

DUPLICATE

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT AND AGREEMENT

[Fairbanks Ranch Country Club, Inc., 15150 San Dieguito Road, San Diego, CA 92130]

THIS CITY OF SAN DIEGO CONSENT TO ASSIGNMENT AND AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and FAIRBANKS RANCH COUNTRY CLUB, INC., a California nonprofit corporation ("ASSIGNOR"), and BAY CLUB FAIRBANKS RANCH, LLC, a Delaware limited liability company, ("ASSIGNEE"), and THE BAY CLUBS COMPANY, LLC, a Delaware limited liability company, ("GUARANTOR"), to be effective as of the later date upon which this Consent is signed by the parties and approved by the San Diego City Attorney ("Effective Date"), and shall be contingent upon the terms and conditions set forth herein.

RECITALS

- A. CITY, as the lessor, and ASSIGNOR, as the lessee, are parties to that certain PERCENTAGE LEASE ("Lease") dated December 6, 1982, and recorded as Document No. 83-382965 on October 24, 1983, as assigned and consented to by an ASSIGNMENT AND ASSUMPTION OF LEASE AND CONSENT TO ASSIGNMENT AGREEMENT dated January 31, 1986, and filed in the Office of the San Diego City Clerk as Document No. 769333, relating to certain CITY-owned real property commonly known as "Fairbanks Ranch Country Club" and located at 15150 San Dieguito Road, San Diego, CA 92130, and more particularly described in the Lease.
- B. ASSIGNOR and ASSIGNEE are parties to that certain "Agreement for Purchase and Sale," dated February 23, 2015, as amended ("Purchase Agreement"), relating to the purchase and sale of the Fairbanks Ranch Country Club assets and property, including the Lease and interests on the subject property.
- C. Pursuant to Lease section IV., A. (2) Right to Assign and Sublet, ASSIGNOR and ASSIGNEE seek CITY's consent to the assignment contemplated by the Purchase Agreement. In consideration for such consent, GUARANTOR separately has executed a certain Guaranty in favor of CITY, among other things guaranteeing performance of all lessee obligations and responsibilities under the Lease.
- D. ASSIGNEE also desires to amend the Lease. CITY staff has agreed to present the desired proposed amendments to the Lease (First Amendment) to the City Council for its consideration. If the proposed First Amendment is approved by the City Council, then this Consent shall be and remain valid. However, if the First Amendment is not approved by the City Council, then this Consent shall be considered null and void by all the parties hereto, and FRCC will revert to being the lessee under the Lease.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency and receipt of which is acknowledged, the parties agree as follows:

1. Consent. Subject to the terms and conditions stated herein, including those set forth in Recital D which are incorporated herein by this reference, CITY hereby consents to the assignment of ASSIGNOR's leasehold interest in the Lease, and all ASSIGNOR's rights and obligations under the Lease and as to the leased property, to ASSIGNEE. It is a condition of all parties that Closing under the Purchase Agreement shall have occurred prior to this Consent becoming effective.
2. Lease Controls. The terms and conditions of this Consent shall be subject and subordinate to the terms and conditions of the Lease, unless otherwise explicitly set forth in this Consent. This Consent is a consent of the CITY to the assignment of the Lease to ASSIGNEE made pursuant to, and in accordance with, Section (IV)(A)(2) (Right to Assign and Sublet) of the Lease. The CITY is not bound by any term or condition in the Purchase Agreement.
3. Notices.
 - a) ASSIGNOR'S address for notices after the Effective Date will be:

**PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
525 B STREET, SUITE 2200
SAN DIEGO, CA 92101
619.515.3251**
 - b) ASSIGNEE'S address for notices after the Effective Date will be:

**THE BAY CLUBS COMPANY, LLC
c/o BAY CLUB FAIRBANKS RANCH, LLC
1 LOMBARD STREET
SAN FRANCISCO, CALIFORNIA 94111
415.901.9254**
4. Additional Consideration to CITY. None.
5. Other Rents and Fees Owed to CITY. A condition of this Consent is that all outstanding rents and fees owed to CITY under the Lease, in the amount of Two Hundred Fifteen Thousand Eight Hundred Seventy-Three Dollars and Ninety-Seven Cents (\$215,873.97) for the Third Quarter 2015, Two Hundred Fourteen Thousand Six Hundred and Three Dollars and Eighty-Seven Cents (\$214,603.87) for the Fourth Quarter 2015, and Two Hundred Four Thousand and Fifty Four Dollars and Ninety Two Cents (\$204,054.92) for First Quarter 2016, shall be paid to CITY concurrent with the closing of the Purchase Agreement. Forgoing and all additional outstanding rents and fees owed to CITY are subject to the rent and audit provisions under the Lease.
6. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the Purchase

Agreement which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

7. Joint and Several Liability. If a party to this Consent is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of such party under this Consent.
8. Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and shall be governed by, the laws of the State of California, without reference to the choice of law or conflicts of law principles thereof.
9. Authority to Contract. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Consent, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity represents and warrants such entity is a valid, qualified, corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
10. Counterparts. This Consent may be executed in two or more counterparts (delivery of which may occur via facsimile, .pdf or other electronic means), each of which shall be binding as of the Effective Date, and, when delivered, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Consent is executed to be effective as of the Effective Date.

FAIRBANKS RANCH COUNTRY CLUB, Inc.,
a California nonprofit corporation

Date: _____

BY: [Signature]
Name: STEVEN FOSTER
Title: PRESIDENT, BOARD OF DIRECTORS

BAY CLUB FAIRBANKS RANCH, LLC
a Delaware limited liability company

Date: _____

BY: _____
Name: _____
Title: _____

Agreement which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

7. Joint and Several Liability. If a party to this Consent is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of such party under this Consent.
8. Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and shall be governed by, the laws of the State of California, without reference to the choice of law or conflicts of law principles thereof.
9. Authority to Contract. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Consent, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity represents and warrants such entity is a valid, qualified, corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
10. Counterparts. This Consent may be executed in two or more counterparts (delivery of which may occur via facsimile, pdf or other electronic means), each of which shall be binding as of the Effective Date, and, when delivered, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Consent is executed to be effective as of the Effective Date.

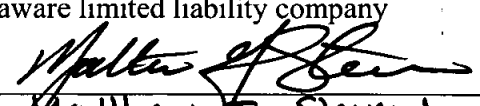
FAIRBANKS RANCH COUNTRY CLUB, Inc.,
a California nonprofit corporation

Date: _____

BY: _____
Name: _____
Title: _____

BAY CLUB FAIRBANKS RANCH, LLC
a Delaware limited liability company

Date: _____

BY: 
Name: Matthew T. Stevens
Title: CFO

Date: _____

THE BAY CLUBS COMPANY, LLC
a Delaware limited liability company

BY: _____

Name: Matthew J. Stevens

Title: CEO

Date: 6/8/16

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: _____

Cybele L. Thompson

Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance: ADDENDUM TO EIR No. 81-04-01(Proj. No. 440371) WAS ADOPTED BY THE CITY COUNCIL PURSUANT TO SECTION 15164 OF CEQA GUIDELINES.

Date: 6/7/16

By: _____

Name: MARK BRUNETTE

Title: SENIOR PLANNER

Approved as to form this 9th
day of June, 2016

Page 4 of 4

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: Debra J. Boyler

Title: Deputy City Attorney

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Bay Club Fairbanks Ranch, LLC

April 30, 2015

Fairbanks Ranch Country Club, Inc.
15150 San Dieguito Road
Rancho Santa Fe, CA 92067
Attention: John C. Glancy

Re: Agreement for Purchase and Sale, by and between Fairbanks Ranch Country Club, Inc., a California non-profit corporation ("**Seller**"), and Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("**Buyer**"), dated as of February 23, 2015 (the "**Purchase Agreement**" capitalized term used herein and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement).

Gentlemen:

As you know, the Closing of the purchase and sale of the Club has been delayed due to the City of San Diego requiring that an appraisal be completed prior to any amendment with the assignment of the Ground Lease. Buyer and Seller have agreed to enter into an Interim Management Agreement (the "**Management Agreement**") for Buyer to manage and operate the Club on Seller's behalf and in connection therewith, extend the Closing Date set forth in the Purchase Agreement. Accordingly, Buyer and Seller would like to amend the Purchase Agreement as set forth in this letter agreement.

1. **Extension of Closing Date.** Buyer and Seller hereby agree that the first sentence of the introductory paragraph of Section 8.1 (Closing) of the Purchase Agreement is hereby amended to provide that the Closing shall occur on or before December 31, 2015 (the "**Outside Date**") at such time when the Closing conditions set forth in Article VII are met or otherwise waived and the Closing deliverables listed in Article VIII are delivered or such delivery is otherwise waived (such date the "**Closing Date**"). In addition, the first sentence of Section 7.3(a) (Failure of a Condition) of the Purchase Agreement is hereby amended such that the reference to the "Closing Date" shall instead be deemed to refer to the Outside Date as the date by which the Closing must occur.

2. **Payment of the Deposit.** Notwithstanding anything in the Purchase Agreement to the contrary, Buyer and Seller hereby agree that upon a termination of the Purchase Agreement (a) pursuant to Section 12.2 due to a material default by Buyer or (b) or due to the failure of the City of San Diego to consent to the assignment of the Ground Lease with an amendment reasonably satisfactory to Buyer on or prior to the Outside Date, Seller shall be paid all or a portion of the Deposit as is necessary to pay the Termination Fee (as defined in the Management Agreement) in accordance with the terms of the Management Agreement; provided however, if the amount of the Termination Fee due to Seller is less than the full amount of the Deposit, Buyer shall be refunded that portion of the Deposit not required to pay such Termination Fee. In the event the Purchase Agreement is terminated for any other reason, Buyer shall receive a refund of the Deposit.

Memorandum

CONFIDENTIAL – PENDING LEASE NEGOTIATION MATERIAL

DATE: June 9, 2015
TO: Heidi Farst **FILE NO:** 012059.0039
COPY TO: Cybele Thompson; Patti Phillips; Jeremy Fonseca; Chris Frahm; Chris Reiss
FROM: Ryan R. Waterman 
RE: Fairbanks Ranch Purchase Agreement

Per request, enclosed please find the "Agreement for Purchase and Sale" by and between Fairbanks Ranch Country Club, Inc. and Bay Clubs Fairbanks Ranch LLC and BC Equity Ventures LLC (dated February 23, 2015), and a letter amendment thereto (dated April 30, 2015).

If you have any questions, please do not hesitate to contact me at 619.702.7569, or rwaterman@bhfs.com.

3. Shadow Management. Buyer and Seller agree that the Management Agreement has been entered into to supplement but not replace the Shadow Management concept described in the Purchase Agreement.

4. Seller Bring Down at Closing. Buyer and Seller agree that notwithstanding anything in the Purchase Agreement to the contrary, Seller shall have no obligation to update or bring down any representation or warranty of Seller contained in the Purchase Agreement based upon any action taken by Buyer relating to the operation of the Club pursuant to the Interim Management Agreement.

Buyer and Seller ratify and confirm the continued force and effect of the Purchase Agreement, as modified by this letter agreement. Except as expressly amended hereby, the Purchase Agreement shall continue in full force and effect. Any references to the "Agreement" in the Purchase Agreement or to the words hereof, hereunder or words of similar affect in the Purchase Agreement shall mean the Purchase Agreement as amended hereby. In the event of any conflict between this letter agreement and Purchase Agreement, this letter agreement shall control.

All of the terms and provisions of this letter agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

This letter agreement shall be governed by, and construed and enforce in accordance with, the internal Laws of the State of California without regard to principles of conflicts of laws.

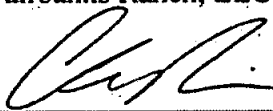
This letter agreement may be executed in multiple counterparts, each of which shall have the full force and effect of an original executed instrument. Signatures of the parties to this letter agreement transmitted by facsimile or email will be binding upon such parties transmitting such signatures by such means.

* * * * *

Please confirm that the foregoing is in accordance with your understanding of our agreement by signing and returning to us a copy of this letter agreement.

Very truly yours,

Bay Club Fairbanks Ranch, LLC

By: 

Name: Chris Reiss

Title: Chief Operating Officer

Accepted and agreed to as of
the date set forth above:

Fairbanks Ranch Country Club, Inc.

By: 

Name: John E Glancy

Title: President

AGREEMENT FOR PURCHASE AND SALE

by and between

FAIRBANKS RANCH COUNTRY CLUB, INC.

as

Seller

AND

BAY CLUB FAIRBANKS RANCH, LLC

as

Buyer

AND

BC EQUITY VENTURES LLC

as

Parent

February 23, 2015

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AGREEMENT FOR PURCHASE AND SALE

This Agreement for Purchase and Sale (this "**Agreement**") is made effective as of February 23, 2015 ("**Effective Date**"), by and between Fairbanks Ranch Country Club, Inc., a California non-profit corporation ("**Seller**"), Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("**Buyer**"), and BC Equity Ventures LLC, a Delaware limited liability company ("**Parent**"), solely for purposes of Section 15.26 of this Agreement. Seller and Buyer are sometimes hereinafter individually referred to as a "**party**" and collectively as the "**parties**", in light of the following Recitals which are a part of this Agreement for all purposes.

RECITALS:

A. Seller is the owner of the Fairbanks Ranch Country Club (the "**Club**") with its facilities (the "**Club Facilities**") located in Rancho Santa Fe, California;

B. Seller operates and manages the Club and has entered into Membership Agreements with the Members of the Club;

C. All legally existing assets, rights and obligations related to the Club and the Club Facilities are owned and held by and are the responsibility of Seller, subject to the terms of the Ground Lease (defined below);

D. Seller desires to sell and Buyer desires to purchase from Seller, all of Seller's right, title and interest in and to the Property, as hereinafter defined and assume the Assumed Liabilities, as hereinafter defined; and

E. Certain capitalized terms contained herein shall have the meaning set forth on the page of this Agreement listed on **Appendix A** attached hereto and certain capitalized terms used but not otherwise defined herein shall have the meanings given to them in **Appendix A** attached hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**ARTICLE I
SALE OF THE PROPERTY**

For the consideration and upon the terms and conditions contained herein, Seller hereby agrees to sell and convey to Buyer on the Closing Date, free and clear of all Encumbrances other than Permitted Encumbrances, and Buyer hereby agrees to purchase from Seller on the Closing Date, all of Seller's right, title and interest in and to, all of Seller's assets and property, tangible and intangible, of every kind and description, wherever located, excluding the Excluded Property, as defined below, (collectively, the "**Property**") and including the following:

1.1 The Real Property.

(a) Seller's leasehold interest in and to all of that certain tract of land situated in San Diego County, Rancho Santa Fe, California described in Exhibit A attached hereto and incorporated herein by reference, together with all leasehold rights and appurtenances pertaining to such land as referenced in the Ground Lease (as defined in Section 1.1(b) below) (the "Land");

(b) Seller's interest, as tenant, under that certain Percentage Lease dated December 6, 1982 and recorded as Document No. 83-382065 in the Official Records of San Diego County by and between the City of San Diego (the "City" or "Landlord"), as Lessor, and Seller, as successor-in-interest to Watt Industries/San Diego, Inc., a California corporation, as Lessee, with respect to the Land (the "Ground Lease");

(c) Subject to the terms of the Ground Lease, Seller's interest, if any, in all buildings, structures, fixtures, parking areas and other improvements, and appurtenances placed, constructed, installed or situated on or under the Land, including but not limited to, a 27-hole golf course, clubhouse, outdoor tennis courts, recreational pro shops and facilities, golf practice facilities, and maintenance facilities (the "Improvements");

(d) Subject to the terms of the Ground Lease, any right, title and interest of Seller, if any, in all water rights (whether decreed, undecreed, tributary, non-tributary, surface water, groundwater, contractual, company stock or otherwise) and water agreements associated with the Land (the "Water Rights");

(e) Subject to the terms of the Ground Lease, all right, title and interest of Seller, if any, in: (i) all appurtenances, hereditaments and easements; (ii) any reversionary, oil and gas, mineral, surface and subsurface rights (including mining and development rights); (iii) all other rights, privileges, and entitlements belonging to or running with the Land (including as may be necessary for ingress, egress and maintenance of the Land and the Improvements) and (iv) adjacent streets, alleys, rights-of-way, strips and gores (collectively, the "Appurtenances").

The Land, the Ground Lease the Improvements, the Water Rights and the Appurtenances are collectively referred to herein as the "Real Property."

1.2 Personal Property. All of Seller's right, title and interest in and to all personal property of Seller, excluding the Excluded Property, as defined below, (collectively, the "Personal Property").

(a) All accounts receivable and work-in-process of Seller and the Club at Closing which are earned, accrued and/or attributable to the period prior to the Closing Date, including any interest, collection costs and late fees related thereto then incurred or due (collectively, the "Receivables");

(b) All personal property, inventories and supplies used in the operation, maintenance, repair or ownership of the Club, including, but not limited to, furniture, fixtures, furnishings, equipment, other tangible personal property, art, computers, point of sale systems, electronic servers, peripherals, machinery, repair parts, goods, supplies, televisions,

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communications equipment, architectural plans, engineering drawings, site plans, surveys, specifications, floor plans, engineering studies, environmental and toxic waste studies and information (including information concerning any wash lands and endangered species habitat located on the Real Property), soil studies, utility location drawings, landscape plans in Seller's possession and which are applicable to the operation of the Real Property and the Club Facilities; all records relating to the operation of the Real Property (including, but not limited to all equipment, all maintenance records, schedules, warranty documents, logs, operating manuals and existing financial data; all kitchen utensils, linen, glassware, china, appliances, and kitchen equipment, gasoline and lubricants, fertilizer, seed, sand, chemicals, irrigation parts and supplies, vehicles, HVAC systems, electrical systems, plumbing systems, conduits to provide fire protection and security, gas, sewer, water facilities and tools; all food, beverage and liquor inventories, to the extent permitted by Law; all books, records and files used in the operation of the Club, including, without limitation, database, files and lists of customers, members, vendors and pricing, sales and promotional literature, manuals, personnel files, policies and accounting records, to the extent permitted by Law; to the extent in Seller's possession or control and to the extent permitted by applicable Law and the privacy policies of Seller, the guest and member profiles, contact information, social media friends and/or followers, histories, preferences, and other information obtained in the ordinary course of business from guests of the Club during such guests' use of the Property, or from persons viewing or accessing the websites and/or social media accounts operated by or for the Club; and all retail merchandise inventories owned by Seller and used in the operation of the Club, whether in the golf or tennis pro shop or in storage for future use. The Personal Property will be conveyed free and clear of any Encumbrances other than Permitted Encumbrances and shall become the personal property of the Buyer by way of a bill of sale in the form of **Exhibit B** attached hereto (the "**Bill of Sale, Assignment of Intangibles and Assumption Agreement**") executed by Seller to Buyer. Inventories of merchandise, food and beverage stocks and service supplies, to the extent permitted by Law, are and will be conveyed to Buyer at Closing. The parties agree that not more than five (5) days prior to the Closing, a representative of each party shall jointly conduct an inventory of the merchandise, food and beverage stocks and service supplies, and said inventory schedule (subject to dispositions in the ordinary course of business between the date thereof and the Closing) shall be made a part of the schedule of tangible personal property to be conveyed by the Bill of Sale, Assignment of Intangibles and Assumption Agreement; and

(c) All of Seller's right, title, and interest in the intangible property and property rights that are appurtenant to or used in connection with the ownership, operation, and use of the Club or the Real Property including, but not limited to, the following: (i) to the extent transferable, all software, permits, accreditations, registrations, consents and licenses related to the Property, mineral rights and water rights, approvals, certifications, authorizations, and certificates of occupancy, granted, approved or issued by any Governmental Authority; (ii) any telephone numbers, websites, social media accounts and handles, domain names and assignable or owned software employed in connection with the Real Property and including all passwords related thereto; (iii) all deposit rights; (iv) all product and service warranties and guaranties associated with the Personal Property; (v) all of Seller's right, title and interest in and to all rights, privileges, benefits, powers, and interests (including rights, privileges, benefits, powers and interests as "owner," "declarant," or otherwise, if any) under or with respect to any restrictive covenants, use restrictions, or other deed restrictions pertaining to the Real Property or any portion thereof; (vi) all goodwill related to the Club; (vii) registered and unregistered copyrights

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and other rights of authorship; (viii) rights to personal information; (ix) trade secrets, confidential business information and other proprietary information (whether or not subject to intellectual property or trade secret protection ("**Trade Secrets**") and (x) all rights of Seller in the use of the trade name "Fairbanks Ranch Country Club" and associated trademarks, trade names, trade dress designations and logos, if any, used in the operation of the Club Facilities, including but not limited to the items as listed on Schedule 1.2(c) (collectively, the "**Marks and Logos**") which will be transferred to the Buyer at the Closing by the Bill of Sale, Assignment of Intangibles and Assumption Agreement (all of the foregoing listed in (i) through (x) in this Section 1.2(c) shall collectively be referred to herein as the "**Intangible Personal Property**"). The Intangible Personal Property described in subsections (i), (ii), (vii), (viii), (ix) and (x) above shall collectively be referred to herein as the "**Intellectual Property**".

(d) Notwithstanding the foregoing, Seller shall retain the following personal property (collectively, the "**Excluded Property**") and none of the Excluded Property shall constitute part of the Property for purposes of this Agreement: (i) subject to Section 4.4, all cash and cash equivalents (including any amount that could be considered a member deposit) of Seller (the "**Excluded Cash**"); (ii) all rights of the Seller under this Agreement and any agreements ancillary to the transactions contemplated hereby; (iii) all personal property not owned by Seller located on the Property; (iv) each Contract that is not an Assumed Contract, including, but not limited to, all Membership Agreements; (v) all rights of Seller under all Seller Benefit Plans (as defined herein) and any Contracts relating thereto; and (vi) (1) any documents solely related to any Excluded Property; (2) files which the Seller is not permitted to release to Buyer under applicable Law or pursuant to any contractual confidentiality obligation owed to any third party; (3) personnel files, including medical records, pertaining to any employee; (4) other books and records that the Seller is required by Law to retain or that the Seller determines are necessary to retain including, without limitation, tax returns, financial statements, and corporate or other entity filings, including incorporation documents, corporate minutes, financial records, and legal records; (5) all correspondence with counsel, certified public accounts and consultants related to this transaction and/or the sale of Property hereunder; and (6) all documents related to other bids, sale of the Club or related to Excluded Property.

1.3 Contracts and Leases. At Closing, the rights and obligations under (i) all Contracts (defined below) set forth on Schedules 1.3(a), 1.3(b) and 5.2(k) and (ii) all of the written contracts, leases, licenses, instruments, purchase orders, sales orders or other agreement or binding commitment (each, a "**Contract**") of Seller not required to be disclosed on such Schedules solely to the extent such Contracts have been entered into by Seller in the ordinary course of business in arms' length transactions (collectively, the "**Assumed Contracts**") are to be assigned to the Buyer and the obligations due and payable after the Closing Date (other than any liability or obligation relating to or arising from any breach existing on or prior to the Closing Date) are assumed by Buyer as provided herein (collectively, the "**Assumed Contract Liabilities**") in accordance with the terms of the Bill of Sale, Assignment of Intangibles and Assumption Agreement. The Assumed Contracts shall include those set forth in Schedule 1.3 attached to this Agreement and as further described in (a) and (b) of this Section 1.3:

(a) Seller's rights, interests in and all liabilities under all of the operations, maintenance, repair and pest control Contracts, and other Contracts relating to the use, operation or maintenance of the Real Property and the Club listed on Schedule 1.3(a) attached hereto (the

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"**Maintenance Contracts**") will be assumed by Buyer at Closing. Renewals in the ordinary course of business of the Maintenance Contracts listed in Schedule 1.3(a) following the Effective Date will be permitted and such new Maintenance Contracts entered into in accordance with Section 5.5(c) will be added to Schedule 1.3(a) following the Effective Date upon written approval of Buyer which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Seller's rights, interests in and liabilities under all capital leases and leases of equipment, furniture, fixtures and utensils related to the use, operation or maintenance of the Real Property and the Club listed on Schedule 1.3(b) attached hereto (the "**Leases**") will be assumed by Buyer at Closing. Any such Lease subject to renewal prior to Closing will be renewed and new Leases added to Schedule 1.3(b) following the Effective Date upon written approval of Buyer which approval shall not be unreasonably withheld, conditioned or delayed.

For the avoidance of doubt, in no event shall any Membership Agreement constitute an Assumed Contract.

