entering onto the Property to conduct such inspection and/or evaluation, subject to the rights of the subtenants of the Property.

ARTICLE 11

OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS.

11.1 Ownership During Term.

11.1.1 Improvements. Subject to the provisions of Sections 5.4.1 and 5.4.2 hereof, all Improvements on the Property as permitted or required by this Lease shall, during the Term, be and remain the property of Tenant, and Landlord shall not have title thereto.

11.1.2 Personal Property. All Personalty, which are not so affixed to the Property or the buildings thereon as to require substantial damage to the buildings upon removal thereof (unless Tenant repairs such damage) shall constitute Personalty including, but not limited to: (a) functional items related to the everyday operations of the Property; (b) personal property furnishings, fixtures and equipment of the nature or type deemed by law as permanently resting upon or attached to the buildings or land by any means, including, without limitation, cement, plaster, nails, bolts or screws, or essential to the ordinary and convenient use of the Property and the Improvements. Any time during the Term and at termination thereof, Tenant shall have the right to remove any and all personal property, furnishings, fixtures and equipment that was originally delivered to or installed at the Property by Tenant after the Commencement Date; provided that Tenant shall repair any damage to the Property or the Improvements caused by such removal. In the event that Tenant has not removed its Personalty by the expiration of the Term, Landlord may, at its option, after thirty (30) days written notice to Tenant, remove, store, retain or dispose of the same in any manner that Landlord may see fit.

11.1.3 Lien Waivers. Landlord acknowledges and agrees that Tenant's and its subtenants' Personalty may be leased from an equipment lessor or encumbered by Tenant's or its subtenants' lender(s) ("Equipment Lessor") and that Tenant or its subtenant(s) may execute and enter into an equipment lease or security agreement with respect to such Personalty ("**Equipment Lease**"). If and to the extent required by any Equipment Lease or Equipment Lessor, Landlord shall execute and deliver to the Equipment Lessor a written consent or acknowledgment, in recordable form and in scope and substance reasonably satisfactory to both Landlord and such Equipment Lessor in which Landlord (a) acknowledges and agrees that the Personalty which is the subject of the Equipment Lease constitutes the personal property of Tenant, and shall not be considered to be part of the Property, regardless of whether or by what means they become attached thereto, (b) agrees that it shall not claim any interest in such Personalty, and (c) agrees that Equipment Lessor may enter the Property during the Term and during a period of thirty (30) days thereafter for the purpose of exercising any right it may have under the provisions of the Equipment Lease, including the right to remove such Personalty, provided that such Equipment Lessor agrees to repair any damage resulting from such removal. Such consent or acknowledgment documents shall also contain such other provisions as may be common in the equipment leasing or lending industry.

11.1.4 Basic Building Systems. For purposes of this Lease, the personal property, furnishings, fixtures and equipment described in this Section 11.1 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, heating and central air-cooling system.

11.2 Ownership at Expiration or Termination.

11.2.1 Property of Landlord. In accordance with provisions of Sections 5.4.1 and 5.4.2 hereof, and except as provided in Section 11.2.2, at the expiration or earlier termination of the Term, all Improvements which constitute or are a part of the Property shall become (without the payment of any compensation whatsoever to Tenant or to others) the property of Landlord free and clear of all liens, claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant, except for Permitted Encumbrances and such title exceptions permitted or required during the Term with Landlord's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

11.2.2 Removal by Tenant. Subject to the provisions of Section 5.4.2 hereof, within thirty (30) days following the expiration or earlier termination of the Term, Tenant may remove all personal property, furniture, equipment, and other Personalty.

11.2.3 Unremoved Property. Any personal property, furnishings or equipment which is owned by Tenant or a sublessee or subtenant of Tenant and not removed by Tenant pursuant to Section 11.2.2 hereof, shall, without compensation to Tenant, become Landlord's property, free and clear of all claims to or against them by Tenant or any third person, firm or entity arising by, through or under Tenant.

11.3 Waste. Subject to the alteration rights of Tenant and any damage or destruction or Taking of the Property or any part thereof, Tenant shall not commit active, intentional physical waste of the Property, or any part thereof. For the avoidance of doubt, the shutting down of the

Willowick Golf Course or the vacating of any Improvements in connection with the development of the Project shall not constitute “waste.”

11.4 Compliance with Laws. Tenant shall carry out the construction, operation, and management of the Project in conformity with all applicable federal, state and local laws, including, without limitation, all applicable state labor standards, zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of any governmental agencies having jurisdiction over development of the Property, and all applicable Governmental Requirements.

ARTICLE 12 CONTINUED GOLF COURSE OPERATION.

Tenant acknowledges that the Management Agreement is in effect as of the Effective Date, and that under the Management Agreement golf course operations are in effect as of the Effective Date. The golf course operations shall continue until at least such time as Tenant has received the Master Development Plan, or such earlier date as may be mutually agreed by the Parties. Tenant shall have the right at any time after Tenant’s receipt of the Master Development Plan to terminate or modify (in whole or in part), and otherwise act as the “Owner” under, the Management Agreement, including to discontinue golf course operations at the Property (in whole or in part). City shall not be responsible for payment of early termination fees, if any, payable under the Management Agreement as a result of any termination of the Management Agreement by Tenant.

ARTICLE 13 CASUALTY.

13.1 Damage or Destruction Due to Cause Required to be Covered by Insurance Covered by Insurance. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no obligation to restore any Improvements after a fire or other casualty. If Tenant elects not to restore all or any portion of the Improvements, then Tenant shall promptly raze such damaged Improvements and maintain such portion of the Property in a safe manner reasonably free of rubbish. Subject to Section 13.2 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Tenant, and if Tenant elects to repair or reconstruct the Improvements, Tenant shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be constructed pursuant to this Lease, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Tenant shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Lease. Following the completion of any such repair, replacement, or restoration (subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage), any additional or excess insurance proceeds received by Tenant shall be the property of Tenant. Landlord shall cooperate with Tenant, at no expense to Landlord, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then existing laws of any other governmental agencies with jurisdiction over the Property do not permit the repair, replacement, or restoration, Tenant may elect not to repair, replace, or restore the Project by giving

notice to Landlord (in which event Tenant will be entitled to all insurance proceeds but Tenant shall be required to remove all debris from the applicable portion of the Property and, at Tenant's election, this Lease shall terminate) or Tenant may reconstruct such other improvements on the Property as are consistent with applicable Governmental Requirements and reasonably approved by Landlord. In the event the Improvements are destroyed within the last five (5) years of the Term, Tenant shall have the option to terminate this Lease upon written notice to Landlord. In such event, Tenant shall immediately tender possession of the Property to Landlord. Tenant shall have no obligation to pay any insurance proceeds to Landlord.

13.2 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the Project is completely destroyed or suffers Substantial Damage caused by a casualty for which Tenant is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild then Tenant may, at its option, terminate this Lease upon written notice to Landlord, such termination to be effective on the date specified in such notice, which date shall be no sooner than the date of the casualty nor later than one hundred eighty (180) days after the date of such notice. In such event, Tenant shall immediately tender possession of the Property to Landlord.

ARTICLE 14 COVENANTS.

14.1 Tenant covenants by and for itself and any successors in interest to all or any portion of the Property that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

14.2 Tenant shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) **In leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

‘That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.’”

14.3 Landlord shall, at its cost, use its best efforts to defend the Existing Litigation and any other Property Litigation to which it is a party in a way that protects the interests of the transactions contemplated by this Lease, and Landlord shall reasonably consult with Tenant regarding the same and take into account such suggestions as may be provided by Tenant from time to time with respect thereto, provided the foregoing shall not be construed as an indemnification of Tenant in such Property Litigation if Tenant is a party thereto.

ARTICLE 15 EMINENT DOMAIN.

15.1 Notice. The party receiving any notice of the kind specified in this Section 15.1 shall promptly give the other party notice of the receipt, contents and date of the notice received. For purposes of this Article 15, the term “Notice” shall include:

- (a) Notice of Intended Taking;
- (b) Service of any legal process relating to condemnation of the Property or the Improvements;
- (c) Notice in connection with any proceedings or negotiations with respect to such condemnation; or
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

15.2 Representation in Proceedings or Negotiations. Landlord and Tenant (and if applicable, Mortgagee) shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of their claims. Landlord and Tenant each agree to execute and deliver to the other any instruments which may be required to effectuate or facilitate the provisions of this Lease relating to

condemnation. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

15.3 Total Taking.

15.3.1 In the event of a Total Taking that occurs prior to Tenant's receipt of Master Development Plan or, if earlier, the Master Development Plan Deadline, all proceeds from a Total Taking shall be the sole property of Landlord.

15.3.2 In the event of a Total Taking, this Lease shall terminate as of the date of the Taking.

15.3.3 If this Lease is terminated pursuant to this Section 15.3 and such Total Taking occurs after the earlier to occur of Tenant's receipt of the Master Development Plan or the Master Development Plan Deadline, the Award for such Taking shall be apportioned and distributed as follows:

- (a) First, to the Mortgagee, if any, to the extent of the Mortgage;
- (b) Second, to Landlord its Taking Percentage of the balance of the Award; and
- (c) Finally, the remaining balance to Tenant.

15.4 Substantial Taking.

15.4.1 In the event of a Substantial Taking, Tenant may, subject to the rights of the Mortgagee, if any, terminate this Lease. If Tenant elects to terminate this Lease under this provision, Tenant shall give written notice of its election to do so to Landlord within forty-five (45) days after receipt of a copy of a Notice of Intended Taking. In the event Landlord disputes the right of Tenant to terminate this Lease under this Section, Landlord shall give Tenant notice of such fact within thirty (30) days after receiving the notice of Tenant's election to terminate. In the event it is determined that Tenant does not have the right to so terminate this Lease, the apportionment of the Award for such Taking and the obligations of Tenant to restore shall be governed by the terms of Section 15.6 or Section 15.8, whichever is applicable.

15.4.2 In the event that Tenant elects to terminate this Lease by exercising its right to do so under this Section, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:

- (a) First, to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to the extent of the Mortgage;
- (b) Second, to Landlord its Taking Percentage of the balance of the Award; and

- (c) Finally, the remaining balance to Tenant.

15.5 Tenant's Right to Revoke Notice of Termination. Notwithstanding anything to the contrary contained in Section 15.4, if Tenant has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Tenant shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

15.6 Partial Taking.

15.6.1 In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be an equitable abatement in or reduction of any of Tenant's obligations hereunder.

15.6.2 The Award for such Partial Taking shall be apportioned and distributed

- (a) First, to the Mortgagee, if any, to the extent of the Mortgage;
- (b) Second, to Landlord its Taking Percentage of the balance of the Award; and
- (c) Finally, the remaining balance to Tenant.

15.7 Obligation to Repair on Partial Taking. Promptly after any Partial Taking and regardless of the amount of the Award for such Taking, Tenant shall, to the extent of the Award received by Tenant (net of any amounts payable attributable to business interruption) and in the manner specified in the provisions of this Lease, repair, alter, modify or reconstruct the Improvements so as to make them usable for the purposes set forth in this Lease.

15.8 Temporary Taking.

15.8.1 In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Tenant, and, subject to the other provisions of this Section 15.8, Tenant shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Lease, and Landlord shall be entitled to any Award or payment for such use after the termination of this Lease.

15.8.2 If, after the occurrence of a temporary taking, possession of the Property and/or Improvements shall revert to Tenant prior to the expiration of the Term, Tenant shall, to the extent of the amount of any award or payment, restore the Property and/or Improvements so that the Property and/or Improvements in every respect shall upon completion of such restoration be in the same condition as they were prior to the taking thereof.

15.8.3 Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to the extent of the Mortgage, then to Landlord absolutely, together with the remaining balance of any other funds paid to Tenant for such damages or cost of

restoration and Tenant shall thereupon be excused from any obligation to restore the Property and/or Improvements upon the termination of such Temporary Taking except that any obligation that may have accrued for Tenant to restore the Property and/or Improvements prior to the commencement of said Temporary Taking shall continue to be the obligation of Tenant.

15.9 Landlord Participation. Notwithstanding anything to the contrary contained herein, Landlord shall not (and shall cause other Landlord Related Persons not to) initiate, consent to, approve, or otherwise participate in any Taking respecting all or any portion of the Property or cooperate with any other Person exercising any power or right of eminent domain or Taking of the Property or any portion thereof.

15.10 Mortgagee Protection. Notwithstanding anything contained in this Lease to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to be applied in accordance with the Leasehold Mortgage and other documents that govern the loan secured by the Leasehold Mortgage to reduce the Leasehold Mortgage if required by the Leasehold Mortgage documents.

ARTICLE 16 ENVIRONMENTAL.

16.1 Intentionally Omitted.

16.2 No Warranties As To Property. Subject to Landlord's Warranties, the physical condition of the Property is and shall be delivered from Landlord to Tenant in an "as-is" condition, with no warranty expressed or implied by Landlord including the presence of Hazardous Materials, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Property for the development purposes intended hereunder.

16.3 Tenant Release. As of the Commencement Date, Tenant agrees, with respect to the Property, to release Landlord, from and against any Environmental Liabilities except liabilities arising out of any Substandard Conduct by Landlord or any other Landlord Related Person occurring after the Commencement Date or as otherwise herein provided. Tenant shall establish the date that the Environmental Liability occurred. At the request of Tenant, Landlord shall cooperate with and assist Tenant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that Landlord shall not be obligated to incur any expense (other than a de minimis expense) in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Lease.

Tenant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.”

As such relates to this Section 16.3, effective as of the Commencement Date, subject to Landlord’s Warranties and the other provisions of this Article 16, Tenant waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Notwithstanding anything to the contrary contained in this Article 16 or otherwise in this Lease, nothing in this Lease shall constitute a release, limitation or waiver of any breach of, or obligation to perform, any Landlord’s Warranties, Substandard Conduct by Landlord or any other Landlord Related Person, or third party claims.

16.4 Tenant Obligations After Commencement Date. From and after the Commencement Date, Tenant shall exercise reasonable precautions in an effort to prevent the release into the environment of any Hazardous Materials from the Property in violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with applicable environmental Governmental Requirements. Tenant further agrees to comply with all applicable environmental Governmental Requirements in connection with the disclosure, storage, use, removal and disposal of any Hazardous Materials.