1.4 **Non-Assignable Assets.** To the extent any Assumed Contract that is intended to be included in the Property is not capable of being assigned without the consent of another party thereto, neither this Agreement nor the Bill of Sale, Assignment of Intangibles and Assumption Agreement shall constitute an assignment or an attempted assignment of such Assumed Contract. Anything in this Agreement or the Bill of Sale, Assignment of Intangibles and Assumption Agreement to the contrary notwithstanding, Seller is not obligated to transfer to Buyer any of its rights and obligations in and to any Assumed Contract without first having obtained all necessary consents. To the extent any consents necessary to assign any Assumed Contract are not obtained prior to the Closing Date, then after the Closing Date, Seller shall use commercially reasonable efforts, and Buyer shall reasonably cooperate with Seller, to obtain any consents necessary to convey to Buyer all Assumed Contracts intended to be included in the Property. Except as provided herein, if any such consents are not obtained with respect to any Assumed Contract, the Bill of Sale, Assignment of Intangibles and Assumption Agreement shall constitute an equitable assignment by Seller to Buyer of all of Seller's rights, benefits, title and interest in and to such Assumed Contract, to the extent permitted by applicable Law, and Buyer shall be deemed to be Seller's agent for the purpose of completing, fulfilling and discharging all of Seller's rights and liabilities arising after the Closing Date under such Assumed Contract, and Seller shall take all commercially reasonable steps, at Buyer's expense, to provide Buyer with the benefits of such Assumed Contract, including promptly paying to Buyer when received all monies received by Seller with respect to any such Assumed Contracts or any claim or right or any benefit arising thereunder.

1.5 **Disclaimer of Warranties, Guaranties and Representations.** Except as set forth in this Agreement, Seller specifically disclaims any warranty, guaranty, or representation, oral or written, past, present, or future of any nature or kind or pertaining to any real or personal property, object, obligation, right or performance.

1.6 **Condition of the Property.** THE BUYER IS ACQUIRING TITLE TO THE PROPERTY AND EXCEPT AS SET FORTH IN THIS AGREEMENT THE PROPERTY IS BEING CONVEYED "AS IS, WHERE IS, AND WITH ALL FAULTS". EXCEPT FOR ANY WARRANTIES AND REPRESENTATIONS MADE IN THIS AGREEMENT OR IN ANY OF

THE CLOSING DOCUMENTS, THE SELLER, DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY TYPE OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS MAY BE SPECIFICALLY STATED IN THIS AGREEMENT, BUYER IS RELYING SOLELY ON BUYER'S INDEPENDENT ANALYSIS AND INVESTIGATION OF THE PROPERTY. EXCEPT AS MAY BE OTHERWISE PROVIDED IN THIS AGREEMENT OR IN ANY OF THE CLOSING DOCUMENTS, ALL INFORMATION, DOCUMENTS OR REPORTS SUPPLIED OR MADE AVAILABLE TO BUYER BY SELLER, INCLUDING, BUT NOT LIMITED TO, MAPS, SURVEYS, PLATS, SOIL, ENGINEERING, ENVIRONMENTAL OR OTHER DESCRIPTIONS, STUDIES OR REPORTS PERTAINING TO THE PROPERTY (COLLECTIVELY, "**SELLER'S INFORMATION**") ARE BEING DELIVERED TO BUYER ON AN "AS-IS, WHERE IS, AND WITH ALL FAULTS" BASIS. SELLER HAS NEITHER VERIFIED THE ACCURACY OF ANY STATEMENTS OR OTHER INFORMATION IN SELLER'S INFORMATION OR ANY METHOD USED TO COMPILE SELLER'S INFORMATION.

ARTICLE II
PURCHASE PRICE, INDEPENDENT CONSIDERATION AND EARNEST MONEY

2.1 Purchase Price. The purchase price payable by Buyer to Seller for the Property and in consideration for the agreements contained herein is the sum of Nine Million Eight Hundred Fifty Thousand Dollars (\$9,850,000) (the "**Purchase Price**"). Subject to the terms and conditions of this Agreement, such Purchase Price shall be paid by Buyer at the Closing as follows:

(a) Buyer shall wire transfer in immediately available funds such amount as is necessary to pay off the Seller's obligations to Western Alliance Bank, an Arizona corporation ("**Western Alliance Bank**");

(b) Buyer shall wire transfer in immediately available funds such amount as is necessary to pay off the Closing Costs and solely the Seller's Retained Liabilities set forth on Schedule 2.1(b);

(c) Buyer shall wire transfer, to the Escrow Account (defined below), immediately available funds in an amount equal to \$1,000,000 (the "**Escrow Amount**") less the Liquor Escrow Amount, which amount shall become part of, the "Capital Improvements Consideration" hereunder; and

(d) Sixty Thousand Dollars (\$60,000) (the "**Liquor Escrow Amount**") shall be paid in cash to Bay Commercial Bank (the "**Liquor Escrow Agent**") by wire transfer of immediately available funds to be disbursed according to the terms and conditions of the liquor escrow agreement (the "**Liquor Escrow Agreement**") substantially in the form attached hereto

as Exhibit C, it being understood that upon the termination of the Liquor Escrow Agreement, the funds to be released therefrom to Seller shall be paid by the Liquor Escrow Agent directly to the Escrow Agent and added to the Escrow Account to be held pursuant to the terms and conditions of the Escrow Agreement. The parties acknowledge and agree that the terms of the Liquor Escrow Agreement shall provide that the Liquor Escrow Amount shall only secure the payment of the claims of the bona fide creditors of Seller with respect to obligations arising during the period prior to the Closing (provided that such creditors file their claims with the Liquor Escrow Agent before the Liquor Escrow Agent is notified by the California Department of Alcoholic Beverage Control of its approval of the transfer of Seller's liquor license), and shall not secure any of Seller's or Buyer's obligations (including with respect to any Interim Liquor Agreement) following the Closing.

(e) The balance of the Purchase Price, less the amounts referenced in Sections 2.1(a), (b), (c) and (d) above and the amount of the Deposit (such balance, the "Holdback Capital Improvements Consideration" and together with the Escrow Amount and the Liquor Escrow Amount, the amount equal to "Capital Improvements Consideration"), shall be paid by Buyer in accordance with this Agreement.

(f) At least two (2) Business Days prior the Closing Date, Seller shall deliver to Buyer a good faith estimate of (i) the amounts to be paid by Buyer pursuant to Section 2.1(b) and the cash of Seller as of 12:01 a.m. (California time) on the Closing Date.

2.2 Capital Improvements Consideration; Escrow.

(a) Buyer hereby covenants to spend the Capital Improvements Consideration on capital improvements to be made to the Club for the categories of improvements specifically referenced in Section 2.2(b) below (the "Capital Improvements"), which amounts Buyer hereby acknowledges and agrees have been bargained for and agreed to as consideration for Seller's agreement to enter into the transactions contemplated by this Agreement. The Capital Improvements Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and is an irrevocable commitment and non-refundable except as set forth in this Agreement.

(b) Subject to obtaining the necessary permits and any other approvals required by applicable Law, such Capital Improvements shall commence within one hundred twenty (120) days of Closing and, subject to Article XI, shall be incurred as follows during the first two (2)-year period following the Closing (the "Capital Improvements Period"): (i) \$2,000,000 of the Capital Improvements Consideration shall be incurred by Buyer within twelve (12) months following the Closing, (ii) an additional \$2,000,000 of the Capital Improvements Consideration shall be incurred by Buyer within eighteen (18) months following the Closing, and (iii) the balance of the Capital Improvements Consideration shall be incurred by Buyer within twenty-four (24) months following the Closing. The Capital Improvements Consideration shall be used for capital improvements to the following categories: golf course(s), tennis and aquatic facilities, fitness facilities and equipment, and social/hospitality facilities. The Capital Improvements shall be exclusive of (and in addition to) capital expenses and reserves for normal day-to-day operations of the Club and improvements not covered in the categories mentioned in the prior sentence. The Capital Improvements Consideration will be spent on such

Capital Improvements, in accordance with this Section 2.2; provided, that as such expenditures are made, Buyer will consult with the Club Advisory Committee (as defined in Exhibit D) to confirm that all such expenditures are consistent with this Section 2.2, and Buyer shall provide Seller with detailed quarterly updates (at the end of each calendar quarter) on expenditures and uses of the Capital Improvements Consideration until all such funds have been expended.

(c) At Closing, Buyer shall pay the Escrow Amount of the Capital Improvements Consideration less the Liquor Escrow Amount to an account (the "Escrow Account") held by UMB Bank, N.A. (the "Escrow Agent") to be used as the last money to be spent for the Capital Improvements to the Property pursuant to the terms of this Section 2.2 and an escrow agreement to be executed by Buyer, Seller and the Escrow Agent, substantially in the form of Exhibit E attached hereto (the "Escrow Agreement"), subject to any right of offset by Buyer under this Agreement.

(d) Notwithstanding the foregoing, in the event that, as of the second (2nd) anniversary of the Closing Date, (i) the amount actually spent by Buyer in payment of the Post-Closing Operations Liabilities and Seller Retained Liabilities in excess of the amount set forth on the Latest Balance Sheet, the most recent of which is attached hereto as Schedule 2.2(d) (such excess a "Post-Closing Operations Liabilities Deficiency"), (ii) the amount actually spent by Buyer in payment of any Habitat Improvement Liabilities under Section 4.2 below exceeds Two Million Eight Hundred Thousand Dollars (\$2,800,000) (such excess a "Habitat Improvement Liabilities Deficiency"), (iii) (x) the sum of the Receivables collected by Buyer within a period of six (6) months from the Closing Date pursuant to Article VI below, less (y) the amounts actually spent by Buyer in payment of the Accounts Payable under Section 4.2, is less than Two Hundred Fifty Thousand Dollars (\$250,000.00) (such excess a "Net Cash Deficiency"), then the Capital Improvements Consideration shall be reduced on a dollar-for-dollar basis by the amount equal to such Post-Closing Operations Liabilities Deficiency, Habitat Improvement Liabilities Deficiency or Net Cash Deficiency (the amount equal to such reduction a "Capital Improvement Reduction"); provided, however, that for purposes of this Agreement, the Net Cash Deficiency shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Any Capital Improvement Reduction shall be determined as follows:

(i) As soon as practicable, but in any event within ninety (90) days after the second (2nd) anniversary of the Closing Date, Buyer shall prepare a Capital Improvement Statement, including any Post-Closing Operations Liabilities Deficiency, Habitat Improvement Liabilities Deficiency, Net Cash Deficiency, and the Capital Improvement Reduction, if any, and shall deliver to Seller a copy thereof (the "Draft Capital Improvement Statement") together with an explanation of such adjustments and Buyer's work papers, calculations, documents, etc. related to, or used in, the preparation of the Draft Capital Improvement Statement; provided, that if Buyer does not deliver the Draft Capital Improvement Statement to Seller within ninety (90) days after the Closing Date, then no reduction to the Capital Improvements Consideration shall be permitted pursuant to this Section 2.2(d).

(ii) The Seller shall have until thirty (30) days after the delivery of the Draft Capital Improvement Statement to review it and either accept the Draft Capital Improvement Statement or propose adjustments thereto. All adjustments proposed by the Seller shall be set out in detail in a written statement delivered to Buyer (the "Adjustment").

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Statement"). If the Seller accepts the Draft Capital Improvement Statement without further adjustment or fails to deliver an Adjustment Statement within such thirty (30)-day period, then such Draft Capital Improvement Statement shall be the "Final Capital Improvement Statement" for all purposes of this Agreement.

(iii) If the Seller delivers an Adjustment Statement, then Buyer and the Seller shall use commercially reasonable efforts to resolve their dispute. If Buyer and the Seller cannot reach a final resolution within ten (10) days after the Seller delivers to Buyer the Adjustment Statement, then Buyer and the Seller shall promptly retain an independent accountant acceptable to both parties ("**Independent Accountant**") to resolve any remaining disputes. Either the Seller or Buyer may retain the Independent Accountant upon the expiration of such ten (10)-day period; provided, that the engagement agreement for the Independent Accountant must specify that the Independent Accountant will act as a neutral expert and not as an arbitrator or as a fiduciary to or advocate of either Buyer or the Seller. If the Independent Accountant is retained, then the Seller and Buyer shall (i) each submit to the Independent Accountant in writing not later than ten (10) days after the Independent Accountant is retained their respective positions with respect to the matters addressed herein, together with such supporting documentation as they deem necessary or as the Independent Accountant requests, provided, that neither party shall be required to provide any attorney-client privileged communications and (ii) direct the Independent Accountant to render its decision as to the Final Capital Improvement Statement and Capital Improvement Reduction within sixty (60) days after receiving the positions of both the Seller and Buyer and all supplementary supporting documentation requested by the Independent Accountant, which decision shall be final and binding on, and nonappealable by the Seller and Buyer. The decision of the Independent Accountant shall be in writing and be delivered to each of the Seller and Buyer within such thirty (30)-day period. If the Independent Accountant is retained pursuant to this Section 2.2(d), the Draft Capital Improvement Statement as finally determined by the Independent Accountant shall be the "**Final Capital Improvement Statement**" for all purposes of this Agreement. The fees and expenses of the Independent Accountant shall be paid (i) one half by Buyer and (ii) one half by the Seller, which amount Buyer shall offset against the Escrow Amount.

(iv) If the Final Capital Improvement Statement indicates a Capital Improvement Reduction, the Capital Improvements Consideration shall be reduced by the amount of such Capital Improvement Reduction. If the Final Capital Improvement Statement does not indicate a Capital Improvement Reduction, the Capital Improvements Consideration shall not be reduced by any amount.

(v) Buyer shall provide the Seller and its Representatives with reasonable access during normal business hours to the accounting records of Buyer and the Club, and to Buyer's work papers, calculations, documents, etc. related to, or used in, the preparation of the Draft Capital Improvement Statement.

2.3 Deposit. Within one (1) Business Day following the Effective Date, Buyer shall deposit the sum of One Hundred Thousand Dollars (\$100,000.00) with Chicago Title Company (the "**Title Company**") as earnest money (the "**Deposit**"). If the sale of the Property hereunder is consummated in accordance with the terms of this Agreement, the Deposit shall be applied to the Purchase Price to be paid by Buyer at the Closing. Upon receipt, the Title Company shall,

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promptly invest the Deposit in accounts as reasonably requested by Buyer and Seller and which permit the timely performance of the Title Company under the terms of this Agreement and any interest earned thereon will be added to and become a part of the Deposit. If Buyer fails to deposit the Deposit with the Title Company on or before the date specified above, Seller shall have the right and option to terminate this Agreement on behalf of Seller by written notice of termination to Buyer and the Title Company. Any performance by any of the parties in furtherance of this Agreement during the period following Buyer's failure to timely deposit the Deposit with the Title Company and Seller's election to terminate this Agreement for Buyer's failure to make the Deposit shall not act as any waiver of Seller's termination right. If this Agreement is terminated for any reason other than a breach by Buyer pursuant to Section 12.2, Buyer shall receive a full refund of the Deposit. The term "**Business Day**" is any day determined by Pacific Standard Time or Pacific Daylight Time as then applicable that is not a Saturday, Sunday or legal holiday under federal law or the laws of the State of California.

2.4 Allocation of Purchase Price. Following the Closing, Buyer shall complete its purchase price accounting, and Buyer shall provide Seller with a copy of its determination for allocation of the Purchase Price among the Property and a copy of IRS Form 8594 filed by Buyer.

2.5 Transfer Taxes. Buyer shall assume and pay when due the entire amount of any and all transfer and sales or use Taxes imposed or levied by reason of the sale of the Property to Buyer. Buyer and Seller shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such sales or use Taxes.

**ARTICLE III
TITLE AND SURVEY REVIEW, DUE DILIGENCE PERIOD
AND UPDATED EXHIBITS AND SCHEDULES**

3.1 Title and Survey Review.

(a) State of Title to be Conveyed. Leasehold title to the Property shall be conveyed to Buyer at Closing pursuant to the New Ground Lease (as hereinafter defined), free and clear of any and all Encumbrances, except for the following (collectively, the following items, "**Permitted Exceptions**"): (i) the exceptions set forth on Schedule 3.1; (ii) any matters and items that would be shown on an accurate current survey of the Property; (iii) the standard printed exclusions and special California exclusions from coverage contained in the Title Commitment (defined below); (iv) the lien of real property Taxes and municipal and other charges not yet due and payable; (v) any Laws affecting the Property; (vi) any Encumbrance affecting the Property arising or resulting from the actions or omissions of Buyer or Buyer's representatives and (vii) the Permitted Encumbrances.

(b) Title Commitment. Buyer hereby acknowledges receipt of (i) a commitment for owner's title insurance policy for the Property, issued by Chicago Title Insurance Company, with an effective date of November 12, 2014 (the "**Title Commitment**"), together with copies of all instruments giving rise to any Encumbrances, defects or other exceptions to title noted therein. Buyer hereby accepts the state of title as shown and described in the Title Commitment and waives any claim of defect or other title or survey objection based

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on the matters as shown in the Title Commitment; provided that the Seller shall be obligated to cure those title defects and exceptions that may be cured by payment of money or the posting of a bond, to the extent such defects and exceptions relate to the period prior to the Closing (the "**Monetary Obligations**"). Seller shall have no responsibility for any such matters to the extent they first occur on or after the Closing. As used in this Agreement, the term "**Title Commitment**" means the applicable commitment for title insurance described in the preceding two sentences and the term "**Exception Documents**" means copies of all recorded instruments referred to in Schedule B of the Title Commitment in as legible a form as the instrument is recorded. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that to the extent any Monetary Obligations, including without limitation any outstanding mortgages on the Real Property (but not any mortgages on the fee simple interest in the Land), remain outstanding and unpaid as of the Closing Date, Buyer shall pay any such Monetary Obligations and the Capital Improvements Consideration shall be reduced by the amount of such Monetary Obligations.

3.2 Due Diligence Period.

(a) Due Diligence. The term "**Due Diligence Period**" means a period beginning on the execution of the Term Sheet dated November 14, 2014 (as amended, restated, modified or supplemented from time to time, the "**Term Sheet**") between Buyer and Seller and ending on February 28, 2015 (the "**Due Diligence Period**"). Seller has made available to Buyer for Buyer's review and inspection, the items provided in the data room maintained on behalf of Seller by CBRE Group, Inc. (collectively, the "**Due Diligence Items**"). During the Due Diligence Period, Buyer and its agents, employees, consultants, inspectors, appraisers, accountants, advisors, counsel, engineers and contractors (collectively, "**Buyer's Representatives**") shall have the right to enter upon and pass through the Property as set forth in Section 3.2(b) below. Notwithstanding any such inspection, or anything to the contrary contained herein, Buyer's obligations hereunder shall not be limited or otherwise affected as a result of any fact, circumstance or other matter of any kind discovered following the date hereof in connection with any such inspection, access or otherwise, except as set forth in Section 3.2(c) below.

(b) Conduct and Property Reports.

(i) In conducting any inspection of the Property or otherwise accessing the Property, Buyer shall at all times comply with all Laws of all applicable Governmental Authorities in all material respects, and neither Buyer nor any of Buyer's Representatives shall (i) contact or have any discussions with any of Seller's employees, agents or representatives, or with any contractors providing services to, the Property, unless in each case Buyer obtains the prior written consent of Seller (which may be given via electronic mail), it being agreed that all such contacts or discussions shall, pending any such approval, be directed to Steve Wittert via electronic mail (at swittert@fairbanksranch.com), with a copy to Steve Foster via electronic mail (at sfoster444@gmail.com), (ii) unreasonably interfere with the Business (or any of its licensees, or any other persons or entities entitled to occupy the Property) conducted at the Property or disturb the use or occupancy of any occupant or guest of the Property or (iii) damage the Property. In conducting any inspection of the Property or otherwise accessing the Property, Seller may from time to time establish reasonable rules of conduct for Buyer and

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Buyer's Representatives in furtherance of the foregoing. Buyer shall schedule and coordinate all inspections, including, without limitation, any environmental tests, and other access with Seller and shall give Seller at least (1) Business Day's prior notice thereof. Seller shall be entitled to have a representative present at all times during each such inspection or other access, all of which shall be conducted between 7:00 am and 6:00 pm, local San Diego time. Buyer agrees to pay to Seller on demand the cost of repairing and restoring any damage or disturbance which Buyer or Buyer's Representatives have caused to the Property. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer or Buyer's Representatives relating to such inspection and its other access shall be at the sole expense of Buyer except as otherwise provided in this Agreement.

(ii) Buyer shall keep all information obtained during its inspections and access to the Property confidential. If the Closing shall not occur for any reason whatsoever, upon the Seller's written request, Buyer shall promptly destroy copies of all due diligence materials delivered by Seller to Buyer and shall certify to Seller that such destruction has occurred. If the Closing shall not occur pursuant to Section 7.3(a) (other than due to a failure of a closing condition of Seller pursuant to Section 7.1) or Section 12.2, Buyer shall provide Seller with a copy of all reports regarding the status or condition of the Real Property and/or the Personal Property, or Phase I or Phase II environmental reports made, conducted or procured by Buyer with respect to the Real Property (the "**Buyer Property Reports**") at no cost to Seller. If the Closing shall not occur pursuant to Section 12.1, Buyer shall provide Seller with a copy of all Buyer Property Reports upon Seller's reimbursement of Buyer for all of Buyer's costs and expenses associated with obtaining the Buyer Property Reports within five (5) Business Days following the termination of the Agreement. In the event this Agreement is terminated due to a breach of this Agreement by Seller, Buyer shall provide Seller with copies of the Buyer Property Reports; provided, however, that Seller may not retain copies of the Buyer Property Reports or use the Buyer Property Reports in connection with any future transfer, sale, disposition or similar transaction involving Seller, the Business or the Property. For purposes of this Section 3.2(b), Buyer and Buyer's Representatives may retain copies of the due diligence materials to the extent Buyer or Buyer's Representatives are required to do so by applicable Law or internal record-keeping policies and Buyer and Buyer's Representatives shall not be required to delete electronically-stored due diligence materials to the extent such deletion would be technologically impracticable or inconsistent with the archival records retention policy of Buyer or Buyer's Representatives. Buyer and Buyer's Representatives shall not be permitted to conduct borings of the Property or drilling in or on the Property, or any other invasive, intrusive or destructive testing in connection with the preparation of an environmental audit or in connection with any other inspection of the Property without the prior written consent of Seller, which Seller may give or withhold in its sole and absolute discretion (and, if such consent is given, Buyer shall be obligated to pay to Seller on demand the cost of repairing and restoring any damage as aforesaid). The obligations of Buyer and Seller under this Section 3.2(b)(ii) shall survive any termination of this Agreement.

(c) Termination. Buyer shall have until not later than 5:00 p.m. local San Diego time, on the date that Due Diligence Period expires within which to determine, in its sole discretion, whether all matters related to the Property are satisfactory to Buyer. If Buyer, in its sole discretion, determines that the purchase of the Property is not feasible and that Buyer does not desire to proceed with the transactions contemplated under this Agreement, then Buyer shall

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deliver to Seller, prior to the expiration of the Due Diligence Period, written notice that Buyer does not desire to proceed with the transactions contemplated under this Agreement and, in such case, this Agreement shall terminate upon Seller's receipt of such notice, except for those matters which are indicated herein as surviving termination, and the Deposit shall be immediately returned to Buyer, less any escrow fees of Buyer. If Buyer fails to timely notify Seller prior to the expiration of the Due Diligence Period (with time being of the essence) that Buyer does not desire to proceed with the transactions contemplated under this Agreement as aforesaid, then Buyer shall be deemed to have waived its right to (i) terminate this Agreement under this Section 3.2, and (ii) the Deposit, except as provided in Section 12.1(a).

(d) Insurance. Prior to entry upon any part of the Real Property, Buyer shall cause its agents or consultants to cause a carrier authorized to issue such policies in the state of California which is acceptable to Seller, which such acceptance shall not be unreasonably conditioned or withheld, to issue or endorse an existing policy or policies providing commercial general liability coverage which shall include independent contractors' protection, personal injury and broad form property damage coverage with a limit for each occurrence and a general aggregate each in an amount of not less than One Million Dollars (\$1,000,000.00) naming Seller and their members, officers, managers, Affiliates, employees, agents and representatives each as an additional insured.

(e) Indemnification. In addition, Buyer will fully indemnify, defend, and hold Seller and Seller's members, officers and managers harmless from any claim, damage, loss, cost, expense (including, without limitation, reasonable legal fees, court costs, and expenses) caused by or resulting from the entry in or onto the Club or any portion of the Property by Buyer and/or Buyer's Representatives in connection with Buyer's due diligence investigation or activity (either by Buyer or Buyer's Representatives) on the Real Property in connection with the transactions contemplated by this Agreement prior to the Closing.

(f) Encumbrance. Prior to the Closing, Buyer shall not permit or cause any Encumbrance to be filed against any portion of the Property by a consultant, contractor, subcontractor, or other person or entity arising by, through or under Buyer or otherwise attributable to Buyer's inspection and review of the Property or portion thereof, and in the event of any such Encumbrance being asserted against any of the Property by a consultant, contractor, subcontractor, or other person or entity arising by, through or under Buyer or otherwise attributable to Buyer's inspection and review of the Property or portion thereof, Buyer will promptly take all steps necessary to cause such Encumbrance to be released of record (whether through payment or bonding) within five (5) Business Days after receipt of notice from Seller of the filing of any Encumbrance.

(g) UCC Searches/Contracts and Agreements. Buyer may obtain, at Buyer's expense, a Uniform Commercial Code search for each county and state in which any of the Real Property or the Personal Property is located, where the Seller has its principal place of business, and the Seller state of incorporation.

(h) Investigation. At all times prior to the Closing and upon at least one (1) Business Day prior written notice to Seller, Buyer shall have the right to contact Governmental Authorities and other third parties, and may make reasonable inquiries concerning the Business,

the Club and the Property. Seller agrees to reasonably cooperate with Buyer in connection with its investigation of the Business, the Club and the Property and all other matters pertaining thereto including, but not limited to, delivering copies of documents, in Seller's possession, as reasonably requested by Buyer in connection with its investigation of the Business, the Club and the Property, and furnishing Buyer with a written authorization to make all necessary municipal ordinance, order or requirement violation searches.

The terms of this Section 3.2 survive the Closing or any termination or expiration of this Agreement regardless of the basis or reason for any such termination or expiration.

ARTICLE IV BUYER'S ASSUMPTION OF LIABILITIES

4.1 Assumption of Post-Closing Operational Liabilities. Buyer shall, by conveyance of title to the Property by Seller to Buyer, assume the liability for all the obligations related to the Property, or any portion thereof, not addressed elsewhere in this Article IV (and other than the Seller's Retained Liabilities) which become due for payment or performance after Closing (the "Post-Closing Operations Liabilities"), including the accrued liabilities and accounts payable (i) set forth in the Seller's Current Balance Sheet, and (ii) incurred by Seller in the ordinary course of business following the date of the Current Balance Sheet, in each case, relating to all periods ending on or prior to the Closing Date (the "Accounts Payable").

4.2 The Assumed Liabilities. The term "Assumed Liabilities" in this Agreement shall mean collectively: (i) the Assumed Contract Liabilities; (ii) the Post-Closing Operations Liabilities; (iii) any and all costs, claims, damages and liability arising out of or related to all requirements by the City or any other Governmental Authority, including to mitigate, improve or rehabilitate any and all environmental habitat matters related to the Real Property or any other real estate in the vicinity of the Land (the "Habitat Improvement Liabilities"); (iv) all minimum water purchase obligations under the Schoenfelder Water Use Agreement dated November 1, 1993, as amended on January 1, 2008, by and among Seller, Gerald P. Schoenfelder and Eric Johnson, trustees of the Gerald P. Schoenfelder 2003 Real Property Trust under Trust Agreement dated March 10, 2003, as successor-in-interest to Darryl O. Solberg, Trustee of the Darryl O. Solberg Holding Trust No. 1; (iv) any and all costs, claims, damages and liability arising out of or related to The Worker Adjustment and Retraining Notification Act and any similar state law applicable to Seller (collectively, the "WARN Act"); and (v) any other obligation for which Buyer has assumed the liability for performance under the terms of this Agreement. In no event shall the Member Liabilities be deemed Assumed Liabilities.

4.3 Seller's Retained Liabilities. Notwithstanding anything to the contrary contained in this Agreement and regardless of whether such liability or obligation is disclosed in any schedule to this Agreement or otherwise, Buyer will not assume or in any way be responsible for any liabilities or obligations of Seller, excluding the Assumed Liabilities, of whatever nature, whether known or unknown, absolute or contingent, matured or unmatured (collectively, the "Seller's Retained Liabilities"), including but not limited to any (i) liabilities or obligations related to or arising out of the Excluded Property, (ii) liabilities or obligations of Seller with respect to any Indebtedness, (iii) Taxes relating to any period prior to the Closing, (iv) all accrued but unpaid wages, sales and other commissions, and vacation, holiday and sick pay

obligations (and any payroll taxes thereon) with respect to employees of the Seller or engaged in the operation of the Club by Seller or any third party or otherwise owing or payable to Seller's employees resulting from the transactions contemplated herein (v) any liabilities or obligations with respect to worker's compensation claims of Seller or any third party, (vi) any litigation, arbitration or similar claims against Seller, including, without limitation the matters disclosed on Schedule 5.2(m), (vii) Closing Costs of Seller, (viii) Liabilities related to or arising out of the operation of the Club or the ownership of the Property on or before the Closing Date, (ix) any liabilities or obligations of Seller under this Agreement, (x) liabilities and obligations under the Seller Benefit Plans; and (xi) any Member Liabilities; provided, however, that for avoidance of doubt, the "Seller's Retained Liabilities" shall not include the Accounts Payable. In no event shall Seller have any responsibility for any Assumed Liability.

4.4 Seller's Excluded Cash; Seller's Account. On or prior to Closing, Seller shall use all of the Excluded Cash to pay down Seller's Closing Costs, Accounts Payable or any obligations of Seller owing to Western Alliance Bank (the "Closing Liabilities"), so that immediately following the Closing Seller shall have no remaining Excluded Cash. From and after the Closing, Buyer agrees to pay up to \$500,000 to provide Seller with sufficient funds to maintain its corporate existence, perform its obligations and enforce its rights under this Agreement, wind down its existence when determined by Seller and to take any other actions Seller determines to be required by Law, maintain in effect the primary directors' and officers' liability insurance "tail" policy purchased by Seller in connection with and prior to the transactions contemplated by this Agreement (the "Tail Policy"), and pay and perform any obligations of Seller, including the Retained Liabilities, including in each case payment of fees and expenses of attorneys, accountants and other service providers (collectively the "Contemplated Seller Obligations"). Buyer shall perform its obligation under this Section 4.4 by advancing \$250,000 to Seller by wire transfer at Closing to an account designated by the Seller (the "Seller Account"). Seller shall use the funds in the Seller Account to pay and perform the Contemplated Seller Obligations (the "Post-Closing Seller Funds"). Within thirty (30) days after Seller has spent the remaining Post-Closing Seller Funds in increments of \$100,000, Seller shall provide Buyer with a written accounting of the cash in the Seller Account and the use of such Post-Closing Seller Funds. In the event Seller does not have sufficient cash to pay the Contemplated Seller Obligations, Buyer shall replenish the Seller Account within five (5) Business Days of any written request by Seller in \$25,000 increments (the "Replenishment Obligation") as needed from time to time from the Capital Improvements Consideration (which amount(s) will reduce the Capital Improvements Consideration); provided that in no event shall the Replenishment Obligation pursuant to this Section 4.4 exceed \$250,000; provided further that the Replenishment Obligation shall terminate on the date that is the third (3rd) anniversary of the Closing Date. Any and all Post-Closing Seller Funds held by Seller at time of its Effective Dissolution, shall be promptly returned to Buyer and shall be added to, and become part of, the Capital Improvements Consideration.

ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Buyer's Representations and Warranties. Buyer hereby makes the representations and warranties to Seller as set forth in this Section 5.1:

(a) Buyer is a limited liability company duly organized and legally existing in good standing under the laws of the State of Delaware.

(b) The execution and delivery of, and performance under, this Agreement and the Closing Documents to which Buyer is a party are within Buyer's powers and Buyer has been duly authorized by all requisite action. The person or persons executing this Agreement and the Closing Documents to which Buyer is a party on behalf of Buyer has or have the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws applicable generally to creditor's rights and general equitable principles regardless of whether such enforceability is considered in a Proceeding at Law or in equity.

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not (i) contravene any provision of the certificate of formation or limited liability company agreement of Buyer, (ii) violate any applicable Law by which Buyer or any of its properties are bound, which violation would reasonably be expected to have a material and adverse effect on the ability of Buyer to consummate the transactions contemplated hereby on the terms and subject to the conditions set forth herein, (iii) require the consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority or any other Person (except any governmental permits or licenses required to operate the Club) the absence of which would not reasonably be expected to have a material and adverse effect on the ability of Buyer to consummate the transactions contemplated hereby on the terms and subject to the conditions set forth here or (iv) result in any breach of, or constitute any default under, any Contract to which Buyer is a party.

(d) To Buyer's actual knowledge there are no pending or threatened Proceedings which could adversely affect the ability of Buyer to perform any of its obligations hereunder.

(e) To Buyer's actual knowledge, no consent or approval or other action of any Person or of any Governmental Authority is required with respect to the execution and delivery of this Agreement and the Closing Documents to which Buyer is a party by Buyer or the consummation by Buyer of the transactions contemplated hereby or thereby or the performance by Buyer of its obligations hereunder or thereunder.

(f) On the Closing Date, Buyer will have sufficient available funds to perform all of Buyer's obligations under this Agreement, including, without limitation, the payment of the Purchase Price.

(g) The Lender Conditions are covenants that must be satisfied by Buyer and/or Parent prior to closing the transactions contemplated by this Agreement, but do not limit or qualify the representation set forth in Section 5.1(f).

5.2 Seller's Representations and Warranties. Seller hereby makes the representations and warranties to Buyer that, subject to the knowledge qualification set forth in Section 5.3 below and except as set forth in the Schedules accompanying this Section 5.2 (collectively, the

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"Schedules"), as set forth in this Section 5.2. The Schedules have been arranged in separately numbered sections corresponding to the Sections of this Section 5.2; however, the disclosure of any item in any section of the Schedules shall be deemed to incorporate by reference all information disclosed in any other section of the Schedules to which the relevance of such item is readily apparent. Capitalized terms used in the Schedules are not otherwise defined therein have the meanings given to them in this Agreement.

(a) Seller is a California nonprofit corporation duly formed and legally existing in good standing under the Laws of the State of California and has the requisite power and authority to own or lease the Property and to carry on the business of the Club as now being conducted. Seller is not required to qualify to do business as a foreign nonprofit corporation in any jurisdiction in which it is not so qualified, except where failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect. Except as set forth in Schedule 5.2(a), there are no pending or, to Seller's Knowledge, threatened Proceedings for the dissolution, liquidation, insolvency or rehabilitation of Seller.

(b) The execution and delivery of, and performance under, this Agreement and the Closing Documents to which Seller is a party are within Seller's powers and have been, or will be prior to Closing, duly authorized by all requisite action. The person or persons executing this Agreement and the Closing Documents to which Seller is a party on behalf of Seller has or have the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws applicable generally to creditor's rights and general equitable principles regardless of whether such enforceability is considered in a Proceeding at Law or in equity.

(c) Except as set forth in Schedule 5.2(c), the execution, delivery and performance of this Agreement and each Closing Document to which Seller is a party and the consummation of the transactions contemplated by this Agreement will not (i) contravene any provision of the certificate of incorporation or bylaws of Seller, (ii) violate any applicable Law, writ, injunction, judgment or order of any Governmental Authority or of any arbitration award which is either applicable to, binding upon or enforceable against Seller, (iii) require the consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority or any other Person, or (iv) conflict with, result in any breach of, or constitute any default (or an event that would, with or without the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right of payment under or the right to terminate, amend, modify, abandon or accelerate any Contract which is applicable to, binding upon or enforceable against Seller.

(d) Except as set forth in Schedule 5.2(d), the execution, delivery and performance of this Agreement and each Closing Document to which Seller is a party by Seller will not result in any breach of, or constitute any default under, or result in the imposition of an Encumbrance (other than a Permitted Encumbrance) on the Property under, any Contract to which Seller is a party or by which Seller or the Property might be bound.

(e) Except as set forth in Schedule 5.2(e), no consent or approval of any Person or of any Governmental Authority is required with respect to the execution and delivery

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of this Agreement and each Closing Document to which Seller is a party by Seller or the consummation by Seller of the transactions contemplated hereby or thereby or the performance by Seller of its obligations hereunder or thereunder, except for the approval of the Board of Directors of Seller and the Members of Seller.

(f) Seller has delivered to Buyer (i) its audited balance sheet and related statement of income for the fiscal year ended December 31, 2013 (the "**Audited Financials**"), and (ii) its unaudited balance sheet and related statement of income for the fiscal period ending December 31, 2014 (the "**Current Balance Sheet**"), correct and complete copies of which are attached to Schedule 5.2(f)(i) (collectively, the "**Financial Statements**"). The Financial Statements fairly present the financial position of Seller and all of its properties, assets and liabilities in all material respects at each of the applicable dates set forth therein, and the results of operations for the periods covered thereby. The Financial Statements have been derived from the books and records of the Seller. The Audited Financials have been prepared in accordance with GAAP, consistently applied throughout the periods indicated. The Current Balance Sheet has been prepared in accordance with the past practices of Seller, consistently applied throughout the periods indicated. Except as set forth on Schedule 5.2(f)(ii), Seller has no liabilities, Indebtedness or other obligations, whether accrued, absolute, contingent or otherwise, except: (i) to the extent reflected on the Current Balance Sheet and not heretofore paid or discharged, (ii) liabilities incurred in the ordinary course of business consistent with past practice since the date of the Current Balance Sheet (none of which relates to (A) any breach of contract or breach of warranty or (B) any tort, infringement or violation of Law or that arose out of any action, suit, claim, governmental investigation or arbitration proceeding), or (iii) liabilities incurred in the ordinary course of business prior to the date of the Current Balance Sheet which do not exceed \$20,000 in the aggregate.

(g) All Tax Returns required to be filed by or on behalf of Seller have been duly and timely filed with the appropriate Governmental Authority in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns are true, complete and correct in all material respects. All Taxes due and owing by Seller have been fully and timely paid except those contested in good faith. Seller is not currently the beneficiary of any extension of time within which to file any Tax Return.

(h) Seller has complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and has duly and timely withheld and paid over to the appropriate Governmental Authorities all amounts required to be so withheld and paid over by Seller under all applicable Laws in connection with, or with respect to, the Club or the Property. To Seller's Knowledge, no claim has been made by any Governmental Authority in a jurisdiction in which Seller does not currently file a Tax Return such that Seller is or may be subject to taxation by that jurisdiction in connection with, or with respect to, the Business, the Property or the Assets. There is no material dispute or claim concerning any Tax liability of Seller either claimed or raised by any Governmental Authority. No agreement, waiver or other document or arrangement extending or having the effect of extending the period for assessment or collection of Taxes (including, but not limited to, any applicable statute of limitation) or the period for filing any Tax Return, in each case with respect to the Business, the Property or the other Assets, has been executed or filed with any Governmental Authority by or on behalf of Seller. Seller has not executed or entered into any agreement with, or obtained any consents or

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clearances from, any Governmental Authority, or has been subject to any ruling guidance specific to Seller, that would be binding on Buyer for any taxable period (or portion thereof) ending after the Closing Date.

(i) Except as set forth in Schedule 5.2(i), Seller has marketable title to all of the Property, free and clear of any Encumbrances, other than Permitted Encumbrances. The Property constitutes all of the assets, property and other rights currently used to conduct the business of the Club as currently operated by Seller. No assets utilized by the Club are owned by or in the possession of any Member or Affiliate of Seller. Except as set forth in Schedule 5.2(i), Seller's machinery, equipment and other tangible assets included in the Property are located on the Real Property and have been maintained in working condition (normal wear and tear excepted). There has been no damage to or destruction of the Personal Property currently in use or necessary for the operation of the Club (normal wear and tear excepted) that reasonably could be expected to require an expenditure in excess of \$20,000 in order to replace such Personal Property or return such Personal Property to good operating condition. The conveyance of the Property will not violate the rights of any third party.

(j) Except as set forth in Schedule 5.2(j), all accounts receivable have arisen in the ordinary course of business, represent valid and enforceable obligations due to Seller, have been and are subject to no set-off, counterclaim or future performance obligation on the part of Seller, and are fully collectible in the ordinary course of business in accordance with their terms.

(k) Schedule 5.2(k) sets for a true and complete list of the following Contracts to which Seller is a party: (i) loan agreements, indentures, mortgages, pledges, hypothecations, deeds of trust, conditional sale or title retention agreements, security agreements, equipment financing obligations or guaranties, or other sources of contingent liability in respect of any indebtedness or obligations to any other Person, or letters of intent or commitment letters with respect to same (other than those which individually provide for annual payments of less than \$20,000); (ii) Contracts obligating Seller to provide or obtain products or services for a period of one year or more; (iii) Contracts with suppliers that require the expenditure, or are reasonably anticipated to require the expenditure, by Seller of more than \$20,000 in any 12-month period; (iv) leases or subleases of real and personal property, whether as lessor, sublessor, lessee or sublessee (other than those that individually provide for annual payments of less than \$20,000); (v) distribution, sales agency or franchise or similar agreements, or agreements providing for an independent contractor's services, or letters of intent with respect to same (other than those which individually provide for annual payments of less than \$20,000); (vi) employment agreements, management service agreements, consulting agreements, confidentiality agreements, non-competition agreements, severance agreements, retention agreements and any other similar agreements relating to any consultant, employee, officer or director of Seller; (vii) licenses, assignments or transfers of trademarks, trade names, service marks, patents, copyrights, trade secrets or know how, or other agreements regarding Intellectual Property Rights; (viii) Contracts relating to pending capital expenditures by Seller; (ix) any Contracts which prohibit Seller or the Club or any employees of Seller from freely engaging in any business, including any Contract containing non-competition, exclusivity or most favored nation pricing provisions binding Seller, or which prohibits Seller from soliciting employees, customers, alternative suppliers or vendors, or any other business; (x) any Contracts under

which Seller has made any advance, loan, extension of credit or capital contribution to, or other investment in, any Person (other than extensions of trade credit and other advances under commercial arrangements in the ordinary course of business); (xi) any partnership, joint venture or similar arrangements; (xii) any brokerage Contracts; (xiii) any Contract for the sale of any of the assets of Seller or for the grant to any Person or entity of any preferential rights to purchase any of its assets; (xiv) any Contract that contains a right of first refusal, first offer or first negotiation; (xv) any Contract between Seller, on the one hand, and any of its Affiliates, on the other hand; (xvi) all management or other operating Contracts with respect to the Property and the Club; (xvii) any Contracts with respect to water rights or the usage or access to water on or about the Real Property and (xviii) any other Contract otherwise material to the Club or the Property or not made in the ordinary course of business consistent with past practices. Each of the contracts required to be listed in Schedule 5.2(k) shall be referred to herein as a "**Material Contract**."

(l) Seller has made available to Buyer a true, correct and complete copy of each Assumed Contract. The copy of each Assumed Contract made available to Buyer reflects all amendments thereto made through the date of this Agreement. Except as set forth in Schedule 5.2(l), (i) Seller has not violated any of the terms or conditions of any Material Contract or any term or condition which would permit termination or modification of any Material Contract, (ii) all of the covenants to be performed by any other party thereto have been fully performed, and (iii) no claims have been made or issued for breach or indemnification or notice of default or termination under any Material Contract. Except as set forth in Schedule 5.2(l)(iv), each of the Material Contracts constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its express terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a Proceeding at Law or in equity. No event has occurred that constitutes, or after notice or the passage of time, or both, would constitute, a default by Seller under any Material Contract, and no such event has occurred that constitutes or would constitute a default by any other party.

(m) Except as set forth in Schedule 5.2(m), there are no currently pending or threatened Proceedings involving Seller or any of the Property or the Club.

(n) A complete and correct list of each material license and permit held by Seller in connection with the ownership, use and/or operation of the Club and the Property is set forth on Schedule 5.2(n) and all such licenses and permits are valid and in full force and effect and Seller is in material compliance with the respective requirements thereof. Seller possesses all licenses and permits necessary to operate the Club as currently conducted by Seller.

(o) Other than CBRE, Seller has not employed, nor is liable for the payment of any fee to, any finder, broker, consultant or similar person in connection with the transactions contemplated under this Agreement.

(p) Except as set forth in Schedule 5.2(p), Seller is and has been in compliance in all material respects with all Laws applicable to it, the Club (as conducted by Seller now or in the past five (5) years, as applicable), the Property, and any other properties or

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assets owned or used by Seller. Except as set forth in Schedule 5.2(p), since January 1, 2010, Seller has not been cited, fined or otherwise received any notice, written or otherwise, from any Governmental Authority requiring the correction of any condition with respect to the Property which is or might be in violation of any Law. Seller is not subject to any Contract, decree or injunction that restricts the continued operation of the Club. There are no outstanding orders, decrees or stipulations issued by any Governmental Authority in any Proceeding to which Seller is or was a party which have not been complied with in full or which continue to impose any obligations on Seller.

(q) Except as set forth in Schedule 5.2(q), Seller has not received any notice and neither has any actual knowledge of any pending improvements, Encumbrances (other than Permitted Encumbrances) or special assessments to be made against the Property by any Governmental Authority, or which will result from work, activities, or improvements done to the Property by Seller.

(r) A true, correct and complete copy of the Ground Lease, along with all amendments thereto, has been delivered to Buyer, which Ground Lease is in full force and effect. Seller has not assigned, transferred or subleased any of its rights under the Ground Lease. Except as set forth in Schedule 5.2(r), Landlord has not provided Seller of any written notice of default under the Ground Lease, and there exists no event which with the giving of notice or the passage of time would constitute a default under the Ground Lease.

(s) The Real Property constitutes all the real property leased by Seller and used in connection with the Club. Except as set forth on Schedule 5.2(s), Seller holds good and valid leasehold interest to the Real Property, free and clear of all Encumbrances, except for Permitted Exceptions and other matters in the Title Commitment.

(t) Except as set forth on Schedule 5.2(t), (i) the Real Property is currently zoned in the zoning category which permits operation of such properties as now used, operated and maintained for the operation of the Club, (ii) none of the Real Property nor its respective use is in violation of any Law, and (iii) Seller has not received any written notice of a pending or threatened investigation regarding a potential violation of any Law which could reasonably be expected to have a Material Adverse Effect.

(u) Except as set forth in the Title Commitment, neither the whole nor any portion of the Real Property, including access thereto or any easement benefiting such Real Property, is subject to temporary requisition of use or any condemnation proceeding by any Governmental Authority or has been condemned, or taken in any Proceeding similar to a condemnation proceeding, nor is there now pending any condemnation, expropriation, requisition or similar Proceeding against the Real Property or any portion thereof. Seller has not received any written notice that any such Proceeding is contemplated.

(v) None of the Real Property has been classified under any designation authorized by Law solely for the purpose of obtaining a special low ad valorem tax rate or to receive either an abatement or deferment of ad valorem taxes, which, in such case, will result in additional, catch up ad valorem taxes in the future in order to recover the amounts previously abated or deferred. There are no minimum value, minimum tax or other written agreements

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with respect to the Real Property or any portion of it which would restrict Buyer's (or Seller's) right to contest the value or Taxes attributable to the Real Property.

(w) No Person has any right or option to acquire the Real Property, or any part thereof, or any interest therein, other than Buyer.

(x) Seller owns, free and clear of any Encumbrances, other than Permitted Encumbrances, or has the right to use all Intellectual Property that is used in the conduct of its business as currently conducted. The Intellectual Property owned by Seller ("**Owned IP**") is in full force and effect and has not been used or enforced, or failed to be used or enforced, in a manner that would result in any abandonment, cancellation or unenforceability of the Owned IP. Schedule 5.2(x) lists all Intellectual Property registered in the name of Seller and all Intellectual Property for which applications are still pending, and all material Intellectual Property that is not registered or the subject of a pending application.

(y) Seller has not received any written notice of any pending third party claim with respect to any Intellectual Property used by Seller. There is no opposition, cancellation, interference, re-examination or other Proceeding, at law or in equity, pending against or threatened against Seller. No person is infringing or violating any right of the Seller with respect to any Owned IP.

(z) With respect to any (a) nonqualified deferred compensation, equity or equity-based compensation or retirement plan or arrangement, (b) qualified defined contribution retirement plan or arrangement which is an "employee pension benefit plan" (within the meaning set forth in § 3(2)) of the Employee Retirement Income Security Act of 1974, as amended, and any regulations promulgated or guidance issued thereunder (collectively, "**ERISA**"), (c) qualified defined benefit retirement plan or arrangement which is an "employee pension benefit plan" (including any "multiemployer plan" within the meaning set forth in ERISA §§ 3(37) and 4001(a)(3)), (d) "employee welfare benefit plan" (within the meaning set forth in ERISA § 3(1)) and material fringe benefit plan or arrangement and (e) other material compensation, employment, retirement, bonus, incentive, severance, retention, vacation, employee benefit or compensatory plan, arrangement, agreement, policy, practice or program, in each case, whether written or unwritten, funded or unfunded, formal or informal, and whether or not subject to ERISA that, currently or within the seven-year period immediately preceding the effective date of this Agreement, is or has been maintained or sponsored by Seller or an ERISA Affiliate or to which Seller or an ERISA Affiliate has or has had any obligation to contribute (each a "**Seller Benefit Plan**" and collectively the "**Seller Benefit Plans**"):

(i) "**ERISA Affiliate**" means each persons which, pursuant to ERISA § 4001(b), is required to be treated as a single employer with Seller pursuant to Code § 414(b), (c), (m) or (o).