16.5 Tenant and Landlord Indemnities.

16.5.1 As of the Commencement Date, Tenant agrees, with respect to the Property, to indemnify, defend and hold Landlord Related Persons harmless from and against (“**Indemnity**”) any third party claim, action, suit or proceeding, and any actual out-of-pocket loss, damage, liability, fine, penalty or reasonable cost or expense (including reasonable attorneys’ fees) by third parties for bodily injury or property damage, resulting from or based upon the following first occurring after the Commencement Date: (i) the presence, release, use, generation, discharge, storage or disposal by Tenant of any Hazardous Materials on, under, in, about, or from or the transportation by Tenant of any such Hazardous Materials to or from, the Property in violation of Environmental Laws; (ii) the violation by Tenant of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from the Property; and (iii) damage to person or property arising out of or related to Tenant’s investigations of the Property (collectively “**Environmental Liabilities**”), except any Environmental Liabilities arising out of the Substandard Conduct of Landlord or any other Landlord Related Person occurring after the Commencement Date. Landlord shall establish with substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include any damage, liability, fine and penalty arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment to the extent payable by Landlord to any third party. At the request of Tenant, Landlord shall cooperate with and assist Tenant in its defense of any such Environmental Liability; provided that Landlord shall not be obligated to incur any expense in connection with such cooperation or assistance.

16.5.2 Landlord agrees, with respect to the Property, to indemnify, defend and hold Tenant and any Mortgagee (and their respective successors, assigns, and Related Persons) harmless from and against any third party claim, action, suit or proceeding, and any actual out-of-pocket loss, damage, liability, fine, penalty or reasonable cost or expense (including reasonable attorneys' fees) by third parties for bodily injury or property damage, resulting from or based upon the following occurring on or prior to the Commencement Date or arising out of any Substandard Conduct by Landlord or any other Landlord Related Person occurring after the Commencement Date: (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in, about, or from or the transportation of any such Hazardous Materials to or from, the Property in violation of Environmental Laws; and (ii) the violation of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from the Property. This Indemnity shall include any damage, liability, fine and penalty arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment to the extent payable by Tenant to any third party.

16.5.3 The foregoing Indemnities shall survive the termination, expiration, invalidation, or performance in full or in part of this Lease.

16.6 Notice and Remediation by Tenant. Tenant shall promptly give Landlord, and Landlord shall give Tenant, written notice of any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials located at the Property.

ARTICLE 17 TRANSFERS.

Because of the importance that Landlord places on Tenant's qualification, expertise and identity, and the reliance Landlord makes upon Tenant's ability to operate the Project, during the Term of this Lease, Tenant shall not assign or attempt to assign this Lease or any right herein, except to such transferees as approved or permitted pursuant to this Article 17.

17.1 Transfers by Tenant. The identities and qualifications of Tenant, as an experienced and successful developer are of particular concern to Landlord. It is because of this identity and these qualifications that Landlord has entered into this Lease with Tenant. Except as expressly set forth in Section 17.1.1 or 17.1.2, no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease by assignment, assumption or otherwise, nor shall Tenant make any total or partial transfer, conveyance, encumbrance to secure financing or refinancing, assignment or sublease of the whole or any part of the leasehold interest in the Property (each, a "**Transfer**"), without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed (it being understood that any Transfer approved by Landlord shall constitute a Permitted Transfer). If Tenant shall Transfer this Lease (in whole or in part), or any interest therein, in accordance with this Article 17, the assigning Tenant shall be released from all liabilities and obligations accruing from and after the date of such assignment under this Lease (or with respect to such portion or interest) by the assignee.

17.1.1 Permitted Transfers. Notwithstanding other provisions of this Lease to the contrary, but subject to Section 17.1.2 below, Landlord's approval shall not be required in connection with any of the following (each, a "**Permitted Transfer**"):

(a) Any Transfer of this Lease (in whole or in part), or any interest therein, to one or more Entities in which (i) Tenant, or (ii) a Related Person, directly or indirectly, retains ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) The conveyance, exaction, dedication, donation, subdivision or subordination of any portion of the Property (including the fee interest therein) to Landlord or other appropriate governmental agency, or the granting of easements, covenants, licenses, permits and liens to facilitate the development, entitlement, construction, ownership, use and operation (collectively, the "**Permitted Encumbrances**").

(c) Any Leasehold Mortgage or other assignment for financing purposes, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing of the Project and the following in connection with such financing: (i) any Transfer to any Person pursuant to foreclosure or deed-in lieu of foreclosure of any such mortgage or deed of trust or similar proceeding; (ii) any Transfer of the reversionary interest and estate of the lessor; and (iii) any lease termination by the lessor under the lease due to default of the lessee thereunder.

(d) A New Lease with a Mortgagee pursuant to Section 18.4.

(e) Any Transfers permitted under Article 24.

(f) The sale or leasing of parcels, buildings or portions thereof to residential, retail and/or commercial tenants or occupants as permitted under this Lease.

In the event of a Permitted Transfer described in clause (a), Tenant shall, within thirty (30) days following such Permitted Transfer, give written notice to Landlord of the same, along with, if applicable, a true and complete copy of the proposed assignment or transfer document.

17.1.2 Conditions. Tenant's right to make any Permitted Transfer shall be subject to compliance with the following conditions (it being understood and agreed that any failure of the satisfaction of any such conditions shall not affect the validity of any such Permitted Transfer):

(a) At the time of such Permitted Transfer, no Default (as defined in Section 21.1) then exists or no Default will exist upon consummation of such Permitted Transfer; and

(b) With respect only to a Permitted Transfer described in clause (a), the transferee shall have executed an express assumption of the obligations and liabilities of Tenant under this Lease from and after the date of the assignment and there shall have been delivered to Landlord a copy of such assumption, it being understood that Tenant shall have no liability for obligations arising on or after the date of such assignment..

17.1.3 Further Assignments; Landlord Cooperation. The consent by Landlord to an assignment shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment if required by the terms of this Lease. Landlord shall, whenever and as often as it shall be requested so to do by Tenant, cooperate with, and as requested by, Tenant in connection with any Permitted Transfers, and shall promptly execute and deliver (or cause to be executed and delivered), without further consideration, all such additional agreements, consents, affidavits, subordinations, assignments, easements, covenants, licenses, endorsements, plats, and conveyance and other documents as determined by Tenant to be required, to effectuate any Permitted Transfer.

17.1.4 Other Rights of Mortgagees. Landlord agrees that none of the restrictions or limitations on assignment or transfer by Tenant set forth in this Article 17 shall be construed to limit or abrogate the rights of a Mortgagee to (a) seek the appointment of a receiver, or (b) delegate or assign its rights under this Lease to any third party in connection with the exercise of said Mortgagee's rights and remedies under its Mortgage.

17.2 Transfers by Landlord. Landlord shall not have the right to Transfer its fee interest in the Property (the "**Landlord Property**"), in whole or in part, prior to the date on which the Master Development Plan has been received by Tenant and the Marketing Plan has been approved by Landlord.

17.2.1 Loss of Approval and Certain Other Rights. In the event that Landlord Transfers the Landlord Property or if Landlord's rights to make determinations are delegated or transferred as a matter of law or otherwise, in either case to a Person other than Tenant or its Related Persons, the transferee shall not have any right to take any action, make any determination, or give (or withhold) any consent or approval, provided to be taken, made or given by "Landlord" under this Lease, and any such action, determination or consent or approval may be taken, made or given by Tenant.

17.2.2 Agreements and Matters of Record. Landlord shall not cause or consent to any agreement or contract affecting the Property or to matters to be placed of record with respect to the Property, without Tenant's written consent.

17.3 Public Financing and Cooperation. Tenant shall have the right to seek, obtain and utilize public financing (and, if required in connection therewith, first priority land debt) opportunities in respect of the Project at any time after Tenant's receipt of the Master Development Plan, provided, that if such public financing and related land debt will encumber Landlord's fee interest in the Property (as opposed to an encumbrance on Tenant's leasehold interest in the Property), such public financing shall be subject to Landlord's consent (in its sole and absolute direction); it being understood and acknowledged by Landlord that Tenant anticipates utilizing public financing encumbering Landlord's fee interest in all of the Property in connection with the Project. Subject to the foregoing consent right of Landlord, Landlord shall, whenever and as often as it shall be requested so to do by Tenant (a) cooperate with, and as requested by, Tenant in connection with any such public financing opportunities (and, if applicable, such land debt), and shall promptly execute and deliver (or cause to be executed and delivered), without further consideration, all such additional agreements, consents, affidavits, plats, assignments, easements, covenants, licenses, endorsements, and conveyance and other documents as may be reasonably

requested by Tenant in connection therewith, and (b) promptly approve, consent to, or grant, as applicable, such Permitted Encumbrances and subordination agreements as may be reasonably requested by Tenant to facilitate the development, entitlement, construction, ownership, use and operation of the Project.

ARTICLE 18 ENCUMBRANCES.

18.1 Leasehold Mortgage. Landlord agrees and consents that Tenant (and Tenant's successors and assigns) may, at any time and from time to time, encumber or otherwise hypothecate all (or any portion) of the right, title and interest of Tenant in the leasehold estate created by this Lease or Tenant's interest in the Improvements (or both) by one or more mortgages, deeds of trust or other security instruments or public financing (any such mortgage, deed of trust, or other security instrument or public financing being herein referred to as a "**Leasehold Mortgage**"), and assign any such interest in this Lease and the leasehold estate in the Property created hereby, as collateral security for such Leasehold Mortgage or assign its interest in the same in connection with an assignment and leaseback transaction, to any lender ("**Mortgagee**"), which term includes any commercial or savings bank, savings or building and loan association, life or casualty insurance company, public or private employee pension trust, investment bank, mortgage conduit lender, mortgage banker, opportunity fund (including loan service correspondent companies designated by any of the foregoing institutions), or other institutional lender imposing a first and/or second lien on Tenant's leasehold interest in the Property or the Improvements. Tenant shall give Landlord notice of any such Leasehold Mortgage (and/or assignment of its interest in the same), and shall accompany the notice with a true copy of the Leasehold Mortgage (and/or assignment, if applicable), together with the recording date and instrument number of the Leasehold Mortgage (and/or assignment, if applicable), within ten (10) days after recordation thereof.

18.1.1 Except as hereinafter otherwise expressly provided, said Leasehold Mortgage and all rights thereunder, shall be subject to each and every of the covenants, conditions and restrictions of this Lease, and the same shall be subject to all rights and interests of Landlord hereunder. Upon the request of Landlord, any Mortgagee shall expressly agree, in a writing satisfactory to Landlord, that upon foreclosure of or a trustee's sale under a Leasehold Mortgage or a deed in lieu thereof, the purchaser at the foreclosure sale or the grantee of the deed in lieu of foreclosure, as the case may be, shall be bound by and subject to each and every of the covenants, conditions and restrictions of this Lease first arising or accruing from and after the date of such foreclosure sale or deed in lieu of foreclosure (as applicable) as to themselves and their respective successors and assigns. In the event of any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the terms of this Lease shall prevail.

18.1.2 Mortgagee may transfer all or any part of its interest in said Leasehold Mortgage to another Person, and in addition, or in the alternative, may collaterally assign its interest in Tenant's leasehold interest in the Property and in said Leasehold Mortgage to another Person and such other Person shall be deemed a Mortgagee, and such Person shall be entitled to the benefits afforded to a Mortgagee hereunder.

18.2 Cure by Mortgagee; Notices to Mortgagee.

18.2.1 Any Mortgagee shall have the right, at any time during the Term, while this Lease is in full force and effect:

(a) to do any act required by Tenant hereunder, and all such acts done or performed shall be effective as to prevent a forfeiture of Tenant's rights hereunder as if the same had been done or performed by Tenant;

(b) to rely on the security afforded by the leasehold estate, and to acquire and to succeed to the interest of Tenant hereunder by foreclosure, whether by judicial sale, by power of sale contained in any security instrument, or by assignment given in lieu of foreclosure. If the Mortgagee or Tenant shall have furnished, in writing, to Landlord a request for notice, then: (i) Landlord shall send to Mortgagee, concurrently with any notice it sends to Tenant, a duplicate copy of such written notice (excluding periodic billing or rental notices), and (ii) in the event of any Default hereunder on the part of Tenant, then Landlord will not terminate this Lease by reason of such Default (or exercise any other remedies with respect to any such Default) if the Mortgagee shall, within ninety (90) days after the expiration of the applicable cure periods set forth in Section 21.1 hereof and service on Mortgagee of written notice from Landlord of Landlord's intention to terminate this Lease (A) cure such Default if the same can be cured by the payment of money and (B) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary covenants of this Lease capable of performance by Mortgagee. Mortgagee shall be deemed to have cured such non-monetary Default if Mortgagee proceeds in a timely and diligent manner to accomplish said cure; provided, however, that if in order to accomplish such cure, Mortgagee must foreclose on its security interest or obtain leave of the court as in the case of bankruptcy proceedings, such Default shall be deemed cured, nevertheless, if Mortgagee shall have made reasonable effort to obtain such leave or shall have commenced foreclosure proceedings and diligently pursues to completion all appropriate steps and proceedings for judicial foreclosure, the exercise of the power of sale under and pursuant to a trust deed in the manner provided by law, or the obtaining from Tenant of an assignment of this Lease in lieu of foreclosure (collectively "foreclosure remedies"). Provided that Mortgagee cures any additional defaults in the manner and within the time herein specified, the inability of Mortgagee to cure a Default based upon Tenant's bankruptcy or insolvency or other non-curable Default shall not permit Landlord to terminate this Lease on account of such Default. Further, this Section shall not be deemed to obligate Mortgagee to undertake to cure any Default based upon Tenant's bankruptcy or insolvency, or other non-curable Default. No notice of Breach or Default by Landlord to Tenant under this Lease shall be effective as to the Mortgagee unless and until a copy thereof shall have been mailed or delivered to Mortgagee in accordance with Section 25.1 below, addressed to Mortgagee at the address previously provided to Landlord.