(ii) Schedule 5.2(z)(ii) sets forth a true, correct and complete list of all Seller Benefit Plans.

(iii) Each Seller Benefit Plan (and each related trust, insurance contract or fund, as applicable) complies in form and in operation in all respects with the

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applicable requirements of ERISA, the Code and other applicable laws, and each Seller Benefit Plan has been operated and administered in accordance with its terms.

(iv) No Seller Benefit Plan is or was (i) subject to Title IV of ERISA, (ii) a "multiemployer plan" as defined in ERISA § 4001(a)(3), or (iii) subject to the minimum funding standards of Code § 412 or ERISA § 302.

(v) Neither Seller nor any ERISA Affiliate maintains, contributes to, or has, or ever has, incurred any liability under, any Seller Benefit Plan providing medical, health and/or life insurance or other welfare-type benefits for retired or terminated employees, currently or in the future, following their termination of service, their spouses, or their dependents, other than in accordance with the requirements of Part 6 of Subtitle I of ERISA and Code § 4980B and the regulations promulgated thereunder or any applicable state law of similar intent.

(aa) The types of membership programs offered by the Seller and the rules and regulations governing such memberships are set forth in the Bylaws and Rules & Regulations of Seller. True, correct and complete copies of the Bylaws and Rules & Regulations are attached hereto as Schedule 5.2(aa), in each case, including all amendments, modifications and supplements thereto. Other than the Bylaws and Rules & Regulations, Seller is not party to any other Contract with any Member.

(bb) Schedule 5.2(bb) sets forth as of December 31, 2014, a true and complete list of (i) all individuals, families and groups who currently possess any class or type of Membership, with an indication of the type of Membership, (ii) the types of such Memberships, (iii) monthly dues, (iv) the amount of prepaid dues by Membership, (v) the amount and refundability of any initiation payments and the terms and conditions applicable thereto, (vi) any outstanding promissory notes owing to Seller or the Club by any Member, and (vii) those Memberships issued on a promotional or non-fee basis or where regularly scheduled membership dues are not owing or are not paid in cash. All Memberships are on a month-to-month basis.

(cc) Seller has in effect and has continuously maintained insurance coverage for the Property and the Club. A complete and accurate list of all primary, excess and umbrella policies, bonds and other forms of insurance held or owned by Seller is set forth on Schedule 5.2(cc), copies of which policies have previously been provided or made available to Buyer or its representatives. Schedule 5.2(cc) also sets forth a list of any pending insurance claims relating to the Club. None of the policy limits of such insurance have been exhausted. Seller is not in default or breach with respect to any provision contained in any such insurance policies, nor has Seller failed to give any notice or to present any claim thereunder in due and timely fashion. Seller has not received any written notice of the intent of any insurance company to not renew or to cancel any insurance policies of Seller or materially increase the premiums thereunder. No letters of credit have been posted or cash restricted for the benefit of any such insurance policies.

(dd) Schedule 5.2(dd) sets forth a complete and accurate list of all motor vehicles utilized in the operation of the Club and indicates whether such vehicles are owned or

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leased, the type of vehicle and vehicle identification number. All such vehicles are property titled, licensed and registered in accordance with applicable Law.

(ee) The transactions contemplated hereunder include all Water Rights of Seller. Schedule 5.2(ee) sets forth all sources of water used in the operation of the Club and all Contracts relating to Seller's use of water. Except as set forth on Schedule 5.2(ee), Seller has not alienated, encumbered, transferred, optioned, leased, assigned or otherwise conveyed its interests or any portion of its interests in the Water Rights or any portion thereof, nor has Seller entered into any agreement of any kind (other than this agreement) to do so. There is no action, suit, Proceeding or government investigation pending threatened against or affecting the Water Rights in Law or in equity.

(ff) Except as set forth on Schedule 5.2(ff), Seller has not, since December 31, 2013:

(i) Entered into any material transaction (including any merger, consolidation or similar transaction) or incurred any material uninsured obligation or liability (absolute, accrued, contingent or otherwise), except in connection with the performance of this Agreement, other than in the ordinary course of business;

(ii) Discharged or satisfied any material Encumbrance, other than Permitted Encumbrances, or paid or satisfied any material obligation or liability other than (i) liabilities shown or reflected on the Current Balance Sheet or (ii) liabilities incurred since the date of the Current Balance Sheet in the ordinary course of business;

(iii) Increased or established any reserve for Taxes or any other liability on its books or otherwise provided therefor since the date of the Current Balance Sheet;

(iv) Mortgaged, pledged or subjected to any Encumbrance, other than a Permitted Encumbrance, any of the Property;

(v) Sold or transferred any of its assets other than inventory sold in the ordinary course of business;

(vi) Otherwise experienced loss, damage or destruction materially and adversely affecting the Property or Business, or experienced a Material Adverse Effect;

(vii) Materially increased the compensation payable to any of the employees, managers, directors, independent contractors or agents of Seller, or increased, or instituted, any bonus, insurance, pension, profit-sharing or other employee benefit plan or arrangements made to, for or with the employees or any independent contractors of Seller outside the ordinary course of business;

(viii) Adjusted or written-off of account receivables or reduced the reserves for account receivables outside of the ordinary course of business or

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instituted any material change in the collection, payment or credit experience or practices of the Club;

(ix) Changed the Tax or accounting methods or practices employed by Seller or changed the depreciation or amortization policies;

(x) Experienced any labor dispute adversely affecting the Club;

(xi) Experienced any termination, waiver or cancellation of any rights or claims of Seller under any Material Contract;

(xii) Incurred any Indebtedness;

(xiii) Entered into any agreement, arrangement or transaction between Seller and any Affiliate of Seller; or

(xiv) Made a commitment with respect to the foregoing.

5.3 Knowledge of Seller and Buyer. Except for the representations and warranties set forth in Sections 5.1(a), 5.1(b), 5.2(a), 5.2(b), 5.2(g), 5.2(h), 5.2(i) and 5.2(o) (collectively, the "**Fundamental Representations**"), all representations and warranties of Seller shall be limited to Seller's Knowledge and as to Buyer shall be limited to the existing actual knowledge of Matthew Stevens, the President and Chief Executive Officer of Buyer and Mark Koorennny, the General Counsel of Buyer; all of which are made without a duty to inquire or inspect any item related to such representation or warranty. Notwithstanding anything to the contrary in this Agreement, no individual shall have any personal liability under the terms of this Agreement, except in the case of intentional fraud by such individual.

5.4 Warranties Survive Closing. The representations and warranties made in Section 5.1 and Section 5.2 of this Agreement shall not merge into any instrument or conveyance delivered at the Closing; provided, however, that any Proceeding with respect to the truth, accuracy or completeness of representations and warranties made in Section 5.1 and Section 5.2 of this Agreement shall be commenced and served, if at all, on or before the date which is two (2) years after the Closing Date and, if not commenced and served on or before such date, such representations and warranties shall lapse and thereafter shall be void and of no force or effect.

5.5 Seller's Covenants. As a material inducement to Buyer to enter this Agreement, Seller hereby covenants and agrees with Buyer that, after the Effective Date and following Closing Date for so long as is provided by the terms of this Agreement, that:

(a) Seller shall terminate the employment and all rights and benefits of employment (as permitted by applicable Law or Contract) of all employees of the Club and Property effective as of the Closing Date. Seller hereby acknowledges and agrees that to the extent Buyer determines, in its reasonable discretion within five (5) Business Days of the Effective Date (the "**WARN Notice Deadline**"), that any notification is required pursuant to the WARN Act, then Seller and Buyer shall agree on the notice to be provided to the employees of the Club and such notice shall be in form and substance satisfactory to Buyer and Seller agrees to promptly provide such notice to the employees of the Club upon Buyer's written request;

provided, however, that should Buyer fail to provide written notice of its determination that notification is required pursuant to the WARN Act prior to the expiration of the WARN Notice Deadline, no notice shall be provided to the employees of the Club in connection with the WARN Act or any similar state Law.

(b) Seller shall provide reasonable cooperation with Buyer as necessary to enable Buyer, at Buyer's sole cost, unless otherwise specified herein, to the extent permitted by Law, to procure or to transfer and to maintain all licenses and permits necessary for the operation of the Property (collectively, whether one or more, the "**Licenses and Permits**") and the parties acknowledge and agree that the liquor license for the Property held by Seller shall be transferred to Buyer. Buyer or an Affiliate of Buyer shall apply, at Buyer's sole cost and expense, for the issuance of a new liquor license and Seller shall use commercially reasonable efforts (at no cost or expense to Seller) to cooperate with Buyer or Buyer's Affiliate in obtaining a new liquor license. Seller shall maintain its liquor license until such time that Buyer obtains a permanent liquor license.

(c) Seller shall continue to operate the Property in the ordinary course of business consistent with past practices of the Seller, but shall not, except in the ordinary course of business, enter into any new Contracts or Leases unless such Contract or Lease can be terminated by Buyer without penalty upon the giving of not more than thirty (30) days written notice or that has a total payment obligation of exceeding the limitation imposed by Section 1.3(a) as to Contracts and Section 1.3(b) as to Leases without the written approval of Buyer which such approval shall not be unreasonably withheld, delayed or conditioned and shall not otherwise grant or permit any new Encumbrances, other than Permitted Encumbrances, on the Property without the prior written approval of Buyer or which are not satisfied by Seller on or before the Closing Date; provided, however, in no event or circumstance will Seller be limited by the provisions of this Section 5.5(c) if Seller deems there is an emergency situation requiring immediate action, in Seller's discretion. Seller shall use commercially reasonable efforts to timely perform its obligations under all Contracts relating to or affecting the Club.

(d) With the exception of the Excluded Property, Seller will neither transfer nor remove any Personal Property or fixtures from the Property, except for any of such Personal Property as is replaced by Seller by an article of equal suitability and value, free and clear of any Encumbrance, other than Permitted Encumbrances, and Seller shall not make any material alterations to any portion of the Property. Seller may, however, sell in the normal course of business, food and beverage items and clothing, goods and other merchandise held for resale; provided that on the Closing Date, Seller has maintained a normalized level of all food and beverage items, clothing, goods and other merchandise inventory consistent with past practice.

(e) Seller will cause the Property to be maintained in its present condition, normal wear and tear excepted; provided, however, the Seller shall obtain prior written approval from Buyer, such approval not to be unreasonably withheld or delayed, for any repair or replacement expenditure exceeding \$5,000 for any one item or occurrence and for all repair and replacement expenditures exceeding \$20,000 in the aggregate before the Closing. Seller shall use commercially reasonable efforts to preserve any existing relationships with vendors, suppliers and others, as well as the goodwill enjoyed by Seller in the operation of the Club.

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(f) Seller shall not, without the prior consent of Buyer, make any material change in the ongoing operations of the Club.

(g) Seller shall neither negotiate the New Ground Lease, nor discuss the transactions contemplated by this Agreement, with the City without providing Buyer with prior notice of, and the option to participate in, such negotiations.

(h) Following the Closing Date, Seller will not, adopt or use any trademarks included in the Intellectual Property, or challenge the rights of Buyer in the Intellectual Property.

(i) Seller acknowledges and agrees that Seller shall be solely liable, and that Buyer shall have no obligation or liability, for providing continuation coverage under and complying with Code § 4980B, ERISA §§ 601 through 608, and any applicable state law of similar intent with respect to any individual who either prior to, on or after the Closing Date was covered under any group health plan contributed to or maintained by Seller or any ERISA Affiliate, or who will otherwise be an "M&A Qualified Beneficiary" (as such phrase is defined in Treasury Regulation § 54.4980B-9, Q&A-4) in connection with the transaction contemplated by this Agreement. Seller agrees to provide continuing health benefit coverage as described in Code § 4980B and ERISA §§ 601 through 608 (hereinafter referred to as "COBRA Coverage") to all employees who are M&A Qualified Beneficiaries with respect to the transactions contemplated in this Agreement (hereinafter referred to as "COBRA Beneficiaries"). Specifically, Seller agrees that all obligations to provide COBRA Coverage to COBRA Beneficiaries are being allocated to and shall remain with Seller, as permitted by Q&A-7 of Treasury Regulation § 54.4980B-9. If Seller ceases to maintain a group health plan and such Seller's obligation to provide COBRA Coverage to COBRA Beneficiaries shifts to Buyer or any of its affiliates as a result of Treasury Regulation § 54.4980B-9, Q&A-8, then, notwithstanding any other provision of this Agreement to the contrary, the Capital Improvements Consideration shall be reduced by the amount of any and all expenses that Buyer or any of its affiliates incurs in providing COBRA Coverage to COBRA Beneficiaries (including, but not limited to, claims, administrative costs, fees, insurance premiums, insurance premium increases, etc.).

(j) Seller shall keep in effect through the Closing all current casualty, liability and other policies of insurance relating the Real Property and Personal Property and the Club.

(k) Except as expressly provided in this Agreement, Seller shall not cause or grant any new Encumbrances (other than Permitted Encumbrances), or exceptions to title to the Real Property without the prior written consent of Buyer in each instance, which consent shall not be unreasonably withheld or delayed.

(l) Without Buyer's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed), Seller shall not do or cause to be done any of the following:

(i) purchase, sell, lease or dispose of any assets or incur any liability or make any commitment to do so outside the ordinary course of business;

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(ii) enter into any transaction which is outside the ordinary course of business, which includes but is not limited to remodeling any of the Real Property or Personal Property or incurring any capital expenditures;

(iii) make or grant any wage or salary increase to any of its employees nor enter into any employee benefit plans or amend in any material respect such plan now in place out of the ordinary course of business;

(iv) offer or permit to be offered promotional membership rates or programs that are inconsistent with Seller's past practices;

(v) allow a higher percentage of total new member additions to prepay their membership dues (at a discount to the typical annual membership costs or not) than is the current practice;

(vi) allow members to prepay any activity fees, except in the ordinary course of business consistent with past practices;

(vii) accelerate the collection of receivables, defer payables (other than payments due under the Ground Lease), or change its policies with respect to bad debt reserves out of the ordinary course of business; or

(viii) take any other action not in the ordinary course of business consistent with past practices.

(m) Following the date of this Agreement and until the earlier of the Closing Date or termination of this Agreement in accordance with the terms hereof, Seller shall not, directly or indirectly, through any officer, director, employee, Member, agent, partner, Affiliate or otherwise (i) enter into any agreement, agreement in principle or other commitment (whether or not legally binding) relating to the sale of the Club or any equity, debt or other investment in Seller or any similar transaction (a "**Competing Transaction**"), (ii) solicit, initiate or encourage the submission of any proposal or offer from any Person (including any of such Person's officers, directors, employees or agents) relating to any Competing Transaction, or (iii) participate in any discussions or negotiations regarding a Competing Transaction, furnish to any other Person any information with respect to, or otherwise cooperation with, assist, participate in, facilitate or encourage, any effort to attempt by any Person to effect a Competing Transaction. Seller shall promptly notify Buyer if any proposal regarding a Competing Transaction (or any inquiry or contact with any Person with respect thereto) is made, and shall advise Buyer of the contents thereof (and, if in written form, provide Buyer with copies thereof).

(n) The Seller shall permit Buyer to observe the management and operations of the Club ("**Shadow Management**") following the date hereof through the Closing Date. Shadow Management shall mean the right to have two or more authorized individuals, selected by Buyer, observe and advise regarding the management, accounting and inventory of the Club by the Seller in a manner that does not materially and adversely disrupt the management or operation of the Club or the use of the Club by Members, customers, guests, licenses, permittees and patrons, and to plan for the transition of ownership of the Property to Buyer following the Closing.

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(o) In no event shall Seller make any distributions from the Excluded Cash or Post-Closing Seller Funds to any of its Members, but shall solely use such Excluded Cash and Post-Closing Seller Funds as set forth in 4.4.

5.6 Buyer's Covenants. As a material inducement to Seller to enter this Agreement, Buyer hereby covenants and agrees with Seller that, following Closing Date:

(a) Buyer will take all necessary action to ensure that the Club and the Property will remain private subject to any limited rights specified herein for the term of the Ground Lease (it being acknowledged that ownership as part of the Bay Club family of companies is private).

(b) The categories and terms of membership for members in the Club following the Closing, which shall be offered by Buyer to all current Members of the Club following the Closing, are as set forth on Exhibit D hereto, including Attachments D-1 and D-2 thereto. Buyer hereby covenants and agrees that such categories and terms shall (i) be set forth in the membership agreements between Buyer and the Members, substantially in the form attached hereto as Exhibit F, and (ii) remain unchanged following the Closing for the period(s) specified in Exhibit D:

(c) Buyer agrees to provide Seller with the following right of first offer:

(i) Any time from the Closing Date until the fifth (5th) anniversary of the Closing Date, in the event Buyer (or any Affiliate thereof) determines to sell the Club on a stand-alone basis (whether through an asset sale, stock sale, merger or other any other structure), Buyer agrees to provide written notice to Seller of such determination and provide Seller the cash purchase price that Buyer is willing to sell the Club to Seller (the "ROFO Notice"). Buyer will also provide Seller with such financial information and other material documentation in Buyer's possession as Seller shall reasonably request related to the Club and the Business. Within 20 Business Days after receipt of an ROFO Notice (the "Exercise Period"), Seller shall have the right to elect to purchase the Club based upon the ROFO Notice, which election ("Seller's Election") shall be made by giving written notice to Buyer within the Exercise Period and shall be accompanied by a bank or cashier's check (the "ROFO Deposit") payable to the direct order of Buyer in amount equal to \$250,000.

(ii) In the event that a Seller's Election is made within the Exercise Period, Seller shall have the right to exclusively negotiate with Buyer in good faith with respect to terms on which Seller would acquire the Club and acquire the Club for a period of 45 days after the date of the Seller's Election, in each case prior to entering into any negotiations with any other party with respect to any acquisition of the Club (whether through an asset sale, stock sale or other any other structure); provided, that Buyer and Seller agree that the material terms of such proposed sale to Seller will include that Seller is acquiring the Club on a cash-free, debt-free basis, with the assets of the Club delivered on an "as-is, where-is" basis other than representations and warranties (of the same nature as the representations provided herein, including the Fundamental Representations) with indemnification provided by Buyer upon the same terms as provided in this Agreement, including representations and warranties that will survive for 12-months with indemnification for such representations and warranties (other than

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the Fundamental Representations) to be capped at 10% of the aggregate purchase price specified in the ROFO Notice given to Seller. If Seller fails to consummate the acquisition of the Club within such 45-day period then, in addition to any other rights Buyer may have hereunder, at law or in equity, Buyer shall have the right to retain the ROFO Deposit and to immediately deposit the check evidencing the ROFO Deposit and shall have the right (but not the obligation) to market and sell the Club to a third party; provided that such sale is consummated at a purchase price not less than 95% of the purchase price specified in the ROFO Notice and terms no less favorable than provided for therein and herein.

(iii) In the event that no Seller's Election is made within the Exercise Period, Buyer shall have the right to market and sell the Club to any third party; provided that such sale is consummated at a purchase price not less than 95% of the purchase price specified in the ROFO Notice.

(iv) The right of first offer granted to Seller under this Section 5.6(c) shall not apply to a transfer to Affiliates of Buyer or a corporate reorganization of Buyer or its Affiliates that does not constitute a Change in Control; provided that such Affiliates agree to be bound by this Section 5.6(c).

(d) Buyer agrees that it shall cause any successor-in-interest, purchaser, assignee or other transferee to honor all of the provisions of this Section 5.6, and agrees that Seller may record at Closing or any time thereafter a memorandum against the Land evidencing such rights, with such "Memorandum of Member Rights" to be in the form attached hereto as Exhibit G hereto.

(e) Buyer shall as of Closing employ all of the terminated employees upon such terms and conditions as Buyer shall in its sole discretion determine, other than those employees who will not be hired by Buyer listed in a written communication from Buyer to Seller no later than the earlier of five (5) days from the Effective Date. Any individual who was an employee of Seller immediately prior to the Closing Date and who is hired by the Buyer on or immediately after the Closing Date (each a "Transferred Employee" and collectively the "Transferred Employees") shall receive past service credit for such individual's service with Seller solely for eligibility and vesting purposes under any benefit plan sponsored or maintained by the Buyer; provided, however, no such past-service credit will be provided (i) to the extent providing such past service credit would result in the duplication of benefits, (ii) for benefit accrual purposes, (iii) for purposes of any retiree medical plan or defined benefit plan or (iv) for any newly established plan of the Buyer for which similarly-situated employees of the Buyer do not receive past service credit.

(f) This Section 5.6 shall survive Closing in accordance with the term set forth in this Section 5.6.

5.7 Buyer's Policies, Procedures and Membership Agreements. For the avoidance of doubt, following the Closing, all of the Membership Agreements shall be cancelled and Buyer's policy, procedures, rules, regulations, form of membership agreements shall become immediately effective.

5.8 Lender Conditions. From the Effective Date until the earlier of (a) the Closing and (b) the termination of this Agreement in accordance with the terms hereof, Buyer shall use commercially reasonable efforts to satisfy and comply with the Lender Conditions (defined below).

ARTICLE VI
ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE

6.1 Accounts Receivable and Accounts Payable. A true, correct and complete list of the Receivables and Accounts Payable shall be attached hereto as Schedule 6.1, and shall be updated at least three (3) Business Days of the Closing Date. The Accounts Payable shall not include payments for those portions of the Leases, Contracts or other payment obligations assumed by the Buyer which accrue following the Closing. Buyer shall use commercially reasonable efforts to collect the Receivables and apply collections from Receivables to Accounts Payable in a priority to avoid or minimize late fees and charges, and shall not waive any claims with regards thereto.

6.2 Collection and Payment Procedures. Beginning on the fifteenth (15th) day of the first month of the calendar quarter following the Closing and on the fifteenth (15th) day of the first month in each of the three (3) calendar quarters thereafter, Buyer shall provide to Seller a report of collections of Receivables and payments of Accounts Payable (the "Collections and Payments Report") having occurred since the date of the preceding Collections and Payments Report (save and except the initial Collections and Payments Report which shall report for the period following the Closing Date until the date of the such initial report) which such reports shall reflect by account payable: (i) the amount of the Receivables collected since the Closing Date for such membership; (ii) the amount of the Receivables collected since the date of the preceding Collections and Payments Report; (iii) each of the payments made for Accounts Payable since the date of the preceding Collections and Payments Report; (iv) the remaining balance, if any, of the Accounts Payable; and (v) the amount of any Net Cash Deficiency, if any. A final reconciliation of Receivables and Accounts Payable will be conducted by the parties on the twelfth (12th) month anniversary of the Closing Date.

6.3 Priority of Application of Payments Received. For the twelve (12) month period following the Closing, the Buyer and the Club shall at all times apply all payments received by Buyer or the Club from a Member or other person owing Receivables first to the payment of Receivables in accordance with Section 6.2 until the Receivables are paid in full and then following such full payment, to obligations owed the Buyer or the then existing Club. Following payment in full of all Receivables owed by such Member, then and only then shall any remainder may then be applied to payments due the Club or Buyer and/or the Member as may be applicable.

ARTICLE VII:
CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions Precedent to Buyer's Obligation to Close. Buyer's obligation to purchase the Property is subject to satisfaction on or before the Closing Date (as such date may

be extended as provided herein) of the following conditions, any of which may be waived in writing by Buyer, in Buyer's sole and absolute discretion.

(a) Covenants. The Seller shall have performed and observed, in all material respects, all covenants of the Seller under this Agreement.

(b) Representations and Warranties. Except as set forth in Section 7.5, all representations and warranties of the Seller set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date, subject to the Schedules (other than representations and warranties made as of another date, which representations and warranties shall have been true and correct in all material respects as of such other date); provided that the Fundamental Representations of Seller shall be true and correct in all respects as if made on the Closing Date, subject to the Schedules (other than representations and warranties made as of another date, which representations and warranties shall have been true and correct in all material respects as of such other date).