18.2.2 Any provisions contained in this Lease to the contrary notwithstanding, any Mortgagee of the Property or its assignee or nominee, may enforce such Leasehold Mortgage and acquire title to the leasehold estate in any lawful manner; and, pending foreclosure of any such mortgage or deed in lieu thereof or similar proceeding, may take possession of the Property, provided following such foreclosure deed in lieu thereof or similar proceeding the transferee of the leasehold shall thereupon and thereby assume the performance of and be bound by each and all of the covenants, conditions, obligations restrictions and provision herein provided to be kept

and performed by Tenant first arising and accruing after the Commencement Date, and Landlord shall recognize such Mortgagee or its assignee or nominee as Tenant under this Lease and shall not disturb its use and enjoyment of Tenant's leasehold interest in the Property, and such Mortgagee, or its assignee or nominee, as Tenant under this Lease shall perform all of the obligations of Tenant set forth in this Lease which accrue thereafter. Mortgagee and its assignee or nominee shall not be liable for any obligations as tenant under this Lease (including any unpaid amounts owing under this Lease as of the date Mortgage or its assignee or nominee takes title to Tenant's interest in this Lease) except for those acts or omissions that occur during the period in which Mortgagee has title to Tenant's interest in this Lease. During such time as a Leasehold Mortgage encumbers the leasehold estate, if Landlord or Tenant shall acquire the interest of the other in the demised premises or any portion thereof (except for any acquisition by Landlord by reason of a Default by Tenant hereunder), there shall be no merger of the leasehold estate into (a) the fee simple estate in the Property, (b) the subreversion interest held by Landlord or (c) any leasehold estate superior to that of Tenant. The obligation of Mortgagee for the performance of the terms of this Lease shall terminate upon the sale, transfer or assignment of the right, title and interest of Mortgagee in the leasehold estate to any other person, firm or corporation in accordance with the provisions of this Article 18.

18.3 No Subordination. The foregoing provisions of this Article 18 do not give any Person whatsoever the right to mortgage, hypothecate or otherwise encumber or to cause any liens to be placed upon the single estate of Landlord, nor shall the foregoing provisions in any event be construed as resulting in a subordination in whole or in part of the single estate of Landlord or to any indebtedness of Tenant.

18.4 New Lease on Termination of this Lease. In the event this Lease is terminated for any reason except for a termination for Default or a termination pursuant to Section 3.3 resulting from Tenant's or Mortgagee's failure to receive the Master Development Plan by the Master Development Plan Deadline, a Mortgagee shall have the right within ninety (90) days after receipt of notice of such termination to demand that Landlord execute a new lease of the Property with Mortgagee as Tenant hereunder (a "New Lease"), or any designee or nominee which Mortgagee may designate or name. In such event Mortgagee (or such designee or nominee) shall immediately execute a New Lease which shall be for the unexpired term of this Lease and shall otherwise be identical with the terms of this Lease. Such New Lease shall be executed and delivered by Landlord to the Mortgagee (or such designee or nominee) within twenty (20) days after receipt by Landlord of written notice from the Mortgagee of such election to obtain a New Lease. After such termination of this Lease and prior to the expiration of the period within which Mortgagee may elect to obtain such New Lease from Landlord, Landlord shall refrain from executing any new subleases or amending, canceling or terminating any existing subleases without the prior written consent of Mortgagee. Any such New Lease shall have the same priority of title as this Lease, and Mortgagee (or such designee or nominee) under such New Lease shall have the benefit of all of the right, title, interest, powers and privileges of Tenant hereunder in and to the Property. Landlord shall execute and return to Mortgagee any and all documents reasonably requested by Mortgagee to secure or evidence such priority of title, and Mortgagee's title to the improvements on the Property, within twenty (20) days after request therefor. Upon the execution and delivery of the New Lease, title to all Improvements on the Property, shall automatically vest in Mortgagee or the designee until the expiration or earlier termination of the New Lease. By accepting any Mortgage or other security interest with respect to this Lease or the Property, each

Mortgagee expressly acknowledges the provisions of Section 3.3 of this Lease, which entitle Landlord to terminate this Lease and retake the Property, free and clear of all Mortgages and other liens and encumbrances on the Property (other than Permitted Encumbrances) not in existence prior to the Commencement Date. Landlord shall have no obligation to enter into a New Lease as a result of a termination of this Lease pursuant to Section 3.3.

18.5 Consent of Mortgagee. Notwithstanding the provisions of this Lease to the contrary, until such time as the indebtedness of Tenant to Mortgagee shall have been fully paid, this Lease shall not be modified, terminated, cancelled or surrendered, and Landlord shall not, without the prior written consent of Mortgagee first had and obtained, (i) accept rent that is more than thirty (30) days in advance, (ii) accept any termination, cancellation or surrender of this Lease, or (iii) consent to any modification hereof or consent to the assignment hereof, or of any part or portion of the term created thereby, or of any interest therein, if such consent is requested by the Mortgagee. Any exercise or attempted exercise of the foregoing shall be void, at the option of Mortgagee.

18.6 Rights Under Bankruptcy Code. Landlord and Tenant agree, for the benefit of Mortgagee, that so long as a Leasehold Mortgage shall encumber Tenant's leasehold interest in the Property, the right of election arising under Section 365(h)(1) of the United States Bankruptcy Code may be exercised solely by Mortgagee and not by Tenant. Any exercise or attempted exercise of such right of election by Tenant shall be void, at the option of Mortgagee.

18.7 Estoppel Certificate. Landlord shall execute, acknowledge and deliver to Mortgagee, Tenant, proposed assignees and subtenants, promptly upon request, and in any event not later than ten (10) business days following receipt of such request, a certificate identifying all documents constituting the Lease, and certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and describing or referencing the modifications), (b) the dates, if any, to which all rental due thereunder has been paid, (c) whether, to the best of Landlord's knowledge, there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), (d) whether, to the best of Landlord's knowledge, there are then existing any Breaches or Defaults by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed under this Lease and whether any notice has been given to Tenant of any Breach which has not been cured (and, if so, specifying the same), (and further, whether any conditions existing which, but for the passage of time or the giving of notice would result in a Default by Tenant under the Lease, and, if so, specifying the same) and (e) such other matters as Mortgagee shall reasonably request.

18.8 Cost of Loans to be Paid by Tenant. Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Mortgage loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, (iii) all taxes and charges payable in connection with the Mortgage loans, and (iv) all costs reasonably incurred by Landlord in providing any estoppel certificates and/or in making any amendments of this Lease requested by Tenant or Mortgagees.

18.9 Lease Amendments Requested by Leasehold Mortgagee. In the event Tenant seeks to obtain or modify a Leasehold Mortgage (including any public financing), and the applicable Mortgagee desires amendments to this Lease (including any provisions of this Article 18), then Landlord shall negotiate reasonably and in good faith any such amendments, provided that such amendment does not reduce the Rent hereunder or otherwise materially adversely affect the rights of Landlord hereunder, it being understood that all reasonable expenses (including reasonable attorney's fees) incurred by Landlord in connection with any such amendment shall be paid by Tenant.

18.10 Additional Mortgagee Provisions. Notwithstanding anything to the contrary contained in this Lease, in the event of any damage or destruction of the Property or Improvements or any portion thereof or interest therein, upon the request of Mortgagee, the proceeds of Tenant's insurance shall be deposited with Mortgagee (or an independent trustee acceptable to Mortgagee) and shall be applied in accordance with the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage. Notwithstanding anything in the contrary contained in this Lease, in the event of condemnation of the Property or Improvements, or any portion thereof or any interest therein, upon the request of Mortgagee, the proceeds of the condemnation award shall be deposited with Mortgagee (or an independent trustee acceptable to Mortgagee), who shall act as the disbursing agent and apply the condemnation proceeds in accordance with the terms of this Lease. Landlord acknowledges that, except as otherwise provided in this Lease, Tenant's interest in its portion of any condemnation proceeds to which it is entitled under this Lease shall be applied in accordance with the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage. Nothing herein shall be construed to effect, in any way, any separate insurance or condemnation proceeds payable to Landlord based upon Landlord's interest in the Property, or otherwise separate insurance or condemnation proceeds from those proceeds attributable to Tenant's leasehold estate in the property and interest in the Improvements. Subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage, at the option of Mortgagee, this Lease may not be terminated by Tenant following a casualty or condemnation unless the indebtedness of Tenant to Mortgagee shall have been fully paid.

18.11 Landlord Financing. Landlord shall not have the right to encumber Landlord's fee interest in the Property pursuant to a mortgage or deed of trust (a "**Landlord Mortgage**"), without Tenant's written consent, and, in any event, the holder of any such Landlord Mortgage trust must agree to recognize this Lease, and otherwise the relative lien priorities with respect to this Lease shall not be required to change. No default, foreclosure or other enforcement of remedies under any such Landlord Mortgage shall extinguish or otherwise affect in any manner, and any Person who acquires title to Landlord's fee interest pursuant to any foreclosure, assignment in lieu of foreclosure or other exercise of remedies under any Landlord Mortgage shall take title to Landlord's fee interest subject to (i) this Lease and all of Tenant's rights hereunder, (ii) the rights of the subtenants hereunder and (iii) the rights granted to any Mortgagee hereunder. Upon request of Landlord, any holder of a Landlord Mortgage, Tenant and/or any Mortgagee, or any fee mortgage lender, such parties shall enter and execute a commercially reasonable nondisturbance and attornment agreement(s) between and amongst Tenant, Mortgagee, Landlord, Landlord's leasehold mortgage lender, and any fee mortgage lender, as applicable, it being understood that all reasonable expenses (including reasonable attorney's fees) incurred by Tenant in connection with any such nondisturbance and attornment agreement(s) shall be paid

by Landlord; provided that the parties acknowledge that the mortgage lender is not party to this Lease and not bound hereby.

ARTICLE 19 NON-DISTURBANCE AGREEMENTS.

Landlord shall execute nondisturbance agreements, as and when requested by Tenant, with any occupant of the Improvements or any other Person, which nondisturbance agreement shall provide that (a) so long as such occupant or other Person has not defaulted under the terms of its lease or other agreement with Tenant, the rights of such occupant or other Person will not be terminated by Landlord on Landlord's exercise of any right of Landlord to terminate this Lease for Tenant's breach or otherwise, and (b) Landlord shall not be bound by prepayments of more than one month's rent or security deposits in excess of one month's rent under such nondisturbance agreement unless such excess prepayment and/or deposit has, in fact, been transferred to Landlord.

ARTICLE 20 PERFORMANCE OF TENANT'S COVENANTS.

20.1 Right of Performance.

20.1.1 Rights of Landlord. If Tenant shall at any time fail to pay any Real Property Taxes or other charge in accordance with Article 4 hereof, within the time period therein permitted, or shall fail to pay for or maintain any of the insurance policies provided for in Article 9 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after thirty (30) days' written notice to Tenant (or, in case of an emergency, on such notice as may be reasonable under the circumstances, but not less than two (2) business days) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

- (a) pay such Real Property Taxes or other charge payable by Tenant pursuant to the provisions of Article 4 hereof, or
- (b) pay for and maintain such insurance policies provided for in Article 9 hereof, or
- (c) make such other payment or, if Tenant has not commenced the performance of such act, perform such other act on Tenant's part to be made or performed as in this Lease provided.

20.2 Reimbursement and Damages. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate provided in Section 4.6 from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within thirty (30) days following Tenant's receipt of Landlord's written demand (which shall include copies of contractors' invoices for any work performed by Landlord on Tenant's behalf). Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or

by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including reasonable attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Improvements, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 21 BREACH, DEFAULT; REMEDIES.

21.1 Breach. Any one or all of the following events shall constitute a Breach hereunder:

21.1.1 If Tenant shall fail to make payment of any Rent when and as the same become due and payable; or

21.1.2 The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "**Assignee**"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of ninety (90) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing; or

21.1.3 If Tenant shall fail to perform or comply with any other term, covenant or condition of this Lease.

21.2 Default. If any Breach shall continue for more than thirty (30) days after Landlord shall have given written notice thereof to Tenant, then Tenant shall be in "**Default**"; provided, however, if cure of such Breach reasonably requires more than thirty (30) days, then, provided that Tenant commences to cure within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion, Tenant shall not be in Default during the period.

21.3 Termination and Other Remedies of Landlord in Event of Default.

21.3.1 If a Default shall occur, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following:

(a) termination of this Lease and the return of the Property and Improvements free and clear of all liens and encumbrances (other than Permitted Encumbrances);

(b) the worth at the time of award of the unpaid Base Rent and/or Additional Rent, which had been earned at the time of termination;

(c) the worth at the time of award of the amount by which the unpaid Additional Rent has been earned after termination until the time Tenant is no longer in possession of the Property; and

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom.

21.3.2 The "worth at the time of the award" of the amounts referred to in Sections 21.2.1(a) and 21.2.1(b) above shall be computed by allowing interest at the rate provided in Section 4.6 as of the date of the award (the "**Interest Rate**"). Notwithstanding the foregoing, in no event shall Landlord recover any Rent or other sums from Tenant which would have been earned after Tenant is no longer in possession of the Property.

21.3.3 If a Default occurs, Landlord shall also have the right, with or without terminating this Lease, but subject to any nondisturbance agreements entered into with subtenants, to reenter the Property by legal process and remove all persons and property from the Property, subject to the rights of Equipment Lessors; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

21.3.4 No reentry or taking possession of the Property by Landlord pursuant to Section 21.3.3 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

21.3.5 Notwithstanding anything to the contrary contained herein, if at any time prior to the Master Development Plan Deadline, Tenant reasonably determines and informs Landlord that the cost which would be required to treat, remove, or remediate Hazardous Materials in order for the Project to proceed would be of an amount which renders the Project materially infeasible, Tenant shall have the right to elect to terminate this Lease by delivering written notice to Landlord of its election to terminate this Lease, in which case Landlord shall be entitled to keep the Base Rent as its sole and exclusive remedy at law or in equity.

21.4 Specific Performance. If a Default occurs, each party shall, in addition to any other rights of such party under this Lease, have the right to pursue the remedy of specific performance to require the other party to perform its obligations and comply with its covenants under this Lease.

21.5 Receipt of Rent, No Waiver of Default. The receipt by Landlord of the rents or any other charges due to Landlord, with knowledge of any Breach of this Lease by Tenant or of any Default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No

acceptance by Landlord of a lesser sum than the rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any rent or any other sum of money or any other consideration paid by Tenant after the termination of this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the Improvements, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

21.6 Effect on Indemnification. Notwithstanding the foregoing, nothing contained in this Article 21 shall be construed to limit (a) any right to indemnification of Tenant, any Tenant Related Person or any Mortgagee by Landlord or any Landlord Related Person as otherwise provided in this Lease, or (b) any right to indemnification of Landlord or any Landlord Related Person by Tenant as otherwise provided in this Lease for indemnified matters first arising and accruing prior to the date of termination of this Lease.

21.7 Landlord Default. If Landlord shall violate, neglect or fail to perform or observe any of the representations, covenants, provisions, or conditions contained in this Lease on its part to be performed or observed in any material way, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (provided Landlord must have undertaken procedures to cure the default within such thirty (30) day period and thereafter diligently pursues such efforts to cure to completion), Tenant may, at its option (in addition to all other rights and remedies specifically set forth in this Lease or available to Tenant at law or in equity), either terminate this Lease upon written notice thereof given to Landlord, or, upon further written notice to Landlord of Tenant's intention to exercise its self-help remedies hereunder, and after providing Landlord with an additional thirty (30) day cure period thereafter, incur any reasonable expense necessary to perform the obligation of Landlord specified in such notice and bill Landlord for the costs thereof. Notwithstanding the foregoing, if in Tenant's reasonable judgment, an emergency shall exist, Tenant may cure such default with only reasonable (under the circumstances) notice to Landlord being required. If Landlord has not reimbursed Tenant within thirty (30) days after receipt of Tenant's bill, then Tenant may deduct the reasonable cost of such expense from the Rent next becoming due, together with interest thereon at the Interest Rate. The self-help option given in this Section is for the sole protection of Tenant, and its existence shall not release Landlord from its obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord.

ARTICLE 22 PERMITTED CONTESTS.

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Real Property Taxes or lien or any Governmental Requirements or Insurance Requirements, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Real Property Taxes or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Improvements, or any interest therein, or any Rent, if any, or Tenant shall have furnished to Landlord, if requested, a bond or other security, satisfactory to Landlord, (b) neither the Property nor the Improvements, nor any part thereof or interest therein, nor the Rent, if any, nor any portion thereof, would be in any danger of being sold, forfeited or lost by reason of such proceedings, and (c) in the case of Governmental Requirements, Landlord would not be in any danger of any criminal liability or, unless Tenant shall have furnished a bond or other security therefor satisfactory to Landlord, any additional civil liability for failure to comply therewith and the Property and the Improvements would not be subject to the imposition of any lien as a result of such failure. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, post a bond, at Tenant's cost and expense. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

ARTICLE 23 FORCE MAJEURE.

Any prevention, delay, nonperformance or stoppage by Tenant or Landlord due to any Force Majeure Event shall be excused. As used in this Lease, the term "**Force Majeure Event**" means any of the following events: (i) any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof (except that action or inaction of Landlord shall not excuse timely performance by Landlord), or civil or military authority; (ii) any act of God, including an earthquake, hurricane, tsunami, tornado, flood or other similar natural catastrophe; (iii) any act or omission of the other party or its agents or employees; (iv) any act, delay or failure to act by Santa Ana or any other governmental agency (including Landlord), excluding a failure by Santa Ana to issue any required Entitlements, but including such a failure or delay by reason of any Proceeding in respect of the Property); (v) any fire, explosion or floods; (vi) any walkouts or inability to obtain materials, strikes, lockouts, work stoppages, or failures of utility services that are not specific to the Project; (vii) war, terrorism, riots, sabotage or civil insurrection; (viii) from and after January 1, 2021 (unless Landlord, acting reasonably, agrees with Tenant at an earlier time that any of the following matters described in this clause (viii) then constitutes a Force Majeure Event), the pendency of any Property Litigation that Tenant reasonably and in good faith determines poses a legitimate (and neither frivolous nor trivial) risk to Landlord's or Tenant's authority or ability to enter into or perform under this Lease, Tenant's rights to receive the rights, benefits and privileges under this Lease, or materially hinder, delay or have a material adverse effect on the Project (provided that Tenant notifies Landlord within sixty (60) days of learning of such Force Majeure Event under this clause (viii)); and (ix) any other causes beyond the reasonable control of the party claiming the enforced delay.

ARTICLE 24 DISPOSITION OF PROPERTY.

24.1 General Provision. Tenant shall have the right, from time to time, to acquire or cause a Sale of all or any portion of the Property, in one or more transactions, in accordance with the terms of this Article 24. Sales shall be consistent with the Marketing Plan.

24.2 Periodic Consultation. Tenant and Landlord shall meet regularly concerning the status of the implementation of the Marketing Plan as well as any proposed modifications to the Marketing Plan that constitute a Major Change; such meetings shall take place at least quarterly until the Master Development Plan has been received, and thereafter quarterly unless a different frequency of meetings is established by mutual agreement of the Parties. At such meetings, Tenant will consult with Landlord regarding anticipated developers of the Property.

24.3 Sale Parcels.

24.3.1 At such time as Tenant has received the Master Development Plan, Tenant shall have the right, upon giving Landlord ten (10) business days' notice (the "**Sale Notice**"), to cause Landlord to sell (a "**Parcel Sale**") such Sale Parcel or Sale Parcels to Tenant (or Tenant's Related Person expressly designated for such purpose in said notice, a "**Related Titleholder**") for a purchase price equal to "Landlord's Share of Net Proceeds" (as calculated in accordance with Schedule 1) from such Sale Parcel, as and when actually received by Tenant or the Related Titleholder, as calculated and when payable in accordance with Schedule 1, with the understanding that Tenant or the Related Titleholder will sell such Sale Parcel to one or more (a) unrelated parties at a price and on terms determined by Tenant or (b) Related Persons of Tenant at not less than "Fair Market Value" (as determined pursuant to Schedule 1) and on such other terms as determined by Tenant. Landlord shall, within ten (10) business days after Tenant's delivery of the Sale Notice, execute and deliver (and, if applicable, cause to be recorded) (x) a purchase and sale agreement in the form of Exhibit F attached hereto (the "**Form of Purchase Agreement**"), (y) a grant deed in the form of Exhibit G attached hereto (the "**Form of Deed**"), and (z) any other related documents as determined by Tenant, conveying the applicable Sale Parcel(s) and transferring related rights to Tenant or the Related Title Holder, as applicable.

24.3.2 Tenant shall endeavor promptly following its receipt of the Master Development Plan and completion of appropriate infrastructure development with respect to the Sale Parcels to cause there to be a Sale of the Sale Parcels in order to accelerate the payment of the Percentage Rent.

24.4 Remaining Parcels. At such time as Tenant has received the Master Development Plan, Tenant shall have the right, upon giving Landlord ten (10) business days' notice (the "**Remaining Parcel Notice**"), to cause Landlord to sell any one or more of the Remaining Parcels to Tenant or a Related Person of Tenant expressly designated for such purpose in said notice (in either case, the "**Ground Lessor Entity**") for a purchase price equal to Landlord's Share of Net Proceeds from such Ground Lease Parcel, as and when actually received by Tenant or the Related Titleholder, as calculated and when payable in accordance with Schedule 1, with the understanding that the Ground Lessor Entity shall, in turn, enter into a ground lease (the "**Parcel Ground Lease**") for a period up to ninety-nine (99) years with respect to such Remaining Parcel(s) with one or more

(a) unrelated parties at a rent rate and on terms determined by Tenant or (b) Related Persons of Tenant at not less than “Fair Market Value Rent” (as determined pursuant to Schedule 1) and on such other terms as determined by Tenant. Landlord shall, within ten (10) business days after Tenant’s delivery of the Remaining Parcel Notice, execute and deliver (and, if applicable, cause to be recorded) (x) a purchase and sale agreement in the form of the Form of Purchase Agreement, (y) a grant deed in the Form of Deed, and (z) any other related documents as determined by Tenant, with respect to the conveyance of the applicable Remaining Parcel(s) and the transfer of the related rights to the Ground Lessor Entity. Landlord will not be a party to the Parcel Ground Lease.

24.5 Without limitation on the foregoing, in connection with the transactions contemplated by this Article 24, including with respect to any sale of any Sale Parcel or Remaining Parcel, or any Parcel Ground Lease, Landlord shall, whenever and as often as it shall be requested so to do by Tenant in connection therewith, cooperate with Tenant and such other parties with respect thereto, and shall promptly execute and deliver (or cause to be executed and delivered), without further consideration, all such additional agreements, assignments, endorsements and other documents as may be reasonably requested by Tenant in order to consummate such transaction or transactions consistent with this Lease, including (a) title affidavit or affidavits as may be required by Tenant or the title company engaged in connection with such transaction or transactions to facilitate the issuance of an extended coverage title policy in form and substance reasonably satisfactory to Tenant, including removal of the general exception for mechanics’ liens, materialmens’ liens and similar liens, and (b) consents and other evidence reasonably satisfactory to Tenant and such title company respecting the due organization and authority of Landlord in respect of such transaction or transactions. Closing costs shall be allocated in accordance with local custom; however, any transfer taxes payable in connection with such transaction or transactions shall be borne by Landlord.

24.6 Tenant (or a Related Person of Tenant) will have the option of forgoing “Tenant’s Share of Net Proceeds” (as calculated in accordance with Schedule 1) from any Parcel Sales or Parcel Ground Lease rent and in lieu thereof, receiving an equity and/or profits interest in the applicable Related Person that is ultimately purchasing or leasing the Sale Parcel or Ground Lease Parcel for development of a vertical project, but Tenant, the Related Title Holder, or the Ground Lessor Entity will nevertheless remit the Landlord’s Share of Net Proceeds as and when due and payable. At Landlord’s written request, but not as a condition to Tenant’s foregoing option, Tenant will demonstrate to City Manager that the foregoing transaction is not worse than financially neutral to Landlord.

24.7 Landlord hereby agrees that, notwithstanding anything to the contrary herein, no failure by Tenant to comply with the Marketing Plan or any provision of this Lease shall affect the validity or enforceability of any disposition, transfer or ground lease contemplated by this Article 24, and, without limitation on the foregoing, Landlord’s sole and exclusive remedy for any failure to comply with the Marketing Plan shall be an action against Tenant for actual damages (and Landlord shall not be entitled to terminate this Lease or any Parcel Ground Lease or other occupancy agreement with respect to any parcel on account of any such failure).

ARTICLE 25
GENERAL PROVISIONS.

25.1 Notices. Any approval, consent, disapproval, demand, document, direction, request, waiver, communication or other notice (each, a “**Notice**”) which either party may desire to give to the other party under this Lease must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as FedEx that provides a receipt showing date and time of delivery (with charges paid by the party sending the Notice), (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, or (iv) facsimile transmission or a PDF or similar attachment to an email, provided that such facsimile or email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (i), (ii) or (iii) above, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service of any such Notice so made shall be deemed effective on the day of actual delivery (whether accepted or refused), as shown by the addressee’s return receipt if by certified mail, as confirmed by the courier service if by courier, or as evidenced by printed confirmation if by facsimile (provided that if any Notice to be delivered by facsimile or email attachment as provided above cannot be transmitted because of a problem affecting the receiving party’s facsimile machine or computer, the deadline for receiving such notice or other communication shall be extended through the next business day); provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or communication so made shall be deemed effective on the first business day after the day of actual delivery. Except as expressly provided above with respect to certain email attachments, no Notice shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder. The attorneys for any party hereto shall be entitled to provide any notice that a party desires to provide or is required to provide hereunder.

25.1.1 Any notice to Landlord shall be given to and rent shall be paid to:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager
E-mail: _____

With Copies To:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Community and Economic Development Director
E-mail: _____

and:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
E-mail: tclark@sycr.com

25.1.2 Any notice to Tenant shall be given to:

MWillowick Land, LLC
c/o McWhinney Real Estate Services, Inc.
1800 Wazee Street, Suite 200
Denver, Colorado 80202
Attention: Executive Vice President, Master Planned Communities
E-mail: peter.lauener@mcwhinney.com

With Copies To:

c/o McWhinney Real Estate Services, Inc.
1800 Wazee Street, Suite 200
Denver, Colorado 80202
Attention: General Counsel
E-mail: legalnotices@mcwhinney.com

and:

Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (SCS/SMK; 5700-88)
Email: realestatenotices@pircher.com; ssilvers@pircher.com; and
skodaverdian@pircher.com

Any party may, by virtue of written Notice in compliance with this Section 25.1, alter or change the address or the identity of the Person to whom any notice, or copy thereof, is to be sent.

25.2 No Merger of Title. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly: (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold Mortgagee or leasehold Mortgagees, having any interest (including a security interest) in (i) this Lease or the leasehold estate created by this Lease, and (ii) any other estate in the Property or the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

25.3 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation by Landlord, or any Person or Persons claiming through Landlord.

25.4 No Claims Against Landlord. Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property with respect to the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.

25.5 No Waiver. No waiver by a party of any breach of this Lease or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Lease or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Lease or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

25.6 Holding Over. In the event Tenant shall hold over or remain in possession of the Property with the consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable.

25.7 No Partnership. Anything contained herein to the contrary notwithstanding, Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant hereunder.

25.8 Remedies Cumulative. The various rights, options, elections and remedies of Landlord and Tenant, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease. No party shall have the right to recover consequential, unforeseeable or punitive damages.

25.9 Attorneys' Fees. The parties hereto agree that they shall pay any and all legal costs which they have incurred on their own behalf in the preparation of this Lease. In the event of a dispute between the parties arising out of or in connection with this Lease, whether or not such dispute results in litigation, the prevailing party (whether resulting from settlement before or after litigation is commenced), as determined by the court, agency or other authority before which such suit or proceeding is commenced, shall, in addition to such other relief as may be awarded, be

entitled to have and recover from the non-prevailing party reasonable attorneys' fees and costs of suit actually incurred by the prevailing party.

25.10 Time Is of the Essence. Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.

25.11 Construction of Lease. This Lease shall be construed in accordance with the substantive laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Lease. Whenever the singular number is used in this Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

25.12 Severability. If one or more of the provisions of this Lease (or the application thereof to any Person or circumstance) shall be held to be illegal or otherwise void or invalid, the remainder of this Lease (or the application of such term or provision to persons or circumstances other than those as to which it is held illegal, void or invalid) shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.