(c) Seller's Bring Down Certificate. Buyer shall have received a certificate dated as of the Closing date executed by an officer of Seller certifying (i) as to the matters set forth in Section 7.1(a) and (b), (ii) the governing documents of Seller, (iii) the resolutions of the Board of Directors of Seller approving the execution, delivery and performance of this Agreement and the Closing Documents and the consummation of the transactions contemplated hereby and thereby, and that such resolutions have not been amended and remain in full force and effect and (iv) that the Member Consent has been obtained.

(d) Title. The Title Company shall be prepared to issue to Buyer, a CLTA Form B (2006) leasehold owner's title insurance policy in the amount of the Purchase Price, insuring that the leasehold estate to the Property is vested in Buyer, subject only to the Permitted Exceptions, matters caused by Buyer or its activities on the Property, or other matters approved in writing by Buyer. In no event shall Seller be obligated to cure any title exception or other matter affecting title to the Property, except for matters voluntarily created by Seller subsequent to the effective date of the Title Commitment.

(e) Delivery of Closing Documents. Seller shall have delivered each of the Closing Documents required to be delivered under Section 8.1(a) of this Agreement.

(f) Receipt of Consent of Board of Directors and Members. This Agreement and the transactions contemplated hereby shall have been approved by the Board of Directors and not less than a majority of the Seller's voting Members under California Law and the Bylaws of Seller (the "Member Consent") on or before the date that is thirty (30) days following the Effective Date (the "Consent Deadline").

(g) No Governmental Order. No Governmental Authority shall have issued any order, injunction or decree that is in effect and that makes the transactions contemplated by this Agreement illegal or otherwise restrains or prohibits the consummation of the transactions contemplated by this Agreement and there shall be no threatened, pending or actual litigation, injunction or restraining order concerning such terminations or the consummation of the transactions contemplated by this Agreement.

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(h) Violations. All notes or notices of violations of Law noted in, or issued prior to Closing against or affecting the Club and the Property, by the local departments of housing, buildings, fire, labor, health or other Governmental Agency having jurisdiction over the Club and the Property, shall be complied with and discharged by Seller, at its sole cost and expense.

(i) Approvals. All Governmental Authority and third party approvals, consents, permits or waivers set forth on Schedule 7.1(i) (the "**Required Consents**") shall have been obtained in form and substance satisfactory to Buyer.

(j) Encumbrances. All Encumbrances (other than Permitted Encumbrances) on the Property shall have been released in a manner satisfactory to Buyer and, if applicable, Buyer shall have received payoff letters in forms acceptable to Buyer from (i) those holders of Indebtedness which will be paid at Closing pursuant to Section 2.1 and (ii) with respect to any brokers' fees payable by or on behalf of the Seller.

(k) Monetary Obligations. All Monetary Obligations shall have been cured as provided for in Section 3.1(b).

(l) WARN Act. If, prior to the expiration of the WARN Notice Deadline, Buyer has provided notice to Seller of its determination that notice is required under the WARN Act pursuant to Section 5.5(a), at least sixty (60) days shall have passed since the date that Seller provided notice to the employees of the Club.

(m) Lender Consent. Buyer shall have satisfied all conditions required by Ventas Healthcare Properties, Inc. as a lender and the administrative agent, pursuant to the credit agreement, as amended, restated, modified or supplemented from time to time, with Parent and any other Affiliates of Buyer necessary to consummate the transactions contemplated hereby (the "**Lender Conditions**").

(n) Amended and Restated Ground Lease. Buyer and the City shall have entered into an amended and restated ground lease with respect to the Real Property (on terms consistent with Buyer's application to the City to the City for assignment of the Ground Lease) (the "**New Ground Lease**").

7.2 Conditions Precedent to Seller's Obligation to Close. Seller's obligation to sell the Property is subject to satisfaction, on or before the Closing Date (as such date may be extended or postponed as provided herein) of the following conditions, any of which may be waived in writing by Seller, in Seller's sole and absolute discretion:

(a) Covenants. Buyer shall have performed and observed, in all material respects, all covenants of Buyer under this Agreement.

(b) Representations and Warranties. All representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date (other than representations and warranties made as of another date, which representations and warranties shall have been true and correct in all material respects as of such other date); provided that the Fundamental Representations of Buyer shall be true and correct in

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all respects as if made on the Closing Date (other than representations and warranties made as of another date, which representations and warranties shall have been true and correct in all material respects as of such other date).

(c) Buyer's Bring Down Certificate. The Seller shall have received a certificate dated as of the Closing date executed by an officer of Buyer certifying (i) as to the matters set forth in Section 7.2(a) and (b), (ii) the governing documents of Buyer, and (iii) the resolutions of the Board of Directors (or equivalent governing body) of Buyer approving the execution, delivery and performance of this Agreement and the Closing Documents and the consummation of the transactions contemplated hereby and thereby, and that such resolutions have not been amended and remain in full force and effect.

(d) Delivery of Closing Documents. Buyer shall have delivered each of the Closing Documents required to be delivered under Section 8.1(b) of this Agreement.

(e) Receipt of Consent of Board of Directors and Members. This Agreement and the transactions contemplated hereby shall have been approved by the Board of Directors and not less than a majority of the current voting Members of Seller under California Law and the Bylaws of Seller on or before the Consent Deadline.

(f) No Governmental Order. No Governmental Authority shall have issued any order, injunction or decree that is in effect and that makes the transactions contemplated by this Agreement illegal or otherwise restrains or prohibits the consummation of the transactions contemplated by this Agreement and there shall be no threatened, pending or actual litigation, injunction or restraining order concerning such terminations or the consummation of the transactions contemplated by this Agreement.

(g) Violations. All notes or notices of violations of Law noted in, or issued prior to Closing against or affecting the Club and the Property, by the local departments of housing, buildings, fire, labor, health or other Governmental Agency having jurisdiction over the Club and the Property, shall be complied with and discharged.

(h) New Ground Lease. Buyer and the City shall have entered into a New Ground Lease.

7.3 Failure of a Condition.

(a) In the event that any condition precedent to Closing has not been satisfied on or before the Closing Date, then the party whose conditions to Closing have not been satisfied (the "Unsatisfied Party") shall give notice to the other party of the condition or conditions which the Unsatisfied Party asserts are not satisfied. If the conditions specified in such notice are not satisfied within five (5) Business Days after receipt of such notice, then the party whose condition precedent was not satisfied may terminate this Agreement, whereupon neither party shall have any further rights or obligations hereunder (other than any obligations of either party that expressly survive termination). Notwithstanding anything contained herein to the contrary, if any of the conditions precedent to Buyer's obligation to close, as set forth in Section 7.1 of this Agreement, are not satisfied within the five (5) Business Day period specified above and the same are reasonably susceptible of being cured, Seller shall have the right to extend such period

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in which to satisfy the unsatisfied condition for a period of up to thirty (30) additional days, by giving notice thereof to Buyer within such five (5) Business Day period. Further, Buyer shall have the right to waive the unsatisfied condition or conditions, by notice to Seller within five (5) Business Days after expiration of the applicable satisfaction period, without satisfaction having occurred, in which event the Closing Date shall be the date which is five (5) Business Days after Seller's receipt of Buyer's waiver notice.

(b) If the transaction contemplated by this Agreement closes, the parties hereto shall be deemed to have waived any and all unmet or unsatisfied conditions, other than any unmet or unsatisfied conditions arising out of a breach by either party of any of its representations and warranties hereunder of which the other party has no knowledge as of Closing.

7.4 Supplement to Schedules. From time to time up to the Closing Date, Seller will supplement or amend the Schedules in writing with respect to any matter, fact or condition occurring after the date hereof that would otherwise render any representation or warranty of Seller contained herein, if made on the Closing Date (or, in the case of representations and warranties which address matters only as of a particular date, as of such date), untrue or inaccurate in any material respect; provided, however, that Seller shall not have the right to supplement or amend the Schedules with respect to any matter that (i) occurred on or prior to the date of this Agreement, or (ii) resulted from a breach of Seller's covenants set forth in Section 5.5 of this Agreement. Any supplement or amendment to the Schedules will be disregarded for the purpose of determining whether the conditions set forth in Section 7.1 have been satisfied but shall cure any breach or inaccuracy of the representation or warranty mended by such amended disclosure and shall not, following the Closing, constitute a basis for any claim for indemnification resulting from the breach of the representation or warranty such supplemented or amended Schedule is intended to modify.

7.5 Representations and Warranties. All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date, except to the extent the facts and circumstances underlying such representations and warranties may have changed since the Effective Date; provided, however, that if on the Closing Date any such representations and warranties are not true and correct in all material respects, Buyer shall in any event be required to close hereunder and pay the Purchase Price to Seller without any reduction or credit, unless the breach of any representations and warranties has had or will have, either individually or in the aggregate, a "material adverse effect," and in such event, Seller shall be entitled, at its option and in its sole discretion, to credit to Buyer such amount on account of such breach as will cause the same to no longer have a "material adverse effect," in which event Buyer shall be required to close hereunder. As used in this Section 7.5, a "material adverse effect" shall be deemed to have occurred if by reason of a breach of any representations or warranties, the fair market value of the Property is decreased by an amount exceeding five percent (5%) of the Purchase Price. For purposes hereof, a representation or warranty shall not be deemed to have been breached if the representation or warranty is not true and correct in all material respects as of the Closing Date by reason of changed facts or circumstances which pursuant to the terms of this Agreement are permitted to have occurred.

ARTICLE VIII
CLOSING

8.1 Closing. The consummation of the transaction contemplated hereby (the "Closing") will take place on or before the earlier to occur of (i) April 30, 2015; or (ii) such other date as Seller and Buyer may mutually agree upon in writing (the "Closing Date"). Buyer and Seller agree to use commercially reasonable efforts to finalize and execute all documents necessary for the consummation of the transaction contemplated herein in order to ensure the orderly and timely transfer of all funds necessary for Closing on the Closing Date.

(a) At the Closing, Seller shall deliver to the Buyer the following:

(i) The Bill of Sale, Assignment of Intangibles and Assumption Agreement, duly executed by Seller;

(ii) The Section 1445 Affidavit in the form attached as Exhibit H duly executed by Seller;

(iii) All payoff letters (or other similar documentation) for (1) all amounts owing to Western Alliance Bank, (2) all amounts owing to CBRE, in each case, including the amounts necessary to pay off all Indebtedness and Closing Costs as of the Closing, along with the per diem interest amount with respect thereto, if applicable, and the agreement of each of Western Alliance Bank and CBRE that, upon receipt of such specified amount, its Indebtedness or Closing Costs shall be paid in full and the Buyer or its designee shall be authorized to release all of its Encumbrances upon the Property, if any;

(iv) Evidence of release of all Encumbrances (other than Permitted Encumbrances) on any of the Property;

(v) A tax clearance certificate from the California State Board of Equalization certifying that Seller has paid all sales Taxes required to be paid by it through the Closing Date;

(vi) The Liquor Escrow Agreement duly executed by Seller;

(vii) The Escrow Agreement duly executed by Seller; and

(viii) All keys, combinations to locks and/or other codes, passwords or instructions for other security devices relating to the operation of the Club.

(b) At the Closing, the Buyer shall deliver to Seller the following:

(i) The Bill of Sale, Assignment of Intangibles and Assumption Agreement, duly executed by Buyer;

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(ii) The Liquor Escrow Agreement duly executed by Buyer and the Liquor Escrow Agent;

(iii) The Escrow Agreement duly executed by Buyer and the Escrow Agent; and

(iv) Such transfer tax or documentary stamp tax forms as may be required as a condition to the recordation of the New Ground Lease.

(c) At the Closing, Seller and Buyer or such third party or subsidiary as may be designated by the Seller or Buyer shall each execute and deliver such other and additional instruments and documents as may be necessary or desirable, in the parties' discretion, in order to complete the Closing and the transactions contemplated hereunder, the form and content of which shall be acceptable to Seller and Buyer.

(d) The parties additionally agree to execute such additional documents at Closing as may be reasonably requested by the Title Company in order to consummate the transactions contemplated by this Agreement.

8.2 Payment of the Purchase Price. On the last Business Day before the scheduled Closing Date, the Buyer shall cause to be delivered to the Title Company an amount sufficient to pay the Purchase Price payable in cash at Closing. On the Closing Date, the Title Company shall cause the portion of the cash Purchase Price due at Closing upon satisfaction of the Closing Conditions to be paid in accordance with this Agreement.

8.3 [Reserved]

8.4 Recording of Documents. At the Closing, the Title Company will cause to be recorded in the Official Records of San Diego County, California any documents or instruments which are customarily recorded in transactions of this nature.

8.5 Closing Costs. Seller shall pay (a) one-half (½) of all escrow fees and similar charges payable to the Escrow Agent and the Title Company in connection with the Closing, (b) Seller's legal, accounting, severance and other expenses arising due to consummation of the transactions contemplated hereby (including sales commission, brokerage and any finder's fee) incurred in connection with the transaction contemplated hereby (collectively, the "Closing Costs"). An estimate of the Closing Costs as of the Effective Date is set forth on Schedule 8.5. The Closing Costs shall not exceed \$1,000,000. Buyer shall pay the other one-half (½) of such fees and charges. Buyer shall pay the recording fees of all the documents that are recorded. Buyer shall be responsible for the payment of all property transfer fees and sales taxes, and escrow fees related to the Escrow. All other expenses incurred by Seller or Buyer with respect to the Closing or the transactions contemplated under this Agreement, including, but not limited to the legal fees of Buyer and Seller shall be borne and paid exclusively by the party incurring such legal fees except to the extent otherwise specified in this Agreement.

8.6 Insurance. Insurance, if any, carried by Seller on the Property shall be terminated effective as of the Closing. Buyer shall be solely responsible for acquiring insurance coverage on the Property effective on and after Closing Date.

ARTICLE IX
PRORATIONS

9.1 Tax Proration. General real estate Taxes and personal property Taxes for the then current tax year shall be prorated as of the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of Taxes shall be upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property, provided that, if the Taxes for the current year are more or less than the Taxes for the preceding year, Seller and Buyer shall adjust the proration of such Taxes and Seller or Buyer, as the case may be, shall pay to the other any amount required as a result of such adjustment. Excepting the transfer Taxes and fees imposed for transfer of title to any part of the Property which are the payment obligation of Buyer, all special Taxes or assessments assessed and attributable to the period of on or prior to the Closing Date shall reduce the Capital Improvements Consideration and those assessed attributable to the period after the Closing Date shall be paid by Buyer.

9.2 Utilities. At least five (5) days prior to the Closing Date, Seller shall notify all water, gas, electric and other utility companies servicing the Real Property (collectively, the "Utility Companies") of the sale of the Club to Buyer and shall request that all Utility Companies send the Seller a final bill through the Closing Date. Seller shall cause the companies and municipalities furnishing utility services to the Property to make termination readings on the morning of the Closing Date, or on a date as soon thereafter as possible, and to submit final statements for utility services, which Seller agrees to pay in a timely manner. Buyer shall be solely responsible for the payment of all utility services to the Property after the Closing Date.

9.3 Revenue, Expenses, Deposits and Deferred Income. All income and expenses, including, but not limited to greens fees, other access and use fees, locker rental charges, bag storage charges, utility charges, rent, and operations expenses and all other income and expense items which arose by virtue of the operation of the Club shall be prorated as of the Closing Date. All deposits held by Seller for golf tournaments, private parties, banquets or other events scheduled to occur after the Closing Date shall be paid to Buyer at Closing less any refunds, deposits, fees or costs paid by the Club prior to Closing to third parties in furtherance of or related to such tournament, party, banquet or event provided the contracts or agreements for such events are included in the Assumed Contract Liabilities.

9.4 Ground Lease Rent. All Rent (as defined in the Ground Lease), if any, related to the Ground Lease shall be prorated between Buyer and Seller as of the Closing. Seller shall be responsible for the Rent, and all other payments due and owing to Landlord under the Ground Lease for all periods prior to the Closing Date. Buyer shall be responsible for the Base Rent, Additional Rent, or other payments due and owing to Landlord under the Ground Lease for all periods from and after the Closing Date. Seller will use reasonable efforts to work with Landlord to calculate accurate Base Rent and Additional Rent amounts prior to the Closing Date, which calculations shall be reasonably acceptable to Buyer.

9.5 Reconciliation. Seller and Buyer agree to cooperate and use their best efforts to make any required adjustment or reconciliation of the items set forth in this Article IX not later than ninety (90) days after the Closing Date (which cooperation may include permitting reasonable inspections of Seller's or Buyer's books and records). The parties shall pay any

amounts owing to the other party within fifteen (15) days after agreeing to such final reconciliation.

9.6 Seller's and Manager's Employees. Seller will be solely responsible for the payment of all wages, bonus payments or other compensation due to Seller's employees, all payments, liabilities, and obligations arising under or relating to Seller Benefit Plans, and all related payroll taxes which relate to the operation of the Property for the period prior to the Closing Date, including such payments, liabilities, or obligations that arise or become due after the Closing Date. With respect to Transferred Employees, Buyer will be solely responsible for the payment of all wages, bonus payments or other compensation to Transferred Employees, all payments, liabilities, and obligations arising under or relating to the benefit plans sponsored or maintained by the Buyer in which Transferred Employees participate, and all related payroll taxes which relate to the operation of the Property for the period on and after the Closing Date.

ARTICLE X LIMITATION OF LIABILITY

10.1 LIMITATION OF LIABILITY - SELLER. IN NO EVENT OR CIRCUMSTANCE WILL ANY PARENT, AFFILIATE, MEMBER, PARTNER, SHAREHOLDER, MANAGER, DIRECTOR, OFFICER, EMPLOYEE, AGENT OR ATTORNEY OF SELLER OR ANY OF SELLER'S AFFILIATES, HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY ONE OR MORE OF THE FOLLOWING: (i) THIS AGREEMENT, (ii) ANY ONE OR MORE OF THE CLOSING DOCUMENTS, OR (iii) ANY OTHER AGREEMENT CONTEMPLATED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. IN NO EVENT OR CIRCUMSTANCE WILL SELLER OR ANY INDIVIDUAL PARENT, AFFILIATE, MEMBER, PARTNER, SHAREHOLDER, MANAGER, DIRECTOR, OFFICER, EMPLOYEE, AGENT OR ATTORNEY OF SELLER OR ANY OF SELLER'S AFFILIATES, BE LIABLE FOR NOR SHALL THE BUYER SEEK ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY TYPE OR NATURE WHATSOEVER (UNLESS PAYABLE TO A THIRD PARTY). THE PROVISIONS OF THIS SECTION 10.1 SHALL SURVIVE BOTH THE CLOSING AND THE TERMINATION OF THIS AGREEMENT REGARDLESS OF THE BASIS OR REASON FOR ANY SUCH TERMINATION.

10.2 LIMITATION OF LIABILITY - BUYER. IN NO EVENT OR CIRCUMSTANCE WILL ANY PARENT, AFFILIATE, MEMBER, PARTNER, SHAREHOLDER, MANAGER, DIRECTOR, OFFICER, EMPLOYEE, AGENT OR ATTORNEY OF BUYER OR ANY OF BUYER'S AFFILIATES HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY ONE OR MORE OF THE FOLLOWING: (i) THIS AGREEMENT, (ii) ANY ONE OR MORE OF THE CLOSING DOCUMENTS, OR (iii) ANY OTHER AGREEMENT CONTEMPLATED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. IN NO EVENT OR CIRCUMSTANCE WILL BUYER OR ANY INDIVIDUAL PARENT, AFFILIATE,

MEMBER, PARTNER, SHAREHOLDER, MANAGER, DIRECTOR, OFFICER, EMPLOYEE, AGENT OR ATTORNEY OF BUYER OR ANY OF BUYER'S AFFILIATES BE LIABLE FOR NOR SHALL THE SELLER SEEK ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY TYPE OR NATURE WHATSOEVER (UNLESS PAYABLE TO A THIRD PARTY). THE PROVISIONS OF THIS SECTION 10.2 SHALL SURVIVE BOTH THE CLOSING AND THE TERMINATION OF THIS AGREEMENT REGARDLESS OF THE BASIS OR REASON FOR ANY SUCH TERMINATION.

ARTICLE XI INDEMNIFICATION

11.1 Indemnification of Seller. Conditioned upon the completion of Closing, Buyer shall indemnify and hold harmless, Seller and its Affiliates from, any costs, expenses (including reasonable fees and expenses of counsel, consultants, experts and other professional fees), fines, penalties, interest, assessments, liabilities, judgments, injunctions, orders, settlements, damages or losses (collectively, "**Losses**") to the extent and only to the extent that Seller suffers actual monetary harm arising out of, relating to or as the result of: (i) any breach of any representation, warranty or covenant made by Buyer in this Agreement or any agreement entered in connection herewith, (ii) any item or obligation assigned to and assumed by Buyer pursuant to the terms of this Agreement; (iii) any of the Assumed Liabilities; (iv) the WARN Act; or (v) Buyer's operations conducted on or by use of the Property by Buyer or Buyer's assigns first arising after the Closing.

11.2 Indemnification of Buyer. Conditioned upon the completion of Closing, Seller shall indemnify and hold harmless, Buyer and its Affiliates from, any Losses to the extent and only to the extent that Buyer suffers actual monetary harm as the sole and direct result of: (a) any breach of any representation, warranty or covenant made by Seller in this Agreement or any agreement entered in connection herewith and (b) Seller's Retained Liabilities.

11.3 Limitations on Indemnification.

(a) Notwithstanding anything in this Agreement to the contrary, the aggregate liability of Seller under Section 11.2 shall in no event exceed the aggregate amount of the remaining balance of the Capital Improvements Consideration at the time a claim is made (the "**Cap**").

(b) Except as set forth in Article XII, the provisions of this Article XI are the sole and exclusive remedy of any party in connection with the transactions contemplated, including for a breach of the representations and warranties in this Agreement, regardless of the Law or legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, except for claims of, or causes of action arising from or based on intentional fraud, except that any party to this Agreement may seek injunctive relief in connection with the enforcement of this Agreement.

(c) Notwithstanding anything contained in this Agreement to the contrary, no indemnified party shall be entitled to duplicative recoveries arising out of the same facts or circumstances and each party shall use commercially reasonable efforts to mitigate Losses to the

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extent required by Law; provided, that no party shall be obligated to initiate any formal Proceeding, violate Law, breach Contract, or harm its business in connection with such mitigation efforts. The provisions of this Section 11.3, together with Section 2.2, were specifically bargained for between Buyer and Seller and were taken into account by Buyer and Seller in arriving at the Purchase Price and agreeing to this Agreement. Seller and Buyer have specifically relied upon the provisions of this Section 11.3, together with Section 2.2, in agreeing to the Purchase Price and in agreeing to provide the specific representations, warranties and indemnities set forth herein.

(d) For all purposes under this Article XI, Losses shall be net of (i) any insurance, indemnification or other recoveries paid to the indemnified party or its Affiliates under any insurance policy or other Contract in connection with the facts giving rise to the right of indemnification (net of any applicable out-of-pocket collection costs and premium adjustments) and (ii) any tax benefits (either by cash refund or actual reduction of taxes otherwise payable) net of any tax detriments (either by cash refund or increase in taxes otherwise payable) of the indemnified party or its Affiliates arising in connection with the accrual, incurrence or payment of such Losses. The parties agree that any indemnification payments made pursuant to this Article XI shall be treated for all tax purposes as an adjustment to the Purchase Price, unless otherwise required by law.

(e) For purposes of this Article XI, representations and warranties contained in this Agreement or in any instrument or document delivered hereunder shall be read taking into account and giving effect to any materiality, Material Adverse Effect or similar standard or qualification contained therein for purposes of determining whether there has been a breach of any such representation or warranty, but shall be read without taking into account and giving effect to any materiality, Material Adverse Effect or similar standard or qualification contained therein for purposes of calculating the amount of any Losses that are indemnifiable hereunder as if such standard or qualification were deleted from such representations or warranty.

(f) In no event shall Buyer or Seller be entitled to seek punitive, special, or consequential, exemplary damages, loss of profits or diminution in value under this Article XI, except to the extent such damages are actually paid to a third party.

(g) Notwithstanding any other provision in this Agreement, any claims for which Seller is obligated to indemnify Buyer under Section 11.2 shall be satisfied from the following sources in the following order of priority: (a) first, from the Holdback Capital Improvements Consideration, and, solely after exhausting the Holdback Capital Improvements Consideration, (b) from the Escrow Amount.