25.13 Entire Agreement; Modification. This Lease and the Exhibits and Schedules (if any) attached hereto, each of which is incorporated by this reference, contain the entire agreement of the parties with respect to the matters discussed herein. This Lease may be amended only by an agreement in writing signed by the parties hereto.

25.14 Binding Effect and Benefits. This Lease shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. Nothing in this Lease, expressed or implied, is intended to confer on any Person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Lease.

25.15 Cooperation; Further Instruments. Each party hereto will, whenever and as often as it shall be requested so to do by the other party, cooperate with, and as reasonably requested by, the other party (or such other parties) with respect to this Lease, the contemplated development of the Project, and the transactions contemplated by this Lease (including with respect to Entitlements), and shall promptly execute and deliver (or cause to be executed and delivered), without further consideration, all such additional agreements, assignments, endorsements and other documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Lease and the transactions contemplated by this Lease (including with respect to Entitlements).

25.16 Counterparts. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease. The delivery of an executed counterpart of this Lease by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

25.17 Request for Approval. In order for a request for any approval or consent required under the terms of this Lease to be effective, it shall be given by way of a Notice in accordance with Section 25.1 clearly marked "Request for Approval" and state (or be accompanied by a cover letter stating) substantially the following:

(a) the section of this Lease under which the request is made and the action or response required;

(b) if applicable, the period of time as stated in this Lease within which the recipient of the Notice shall respond;

(c) if so provided in this Lease, notice that the failure to refuse consent or approval within the stated time period will constitute a Breach under this Lease; and

(d) notice that, other than when consent is in the party's sole discretion, if the consent or approval requested is denied, the explanation for such denial must be given in writing and the party whose request is denied must be given the opportunity to respond.

If a request for approval states a period of time for approval which is less than the time period provided for in this Lease for such approval, the time period stated in this Lease shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a Notice be deemed to have been given by its failure to object or respond to such Notice.

In the event that a recipient does not approve all or any portion of a Request for Approval, the recipient shall concurrently deliver Notice describing in reasonable detail the specific reason for such disapproval.

Notwithstanding the foregoing or anything to the contrary contained herein, in the event that Landlord has given its written consent or approval to a matter under this Lease despite Tenant's failure to follow the procedures set forth in this Section 25.17, such failure shall not negate, limit or otherwise affect the validity of such consent or approval.

25.18 Quiet Possession. Tenant shall have quiet possession of the Property for the entire Term hereof subject to all of the provisions of this Lease and all matters of record against the Property as of the Commencement Date and any Permitted Encumbrances. If Tenant's quiet possession of Property is disrupted by any final determination in any Proceeding that this Lease is not enforceable against Landlord, Landlord shall immediately refund and repay Tenant the Base Rent (together with all interest earned thereon, but less the Base Rent Independent Consideration); and upon Tenant's receipt of such refund, this Lease shall automatically terminate.

25.19 No Third Party Beneficiaries. This Lease is made for the purpose of setting forth rights and obligations of Tenant and Landlord. Except for Tenant and Landlord, no other Person shall have any rights hereunder or by reason hereof.

25.20 Waiver and Release by Tenant. As material consideration for Landlord's agreement to enter into this Lease, notwithstanding Section 25.3 or any other provision of this

Lease, if, for any reason, this Lease is found by a court of competent jurisdiction to be invalid or void, in whole or in part, and/or possession of the Property is ordered by such a court to be returned to Landlord (hereafter, a **"Court Order"**), Tenant, on behalf of itself and all Persons claiming by, through or under Tenant (collectively, the **"Releasing Parties"**), hereby irrevocably releases the City of Garden Grove and its officers, elected officials, employees, consultants, agents, representatives and contractors (collectively, the **"Released Parties"**) from and against all any and all liabilities, claims, demands, damages, losses, claimed or anticipated profits, expenses, disbursements, professionals' or consultants' fees or expenses, obligations, fines, penalties, actions, causes of action, suits and costs, known or unknown, matured or unmatured, including, without limitation, reasonable attorneys' fees and costs and expenses of litigation, of every kind and nature (collectively, **"Claims"**) that each of the Releasing Parties may now have or hereafter acquire arising from or related to such a Court Order.

Tenant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

As such relates to this Section 25.20, effective as of the Commencement Date, Tenant, on behalf of itself and all Releasing Parties, waives and relinquishes all rights and benefits which Tenant and Releasing Parties may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing or anything to the contrary contained in this Lease, nothing in this Section 25.20 or otherwise in this Lease shall constitute a release, limitation or waiver of any breach of, or obligation to perform, any Landlord's Warranties, Substandard Conduct by Landlord or any other Landlord Related Person or third party claims.

25.21 Interpretations; Authority of City Manager to Act on Behalf of Landlord. City Manager is delegated authority to make interpretations of provisions of this Lease, and to make extensions of time which do not exceed in the aggregate one (1) calendar year. Any action, approval or consent (including any approval or consent required for Transfers) or other determination required or permitted to be undertaken by Landlord hereunder may be made by the City Manager (and Tenant may rely on the same).

25.22 Interpretation.

25.22.1 Words. Except as otherwise indicated: (1) the words "herein," "hereof," "hereunder" and "hereby" shall be construed to mean "in this Lease," "of this Lease," "under this Lease," and "by this Lease," respectively, and references to "this Lease" shall include this Lease and all amendments and supplements hereto; and (2) as used in this Lease: (a) whenever the words "including," "include" or "includes" are used they shall be interpreted in a non-exclusive manner without limiting the generality of the preceding subject matter; (b) "good faith" means

“honesty in fact” as such phrase is used in the Uniform Commercial Code, as adopted in the State of California as of the Effective Date; (c) “commercially reasonable efforts” shall not include any obligation to institute or threaten legal proceedings, to declare or threaten to declare any person in default, to incur any liabilities, to expend any monies (other than customary telephone, printing, copying, delivery and similar expenses), or to cause any other person to do any of the foregoing; (d) the two words in each of the following pairs of words (whether used in the singular or the plural) shall be deemed to have the same meanings, which shall encompass any meaning attributable to either word: “cost” and “expense”; and “approval” and “consent”; and (e) all Schedule, Exhibit and Section references in this Lease shall be deemed to refer to the Schedules, Exhibits and Sections in this Lease.

25.22.2 Captions and Headings. The captions and headings of the Sections of this Lease are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof.

25.22.3 Gender and Number. Words of any gender used in this Lease will be construed to include any other gender unless the context requires otherwise. When a singular defined term is used in the plural or a plural defined term is used in the singular, it shall have a corresponding meaning (e.g., if “Box” were a defined term, then “Boxes” would mean all of the same, collectively, and if “Boxes” were a defined term, then “Box” would mean any one of them, individually).

25.22.4 Consents. Except as otherwise expressly provided herein any action, determination, consent or approval provided to be taken or given by Tenant under this Lease may be taken or given (or withheld), in the sole and absolute discretion of Tenant, for any reason or no reason, and any consent or approval must be in writing to be effective. Except as otherwise expressly provided herein any action, determination, consent or approval provided to be taken or given by Landlord under this Lease may be taken or given (or withheld), in the sole and absolute discretion of Landlord, for any reason or no reason, and any consent or approval must be in writing to be effective.

25.23 Non-Business Days. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Lease during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, “**business day**” means any day other than a Saturday, Sunday or federal or California state holiday.

25.24 Limitation of Liability. No present or future direct or indirect partner, member, manager, director, officer, shareholder, owner, employee, advisor, Affiliate or agent of Tenant or Landlord or any Affiliate thereof, shall have any personal liability, directly or indirectly, under or in connection with this Lease or any agreement made or entered into under or in connection with the provisions of this Lease, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and each of Tenant and Landlord, on its behalf and on behalf of its respective successors and assigns, shall look solely to Tenant or Landlord, respectively, for the payment or performance of any such claim, and Tenant and Landlord hereby waive any and all such personal liability. For purposes of this Section, no negative capital account

or any contribution or payment obligation of any partner or member in Tenant (or any of its Related Persons) shall constitute an asset of Tenant.

(Signatures to Master Ground Lease appear on following pages)

IN WITNESS WHEREOF, the undersigned have executed this Lease as of the date first above written.

“TENANT”

MWILLOWICK LAND, LLC,
a Delaware limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation,
its Manager

By: _____
Name: _____
Title: _____

(Signatures to Master Ground Lease continue on following page)

(Signatures to Master Ground Lease continue from previous page)

“LANDLORD”

CITY OF GARDEN GROVE, a California
municipal corporation

Dated: _____, 20____

By: _____
Scott Stiles, City Manager

TERESA POMEROY, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Omar Sandoval
City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel

LIST OF EXHIBITS AND SCHEDULES

Exhibit A	–	Land
Exhibit B	–	Memorandum of Master Ground Lease
Exhibit C	–	Initial Deed
Exhibit D	–	Bill of Sale
Exhibit E	–	Assignment and Assumption of Management Agreement
Exhibit F	–	Form of Purchase and Sale Agreement
Exhibit G	–	Form of Deed
Schedule 1	–	Calculation and Allocation of Certain Net Proceeds
Schedule 2	–	Exception Schedule
Schedule 3	–	<u>Current Approved Budget under</u> Management Agreement

EXHIBIT A

LEGAL DESCRIPTION

(See attached)

EXHIBIT B

MEMORANDUM OF MASTER GROUND LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Clerk

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

MEMORANDUM OF MASTER GROUND LEASE

This **MEMORANDUM OF MASTER GROUND LEASE** ("Memorandum") is executed as of _____, 20__ by and between the **CITY OF GARDEN GROVE**, a California municipal corporation ("Landlord"), and **MWILLOWICK LAND, LLC**, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant have entered into that certain unrecorded Master Ground Lease ("**Lease**") dated concurrently herewith pursuant to which Landlord has conveyed a ground leasehold interest in that certain parcel of real property, which is legally described in Attachment No. 1 attached hereto and incorporated herein by reference ("**Property**"). In no event shall Landlord's ground leasehold interest in the Property or any land use entitlements for the Project be subordinated to any deed of trust or other lien or encumbrance for financing.

B. Subject to the terms of Article 24 of the Lease, Tenant has the right to acquire all or any portion of the Property, from time to time, in one or more transactions.

C. Subject to the terms of Section 17.2 of the Lease, Tenant has a right of first refusal to purchase the Property in the event that Landlord receives an offer to purchase Landlord's interest in the Property.

D. A copy of the Lease is available for public inspection as a public record at Landlord's office at c/o Office of City Clerk, City of Garden Grove, 11222 Acacia Parkway, Santa Ana, CA 92840.

E. The Lease provides that a short form memorandum of the Lease shall be executed and recorded in the Official Records of Orange County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Pursuant to the Lease, Landlord has conveyed a leasehold interest in the Property to Tenant for a term commencing on the Commencement Date and ending on _____ unless earlier terminated or extended as provided by the Lease. The Lease includes certain restrictions on Tenant's and Landlord's right to assign or transfer their respective interests in the Property, as more particularly set forth in the Lease (it being understood, however, that Tenant (and Tenant's successors and assigns) may, from time to time, encumber or otherwise hypothecate all (or any portion) of the right, title and interest of Tenant in the leasehold estate with respect to the Property and Tenant's interest in the Improvements by one or more mortgages, deeds of trust or other security instruments or public financing ("Leasehold Mortgage"), and assign any such interest and the leasehold estate in the Property, as collateral security for such Leasehold Mortgage or assign its interest in the same in connection with an assignment and leaseback transaction, to any lender).

The Lease further provides Tenant with options to purchase the Property as more particularly specified in the Lease.

Further, the Lease provides that as and when any portion of the Property is conveyed or transferred from time to time as permitted under the Lease, it shall no longer be deemed to be part of the "Property" under the Lease, and the term "Property" shall thereafter only mean the remaining Property, if any. Accordingly, such portion of the Property so conveyed or transferred shall be automatically released from the Lease and the encumbrance of this Memorandum (and this Memorandum shall automatically terminate with respect to such portion of the Property).

This Memorandum is not a complete summary of the Lease, and shall not be used to interpret the provisions of the Lease.

(Signatures to Memorandum of Master Ground Lease appear on the following pages)

“LANDLORD”

CITY OF GARDEN GROVE, a California
municipal corporation

Dated: _____, 20__

By: _____
Scott Stiles, City Manager

TERESA POMEROY, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Omar Sandoval
City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel

(Signatures to Memorandum of Master Ground Lease continue from previous page)

“TENANT”

MWILLOWICK LAND, LLC,
a Delaware limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation,
its Manager

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____) SS.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

SIGNATURE OF NOTARY PUBLIC

ATTACHMENT NO. 1 TO EXHIBIT B
LEGAL DESCRIPTION OF THE PROPERTY

[To be inserted or attached]

EXHIBIT C

INITIAL DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

MAIL TAX STATEMENTS TO:

Attention:

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

The undersigned grantor(s) declare(s)

- ☐ This transfer is exempt from the documentary transfer tax.
- ☐ The documentary transfer tax is \$_____ and City Tax is \$_____ and is computed on:
 - ☐ the full value of the interest or property conveyed.
 - ☐ the full value less the liens or encumbrances remaining thereon at the time of sale.

The property is located in the County of Orange.

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, CITY OF GARDEN GROVE, a California municipal corporation ("**Grantor**"), hereby does grant, bargain, and sell and convey unto MWILLOWICK LAND, LLC, a Delaware limited liability company ("**Grantee**"), all of the buildings, structures, fixtures and other improvements currently existing or hereafter located on the real property (the "**Real Property**") located in the County of Orange, State of California, described in **Exhibit A** to this Deed, including, if (and to the extent) applicable, the Willowick Golf Course, together with, all and singular, the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances to the extent belonging or appertaining to the Real Property or such improvements.

MAIL TAX STATEMENTS AS DIRECTED ABOVE.

(Signature page follows)

IN WITNESS WHEREOF, Grantor has caused these presents to be executed as of this ____ day of _____, 20__.

Grantor:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
LEGAL DESCRIPTION OF REAL PROPERTY
[To be inserted or attached]

EXHIBIT D

BILL OF SALE, ASSIGNMENT AND ASSUMPTION

DATED: As of _____, 20__

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned, CITY OF GARDEN GROVE, a California municipal corporation (“**Landlord**”), hereby sells, transfers, assigns and conveys to MWILLOWICK LAND, LLC, a Delaware limited liability company (“**Tenant**”), the following:

1. Personal Property. All right, title and interest of Landlord in and to the “Personal Property” (as defined below).
2. Intangible Property. All right, title and interest of Landlord in and to the “Intangible Property” (as defined below).

This Bill of Sale, Assignment and Assumption is given pursuant to that certain Master Ground Lease (the “**Ground Lease**”) dated as of the date hereof, between Landlord and Tenant. The covenants, agreements, and limitations provided in the Ground Lease with respect to the property conveyed hereunder are hereby incorporated herein by this reference as if herein set out in full. Tenant hereby accepts the foregoing assignment and agrees to assume and discharge, in accordance with the terms thereof, any costs relating to the Property first arising and accruing after the date hereof that are Tenant’s responsibility under the Ground Lease. This Bill of Sale, Assignment and Assumption shall inure to the benefit of and shall be binding upon Landlord and Tenant, and their respective successors and assigns. As used herein, the “**Intangible Property**,” “**Personal Property**,” and “**Property**” shall have the respective meanings set forth for the same in the Ground Lease.

This Bill of Sale, Assignment and Assumption may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

(No further text on this page)

IN WITNESS WHEREOF, each of the undersigned has executed this Bill of Sale, Assignment and Assumption as of the day and year first above written.

LANDLORD:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

(Signatures continue on following page)

TENANT:

MWILLOWICK LAND, LLC,
a Delaware limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation
its Manager

By: _____
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT AND ASSUMPTION OF MANAGEMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF MANAGEMENT AGREEMENT (this “**Assignment**”) is made and entered into as of the ____ day of December, 2019 (the “**Effective Date**”), by and between CITY OF GARDEN GROVE, a California municipal corporation (“**Assignor**”), and MWILLOWICK LAND, LLC, a Delaware limited liability company (“**Assignee**”).

W I T N E S S E T H :

WHEREAS, Assignor is the current “Owner” under that certain Willowick Golf Course Management Agreement, dated as of May 15, 2019 by and between Assignor, as “Owner,” and Billy Casper Golf, LLC, a Virginia limited liability company (“**BCG**”), as “BCG,” relating to management of the property located at 3017 West 5th Street, Santa Ana, California and commonly known as the Willowick Golf Course (the “**Management Agreement**”);

WHEREAS, in connection with that certain Master Ground Lease of even date herewith between Assignor and Assignee (the “**Ground Lease**”), Assignor desires to assign to Assignee all of the rights, title and interest of “Owner” in, to and under the Management Agreement, upon the terms and conditions hereof; and

WHEREAS, Assignee desires to assume all of Assignor’s obligations under the Management Agreement (excluding the “Excluded Liabilities” (as defined in the Ground Lease), which shall remain obligations of Assignor) first arising and accruing after the Effective Date, upon the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns to Assignee, effective as of the Effective Date, all of the rights, title and interest of “Owner” in, to and under the Management Agreement.
2. Assignee hereby accepts the foregoing assignment and assumes all of Assignor’s obligations under the Management Agreement (excluding the Excluded Liabilities, which shall remain obligations of Assignor) first arising and accruing after the Effective Date.
3. All notices, requests, consents and other communications required or permitted to given under the Management Agreement from and after the date hereof to the “Owner” under the Management Agreement shall hereafter be instead delivered to Assignee at the following address (or at such other address as Assignee may from time to time designate):

MWillowick Land, LLC
c/o McWhinney Real Estate Services, Inc.
1800 Wazee Street, Suite 200
Denver, Colorado 80202
Attention: Executive Vice President, Master Planned Communities
E-mail: peter.lauener@mcwhinney.com

With a copy to:

c/o McWhinney Real Estate Services, Inc.
1800 Wazee Street, Suite 200
Denver, Colorado 80202
Attention: General Counsel
E-mail: legalnotices@mcwhinney.com

and:

Pircher, Nichols & Meeks LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Attention: Real Estate Notices (SCS/SMK; 5700-88)
Email: realestatenotices@pircher.com; ssilvers@pircher.com; and
skodaverdian@pircher.com

Further, Assignor hereby agrees that it shall promptly forward to Assignee any notices or other communication received by Assignor under or with respect to the Management Agreement.

4. This Assignment shall be construed under, and governed in accordance with, the laws of the State of California. This Assignment may not be amended, modified or terminated except by an instrument, in writing, executed by Assignee and Assignor. This Assignment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Signatures delivered by facsimile or attached to an email shall be considered original signature for all purposes of this Assignment. This Assignment constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous, oral or written understandings, negotiations or communications on behalf of such parties.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the day and year first above written.

ASSIGNOR:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

ASSIGNEE:

MWILLOWICK LAND, LLC,
a Delaware limited liability company

By: McWhinney Real Estate Services, Inc.,
a Colorado corporation,
its Manager

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT, APPROVAL AND CERTIFICATION

The undersigned, BCG, hereby acknowledges and approves to this Assignment, and hereby certifies to Assignee and its lenders (and their respective successors and assigns) that (a) there are no written or oral modifications or understandings or other agreements between any one or more of BCG and its affiliates, on the one hand, and any one or more of Assignor and its affiliates, on the other hand, (b) the Management Agreement is in full force and effect, has not been amended, modified, supplemented or terminated, and is free from default, (c) no termination fees or other amounts are payable under the Management Agreement in connection with this Assignment or Assignor's entering into of the Ground Lease, (d) BCG does not have any claims against the "Owner" under the Management Agreement, (e) the approved budget (the "**Budget**") under the Management Agreement for the current and any future period is attached hereto as Schedule 3, and there have been no amendments or modifications thereto, and (f) there are no required or anticipated capital expenditures or other large maintenance expenses or other obligations in excess of \$50,000 except as set forth in the Budget.

Dated as of December ____, 2019

BILLY CASPER GOLF, LLC

By: _____
R. Joseph Goodrich, Executive Vice President

By: _____
R. Alexander Elmore, President

SCHEDULE 1

BUDGET

(See attached)

EXHIBIT F
FORM OF
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of _____, 20__ (the “**Effective Date**”), by and between CITY OF GARDEN GROVE, a California municipal corporation (“**Seller**”), and [____], a [Delaware limited liability company] (“**Buyer**”).

R E C I T A L S

WHEREAS, Seller is the owner of certain property located in Orange County, California, more particularly described in the legal description attached hereto as Exhibit A (the “**Land**”).

WHEREAS, [MWillowick Land, LLC, a Delaware limited liability company (“**Tenant**”), which is an affiliate of Buyer,] [Buyer] and Seller, are parties to that certain Master Ground Lease, dated as of December [___], 2019 (the “**Ground Lease**”), encumbering the Land (and certain other property). Unless otherwise defined in this Agreement, each capitalized terms used in this Agreement shall have the meaning set forth for the same in the Ground Lease.

WHEREAS, the “Property” (as hereinafter defined) constitutes a [Sale Parcel / Remaining Parcel] under the Ground Lease.

WHEREAS, pursuant to Article 24 of the Ground Lease, Tenant has exercised its right to cause Seller to sell the Property to Buyer.

WHEREAS, Buyer desires to purchase the Property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of one hundred dollars (\$100) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Purchase and Sale. On the Effective Date, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property upon the terms, covenants and conditions hereinafter set forth. As used herein, the “**Property**” means (a) the Land (b) all easements, rights-of-way, and appurtenances benefiting the Land (the “**Appurtenances**”), (c) all right, title and interest of Seller in and to all improvements, structures and fixtures located upon the Land (the “**Improvements**”), (d) all right, title and interest of Seller in and to all tangible personal property located on or used in connection with all or any portion of the “**Real Property**” (which, as used herein, means the Land, Appurtenances and Improvements, collectively) (the “**Personal Property**”), and (e) all right, title and interest of Seller

in and to all intangible personal property related to all or any portion of the Real Property or Personal Property (the “**Intangible Property**”).

2. Purchase Price; Covenant to Remit Purchase Price. The purchase price shall be Landlord’s Share of Parcel [Ground Lease] [Sale] Net Proceeds (as calculated in accordance with Schedule 1 to the Ground Lease), as and when actually received by Buyer from a [ground lessor] [purchaser] under a Parcel [Ground Lease] [Sale] with respect to the Property. Buyer hereby agrees to remit Landlord’s Share of Parcel [Ground Lease] [Sale] Net Proceeds in respect of a Parcel [Ground Lease] [Sale] with respect to the Property, as and when required under Schedule 1 to the Ground Lease. The provisions of Article 24 (other than [Section 24.3] [Section 24.4]) of the Ground Lease and Schedule 1 to the Ground Lease are, to the extent applicable to the Property hereunder and the transactions contemplated hereby, hereby incorporated herein by reference as though herein set forth in full, *mutatis mutandis*, and shall constitute a part of this Agreement, as though Buyer were a signatory to the Ground Lease regarding such provisions and Schedule 1.

3. Closing Costs. Seller shall pay (a) all state, county and city documentary and other transfer taxes payable, if any, in connection with the transfer contemplated herein, and (b) 50% of all escrow charges, if any. Buyer shall pay (x) the costs of Buyer’s owner’s title insurance policy respecting the Property, and (y) 50% of all escrow charges, if any. Any other closing costs shall be allocated in accordance with local custom. Seller and Buyer shall each pay their respective legal fees and expenses. Any other closing costs shall be allocated in accordance with local custom.

4. Prorations. All real estate taxes and assessments on the Property shall be prorated as of the Effective Date, with Seller being responsible for any such taxes and assessments to the extent Seller is responsible for the same under the Ground Lease applicable to periods on or prior to the Effective Date, and Buyer being responsible for any such taxes and assessments applicable to periods after the Effective Date.

5. Title Matters. Seller shall cause, at Seller’s sole cost and expense, any mortgages, deeds of trust or other monetary liens (including liens for delinquent taxes, mechanics’ liens and judgement liens) encumbering Seller’s interest in the Land to be fully satisfied, released and discharged of record so that Buyer shall take title to the Property free of the same.

6. Closing Documents. Concurrently herewith, Seller shall deliver to Buyer (or, if requested by Buyer, to the “Title Company” (as hereinafter defined)) (a) a duly executed and acknowledged original grant deed in the form attached as Exhibit B hereto, (b) a duly executed original bill of sale, assignment and assumption agreement in the form attached as Exhibit C hereto, (c) such title affidavit or affidavits as may be required by Buyer or the title company (the “**Title Company**”) engaged in connection with such transactions contemplated by this Agreement to facilitate the issuance of an extended coverage title policy in form and substance reasonably satisfactory to Buyer, including removal of the general exception for mechanics’ liens, materialmen’s liens and similar liens, (d) consents and other evidence reasonably satisfactory to Buyer and the Title Company respecting the due organization and authority of Seller in respect of

such transaction or transactions, (e) such transfer tax forms, if any, as are required by state and local authorities, and (f) such additional documents as may be reasonably required by Buyer or Title Company in order to consummate the transactions hereunder (provided the same do not increase in any material respect the costs to, or liability or obligations of, Seller in a manner not otherwise provided for herein).

7. Representations and Warranties. Each party hereby represents and warrants to the other that this Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by such party are duly authorized, executed and delivered by and are binding upon such party, and that such party has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, or laws.

8. Conditions to Closing. Each party's obligation to perform its undertakings provided in this Agreement is conditioned on the due performance by the other party of each and every undertaking and agreement to be performed by it hereunder in all material respects, and the truth of each representation and warranty made by such party in this Agreement as of the Effective Date.

[Include the following only for Remaining Parcels:**

9. Option to Purchase. Buyer hereby grants to Seller an option to purchase the Property for the sum of One Hundred Dollars (\$100.00) on the terms set forth in the Purchase Option Agreement attached hereto as Exhibit D (the "**Purchase Option Agreement**"). The parties shall execute and deliver the Purchase Option Agreement and cause the same to be recorded in the official records of the County of Orange, California, concurrently with execution of the Parcel Ground Lease with respect the Property by and between Buyer and a Vertical Entity.**]

[9/10]. Miscellaneous.

a. Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 25.1 of the Ground Lease (with any notice to Buyer to be sent to the address set forth for Tenant in the Ground Lease).

b. Brokers. Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that no broker or finder has been engaged by it, in connection with the sale contemplated by this Agreement. In the event of a claim for broker's or finder's fee or commissions in connection with the sale contemplated by this Agreement, then Seller shall indemnify, defend and hold harmless Buyer from the same if it shall be based upon any statement or agreement alleged to have been made by Seller, and Buyer shall indemnify, defend and hold harmless Seller from the same if it shall be based upon any statement or agreement alleged to have been made by Buyer.

c. Further Instruments. Each party will, whenever and as often as it shall be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such

further instruments and documents as may be reasonably required by the requesting party, in order to carry out the intent and purpose of this Agreement.

d. Cumulative Remedies. Except as may be otherwise expressly herein provided, no remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

e. No Waiver. No waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

f. Consents and Approvals. Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder must be in writing to be effective and may be given or withheld in the sole and absolute discretion of such party.

g. Modification. This Agreement may not be modified or amended except by written agreement signed by Seller and Buyer.

h. Matters of Construction. All exhibits attached and referred to in this Agreement are hereby incorporated herein as fully set forth in (and shall be deemed to be a part of) this Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters (other than the Ground Lease). Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, “**business day**” means any day other than a Saturday, Sunday or federal or California state holiday.

i. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

j. Interpretation. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the others. Whenever the words “including”, “include” or “includes” are used in this Agreement, they shall be interpreted in a non-exclusive manner, without any limitation on the generality of the subject matter that precedes such word. Wherever the words “herein” or “hereunder” appear in this Agreement, they shall be interpreted to mean “in this Agreement” or “under this Agreement”, respectively. The captions and headings of the Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. Except as otherwise indicated, all Exhibit and Section references in this Agreement shall be deemed to refer to the Exhibits and Sections in this Agreement. Each party acknowledges and agrees that this Agreement (a) has been reviewed by it and its counsel, (b) is the product of negotiations between the parties, and (c) shall not be deemed prepared or drafted by any one party. In the event of any dispute between the parties concerning this Agreement, the parties agree that any ambiguity in the language of this Agreement is to not to be resolved against Seller or Buyer, but shall be given a reasonable interpretation in accordance with the plain meaning of the terms of this Agreement and the intent of the parties as manifested hereby.

k. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED AND ALL DISPUTES BETWEEN THE PARTIES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE RESOLVED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO CONFLICTS OF LAW).

l. Third Party Beneficiaries; Successors and Assigns. Except as may be otherwise expressly provided in this Agreement, Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party (other than Tenant and its Related Persons), and no third party (other than Tenant and its Related Persons) shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties.

m. Counterparts; Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Agreement by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

n. Legal Costs. The parties hereto agree that they shall pay directly any and all legal costs which they have incurred on their own behalf in the preparation of this Agreement, all other agreements pertaining to this transaction and that such legal costs shall not be part of the closing costs. In addition, if any party hereto brings any suit or other proceeding with respect to the subject matter or the enforcement of this Agreement or any document executed in connection with this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be

entitled to recover reasonable attorneys' fees, expenses and costs of investigation actually incurred from the non-prevailing party. The foregoing includes reasonable attorneys' fees, expenses and costs of investigation (including those incurred in appellate proceedings), costs incurred in establishing the right to indemnification, or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code (11 United States Code Sections 101 et seq.), or any successor statutes.

o. Limitation on Liability. No present or future direct or indirect partner, member, manager, director, officer, shareholder, owner, employee, advisor, Affiliate or agent of Buyer or Seller or any Affiliate thereof, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or in connection with the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and each of Buyer and Seller, on its behalf and on behalf of its respective successors and assigns, shall look solely to Buyer or Seller, respectively, for the payment or performance of any such claim, and Buyer and Seller hereby waive any and all such personal liability. For purposes of this Section, no negative capital account or any contribution or payment obligation of any partner or member in Buyer (or any of its Related Persons) shall constitute an asset of Buyer. In no event shall any party be liable under this Agreement for any unforeseeable or punitive damages of any other party to this Agreement (but the foregoing shall not limit a party's liability for any such damages claimed by an unrelated third party).

(No further text on this page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

SELLER:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____

Scott Stiles, City Manager

BUYER:

_____,

a _____

By: _____

Name: _____

Title: _____

Exhibit F

EXHIBIT A
DESCRIPTION OF LAND

[To be inserted/attached]

EXHIBIT B

DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

MAIL TAX STATEMENTS TO:

Attention:

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

The undersigned grantor(s) declare(s)

- ☐ This transfer is exempt from the documentary transfer tax.
- ☐ The documentary transfer tax is \$_____ and City Tax is \$_____ and is computed on:
- ☐ the full value of the interest or property conveyed.
- ☐ the full value less the liens or encumbrances remaining thereon at the time of sale.

Parcel Number: _____

The property is located in the County of Orange

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, CITY OF GARDEN GROVE, a California municipal corporation ("**Grantor**"), hereby does grant, bargain, and sell and convey unto _____, a _____ ("**Grantee**"), the real property located in the City of Santa Ana, County of Orange, State of California, described on Exhibit A attached hereto and made a part hereof, together with, all and singular, the tenements, hereditaments, easements, rights-of-way and appurtenances belonging or in anywise appertaining to the same, and the improvements thereon (the "**Property**").

MAIL TAX STATEMENTS AS DIRECTED ABOVE.

(Signature page follows)

IN WITNESS WHEREOF, Grantor has caused these presents to be executed as of this ____ day of _____, 20__.

Grantor:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of California)
County of _____)

On _____, before me,
_____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
LEGAL DESCRIPTION

[to be inserted]

EXHIBIT C

BILL OF SALE, ASSIGNMENT AND ASSUMPTION

DATED: As of _____, 20__

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned, CITY OF GARDEN GROVE, a California municipal corporation (“**Seller**”), hereby sells, transfers, assigns and conveys to [_____], a [Delaware limited liability company] (“**Buyer**”), the following:

1. Personal Property. All right, title and interest of Seller in and to the “Personal Property” (as defined below).
2. Intangible Property. All right, title and interest of Seller in and to the “Intangible Property” (as defined below).

This Bill of Sale, Assignment and Assumption is given pursuant to that certain Purchase and Sale Agreement (the “**Purchase Agreement**”) dated as of the date hereof, between Seller and Buyer. The covenants, agreements, and limitations provided in the Purchase Agreement with respect to the property conveyed hereunder are hereby incorporated herein by this reference as if herein set out in full. Buyer hereby accepts the foregoing assignment and agrees to assume and discharge, in accordance with the terms thereof, any costs relating to the Property first arising and accruing after the date hereof that are Buyer’s responsibility under the Purchase Agreement. This Bill of Sale, Assignment and Assumption shall inure to the benefit of and shall be binding upon Seller and Buyer, and their respective successors and assigns. As used herein, the “**Intangible Property**,” “**Personal Property**,” and “**Property**” shall have the respective meanings set forth for the same in the Purchase Agreement.

This Bill of Sale, Assignment and Assumption may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

[No further text on this page]

IN WITNESS WHEREOF, each of the undersigned has executed this Bill of Sale, Assignment and Assumption as of the day and year first above written.

SELLER:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

(Signatures continue on following page)

BUYER:

[_____] ,
[_____]

By: _____
Name: _____
Title: _____

EXHIBIT D

PURCHASE OPTION AGREEMENT

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

(Space Above For Recorder's Use)

PURCHASE OPTION AGREEMENT

THIS PURCHASE OPTION AGREEMENT (this "**Agreement**") is made this ____ day of _____, 20__, by and between [_____, a _____] ("**Optionor**"), and CITY OF GARDEN GROVE, a California municipal corporation ("**Optionee**").

WHEREAS, Optionor is the owner of certain property located in Orange County, California, more particularly described on **Exhibit A**, which is attached hereto and incorporated herein by this reference ("**Property**").

WHEREAS, Optionor desires to grant, and Optionee desires to acquire, an option to buy the Property on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of one hundred dollars (\$100) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Optionor hereby grants to Optionee an option (the "**Option**") to purchase the Property on the terms hereinafter set forth for the sum of One Hundred Dollars (\$100.00). Such Option may be exercised by Optionee by written notice (the "**Option Exercise Notice**") to Optionor at any time after the date that is one (1) year prior to the date that is ninety-nine (99) years after the date of this Agreement (the "**Option Outside Date**"; the period commencing on the date that is one (1) year prior to the Option Outside Date and ending on the Option Outside Date being herein referred to as the "**Option Window Period**"), but in no event later than the Option Outside Date. If Optionee timely exercise the Option during the Option Window Period, then Optionor (or its successor) shall sell to Optionee, and Optionee shall purchase from Optionor, the Property, on

an as-is, where-is basis, via quitclaim deed in form and substance mutually acceptable to the parties. The closing of such conveyance shall be designated by Optionee in the Option Exercise Notice but in no event shall such closing date be earlier than the Option Outside Date or later than the date that is sixty (60) days after the Option Outside Date. In the event that Optionee fails to timely exercise the Option during the Option Window Period, Optionee shall be deemed to have elected not to exercise the Option and the Option shall automatically terminate and be of no further force or effect. For the avoidance of doubt, Optionee may in no event exercise the Option (or have any right to acquire the Property by reason of this Agreement) prior to or after the Option Window Period.

2. This Agreement and all rights granted thereunder shall automatically terminate and be of no further force and effect and the Property shall be released therefrom upon the sooner to occur of (a) the acquisition of the Property by Optionee, (b) the expiration of the Option Window Period, or (c) the mutual written agreement of Optionee and Optionor (or their respective successors-in-interest). Optionee and Optionor agree to reasonably cooperate to record such documents or instruments as may be reasonably necessary to effectuate the release and discharge of this Agreement of record upon the termination of this Agreement.

3. The parties hereto may execute this Agreement and any other documents contemplated hereby in any number of counterparts, each of which shall be deemed to be an original instrument but all of which shall constitute one agreement.

(Signature pages follow)

This Agreement is executed by Optionor and Optionee as of the date first written above.

OPTIONOR:

_____,

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Signatures continue on the following page.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit F
18

EXHIBIT A

LEGAL DESCRIPTION

[To be added]

EXHIBIT G
FORM OF DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

MAIL TAX STATEMENTS TO:

Attention:

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

The undersigned grantor(s) declare(s)

- ☐ This transfer is exempt from the documentary transfer tax.
- ☐ The documentary transfer tax is \$_____ and City Tax is \$_____ and is computed on:
 - ☐ the full value of the interest or property conveyed.
 - ☐ the full value less the liens or encumbrances remaining thereon at the time of sale.

Parcel Number: _____

The property is located in the County of Orange

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, CITY OF GARDEN GROVE, a California municipal corporation (**"Grantor"**), hereby does grant, bargain, and sell and convey unto _____, a _____ (**"Grantee"**), the real property located in the City of Santa Ana, County of Orange, State of California, described on Exhibit A attached hereto and made a part hereof, together with, all and singular, the tenements, hereditaments, easements, rights-of-way and appurtenances belonging or in anywise appertaining to the same, and the improvements thereon (the **"Property"**).

MAIL TAX STATEMENTS AS DIRECTED ABOVE.

(Signature page follows)

IN WITNESS WHEREOF, Grantor has caused these presents to be executed as of this ____ day of _____, 20__.

Grantor:

CITY OF GARDEN GROVE,
a California municipal corporation

By: _____
Scott Stiles, City Manager

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION

[To be inserted or attached]

SCHEDULE 1

CALCULATION AND ALLOCATION OF CERTAIN NET PROCEEDS

In addition to the payment of the Base Rent and Additional Rent, Tenant has agreed to provide for or cause the payment of, without duplication, "Landlord's Share of Net Proceeds" (as hereinafter defined) in accordance with this Schedule 1. Capitalized terms used in this Schedule 1 that are not defined in this Schedule 1 shall have the meanings set forth in other parts of this Lease.

A. Definitions:

"Applicable Rent Payments" means, as of a given date, the Base Rent (other than the Base Rent Independent Consideration of \$200,000.00), plus any Extension Base Rent Payments, in each case paid as of such date.

"Disposition" means any fee conveyance or ground lease of all or a portion of the Property for any duration, including any Parcel Sale and any Parcel Ground Lease.

"Fair Market Value" means the price (as determined pursuant to this Schedule 1) at which the applicable parcel or any portion thereof (the parcel or such portion being referred to herein as the **"Subject Property"**) would be sold for cash by a willing seller, not compelled to sell, to a willing buyer, not compelled to buy, both being aware of relevant facts, on a free and clear basis, unencumbered by any financing (including any deeds of trust, mortgages, or other security instruments securing any financing). The Fair Market Value will consider the Subject Property in the condition in which it is intended to be transferred and fully entitled (but not including approval of a building permit or site development permit), located in a master planned community and improved with public and private infrastructure, and encumbered with any applicable taxes and assessments, as contemplated in the transfer. However, the determination of the Fair Market Value of the Subject Property shall be reduced by 4% of such price to take into account the total closing costs (including additional attorneys' fees, loan prepayment costs, market brokers' fees and other transaction costs) that would customarily be paid by the seller in a third party transaction (each party hereby stipulating that such costs shall be deemed to equal such amount). Fair Market Value shall be conclusively determined, as follows:

1. Determination by One Broker Opinion of Value.

a. Within ten (10) business days after delivery of a written notice by Tenant (or a Related Person) to Landlord indicating its desire to establish the Fair Market Value of the Subject Property, Tenant (or such Related Person) and Landlord attempt, in good faith, to mutually agree on a **"real estate broker"** (which, as used herein, shall mean a California real estate broker with at least fifteen (15) years of experience in valuing properties in Southern California) to determine the Fair Market Value of the Property. If the parties mutually agree on a real estate broker within such ten (10) business day period, Tenant shall procure a final broker opinion of value (a **"BOV"**) by such real estate broker, which BOV shall take into account the following additional factors (collectively, the **"BOV Factors"**), if (and to the extent) applicable and made available:

i. The full range of market rate comparable transactions over an appropriate period of time for land intended for development;

ii. the Vertical Entity's proforma for the vertical project intended to be developed on the Subject Property, including the standard maximum fee and promote structure of McWhinney Real Estate Services, Inc. ("**MRES**"); and

iii. Investor and developer return requirements for land acquisition and development projects consistent with the type of vertical project intended to be developed on the Subject Property.

b. The BOV shall establish the Fair Market Value of the Subject Property.

2. Determination by Two Broker Opinion of Values.

a. If the parties are unable to mutually agree on a real estate broker within such ten (10) business day period as provided in Paragraph 1 above (and regardless of any claim by a party that the other party has failed to meet or negotiate in good faith), each party shall, within ten (10) business days thereafter, designate its own real estate broker (who shall be an independent third party who is not controlled by any party) and submit a written notice to the other party identifying such real estate broker. Tenant shall thereafter procure a final BOV by each such real estate broker, which BOV shall take into account the BOV Factors, if (and to the extent) applicable and made available.

b. If both BOVs establish the same value, such value shall be deemed to be the Fair Market Value of the Subject Property.

c. If the value established by the BOVs differ, then the Fair Market Value of the Subject Property shall be deemed to be the average of the two values.

3. Conclusive Determination. The determination of Fair Market Value established pursuant to the mechanism set forth in this Schedule 1 shall be conclusive and binding upon the parties.

"Fair Market Value Rent" means the annual amount to be paid to the landlord (i.e., the Ground Lessor Entity) under a Parcel Ground Lease as rent equal to four and a half percent (4.5%) for the initial year of the land for the initial year, and escalating annually each year thereafter at the lesser of CPI or 2.0%.

"Gross Revenue" means Operating Gross Revenue, Parcel Ground Lease Gross Revenue and Parcel Sale Gross Revenue, collectively. In the event that Tenant elects to forgo payment of Tenant's Share of Net Proceeds in order to receive an equity or profits interest in a Vertical Entity, Gross Revenue may include a hypothetical amount of revenue reasonably determined by Tenant representative of the revenue that would have generated Tenant's Share of Net Proceeds, which shall be demonstrated by Tenant to Landlord upon written request. Gross Revenue from whatever source shall not include the Gross Revenue Excluded Items.