11.4 Indemnification Procedures; Third Party Claims.

(a) The rights and obligations of a party claiming a right of indemnification hereunder (each, an "**Indemnatee**") from a party to this Agreement (each, an "**Indemnitor**") in any way relating to a claim or demand made by an Person who is not a party hereto against an Indemnatee (each, a "**Third Party Claim**") shall be governed by the following provisions of this Section 11.4:

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(i) The Indemnitee shall give prompt written notice to the Indemnitor of the commencement of any Proceeding, or any threat thereof, or any state of facts which Indemnitee determines will give rise to a claim by the Indemnitee against the Indemnitor based on the indemnity agreements contained in this Agreement setting forth, in reasonable detail, the nature and basis of the claim and the amount thereof, to the extent known, and any other relevant information in the possession of the Indemnitee (a "**Notice of Claim**"). The Notice of Claim shall be accompanied by any relevant documents in the possession of the Indemnitee relating to the claim (such as copies of any summons, complaint or pleading which may have been served and, or any written demand or document evidencing the same). No failure to give a Notice of Claim shall affect, limit or reduce the indemnification obligations of an Indemnitor hereunder, except to the extent such failure actually prejudices such Indemnitor's ability successfully to defend the Proceeding giving rise to the indemnification claim.

(ii) In the event that an Indemnitee furnishes an Indemnitor with a Notice of Claim, then upon the written acknowledgment by the Indemnitor given to the Indemnitee within 30 days of receipt of the Notice of Claim confirming that the claim covered by the Notice of Claim is subject to this Article XI and stating that the Indemnitor is undertaking and will prosecute the defense of the claim (with no reservation of rights) (an "**Indemnification Acknowledgment**"), then the claim covered by the Notice of Claim may be defended by the Indemnitor, at the sole cost and expense of the Indemnitor; provided, however, that the Indemnitee is authorized to file any motion, answer or other pleading that may be reasonably necessary or appropriate to protect its interests during such 30 day period. However, in the event the Indemnitor does not furnish an Indemnification Acknowledgment to the Indemnitee or does not offer reasonable assurances to the Indemnitee as to Indemnitor's financial capacity to satisfy any final judgment or settlement, the Indemnitee may, upon written notice to the Indemnitor, assume the defense (with legal counsel chosen by the Indemnitee) at the sole cost and expense of the Indemnitor. Notwithstanding receipt of an Indemnification Acknowledgment, the Indemnitee shall have the right to employ its own counsel in respect of any such Proceeding, but the fees and expenses of such counsel shall be at the Indemnitee's own cost and expense, unless the employment of such counsel and the payment of such fees and expenses shall have been specifically authorized by the Indemnitor in connection with the defense of such Proceeding.

(iii) The Indemnitee or the Indemnitor, as the case may be, who is controlling the defense of the Proceeding, shall keep the other fully informed of such Proceeding at all stages thereof, whether or not such party is represented by counsel. Provided that the Indemnitor shall have furnished the Indemnitee with an Indemnification Acknowledgment in accordance with Section 11.4(a)(iii), the Indemnitee shall cooperate with the Indemnitor and provide such assistance, at the sole cost and expense of the Indemnitor, as the Indemnitor may reasonably request in connection with the defense of any such Proceeding, including, but not limited to, providing the Indemnitor with access to and use of all relevant corporate records and making available its officers and employees for depositions, pre-trial discovery and as witnesses at trial, if required. In requesting any such cooperation, the Indemnitor shall have due regard for, and attempt to not be disruptive of, the business and day to day operations of the Indemnitee and shall follow the reasonable requests of the Indemnitee regarding any documents or instruments which the Indemnitee believes should be given confidential treatment.

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(b) The Indemnitor shall not make or enter into any settlement of any claim, action, suit or proceeding which Indemnitor has undertaken to defend, without the Indemnatee's prior written consent (which consent shall not be unreasonably withheld or delayed), unless there is no obligation, directly or indirectly, on the part of the Indemnatee to contribute to any portion of the payment for any of the Losses, the Indemnatee receives a general and unconditional release with respect to the claim (in form, substance and scope reasonably acceptable to the Indemnatee) and there is no finding or admission of any violation of Law by, or effect on any other claim that may be made against the Indemnatee and, in the reasonable judgment of the Indemnatee, the relief granted in connection therewith is not likely to have a material and adverse effect on the Indemnatee or the Indemnatee's reputation, business or prospects.

(c) If the Indemnitor does not assume the defense of any Third-Party Claim in accordance with this Section 11.4, including due to a failure to provide a Indemnification Acknowledgment, the Indemnatee may defend against such Third Party Claim, at the Indemnatee's cost and expense, in such manner that the Indemnatee deems advisable or appropriate and may, without the prior consent of the Indemnitor, settle such Third Party Claim or consent to the entry of judgment with respect thereto upon such terms as it deems advisable or appropriate. Notwithstanding anything to the contrary, except with the prior written consent of the Indemnitor, no consent or settlement of any such Third Party Claim by any Indemnatee under this Section 11.4(c) shall (i) impose or result in a finding of admission of guilt, violation or any liability, or any admission of liability or judgment against the Indemnitor, or (ii) constitute an admission of the amount of Losses relating to such claim nor shall it constitute an admission that such claim entitles any Indemnatee to be held harmless, indemnified or reimbursed pursuant to this Article XI.

11.5 Indemnification Procedures; Other Claims. An Indemnatee may make a claim (not involving a Third-Party Claim) in any amount to which it may be entitled under this Article XI by providing notice to the Indemnitor specifying the factual basis of such Indemnatee's claim for indemnification under this Article XI in reasonable detail, including the amount of Losses with respect to which the Indemnatee is seeking indemnification (an "**Indemnification Notice**"). If within forty-five (45) days after receipt of such Indemnification Notice by the Indemnitor, the Indemnitor has not provided the Indemnatee with a written notice contesting all or a portion of such claim (an "**Indemnification Objection Notice**"), it will be considered an uncontested claim and the Indemnitor will be conclusively deemed to have consented to recovery by the Indemnatee of the full amount of Losses in connection with the claim. If within forty-five (45) days after receipt of such Indemnification Notice by the Indemnitor, the Indemnitor gives an Indemnification Objection Notice, which may consist of, for the avoidance of doubt, an objection based on the inability to determine (a) the propriety of indemnification of any or all claims contained in the Indemnification Notice, (b) the accuracy of any statement of fact or the amount of Losses set forth in the Indemnification Notice and/or (c) the fact that the facts alleged in the Indemnification Notice do not constitute a breach of a representation, warranty or covenant for which indemnification is available pursuant to this Article XI, it will be considered a contested claim. Following delivery of an Indemnification Objection Notice, the Indemnitor and the Indemnatee shall negotiate in good faith for a period of forty-five (45) days to resolve any disputes with respect to the claims which are the subject of the Indemnification Objection Notice. If the Indemnatee and the Indemnitor are unable to resolve the disputed matters

described in the Indemnification Objection Notice within such forty-five (45) day period, either party may bring a claim in accordance with the provisions of Section 15.16 hereof.

**ARTICLE XII
DEFAULT AND REMEDIES**

12.1 Seller's Default. Buyer shall be entitled to seek the following remedies in the event of a default by Seller as follows:

(a) Failure of a Closing Requirement. If Seller has not terminated this Agreement pursuant to any of the provisions authorizing such termination, and Seller fails to perform any of Seller's obligations or requirements contained herein which are to be performed by Seller at or before Closing, and such failure continues a period of ten (10) calendar days after Seller's receipt from Buyer of a written notice specifying in detail each default claimed by Buyer, then Buyer shall be entitled seek one of the following remedies as Buyer's sole and exclusive remedy: (i) require specific performance of this Agreement, or (ii) terminate this Agreement, receive return of the Deposit and be relieved of any obligation under this Agreement. Buyer will be deemed to have elected to terminate this Agreement, receive refund of the Deposit and waive any right to specific performance unless both of the following occur: (x) Buyer provides Seller written notice of Buyer's intent to enforce specific performance within thirty (30) calendar days after the scheduled Closing Date and (y) Buyer files an action to enforce specific performance of this Agreement against Seller in a court of appropriate jurisdiction within sixty (60) calendar days following the scheduled Closing Date. In no event shall Buyer seek, or Seller be liable for, any damages to Buyer, including, without limitation, punitive or consequential damages (unless payable to a third party).

12.2 Buyer's Default. Seller shall be entitled to seek the following remedies in the event of a default by Buyer as follows:

(a) Failure Prior to or at Closing. If Buyer has not terminated this Agreement pursuant to any of the provisions authorizing such termination, and Buyer fails to perform any of Buyer's obligations or requirements contained herein which are to be performed by Buyer prior to Closing, and, with respect to a non-monetary failure, such failure continues a period of ten (10) calendar days after Buyer's receipt from Seller of a written notice specifying in detail each default claimed by Seller, or if Buyer is in default for failing to close on the purchase and sale of the Property as required by and in accordance with the terms of this Agreement at the Closing, Seller, as Seller's sole and exclusive remedy may elect to terminate this Agreement due to Buyer's default, and the Deposit shall be forfeited by Buyer and retained by Seller, and both parties shall thereafter be released from all further obligations under this Agreement except as otherwise provided herein. Buyer and Seller acknowledge that Seller's damages would be difficult or impossible to determine in the event of Buyer's failure to perform its obligations to proceed to Closing under this Agreement and that the Deposit, paid by Buyer, if any, and such other things of value are a reasonable estimate of such damages. The Deposit shall, therefore, be liquidated damages to Seller and retention thereof shall be Seller's sole and exclusive remedy for Buyer's failure to perform its obligations to proceed to Closing under this Agreement. Seller waives all other remedies, including suit for damages other than retention of the Deposit.

(i) The Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Funds to any successor Escrow Agent jointly designated by the other parties hereto in writing, or to any court of competent jurisdiction, whereupon the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Escrow Agreement. The resignation of the Escrow Agent will take effect on the earlier of (i) the appointment of a successor (including a court of competent jurisdiction) or (ii) the day which is 30 days after the date of delivery of the Escrow Agent's written notice of resignation to the other parties hereto. If at that time the Escrow Agent has not received a designation of a successor Escrow Agent, the Escrow Agent's sole responsibility after that time shall be to safekeep the Escrow Funds until receipt of a designation of successor Escrow Agent or a joint written disposition instruction by the other parties hereto or a final order of a court of competent jurisdiction.

(j) The Escrow Agent shall have no responsibility for the contents of any writing of the arbitrators or any third party contemplated herein as a means to resolve disputes and may rely without any liability upon the contents thereof.

(k) In the event of any disagreement between the other parties hereto resulting in adverse claims or demands being made in connection with the Escrow Funds, or in the event that the Escrow Agent in good faith is in doubt as to what action it should take hereunder, the Escrow Agent shall be entitled to retain the Escrow Funds until the Escrow Agent shall have received (i) a final non-appealable order of a court of competent jurisdiction directing delivery of the Escrow Funds or (ii) a written agreement executed by the other parties hereto directing delivery of the Escrow Funds, in which event the Escrow Agent shall disburse the Escrow Funds in accordance with such order or agreement. Any court order referred to in (i) above shall be accompanied by a legal opinion of counsel for the presenting party to the effect that said court order is final and non-appealable or that the time to file an appeal has expired. The Escrow Agent shall act on such court order and legal opinions without further question.

(l) Buyer, on the one hand, and Seller, on the other hand, shall each pay one-half (1/2) of the Escrow Agent's annual administration fee of \$1750 as payment in full for the services to be rendered by the Escrow Agent hereunder. Each of Buyer and Seller agree, on a separate (and not joint and several basis) to reimburse the Escrow Agent for one-half (1/2) of all extraordinary services, reasonable expenses, disbursements and advances incurred or made by the Escrow Agent in performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel). The Escrow Agent shall have a first lien upon the Escrow Funds for the purposes of paying its fees and expenses.

(m) No printed or other matter in any language (including, without limitation, prospectuses, notices, reports and promotional materials) which mentions the Escrow Agent's name or the rights, powers or duties of the Escrow Agent shall be issued by the other parties hereto or on any other party's behalf unless the Escrow Agent shall first have given its specific written consent thereto.

7. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) hand delivered to the addressee, (ii) sent by electronic mail

with same day copy by facsimile, or (iii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party to whom notice is to be given may substitute by written notice in accordance with this Section 7. If the notice is sent by electronic mail with same day copy by facsimile, it must be properly addressed to the correct electronic address and facsimile phone number of the addressee(s) most recently designated in accordance with this Section 7, and must be transmitted by a facsimile which produces a dated confirmation of completion of transmission. Electronic mail notices with same day facsimile copy shall be deemed received on the date confirmed as the date of transmission if transmitted prior to 5:00 p.m. local time in San Diego, California on any Business Day. If neither the electronic mail nor facsimile copy confirmation shows a transmission time prior to 5:00 p.m. local time in San Diego, California on a Business Day, such notice shall be deemed received on the next Business Day. All hand delivered notices shall be deemed received on the date of actual delivery. All notices forwarded by U.S. mail shall be deemed received a date three (3) calendar days (excluding Sundays and legal holidays) immediately following the date of deposit in the U.S. mail, as applicable. Provided, however, a return receipt indicating the date upon which a notice is received shall be prima facie evidence that such notice was received on the date shown on the return receipt.

If to Seller:

Fairbanks Ranch Country Club, Inc.
P.O. Box 8586
Rancho Santa Fe, CA 92067
Attn: John Glancy
Email: jglancysr@gmail.com
Facsimile: (858) 259-8593

with a copy (which shall not constitute notice) to:

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
Attn: Craig Sapin, Esq.
Email: craig.sapin@procopio.com
Facsimile: (619) 744-5451

If to Buyer:

Bay Club Fairbanks Ranch, LLC
1 Lombard Street
San Francisco, CA 94111
Attn: Matthew J. Stevens
Facsimile: (415) 394-5570
Email: matthew.stevens@bayclubs.com

with a copy (which shall not constitute notice) to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Christopher D. Reiss
Facsimile: (303) 223-1111
Email: creiss@bhfs.com

If to the Escrow Agent:

UMB Bank, N.A.
Corporate Trust and Escrow
1670 Broadway
Denver CO 80202
Attention: Leigh Lutz
Telephone: 303-839-2220
Facsimile: 303-764-3699

The addresses and addressees may be amended by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee provided by a person or entity entitled to notice shall be deemed to continue in effect for all purposes until otherwise amended as provided in this Section 7. No notice to either Seller or Buyer shall be deemed given or received unless the entity noted "With a copy to" or "With copies to" is simultaneously given notice in the same manner as any notice given to either Seller or the Buyer as the case may be.

8. Waivers and Amendments. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of that party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by each of the parties hereto.

9. Counterparts. Multiple copies of this Agreement have been executed by the parties hereto. Each such executed copy will have the full force and effect of an original executed instrument. Signatures of the parties to this Agreement transmitted by facsimile or email will be binding upon such parties transmitting such signatures by such means.

10. Severability. If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, and the provision can be omitted from this Agreement without materially altering the meaning or effect of the remainder of this Agreement or the transfer contemplated hereby, the provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the

remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

11. Governing Law; Consent to Jurisdiction. This Agreement is made in San Diego, California, and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal Laws of the State of California without regard to principles of conflicts of Laws. The parties hereto acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in California. Therefore, the parties agree that the proper venue for any legal Proceedings arising out of this Agreement shall be San Diego County, California, and the parties hereby irrevocably submit to the exclusive jurisdictions of courts located therein.

12. Assignment. Neither Seller nor Buyer may assign this Agreement nor any of the rights and/or obligations under this Agreement either directly, indirectly or by operation of law either prior to or after the Closing Date without the approval of the other party, which approval may be withheld in such other party's sole discretion; provided that (i) the Buyer may assign this Agreement (a) to an Affiliate of Buyer; provided that no such assignment will relieve Buyer of its obligations under this Agreement, (b) as security to any lender providing financing to Buyer or any Affiliate of Buyer, or (c) in connection with a sale of all or substantially all of Buyer; and (ii) Seller may assign this Agreement, and transfer all of its assets and liabilities, to a liquidating trust or similar-type entity to enforce (and be subject to) this Agreement, but it shall give notice to Buyer and Escrow Agent of such transfer within thirty (30) days of the date of such assignment. Such assignment shall be a novation of Seller's duties hereunder to its assignee. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and assigns.

13. Termination. This Escrow Agreement shall terminate upon the complete distribution of the Escrow Funds in accordance with the terms hereof. If any Escrow Funds are subject to a dispute under this Agreement, this Escrow Agreement shall remain in full force and effect until such dispute is resolved in a final nonappealable order by a court of competent jurisdiction or upon written consent of both Buyer and Seller.

[SIGNATURE PAGES FOLLOW]

BUYER:

BAY CLUB FAIRBANKS RANCH, LLC

By: _____

Name: Matthew J. Stevens

Title: President and CEO

SELLER:

FAIRBANKS RANCH COUNTRY CLUB, INC.

By: _____

Name: Steve Foster

Title: Treasurer

ESCROW AGENT:

UMB BANK, N.A., solely as Escrow Agent

By: _____

Name:

Title:

SCHEDULE I**CERTIFICATE**

Reference is hereby made to that certain Escrow Agreement (the "**Escrow Agreement**"), dated as of [_____], 2015, by and among Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("**Buyer**"), Fairbanks Ranch Country Club, Inc., a California non-profit corporation, ("**Seller**"), and UMB Bank, n.a., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the "**Escrow Agent**"). Capitalized terms used herein but not defined herein have the meaning assigned such terms in the Escrow Agreement.

1. Buyer has incurred Losses (as defined in the Purchase Agreement) for which Buyer or an Affiliate of Buyer is entitled to indemnification pursuant to Article XI of the Purchase Agreement in an amount equal to \$[_____] for which Seller has agreed to pay pursuant to Article XI of the Purchase Agreement.
2. Buyer and Seller hereby instruct the Escrow Agent to distribute \$[_____] of the Escrow Funds, including any interest accrued thereon, to Buyer. Such distribution shall be made as follows:

[Add wire transfer instructions]

[To the extent that the distribution above resolves all outstanding claims for Losses following the Distribution Date, this certificate will include an additional provision distributing any remaining funds, if any, to Buyer.]

IN WITNESS WHEREOF, Buyer and Seller have executed this certificate as of [_____].

BUYER:

BAY CLUB FAIRBANKS RANCH, LLC

By: _____

Name:

Title:

SELLER:

FAIRBANKS RANCH COUNTRY CLUB, INC.

By: _____

Name:

Title:

SCHEDULE II

CERTIFICATE

Reference is hereby made to that certain Escrow Agreement (the "**Escrow Agreement**"), dated as of [_____], 2015, by and among Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("**Buyer**"), Fairbanks Ranch Country Club, Inc., a California non-profit corporation, ("**Seller**"), and UMB Bank, n.a., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the "**Escrow Agent**"). Capitalized terms used herein but not defined herein have the meaning assigned such terms in the Escrow Agreement.

1. Buyer has incurred expenses or advanced funds with respect to which Buyer is entitled to be reimbursed from the Escrow Funds pursuant to the terms of the Purchase Agreement.
2. Buyer and Seller hereby instruct the Escrow Agent to distribute \$[_____] of the Escrow Funds, including any interest accrued thereon, to Buyer. Such distribution shall be made as follows:

[Add wire transfer instructions]

[To the extent that the distribution above is made following the Distribution Date, this certificate will include an additional provision distributing any remaining funds, if any, to Buyer.]

IN WITNESS WHEREOF, Buyer and Seller have executed this certificate as of [_____].

BUYER:

BAY CLUB FAIRBANKS RANCH, LLC

By: _____
Name: _____
Title: _____

SELLER:

FAIRBANKS RANCH COUNTRY CLUB, INC.

By: _____
Name: _____
Title: _____

SCHEDULE III

WIRE TRANSFER INSTRUCTIONS

BUYER WIRE TRANSFER INSTRUCTIONS:

SELLER WIRE TRANSFER INSTRUCTIONS:

Exhibit F
Membership Agreement



FAIRBANKS RANCH

MEMBERSHIP AGREEMENT

Applicant understands and agrees that the General Terms and Conditions of Membership are a part of this agreement.

MEMBERSHIP

1. **Membership Contract.** This Membership Agreement establishes a legal contract between the Member and Bay Club Fairbanks Ranch ("Club"), each as identified in the Membership Agreement.
2. **Membership Activation.** The Membership Agreement shall be effective only when this Agreement is approved by the Club, which approval is subject to payment of all fees required to purchase a membership.
3. The contract solely grants the Member the privilege to use and enjoy the facilities of the Club in accordance with the General Terms and Conditions of Membership as they may change from time to time. Club privileges are terminable in accordance with this agreement. Membership does not grant or carry with it any interest in the property or assets of the Club. Membership does not give any right to members to participate in the management of the Club, financially or otherwise. Memberships in the Club are not resalable, and or transferable only among other Bay Club Company properties.
4. **Membership Qualification.** Club policy is to accept applications for membership from any individual 18 years of age or older, without regard to race, color, sex, age, disability, national origin, religion or sexual orientation. Membership is open to any person, family, business or corporation of good character and responsible credit background as determined by the Club in its sole discretion.
5. **Waiting List.** If membership has reached the limit set by management, new applications will be reviewed and when approved for membership, may be placed on a waiting list. When a membership is available, the new applicant will be eligible for membership under the General Terms and Conditions and Membership Fees and Dues Structure in effect at that time.
6. **Club Facilities, Services.** The Club offers facilities and services such as cardiovascular equipment, strength training equipment, fitness training, and fitness programs. The current listing of each of The Bay Club Company's facilities are posted on each Club's website. Facilities and services available to members may be modified by Management at any time in its sole discretion.
7. **Hours of Operation.** Club operating hours are a minimum of Monday through Friday 9:00 am to 5:00 pm. The current hours of operation of each of The Bay Club Company's facilities are posted on each Club's website.

TERMS OF MEMBERSHIP: This is a month-to-month contract. I understand that I am purchasing an ongoing membership that will continue until I terminate my membership by giving at least 30 days notice in accordance with the General Terms and Conditions of Membership.

CONSUMER RIGHT TO CANCEL: You, the buyer, may cancel this agreement at any time prior to midnight of the forty-fifth business day of the Club after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent to the Club at the following address: 15150 San Dieguito Road, Rancho Santa Fe, California 92067.

PRINT NAME: _____ SIGNATURE: _____ DATE: _____

PRINT NAME: _____ SIGNATURE: _____ DATE: _____

AUTHORIZED: _____ DATE: _____

CATEGORIES OF MEMBERSHIP - The Club reserves the right to require proof of the Category of Membership requisites, and to change such definitions and requirements at any time, in its sole discretion. The Club may add or eliminate categories of membership at any time. The member agrees to abide by such Rules and Regulations as they exist or may change from time to time in the Clubs sole discretion. This waiver and agreement applies to any and all Bay Club company properties, including, without limitation, all current and any future Club properties.

1. **Individual Membership.** Consists of one person 18 years of age or older. Member's spouse and children are not entitled to the rights and privileges of this category of membership but may be guests in accordance with the Club's Rules and Regulations.
2. **Couples Membership.** A married couple; registered domestic partners; two immediate family members 18 years of age or older including but not limited to a single parent and a dependent child. Members of a Couple Membership must reside in the same

- household on a permanent basis. Dependents 21 years of age and older must either have their own membership, be included in a Family Membership, or may be guests in accordance with the Club's Rules and Regulations.
3. Family Membership. This membership is defined as any of the following: A husband and wife with one or more dependent children and up to two grandchildren; registered domestic partners with one or more dependent children and up to two grandchildren; two immediate family members 18 years of age or older with one or more dependent children and up to two grandchildren; or a single parent and two or more dependent children and up to two grandchildren. Members of a Family Membership must live in the same residence on a permanent basis, with the exception of grandchildren.
 4. Family Plus Membership. Available to those who qualify for a Family Membership, a Family Plus Membership may also include extended family members, including: children, grandchildren, parents, grandparents, and siblings. Members of a Family Plus Membership must meet the definition of a Family Membership. Extended family members are not required to live in the same residence on a permanent basis.
 5. Young Professional Membership. A Young Professional Membership applies to members ages 29 years and younger. Upon the member's age of 30, this membership will automatically convert to a full membership at the prevailing monthly dues. Couple and Family Young Professional memberships must consist of two individuals 29 years of age or younger, and will automatically convert to full membership upon one of the members turning 30 years of age. Couple and family memberships must meet the definition of such as described in the Membership Agreement. Membership is available at select Bay Clubs and certain club use restrictions may apply. Where available, the current listing of Young Professional membership privileges are posted on each Club's website.
 6. Dependent Children. Dependent children under the age of 21 may be members of the Club as part of a Couple, Family or Family Plus Membership. Dependent children 21 years and older must either have their own membership or use the facilities as a guest. Dependent children not part of a Couple, Family or Family Plus Membership are not entitled to the rights and privileges of this category of membership but may be guests in accordance with this Agreement.
 7. Family Add-on Membership. Children 21 to 29 years of age may be members of the Club as part of a family add-on membership. Only children of a primary or secondary member on a Family Membership are eligible.
 8. Senior Membership. Members who are age 65 and older are eligible for Senior Membership. This is available for Individual and Couple memberships who meet the definitions of such as described in the Membership Agreement. Senior Membership is available only at certain Bay Club Company properties and club use restrictions may apply. Where available, the current listing of the Senior Membership privileges are listed on each Club's website.
 9. Business Membership. A Business Membership is a Membership purchased by, and in the name of a business of responsible credit background. The business may own one or more memberships. The business must assign one employee as the assigned user for each Business Membership owned. The business may change the assigned user from time to time by providing 30 days advance written notice to the Club and upon payment of a change of assignment charge. The business owning the Business Membership and the assigned user are jointly and severally liable for all dues, charges and obligations incurred on the membership account. The Club shall place any Business Membership without an assigned user on Leave of Absence status. The Business must pay the prevailing Leave of Absence dues for each membership on Leave of Absence status. Except as provided in this paragraph, all other terms and conditions of Membership apply to the respective Business Membership.
 10. Club West/Executive Club/Campus Membership. A Club West, Executive Club, or Campus Membership is a special membership arrangement for Club members. A Club West, Executive Club, or Campus Membership entitles the member to use and enjoy the facilities of participating reciprocal clubs in accordance with the participating Clubs' Rules and Regulations. The member agrees to abide by such Rules and Regulations as they exist or may change from time to time. The Club may change the participating reciprocal clubs from time to time.

GENERAL TERMS AND CONDITIONS OF MEMBERSHIP

INITIATION FEES, DUES AND CHARGES

1. Payment of Membership Fees. Members must pay the initiation fee indicated in the Membership Agreement to the Club. The initiation or other fee is deemed fully incurred upon acceptance of the membership by the Club. ACCORDINGLY, NO PORTION OF SUCH FEE IS REFUNDABLE.
2. Dues. The Club shall determine the amount and terms of payment of dues which are payable by the members. The Club reserves the right to increase or modify dues periodically at its sole discretion. THE OBLIGATION TO PAY DUES IS NOT DEPENDENT ON THE AVAILABILITY OF ALL OF THE CLUB'S FACILITIES OR THE FREQUENCY OF USE. Tournaments, repair, maintenance of some facilities, and/or other occurrences may make it necessary for the Club to restrict the use of one or more facilities or to close the Club temporarily. The Club reserves the right to make changes to the type, number, or quality of classes and equipment offered. The Club will not reduce or suspend dues during the time when the facilities are not available.
3. Charges and Services. The Club shall, from time to time, set the fees and terms of payment for charges for goods, services, changes in class of membership and the use of the facility by members and guests.
4. Taxes. Applicable Federal, state and local taxes must be paid in addition to published Club fees, dues, and charges.
5. Credit Card Authorization. The Club reserves the right to bill the statement balance amount to Member's credit card listed on file in the event the account becomes more than thirty (30) days past due. Member agrees to and fully authorizes all such charges to credit card account(s) on file. Payments on delinquent accounts apply first to reduce late charges and accrued dues, then to food and beverage charges, then to any other charges. Any fees assessed for untimely payment of any applicable dues, fees or charges will appear on Member's statement, including any charges made to Member's credit card for payment of same. Member agrees to maintain a valid major credit card account on file with the Club at all times.

GENERAL TERMS AND CONDITIONS OF MEMBERSHIP CONTINUED

BILLING: I hereby authorize the Club to bill my monthly membership dues, incidental charges, administrative fees and any applicable taxes to my membership account. I understand the Club will bill my membership charges to me on a monthly basis and I agree to settle these charges by check or ACH payment on a timely basis. Late payments (currently member charges that are 30 or more days past due) are subject to a late payment charge. I further understand that all payments made by me and returned from my bank will result in a service fee charged to my account.

In the event that my account becomes more than thirty (30) days past due, the Club shall have the right to bill the statement balance amount due to the credit card below:

CREDIT CARD TYPE: _____ EXPIRATION DATE: _____

CREDIT CARD ACCOUNT NUMBER: _____

TERMINATION OF MEMBERSHIP

1. **Voluntary Resignation:** THE CLUB REQUIRES THIRTY DAYS PRIOR WRITTEN NOTICE TO RESIGN A MEMBERSHIP. The resigning member(s) must complete and sign a Membership Resignation Form. The member must also surrender all membership cards and locker keys, and pay any outstanding account balance. The voluntary resignation is not effective until the expiration of the thirty (30) day notification period; and the Club receives the signed and completed Membership Resignation Form, all membership cards, locker keys and required payments. After the effective date of the voluntary resignation, the member is not subject to further dues.
2. **Waiver of Notice:** The Club shall waive the thirty (30) day notification period if the Member becomes unable to use the Club due to death, permanent disability or relocation more than 25 miles from any Club owned or operated by The Bay Club Company. The member or his/her representative is still required to complete the Membership Resignation Form, return all membership cards and locker keys, and pay all outstanding charges. The Club reserves the right to require proof of relocation.
3. **Involuntary Termination or Suspension.** Membership is a revocable license and may be terminated by the Club upon notice at any time. The Club reserves the right to suspend or terminate the membership or privileges thereunder of any member with or without cause. Termination with cause would include failure to comply with any general terms and conditions of membership or rules or regulations adopted by the Club, non-payment, or for any other reason that is reasonably determined to be within the best interests of the Club. Any member terminated without cause, in the Club's sole discretion, will receive a refund of initiation fees paid. The Club may notify the member of such suspension or termination by writing to the member at the last address shown on the records of the Club. The terminated member must promptly return all membership cards and locker keys to the Club. A suspended or terminated member remains liable for all dues and charges incurred. **THE CLUB'S MANAGEMENT MAY SUSPEND OR TERMINATE THE MEMBERSHIP OF ANY MEMBER WHOSE ACCOUNT IS 60 DAYS IN ARREARS.**

RULES AND REGULATIONS

1. **Registration.** Members must check in and present their membership card at the Reception Desk each time they use the Club.
2. **Guests.** Guests may use the Club only when accompanied by a member and must register at the Reception Desk each time they use the Club. The Club will charge a guest fee each time a guest uses the Club. The Club reserves the right to limit the number of guests a member may bring to use the Club. No individual may use the Club as a guest on more than two occasions per month. Members of the Club are responsible for the appropriateness of attire and conduct of their guests. Members who fail to register their guests and/or fail to pay the required guest fee are subject to fines, suspension or expulsion from the Club.
3. **Children.** Members must abide by all regulations concerning children in the Club. A parent or guardian must be in direct control and supervision of all children unless they are in the Children's Center or participating in a Club-supervised program.
4. **Reservations and Court Usage.** Courts may be reserved by a Member. The Club shall, from time to time, determine how many days in advance such members may reserve courts. Members may reserve one court per day. Other court usage policies and cancellation fees may apply.
5. **Attire.** All participants using the Club must wear proper attire. Members and guests must wear proper footwear on all courts. Club management may prohibit the use of any equipment. The Club recommends that all members and their guests wear proper eye guards when using the courts.
6. **Accounting and Billing.** Statements are sent to members on a monthly basis. Accounts not paid in full by the payment due date are past due and are assessed a late payment charge as liquidated damages because actual damages are difficult to assess. The Club may pursue collection of all amounts due by legal or equitable remedies, and the member agrees to pay all reasonable fees as permitted by law in the collection of such amounts.
7. **Privacy.** Members may have access to the personal information of other members, which may be published within the Club with their permission. Members may not solicit based on this information, nor share this information at any time with anyone.
8. **Damages.** The member must pay for any damages to Club property caused by the member, member's guest or dependent children.
9. **Leave of Absence.** Members may apply for a Leave of Absence if they are to be out of the area three consecutive months or more, or are unable to use the Club because of prolonged illness or injury. Leave of Absence is available only at certain The Bay Club Company properties and for select membership types. Presently, Club West memberships are not available for a leave of absence. Members must complete a Leave of Absence Request Form prior to the desired leave period, and must accompany such request with their membership card and full payment of their account balance. The dues of a Member on an approved Leave of Absence are reduced to an amount equal to one third of the prevailing dues for the applicable membership classification.

GENERAL TERMS AND CONDITIONS OF MEMBERSHIP CONTINUED

10. Programs. From time to time the Club provides a venue for various events, seminars, lectures and other activities provided by outside third parties with which the Club has no affiliation. These activities are provided as a service for the general interest and information of the members. The Club does not verify any information which these outside third parties may provide, nor does it endorse or sponsor any of the providers or products.
11. Financial and Legal Responsibility. Both adult parties to the membership are jointly and severally liable for all dues, charges and obligations incurred on the membership account. Both adult parties to the membership shall be legally responsible for each Member's acts and omissions as well as those of such Member's spouse, children, designees and guests. Business memberships in all membership classes shall terminate upon the dissolution, liquidation or cessation of the legal existence of the business.
12. Cancellation; Division of Membership. Any party may elect to cancel his/her portion of the membership in accordance with the General Terms and Conditions of Membership. In the event that only one (1) of the parties to the membership desire to cancel the membership, the remaining Member will retain the prevailing of the membership. Should the parties choose to cancel and divide the existing membership, division of the membership will be based on equitable division of the prevailing value of the membership. Under no circumstances will the prevailing value of the membership exceed the initiation fee amount paid to the Club. The Club reserves the right to determine the equitable division and prevailing value of the membership.

Initial

Initial

AMENDMENTS OF GENERAL TERMS AND CONDITIONS OF MEMBERSHIP

The Club reserves the right to require proof of the Category of Membership requisites, and to change such definitions and requirements at any time, in its sole discretion.

1. The Club may amend the preceding general terms and conditions of membership, including rules and regulations, and club information and guidelines from time to time. Additionally, the Club may adopt or amend other rules, regulations or policies not herein covered. All Members and guests agree to comply with such rules, regulations or policies.

WAIVER OF CLAIMS

1. The Member expressly agrees that all use of the Club facilities, exercise equipment, exercise machines, courts and any transportation provided by the Club is undertaken by the Member or Member's guest at his/her sole risk.
2. The member further agrees that the Club is not liable for any injuries or damages to any member or guest, or the property of any member or guest.
3. The member agrees that the Club is not subject to any claim, demand, injury or damages whatsoever, including, without any limitation, those damages resulting from acts of active or passive negligence on the part of the Club, its owners, officers, agents or employees.
4. The member, for himself/herself and on behalf of his/her executors, administrators, heirs, assigns and successors, does hereby expressly forever release and discharge the Club, its owners, officers, employees, agents, assigns and successors from all such claims, demands, injuries, damages, actions or causes of action.
5. The member agrees that the Club is not responsible or liable to members or their guests for articles damaged, lost or stolen in or about the Club, or in lockers, or for loss or damage to any property including, but not limited to, automobiles and the contents thereof. Members and their guests agree not to store any valuable items in lockers and to use the lockers provided solely for temporary clothing storage.

RELEASE / DISCLAIMER

WARNING: Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damaged liver function. Men and women using steroids may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. These health hazards are in addition to the civil and criminal penalties for unauthorized sale, use, or exchange of anabolic steroids.

I do hereby assume full responsibility for any and all damages, injuries, (including death) or losses that I may sustain, if any, while attending, practicing, participating or witnessing in any Club exercise program, sport or physical activity occurring in or about the Club premises. I hereby assume full risk, waive any claims and release and hold the Club, its owners and its employees, individually or otherwise, harmless for any and all claims for injuries or damages. In consideration of my participation in the use of the Club's facilities, I hereby release and covenant not to sue the Club, its owners, shareholders, directors, officers, employees, representatives, agents and lessees from any and all present claims resulting from ordinary negligence and inherent risk of use of the facilities and equipment of the Club including but not limited to any loss, injury, damage or liability sustained by me while on or about the premises of the club.

I have read and fully understand the above release/waiver and fully understand that I have given up substantial rights by signing this waiver voluntarily. I agree to abide by the general terms and conditions of membership.

SIGNATURE: _____ DATE: _____

SIGNATURE: _____ DATE: _____

RIDER TO MEMBERSHIP AGREEMENT FOR EXISTING FRCC MEMBERS AT BAY CLUB FAIRBANKS RANCH

The following terms and conditions will apply to your Membership.

Any inconsistencies or ambiguities between the terms and conditions set forth in this Rider (this "Rider") and the terms and conditions set forth in your Membership Agreement, the terms and conditions of this Rider shall control.

1. Bay Club Fairbanks Ranch (the "Club") will waive any initiation fee for all members including all Golf, Non-Resident, Social, Junior Executives and Tennis-Only Members (and their immediate family) who join the Club within thirty (30) days of [_____]² (the "Effective Date").

a. Golf Members, Non-Resident Members and Junior Executive Members will be allowed to choose from a Club Golf Family Membership (as set forth on Attachment R-1) or from various Club West Membership Options (as set forth on Attachment R-2). Golf Members, Non-Resident Members and Junior Executive Members will have one hundred eighty (180) days after the Effective Date to move among these options and decide on a final membership choice (to the extent a term is not otherwise provided, such terms under Attachment R-1 shall not change for a period of five (5) years after the Effective Date).

b. Social Members will be offered the Club West Premier Membership.

c. Tennis-Only Members will be offered the Club West Premier Membership.

2. For the term of the Club's lease with the City of San Diego, no special or capital assessments may be imposed on you at any time after the Effective Date.

3. The Club will form a Club Advisory Committee (the "Club Advisory Committee") and a Golf Advisory Committee initially composed of [five individuals]² to consult with the Club on future capital improvements, service standards, tournaments, and social activities of the Club.

4. For a period of five (5) years following the Effective Date, the Club will continue a spacing between golf tee times of at least ten (10) minutes.

5. By executing below you hereby acknowledge and agree with the privacy policy attached hereto as Annex A.

6. In addition, by executing below you hereby acknowledge that neither the Club nor its Affiliates have any obligation or future liability with respect to any previous agreements or understandings between you and Fairbanks Ranch Country Club, Inc. (the "Prior Owner"). You hereby further acknowledge and agree that the Prior Owner has no obligations owed to you under any agreement between you and the Prior Owner and all such agreements are effectively terminated. Finally, you hereby agree to release The Bay Club Companies and the Prior Owner from any obligations or liability arising out of, or relating to, any prior agreement between you and the Prior Owner and the organization, management, operation or conduct of the businesses of the Club relating to any matter, occurrence, action or activity on or prior to the date hereof. You acknowledge and agree that this release constitutes a voluntary waiver of any and all rights and claims you may have as of this date. You acknowledge and agree that this release shall be and remain in effect in all respects a complete general release as to the matters released, whether known or unknown. You are familiar with the provisions of California Civil Code section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

You are releasing known and unknown claims, and waive all right you have or may have under California Civil Code section 1542 or under any other statute or common law principle of similar effect.

NTD: Insert Closing Date.

NTD: To be selected prior to closing.

ATTACHMENT R-1

GOLF FAMILY MEMBERSHIP TERMS FOR FORMER FRCC MEMBERS

- Exclusive Access to Protected Tee Times.

As an existing FRCC member, you will have the ability to register in advance of all other membership tiers with respect to the Club's Annual Golf Calendar of Events consisting of scheduled tournaments, guest days, Team Play, etc. This advance registration benefit shall remain as set forth herein for a period of ten (10) years following the Effective Date.

Additionally, you will have priority with respect to tee times during the following hours of the day during every week of the year: Monday(if open)/Tuesday/Wednesday/Thursday from 8am thru 11 am; Friday from 9:30am thru 12:30pm; Saturday from 7:30am thru 10:30am; and Sunday from 9:30am thru 12:30pm. The tee times set forth above are referred to herein as the "Protected Tee Times". Golf Members can reserve Protected Tee Times seven (7) days in advance. If a Protected Tee Time is not reserved by a Golf Member at least 48 hours in advance of the tee time, then that tee time will be opened to Club West Members. The Protected Tee Times shall remain as set forth herein for a period of ten (10) years following the Effective Date; provided that on or after the fifth (5th) anniversary of the Effective Date, the Club may change the time of the Protected Tee Times so long as such tee times remain available for the same length of time.

- Preferred Access to Non-Protected Tee Times. Golf Members may book tee times five (5) days in advance of Club West Members. For example, if Club West Members can book Non-Protected Tee Times thirty (30) days in advance, then Golf Members could book these tee times thirty-five (35) days in advance. Such preferred access to Non-Protected Tee Times shall remain as set forth herein for a period of five (5) years following the Effective Date.

- Additional Fees. For a period of five (5) years following the Effective Date, (1) there will be no green, cart, range, locker or bag storage fees at Club in connection with your Membership and (2) one locker will be included in the Family Membership for Golf Members. All new Home Club Memberships will be required to pay for lockers, range and bag storage fees and such fees shall be determined by the Club, in its sole discretion.

- Food & Beverage Minimum. For a period of five (5) years following the Effective Date, there will be no Food & Beverage minimum in connection with your Membership.

- Preferred Access to Practice Facilities. For a period of five (5) years following the Effective Date, you will have preferred access to practice facilities. Additional availability will be determined based on demand and the condition of the practice facilities. Such preferred access shall not inhibit the Club from keeping the condition of the practice facilities consistent with first-tier country clubs.

- Membership Dues. Your membership dues will be \$975/month beginning on the first month following the Effective Date through the end of 2016 and will increase a maximum of 5% per year in 2017, 2018, and 2019.

- Access to Bay Club Properties. For a period of five (5) years following the Effective Date, you shall have access to all Bay Club properties (reservations may apply).

- Additional Sports. For a period of five (5) years following the Effective Date, your Membership will include unlimited access to all sports (golf, tennis, and squash) and you will not be required to pay cart fees at other Bay Club properties.

- Advance Booking Privileges. For a period of five (5) years following the Effective Date, your Membership will entitle you to thirty (30) day advance booking privileges for all sports & childcare reservations.

- **Activity Passes.** For a period of five (5) years following the Effective Date, your Membership will entitle you to ten (10) Activity Passes per month (including guest, green, cart, and court fees); provided, however, that green fees require two Activity Passes per participant.

- **CONNECT Workspace.** For a period of five (5) years following the Effective Date, your Membership will entitle you to unlimited CONNECT workspace hours at Bay Club locations with CONNECT areas.

- **Equipment Rentals and Family Cabanas.** For a period of five (5) years following the Effective Date, your Membership will entitle you to receive discounts on equipment rentals and family cabanas.

- **Discount.** You shall receive a four percent (4%) discount off all Club charges other than Membership Dues.

- **Additional Privileges.** Your Membership will include any other privileges that are added to the Club West Diamond Membership Privileges from time to time. *Specific club booking restrictions may apply.*

* Notwithstanding Section 3 of the general terms and conditions under the heading entitled "Termination of Membership" in the Membership Agreement, the Club may only terminate or suspend a former FRCC member for cause.

ATTACHMENT R-2

DIAMOND

- Access to all properties (reservations may apply)
- Unlimited complimentary sports reservations, including golf, tennis, and squash (cart fees included)
- 30-day advance booking privileges for all sports activities and childcare
- Ten complimentary activity passes each month good for guest fees, greens fees, and court fees
- Unlimited CONNECT workspace hours at Courtside, Cupertino, and Carmel Valley
- Discounts on equipment rentals and family cabanas
- 4% off ALL CLUB CHARGES*

Individual Couple Family Initiation Fee: \$5,000 \$6,250 \$7,500

Monthly Dues: \$500 \$650 \$800

PLATINUM

- Access to all properties (reservations may apply)
- Access to and 50% off sports reservations, including golf, tennis, and squash (cart fees included)
- Complimentary use during select non-prime time hours (golf after 2:00 pm, tennis Monday–Friday 12:00–5:00 pm)
- 14-day advance booking for all sports activities and childcare
- Eight complimentary activity passes each month good for guest fees, greens fees, and court fees
- 50 CONNECT workspace hours each month at Courtside, Cupertino, and Carmel Valley
- Discounts on equipment rentals and family cabanas
- 3% off ALL CLUB CHARGES*

Individual Couple Family Initiation Fee: \$3,500 \$4,250 \$5,000

Monthly Dues: \$350 \$500 \$600

PREMIER

- Access to all properties (reservations may apply)
- Access to and 25% off sports reservations, including golf, tennis, and squash (cart fees included)
- 8-day advance booking for all sports activities and childcare
- Four complimentary activity passes each month good for guest fees, greens fees, and court fees
- 30 CONNECT workspace hours each month at Courtside, Cupertino, and Carmel Valley
- Discounts on equipment rentals and family cabanas
- 2% off ALL CLUB CHARGES*

Individual Couple Family Initiation Fee: \$2,400 \$3,000 \$3,600

Monthly Dues: \$280 \$420 \$500

**Does not apply to dues charges. Discount will be reflected on monthly statement, not at point of sale.
Pricing subject to change. At some locations, home club members may receive additional benefits. Reservations may apply.
Specific club booking restrictions may apply.*

Annex A

Privacy Policy

**BAY CLUB FAIRBANKS RANCH, LLC
PRIVACY POLICY**

This privacy policy for Bay Club Fairbanks Ranch, LLC and the affiliated Bay Club Companies ("Bay Club") describes the privacy practices for BAY CLUB (the "Privacy Policy"). The purpose of this Privacy Policy is to inform you about the types of information we gather about you, including information contained on any membership application you may submit to us, information gathered when you visit BAY CLUB's website located at www.fairbanksranch.com, BAY CLUB's social media pages, BAY CLUB's mobile site or downloadable mobile applications (collectively, the "Site"), and information we may receive from third parties or affiliates, how we may use that information, whether we disclose that information to anyone, and the choices you have regarding our use of, and your ability to correct, the information. BAY CLUB strives to help visitors of the Site protect their privacy while using our Site. By using the Site, you expressly consent to the use and disclosure of information as described in this Privacy Policy.

How We Collect and Use Information

We may collect information in several ways by your use of this Site, as well as from forms you submit to us, or personal correspondence, such as emails or letters that you send to us. We may ask you to voluntarily provide us with personal information on this Site. In addition, when you log onto the Site, our servers may log your IP address, the URL of your request and other information that is provided in the HTTP header. Also, our third-party service providers may ask you voluntarily to provide personal information on their websites and may share such personal information with us, as governed by their respective privacy policies. Our use of information received from a service provider will be dictated by the service provider's privacy policies and not this Privacy Policy.

We collect two types of information: personally identifiable information and non-personally identifiable information. Personally identifiable information is information that identifies you or can be used to identify or contact you ("Personally Identifiable Information"). We also may collect information that by itself typically cannot be used to identify or contact you, such as demographic information (e.g. age, profession or gender), IP addresses, browser types, domain names, and other anonymous statistical data involving the use of our Site ("Non-Personally Identifiable Information").

Like many other websites, BAY CLUB may use cookies to customize content specific to your interests and track your use of the Site. "Cookies" are text files that are placed on your computer and may be used to store your personal information. In addition to cookies, BAY CLUB may use other now known or later developed technologies, to assist BAY CLUB in observing the behavior of users visiting the Site. These technologies access individual user information but the information is used only to compile aggregated statistics about the Site's usage.

Our Site uses Google Analytics (and in the future may use other similar sites or services), a web analytics service provided by Google, Inc. ("Google"), to better assist BAY CLUB in understanding how the Site is used. Google Analytics will place cookies on your computer that will generate information that we select about your use of the Site, including your computer's IP address. That information will be transmitted to and stored by Google. The information will be

used for the purpose of evaluating consumer use of the Site, compiling reports on Site activity for BAY CLUB's use, and providing other services relating to Site activity and usage. Google may also transfer this information to third parties where required to do so by law, or where such third parties process the information on Google's behalf. You may refuse the use of cookies by selecting the appropriate settings on your browser. Please note that by doing so, you may not be able to use the full functionality of the Site. The use of cookies by Google Analytics is covered by Google's privacy policy.

Personally Identifiable Information we collect may include your name, email addresses; postal addresses, ZIP code, telephone number, credit card information, date of birth, gender, age, user name and password, and other information either desirable or necessary to provide quality services to our customers and visitors. We may also collect information about you such as your use of the Site and communication preferences.

To the extent we are able to do so, we may link your Non-Personally Identifiable Information with your Personally Identifiable Information. We may also link information collected online with information we collect offline or that is collected online by third parties.

BAY CLUB may use the information collected from you to provide services which you have requested from us. We may also use your personal information to send you targeted messages, publications, news, and information about events, special offers, promotions and benefits. BAY CLUB may use third-party service providers to send and distribute e-mail and to perform other marketing and support functions. We may use information we collect from you to improve the content of this Site, to enhance users' experiences when visiting this Site, and to customize the content and layout of this Site for each individual user.