“Gross Revenue Excluded Items” means (a) the proceeds of any debt, public financing or incentive, CFD, or similar sources (**“Indebtedness”**), (b) any unearned deposits, funds contractually earmarked by a purchaser or ground lessee for improvements, advances or other prepayments (until any such deposits, advances or prepayments are earned), and (c) any monies received (or deemed received) in connection with a Permitted Transfer other than any monies actually received from a Sale of a Sale Parcel or a Parcel Ground Lease of a Remaining Parcel, in either case, to a Vertical Entity, as contemplated by Article 24 of this Lease.

“Landlord’s Percentage Rent of Operating Net Proceeds” means eighty-five percent (85%) of Operating Net Cash Flow. Landlord’s Percentage Rent of Operating Net Proceeds shall not constitute a Project Cost.

“Landlord’s Share of Net Proceeds” means eighty-five percent (85%) of Net Cash Flow.

“Landlord’s Share of Parcel Ground Lease Net Proceeds” means eighty-five percent (85%) of Parcel Ground Lease Net Cash Flow. Landlord’s Share of Parcel Ground Lease Net Proceeds shall not constitute a Project Cost.

“Landlord’s Share of Parcel Sale Net Proceeds” means eighty-five percent (85%) of Parcel Sale Net Cash Flow. Landlord’s Share of Parcel Sale Net Proceeds shall not constitute a Project Cost.

“Net Cash Flow” means, as of a given date, Operating Net Cash Flow, Parcel Ground Lease Net Cash Flow and Parcel Sale Net Cash Flow, collectively, as of such date.

“Non-Credit Enhanced Public Financing” means any public financing that (i) is repaid solely by special taxes or assessments (or any combination of the foregoing) levied on the Project, and (ii) is completely non-recourse with no guarantees (including, for the avoidance of doubt, no payment guarantees, no recourse guarantees, and no completion guarantees) or other credit enhancement whatsoever.

“Operating Gross Revenue” means all monies actually received by Tenant from the operation of the Willowick Golf Course or from the operation of the portion, if any, of the Property that is not the subject of a Parcel Sale or Parcel Ground Lease (excluding any Gross Revenue Excluded Items). For the avoidance of doubt, Operating Gross Revenue shall not include any Parcel Sale Gross Revenue or Parcel Ground Lease Gross Revenue.

“Operating Net Cash Flow” means, for a Fiscal Quarter, the aggregate Operating Gross Revenue received during such Fiscal Quarter less (i) the aggregate Unrecovered Project Costs (determined without regard to any Operating Gross Revenue received during such Fiscal Quarter), and (ii) any Reserves.

“Parcel Ground Lease Gross Revenue” means all monies, net of closing or other collection costs, actually received by Tenant or a Ground Lessor Entity under a Parcel Ground Lease (excluding any Gross Revenue Excluded Items).

“Parcel Ground Lease Net Cash Flow” means, for a calendar year, the aggregate Parcel Ground Lease Gross Revenue received during such calendar year less (i) the aggregate

Unrecovered Project Costs (determined without regard to any Parcel Ground Lease Gross Revenue received during such calendar year) and (ii) any Reserves.

“Parcel Sale Gross Revenue” means all monies, net of closing or other collection costs, actually received by Tenant or a Related Titleholder from the sale of a Sale Parcel by Tenant or a Related Titleholder (excluding any Gross Revenue Excluded Items).

“Parcel Sale Net Cash Flow” means, with respect to a Parcel Sale, the aggregate Parcel Sale Gross Revenue with respect to such Parcel Sale minus (i) the aggregate Unrecovered Project Costs (determined without regard to any Parcel Sale Gross Revenues with respect such Parcel Sale), and (ii) any Reserves.

“Political Contributions” means any contributions of money for the direct benefit of election of candidates for public office, public officeholders, political parties, political campaigns, political committees, or election contests.

“Preferred Return” means nominal 14.058% cumulative, annual return, compounded monthly (calculated like interest) on the first day of each calendar month (i.e., a monthly rate of 1.1715% compounded monthly). For the avoidance of doubt, it is acknowledged that, as a result of the effect of monthly compounding, (i) any applicable Project Costs not recovered through Gross Revenue shall themselves be increased at a nominal annual rate of 14.058% cumulative, annual return, compounded monthly on the first day of each calendar month, and (ii) the effective annual yield of the Preferred Return is 15%. Preferred Return shall be calculated by Tenant in a manner consistent with this Schedule 1, and such calculation shall be conclusive absent manifest error.

“Project Costs” means, as of given date, the following (which, other than the Project Costs described in clause (e), shall be increased by the Preferred Return):

- (a) all Applicable Rent Payments as of such date;
- (b) all Project Service Costs as of such date;
- (c) all Project Implementation Costs as of such date;
- (d) all “Entitlement Fees” (as hereinafter defined) as of such date; and
- (e) all “Affiliate Fees and Cost Recoveries” (as hereinafter defined) (other than Entitlement Fees), as provided herein, as of such date.

Except with respect to Landlord’s obligations set forth in the Lease, in no event shall Landlord be liable for payment of Project Costs.

Project Costs shall not include the cost of any improvements to the extent paid solely with Non-Credit Enhanced Public Financing.

“Project Implementation Costs” means all actual costs incurred by Tenant or any Related Person of Tenant (including MRES, any Related Titleholder and any Ground Lessor Entity) in

connection with preparation of the Property (or any portion thereof) for Entitlements, development and/or any Disposition of all or any portion of the Property (including, for the avoidance of doubt, the actual costs incurred in connection with any Disposition). Without limitation on the foregoing, Project Implementation Costs shall include actual development, construction, capital expenditures, carrying costs, Willowick Golf Course losses (without duplication of any amounts that otherwise constitute Project Service Costs), on and off-site improvements, exactions, fees, taxes and other assessments (including real property, transfer taxes, taxes and other assessments due in connection with public financings), legal costs and expenses, acquisition, due diligence and accounting expenses, government fees and assessments, association dues, donations to non-profit entities and support of community organizations or government entities (but no Political Contributions), public and private financing costs, fees and transactional expenses (excluding the principal and interest payments in such financings), travel costs, insurance, sale and brokerage costs, and, at the election of Tenant, depreciation, amortization and other non-cash accounting or tax items, in each case incurred as part of the Project or otherwise in connection with the Property. For clarity, Project Implementation Costs shall not include Affiliate Fees and Cost Recoveries.

“Project Service Costs” means all actual third-party out of pocket costs or expenses of whatever kind or nature incurred by Tenant or any Related Person of Tenant (including MRES, any Related Titleholder and any Ground Lessor Entity) which provides services or credit enhancement for the Property or Project, Tenant, MRES, any Related Titleholder, any Ground Lessor Entity, or any other Related Person of Tenant or any Vertical Entity that assumes responsibility for any horizontal improvements at the Property, resulting from or in connection with or related to (i) the Project (including the costs of operating and leasing the Property), (ii) operation of the Willowick Golf Course, (iii) this Lease, or (iv) the Property.

“Remaining Parcel” means the portion of the Property that does not constitute the Sale Parcel. (This definition is included in this Schedule 1 for clarity but is the same definition as in the body of this Lease.)

“Reserves” means, as of a given date, (i) any reserves for the payment of any future Project Costs reasonably anticipated to be incurred or accrued as of such date in the following twelve (12) month period, and (ii) any reserves that are required by a Mortgagee or a governmental agency in connection with the Project for the following twelve (12) month period as of such date.

“Sale Parcel(s)” means one or more parcels of Land consisting of up to approximately thirty (30) acres (in the aggregate), to be identified by Tenant from time to time. (This definition is included in this Schedule 1 for clarity but is the same definition as in the body of this Lease.)

“Tenant’s Share of Net Proceeds” means fifteen percent (15%) of Net Cash Flow.

“Vertical Entity” means the Person that is the buyer under a Parcel Sale or the ground lessee under a Parcel Ground Lease.

“Unrecovered Project Costs” means, as of a given date, Project Costs minus Gross Revenue as of such date (it being understood that Gross Revenue shall be applied first to the Preferred Return, if any, on the applicable Project Costs and then to the remainder of the Project

Costs). For the avoidance of doubt, when determining Net Cash Flow, the determination of Unrecovered Project Costs shall exclude the subject Gross Revenue.

B. Affiliate Fees and Cost Recoveries for Services

The following amounts (collectively, “**Affiliate Fees and Cost Recoveries**”) shall be included as part of Project Costs (and shall not constitute Gross Revenue):

- 1) So long as Tenant proceeds with reasonable diligence to receive the Master Development Plan, an “**Entitlement Fee**” equal to \$750,000 per annum commencing on the Commencement Date until the Master Development Plan has been received, shall accrue and be prorated monthly;
- 2) A “**Construction Management Fee**” equal to one and a half percent (1.5%) of all on and off-site hard infrastructure and horizontal improvement costs, shall accrue monthly on a proforma basis, not to exceed \$50,000 per month;
- 3) A “**Development Fee**” equal to three percent (3%) of total Project hard and soft costs including market land value at the time established by Tenant with a BOV, shall accrue monthly on a proforma basis, not to exceed \$100,000 per month; and
- 4) Recovery of fully burdened employee and personnel costs as follows:
 - a. The fully burdened cost of all staff of Tenant and its Affiliates assigned to the Project who perform work or services on site;
 - b. A sales and disposition charge of one and a half percent (1.5%) of the sales price or present value of proforma ground lease payments, as determined by Tenant; and
 - c. “Shared Services Expenses” (as hereinafter defined).

C. Landlord’s Share of Net Proceeds

- 1) Landlord’s Percentage Rent of Operating Net Proceeds shall be due and payable within ninety (90) days following the end of each Fiscal Quarter.
- 2) Landlord’s Share of Parcel Ground Lease Net Proceeds shall be due and payable within ninety (90) days following the end of each Fiscal Quarter.
- 3) Landlord’s Share of Parcel Sale Net Proceeds shall be due and payable within thirty (30) days following the closing of any Parcel Sale. Tenant may cause Landlord’s Share of Net Proceeds to be paid by any other Person on behalf of Tenant.
- 4) For the avoidance of doubt, Tenant shall be entitled to retain Tenant’s Share of Net Proceeds.

It is the intent of the parties that no payments be made to Landlord at any time when Tenant has not actually received Gross Revenue at least equal to Project Costs, and the foregoing

(including all calculations of defined terms in this Schedule 1) shall be interpreted accordingly. Landlord's Share of Net Proceeds shall only be payable out of Net Cash Flow.

D. **Certain Shared Services**

Tenant may (or may cause any Related Person of Tenant, including MRES, any Related Titleholder and any Ground Lessor Entity, to), but shall not be obligated to, from time to time, make available certain benefits, services and/or facilities to any one or more of the Project, any Related Person, and the Property, which services may include in-house accounting, legal, marketing, claims management, information technology, human resources, central purchasing and procurement, employee benefits administration, payroll administration and general administrative services (collectively, the "**Shared Services**"). Tenant (or any such Related Person) shall be entitled to reimbursement for an allocated portion of the cost of providing the Shared Services (the "**Shared Services Expenses**") to the Project, but not for general services that are not directly related to the Project. The allocation of Shared Services Expenses shall be made in a manner determined by Tenant in good faith and in its sole and absolute discretion. Without limitation on the foregoing, Tenant will generally seek to make such determination (A) with respect to in-house accounting services, on a quarterly or monthly basis at an equitable flat-rate based on the project size, entity capitalization, complexity of the services and/or project activity; and (B) with respect to any other Shared Services: (i) for services which are shared with other entities, projects or properties, utilizing an equitable allocation method determined by Tenant, which may or may not include calculated percentage-based time or work allocations, per unit/activity charges, comparable market-based charges, hourly charges, formula-based assessment of costs based on project size and project activity and/or nominal flat-rate charges for entities with minimal activity and/or other methods, (ii) with respect to services which are not shared with other entities, projects or properties, for the full cost of such services, as calculated by Tenant using similar methods, and (iii) utilizing, when applicable, an estimated fully-burdened rate for personnel providing such services, which rate may include estimated occupancy, benefit, insurance and other overhead costs, without markup, and shall not exceed maximum rates charged by third party service providers for similar personnel. Nothing in this section shall limit the Project's responsibility for any of its expenses to third parties, whether incurred directly by the Tenant or by any Related Person of Tenant on behalf of the Project.

E. **Miscellaneous Provisions**

- 1) An illustration of the calculations contemplated by this Schedule 1 is attached hereto. Such illustration is purely for informational purposes and shall not be deemed to modify the text of this Schedule 1 (or the body of this Lease). In the event of conflict between the illustration and the text of this Schedule 1 (or the body of this Lease), the text of this Schedule 1 (and the body of this Lease) shall control.
- 2) Tenant shall submit a statement, with supporting documentation (except for Excluded Materials), of all Project Costs incurred and Gross Revenues received in the corresponding Fiscal Quarter, within ninety (90) days following Landlord's written request, which shall be afforded Confidential Treatment.
- 3) Upon written request from Landlord, Tenant shall produce copies of such records (except for Excluded Materials) as may be reasonably requested by Landlord to verify Tenant's

calculation of the Landlord's Share of Net Proceeds. All review and handling of such records shall be conducted at the offices of Tenant and any records delivered, disclosed or otherwise made available to Landlord or any other Landlord Related Person in connection therewith shall be afforded Confidential Treatment, and Landlord shall not (and shall cause each other Landlord Related Person not to) disseminate any such records or cause any such records to be reposed in the offices of Landlord. In the event that the cost of reproduction of the records requested by Landlord paid to third parties shall exceed \$2,000 per year, Landlord agrees to inspect these records at the principal office of Tenant in the State of California or Colorado, as applicable, or reimburse Tenant for any actual and direct third party costs of reproduction of such records in excess of \$2,000.

- 4) The provisions of this Schedule 1 shall survive termination of the Lease.

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SCHEDULE 2

EXCEPTION SCHEDULE

None.

SCHEDULE 3

CURRENT APPROVED BUDGET UNDER MANAGEMENT AGREEMENT

(See attached)