Sharing of Personal Information

Except as set forth in this Privacy Policy or as specifically agreed to by you, we will not disclose any information we gather from you on our Site. We may share your personal information with our affiliates or with select third parties who offer goods or services we think may be of interest to you. From time to time, we may partner with other organizations or companies to provide co-sponsored or co-branded promotions, services or events and may share your personal information with our co-sponsor(s) and partners. Additionally, BAY CLUB may provide your personal information to service providers or contractors to perform functions on its behalf, such as, but not limited to, companies or individuals hired to: communicate news, deliver BAY CLUB's promotional materials via e-mail and direct mail, promote BAY CLUB's social media presence and activities, to develop, enhance, market or provide any of BAY CLUB's products, to process credit card payments and to assist BAY CLUB with sending communications and performing other marketing and support functions. Also, BAY CLUB may use third-party social media platforms, including third-party social media websites, to communicate with you.

We also may share with third parties aggregated demographic and statistical information that is not personally identifiable.

BAY CLUB also may disclose an individual's personal information:

- to a person who in the reasonable judgment of BAY CLUB is seeking the information as an agent of the individual;
- in situations where sharing or disclosing your information is required in order to offer you products or services you desire;
- to a third party or parties, where disclosure is required or permitted by law;

- if, in the reasonable judgment of BAY CLUB, it is necessary enforce compliance with our internal policies or the Terms of Use or to protect our Site, customers, or others; and
- to any other entity that acquires all or a portion of our organization by merger, reorganization, operation of law, or a sale of some or all of BAY CLUB's assets.

BAY CLUB may be required to use or disclose your information in connection with a legal action or other proceeding, including without limitation, in response to a court order or a subpoena. We also may disclose such information in response to a law enforcement agency's request.

Through the Site, BAY CLUB may make available areas that allow for user interaction, including blogs, forums, bulletin board services, chat areas, or other message and communications features. Some of these forums may require registration. Please remember that any information that is disclosed in these areas becomes public information, and you should exercise caution when deciding to disclose your personal information.

Children's Information

BAY CLUB does not knowingly solicit or collect personal information on the Site from children under the age of 13 without prior verifiable parental consent. If BAY CLUB learns that, despite these measures, a child under the age of 13 has submitted personally identifiable information to BAY CLUB through the Site, it will take reasonable measures to delete such information from its records and to not use such information for any purpose (except where necessary to protect the safety of the child or others as required by law).

How We Store Your Information

BAY CLUB is committed to protecting the security of any personal information you provide to us. We maintain commercially reasonable safeguards to maintain the security and privacy of personal information that you provide to us. After you have submitted your information online to BAY CLUB, we recommend that you end your browser session before leaving your computer. In spite of these protections, BAY CLUB cannot guarantee the security of any data submitted over the Internet. After your information reaches BAY CLUB, however, it is stored on servers (or in the case of information received from you in person, in writing or over the phone, in physical storage areas) protected by procedures and technology designed to block reasonably foreseeable intrusions by unauthorized third parties.

Opt-Out From Mailings

From time to time, you may receive periodic mailings, telephone calls or e-mails from BAY CLUB with news or other information on events, products, services, discounts, special promotions, upcoming events or other offers from or on behalf of BAY CLUB. If at any time you wish to stop receiving emails or mailings from BAY CLUB please send us an email to _____ with the phrase "Privacy Opt-out: BAY CLUB Mailings" in the subject line, or write to us at the address provided below, and we will remove you from BAY CLUB's mailing list. Alternatively, for e-mail communications, you may opt out of receiving such communications by following the unsubscribe instructions set forth at the bottom of most promotional e-mail messages from BAY CLUB.

Third-Party Websites

This Privacy Policy applies solely to information collected by BAY CLUB. This Privacy Policy does not apply to other websites that are accessible through this Site, including but not limited to any third-party websites that process payments on behalf of BAY CLUB. Please be aware that third-party websites that process payments for BAY CLUB and websites for our advertisers, sponsors, affiliated entities and other third parties that are accessible through this Site may have

their own privacy and data collection policies and practices. BAY CLUB is not responsible for the privacy practices of such sites and will not be responsible for any actions or policies of such third parties. We encourage our users to be aware when they leave the Site and to read the privacy statements of each and every website that you visit.

Do Not Track

Your browser and other mechanisms may permit you to send do-not-track signals or other similar signals to express your preferences regarding online tracking. To the extent you employ such browser do-not-track signals or other similar mechanisms, we will use commercially reasonable efforts to honor such requests received by us to the extent we have the capacity and resources to identify and process your request. Due to the potential for rapid and diverse developments of technology in this area, we cannot guarantee that we can process every type of request that exists or may be developed in the future. As noted above, third parties, such as our advertising partners, may collect data that relates to you. We cannot control third parties' responses to do-not-track signals or other such mechanisms. Third parties' use of data relating to you and responsiveness to do-not-track signals is governed by their respective privacy policies.

California Privacy Rights

If you are a California resident, you have the right to request information from us regarding the manner in which BAY CLUB shares certain categories of personal information with third parties for their direct marketing purposes, in addition to the rights set forth above. Under California law, you have the right to send us a request at the designated address listed below to receive the following information:

1. The categories of information we disclosed to third parties for their direct marketing purposes during the preceding calendar year;
2. the names and addresses of the third parties that received the information; and
3. if the nature of the third party's business cannot be determined from their name, examples of the products or services marketed.

This information may be provided in a standardized format that is not specific to you. The designated email address for these requests is: _____.

Contact Us

If you would like to update or correct your information or modify your communication preferences, or if you have questions regarding our Privacy Policy or the use of information collected, you can contact us:

by email:

by writing to us at:

Policy Changes

BAY CLUB may amend this Privacy Policy from time to time. Should this Privacy Policy be amended in any way, changes will be posted to this webpage. As we may make changes from time to time without notifying you, we suggest that you periodically consult this Privacy Policy. Your continued use of the Site after the effective date of any modification to the Privacy Policy will be deemed to be your agreement to the changed terms.

Last Updated: _____, 2015.

Exhibit G

Memorandum of Member Rights

RECORDING REQUESTED BY:

AND WHEN RECORDED RETURN TO:

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP
525 B Street, Suite 2200
San Diego, CA 92101
Attn: Craig Sapin, Esq.

Above Space Reserved for Recorder's Use Only

MEMORANDUM OF MEMBER RIGHTS

This Memorandum of Member Rights ("Memorandum"), dated for reference purposes as of _____, 2015 is entered into by and between Fairbanks Ranch Country Club, Inc., a California non-profit corporation ("Seller"), and Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("Buyer").

1. The parties have entered into that certain Agreement for Purchase and Sale dated as of February 23, 2015 ("Purchase Agreement") by and between Seller and Buyer.

2. Pursuant to the Purchase Agreement, Buyer has acquired from Seller substantially all of the assets and business of Seller for the golf and tennis club formerly known as Fairbanks Ranch Country Club (the "Club") as described further in the Purchase Agreement (the "Acquisition").

3. As part of the Acquisition, Buyer has entered into an amended and restated ground lease with the City of San Diego for the ground lease of the real property, legally described on Exhibit A attached hereto and incorporated herein, on which the Club is operated.

4. The provisions of Section 5.6 of the Purchase Agreement ("Section 5.6") are incorporated herein, as if set forth fully herein.

5. As set forth in Section 5.6(f), the provisions of Section 5.6 expressly survive the closing under the Purchase Agreement.

6. Section 5.6(d) provides that Seller may record this Memorandum in the Official Records of San Diego County. This Memorandum is recorded to provide notice of certain rights and obligations set forth under Section 5.6.

7. Terms that are capitalized shall have the meaning set forth in the Purchase Agreement.

8. To the extent of any conflict between the terms and conditions of the Purchase Agreement, including Section 5.6, and this Memorandum, the terms and conditions of the Purchase Agreement shall govern and control.

9. This Memorandum may be executed in one or more counterparts, each of which when executed shall constitute an original, but all of which together shall constitute one and the same agreement.

[Signature Page Attached]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first set forth above.

SELLER:

Fairbanks Ranch Country Club, Inc.,
a California non-profit corporation

By: _____
Printed Name: _____
Title: _____

BUYER:

Bay Club Fairbanks Ranch, LLC,
a Delaware limited liability company

By: _____
Printed Name: _____
Title: _____

PARENT

BC Equity Ventures LLC,
a Delaware limited liability company

By: _____
Printed 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)
) ss.
County of _____)

On _____ before me, _____, 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)

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 _____) ss.

On _____ before me, _____, 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)

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 _____) ss.

On _____ before me, _____, 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

All that certain real property located in the City of San Diego, County of San Diego, State of California, described as Lot B of Tentative Map 02-1990-0 and delineated as Lot 2, Fairbanks Country Club Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 10730, filed in the Office of the County Recorder of San Diego County, September 29, 1983.

Exhibit A

Exhibit H
Section 1445 Affidavit

**FIRPTA CERTIFICATE
CERTIFICATION OF NON-FOREIGN STATUS
PURSUANT TO TREASURY REGULATION SECTION 1.1445-2(b)**

Section 1445 of the Internal Revenue Code of 1986, as amended ("**Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. No withholding is required, however, if the transferor furnishes this certificate of non-foreign status. See Code § 1445(b)(2); Treas. Reg. § 1.1445-2(b)(2). To inform the Buyer (as defined below), pursuant to that certain Agreement for Purchase and Sale, dated as of February 23, 2015 (the "**Agreement**") by and between Fairbanks Ranch Country Club, Inc. a California non-profit corporation ("**Seller**"), Bay Club Fairbanks Ranch LLC, a Delaware limited liability company (the "**Buyer**"), and BC Equity Ventures LLC, a Delaware limited liability company ("**Parent**"), that withholding of tax is not required upon the disposition of the Real Property, as that term is defined the Agreement, the undersigned hereby certifies the following:

1. Seller is not a foreign person, including foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and Income Tax Regulations);
2. Seller is not a disregarded entity as defined in Treasury Regulation Section 1.1445-2(b)(2)(iii);
3. Seller's U.S. Employer Identification Number is 95-3820662; and
4. Seller's office address is 15150 San Dieguito Road, P.O. Box 8586, Rancho Santa Fe, CA 92067.

Seller understands that this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declares that he has examined this certification and to the best of his knowledge and belief it is true, correct and complete, and further declares that he has the authority to sign this document on behalf of Seller.

Fairbanks Ranch Country Club, Inc.
a California non-profit corporation

Dated: _____, 2015

By: _____
Steve Foster, Treasurer

ARTICLE XIII
CASUALTY AND CONDEMNATION

13.1 Risk of Loss and Notice. The risk of loss or damage to the Real Property by fire or other casualty prior to the Closing is borne by Seller. Seller shall give the Buyer prompt notice of any destruction of any part of the Real Property or the commencement of any condemnation proceedings against the Real Property between the Effective Date and the Closing Date.

13.2 Minor Casualty. Whether or not the notice required by Section 13.1 is given, if part of the Real Property are destroyed by fire or other casualty and (i) the estimated cost of repairs in excess of Seller's insurance coverage as reasonably determined by Seller is Two Hundred Fifty Thousand Dollars (\$250,000.00) or less, or (ii) the anticipated time to complete the repairs as reasonably determined by Seller is ninety (90) calendar days or less, (a "Minor Casualty"), the Closing will occur with no reduction in the Purchase Price except as set forth below, and at the Closing:

(a) Seller shall assign to the Buyer all proceeds of all insurance payable to Seller insuring the Property and Improvements from such loss or damage, if any, less any amounts reasonably paid by Seller to repair, restore, or clean the Real Property and Improvements;

(b) Buyer will receive a credit against the Purchase Price equal to the amount of any deductible amounts under the applicable property insurance policies providing coverage of such event;

(c) Buyer shall accept the respective Real Property and Improvements in their damaged state; and

(d) Seller has no obligation to repair or restore any damaged or destroyed portions of the Real Property and Improvements.

13.3 Major Casualty and Condemnation. If condemnation proceedings are commenced against any portion of the Land and Improvements, or if Improvements are destroyed by fire or other casualty and (i) the estimated cost of repairs in excess of Seller's insurance coverage as reasonably determined by the parties is more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or (ii) the anticipated time to complete the repairs as reasonably determined by Seller is greater than ninety (90) calendar days (a "Major Casualty"), then within ten (10) calendar days after notice from Seller of the occurrence of a Major Casualty or the initiation of condemnation proceedings, the Buyer may either: (x) extend the Closing Date until such time as the repairs are completed to the Real Property and Improvements, or (y) elect to proceed with the Closing on the Closing Date without reducing the Purchase Price except as set forth below, and at Closing.

(a) Seller shall assign to the Buyer all proceeds of all insurance payable to Seller insuring the Property and Improvements from such loss or damage, if any, less any amounts reasonably paid by Seller to repair, restore, or clean the Land and Improvements;

(b) If a Major Casualty occurs:

(i) Buyer will receive a credit against the Purchase Price equal to the amount of any deductible amounts under the applicable property insurance policies, if any, providing coverage of such event (but only to the extent not utilized for repairs);

(ii) Buyer will accept the Land and Improvements in their damaged state; and

(iii) Seller has no obligation to repair or restore any damaged or destroyed portions of the Land and Improvements.

(c) If condemnation proceedings are begun:

(i) Buyer will accept the Land and Improvements subject to the condemnation proceedings;

(ii) Seller has no liability with respect to any portion of the Land and Improvements condemned, or with respect to any costs or expenses incurred by Buyer as a result of any condemnation proceedings; and

(iii) Seller has no obligation to defend or otherwise appear in any condemnation proceedings.

Notwithstanding the above, if the (x) estimated cost of repair in excess of Seller's insurance coverage or (y) the property subject to the condemnation has a value in excess of Five Hundred Thousand Dollars (\$500,000.00) or if the anticipated time to complete the repairs as reasonably determined by Seller is greater than ninety (90) days, as reasonably determined by the parties, Buyer may elect to terminate this Agreement upon written notice to Seller.

**ARTICLE XIV
FORCE MAJEURE**

14.1 Force Majeure. If the performance of any non-monetary obligations or duties of either Seller or the Buyer are prevented by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortages or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or in the event of the occurrence of any other cause not reasonably within the control of Seller or the Buyer, whether or not specifically mentioned herein, the time for performance by Seller or the Buyer other than for the payment of money, as the case may be, shall be excused, discharged and released to the extent such performance or obligation is limited or prevented by such occurrence, without liability of any kind. The provisions of this Article shall not be applicable to any obligations by either party to timely perform and pay monetary obligations under this Agreement.

ARTICLE XV
MISCELLANEOUS PROVISIONS

15.1 Entire Agreement. This Agreement, the Nondisclosure Agreement, the Closing Documents and the exhibits attached hereto represent the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations, if any, made by and between such parties, including the Term Sheet. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by each of the parties hereto.

15.2 Rules of Construction. Each party and their respective legal counsel have participated in the review, revision and negotiation of this Agreement. The rule of construction to the effect that ambiguities are to be resolved against the drafting party may not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits to this Agreement.

15.3 Incorporation of Exhibits and Schedules. All exhibits and schedules attached to this Agreement are incorporated herein and made a part of this Agreement by this reference for all purposes.

15.4 Assignments. Neither the Seller nor the Buyer may assign this Agreement nor any of the rights and/or obligations under this Agreement either directly, indirectly or by operation of law either prior to or after the Closing Date without the approval of the other party, which approval may be withheld in such other party's sole discretion; provided that (i) the Buyer may assign this Agreement (a) to an Affiliate of Buyer; provided that no such assignment will relieve Buyer of its obligations under this Agreement, (b) as security to any lender providing financing to Buyer or any Affiliate of Buyer, or (c) in connection with a sale of all or substantially all of Buyer; and (ii) Seller may assign this Agreement, and transfer all of its assets and liabilities, to a liquidating trust or similar-type entity to enforce (and be subject to) this Agreement, but it shall give notice to Buyer of such transfer within thirty (30) days of the date of such assignment. Such assignment shall be a novation of Seller's duties hereunder to its assignee.

15.5 Brokers. Seller has entered an engagement agreement to pay a sales commission to CBRE Group, Inc. ("CBRE") and Seller is solely responsible for payment of such sales commission and any other fees, costs or expenses due and payable by Seller to CBRE. Buyer represents and warrants to Seller that Buyer has not entered into any engagement, contract or arrangement with and is not represented by any realtor, broker, agent, finder or other intermediary in connection with the transaction the subject matter of this Agreement. Seller and Buyer otherwise each agree to indemnify and defend the other against claims, loss, liability, cost and expense (including reasonable attorneys' fees) arising out of any claim made by any realtor, broker, finder, or any other intermediary who has been engaged, contracted or utilized by such other party in connection with the transaction which is the subject matter of this Agreement.

15.6 Binding Effect. All of the terms and provisions of this Agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

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15.7 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) hand delivered to the addressee, (ii) sent by electronic mail with same day copy by facsimile, or (iii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party to whom notice is to be given may substitute by written notice in accordance with this Section 15.7. If the notice is sent by electronic mail with same day copy by facsimile, it must be properly addressed to the correct electronic address and facsimile phone number of the addressee(s) most recently designated in accordance with this Section 15.7, and must be transmitted by a facsimile which produces a dated confirmation of completion of transmission. Electronic mail notices with same day facsimile copy shall be deemed received on the date confirmed as the date of transmission if transmitted prior to 5:00 p.m. local time in San Diego, California on any Business Day. If neither the electronic mail nor facsimile copy confirmation shows a transmission time prior to 5:00 p.m. local time in San Diego, California on a Business Day, such notice shall be deemed received on the next Business Day. All hand delivered notices shall be deemed received on the date of actual delivery. All notices forwarded by U.S. mail shall be deemed received a date three (3) calendar days (excluding Sundays and legal holidays) immediately following the date of deposit in the U.S. mail, as applicable. Provided, however, a return receipt indicating the date upon which a notice is received shall be prima facie evidence that such notice was received on the date shown on the return receipt.

If to the Seller:

Fairbanks Ranch Country Club, Inc.
P.O. Box 8586
Rancho Santa Fe, CA 92067
Attention: John Glancy
Email: jglancysr@gmail.com
Telephone: (619) 997-7740
Facsimile: (858) 259-8593

With copies (which shall not constitute notice) to:

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
Attention: Craig Sapin, Esq.
Email: craig.sapin@procopio.com
Telephone: (619) 515-3251
Facsimile: (619) 744-5451

If to Buyer:

Bay Club Fairbanks Ranch, LLC
1 Lombard Street
San Francisco, CA 94111
Attention: Matthew J. Stevens
Email: matthew.stevens@bayclubs.com
Facsimile: (415) 394-5570

With copies to:

Brownstein Hyatt Farber Schreck, LLP

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410 17th Street, Suite 2200
Denver, CO 80202
Attention: Chris Reiss
Facsimile: (303) 223-1111

If to Parent:

BC Equity Ventures LLC
1 Lombard Street
San Francisco, CA 94111
Attention: Matthew J. Stevens
Email: matthew.stevens@bayclubs.com
Facsimile: (415) 394-5570

With copies to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attention: Chris Reiss
Facsimile: (303) 223-1111

If to the Title Company:

Chicago Title Insurance Company
2828 Routh Street, Suite 800
Dallas, TX 75201
Attention: Joycelyn Armstrong
Email: armstrongjo@CTT.com
Telephone: (214) 965-1717

The addresses and addressees may be amended by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee provided by a person or entity entitled to notice shall be deemed to continue in effect for all purposes until otherwise amended as provided in this Section. No notice to either the Seller or Buyer shall be deemed given or received unless the entity noted "With a copy to" or "With copies to" is simultaneously given notice in the same manner as any notice given to either Seller or the Buyer as the case may be.

15.8 Headings and Capitalized Terms. The headings and capitalized terms contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

15.9 Bulk Sales Act. To the extent permitted by applicable Law, the Buyer waives Seller's compliance with the requirements of the Uniform Commercial Code relating to bulk transfers in connection with this sale of assets, including the requirements that Seller furnish the Buyer with a list of creditors.

15.10 Reporting Person. The Title Company is hereby designated as the "**Reporting Person**" pursuant to Section 6045 of the Code and the regulations promulgated thereunder.

15.11 Survival. The obligations and rights of the parties with respect to: (i) Article IV, Article VI, Article IX, Article X, Article XI, Article XII and Sections 5.4, 5.5, 5.6, 14.1, 15.5,

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15.6, 15.7, 15.11, 15.12, 15.14, 15.15, 15.16, 15.17, and 15.23 of this Agreement; (ii) as to all warranties, representations, covenants, obligations and agreements contained in this Agreement which specifically provide for the observance of obligations following the Closing Date and (iii) any right of action for the breach of any representation, warranty or covenant contained herein shall not merge with the provisions of any document delivered at Closing but shall survive the Closing subject to the limitations, if any, related to such provisions set forth in this Agreement, including Section 5.4.

15.12 Severability. If any part of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, and the provision can be omitted from this Agreement without materially altering the meaning or effect of the remainder of this Agreement or the transfer contemplated hereby, the provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.

15.13 Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of that party to require performance of that provision or to exercise any right, power or remedy hereunder, and any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement.

15.14 No Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than the parties hereto and their respective legal representatives, successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

15.15 Governing Law. This Agreement is made in San Diego, California, and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal Laws of the State of California without regard to principles of conflicts of Laws.

15.16 Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in California. Therefore, the parties agree that the proper venue for any legal Proceedings arising out of this Agreement shall be San Diego County, California, and the parties hereby irrevocably submit to the exclusive jurisdictions of courts located therein.

15.17 Enforcement Costs. If any Proceeding is brought for the enforcement, interpretation or reformation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party or parties will be entitled to recover reasonable attorneys' fees actually incurred, expert witness fees, court costs and all litigation related expenses even if not taxable as court costs (including.

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without limitation, all such fees, costs and expenses incident to appeals incurred in that Proceeding), in addition to any other relief to which such party or parties may be entitled.

15.18 Dates and Time Periods. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date falls on a day that is not a Business Day, then in such event said date shall be extended to the next day which is a Business Day.

15.19 No Recording. In no event or circumstance will this Agreement, any memorandum or summary of this Agreement or any other agreement referencing or describing this Agreement in any manner be recorded of record in any public records of any type or nature including, but not limited to, the Official Records of San Diego County, California, unless it is approved in advance in writing by Seller, in Seller's discretion.

15.20 Time of Essence. Time is of the essence of this Agreement and the performance and observance of all obligations of the parties under this Agreement.

15.21 Multiple Counterparts and Signatures. Multiple copies of this Agreement have been executed by the parties hereto. Each such executed copy will have the full force and effect of an original executed instrument. Signatures of the parties to this Agreement transmitted by facsimile or email will be binding upon such parties transmitting such signatures by such means.

15.22 Further Assurances and Cooperation. The parties hereby agree from time to time to execute and deliver such further assurance and other transfers, assignments and documents and do all matters and this which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement. The parties shall cooperate with each other after the Closing Date to effectuate the property transfers of all licenses and permits, to the extent permitted by law. Following the Closing Date, the parties shall provide all cooperation reasonably requested by the other in providing access to, and as may be reasonably requested, copies of documents, data (in electronic or any other form) and information contained within records created or modified prior to the Closing which are: (i) transferred to Buyer by Seller as a part of this transaction and (ii) retained by Seller following the Closing. Following the Closing Date, the parties shall provide all cooperation reasonably requested by the other in providing assistance, access to historical documents and access to and the reasonable cooperation of employees of each to assist in the performance of obligations or requirements under this Agreement which survive the Closing Date.

15.23 No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal and agent, (ii) a partnership, or (iii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of seller and buyer of the Property.

15.24 Discretion of Seller. The terms "at Seller's discretion" and "at the discretion of Seller" as used in this Agreement unless otherwise described in the Section of this Agreement containing reference to such discretion means at the sole and absolute discretion of the Seller in each instance.

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15.25 Currency. All references to currency, monetary amounts or monetary obligations set forth in this Agreement, are to United States dollars.

15.26 Parent Guaranty.

(a) Parent irrevocably and unconditionally guarantees the prompt, complete and punctual payment and/or performance of all the obligations of Buyer under this Agreement ("**Buyer's Obligations**"). In furtherance of the foregoing and without limiting the generality thereof, Parent agrees that (i) Parent's guaranty under this Section 15.26 (this "**Guaranty**") is a guaranty of payment and performance when due and not collectability; (ii) this Guaranty is a primary obligation of Parent and not merely a contract of surety; and (iii) payment or performance by Parent of a portion, but not all, of the Buyer's Obligations shall in no way limit, affect, modify or abridge any liability of Parent for any portion of Buyer's Obligations which have not been paid or performed.

(b) Seller may recover from Parent the full amount of Buyer's Obligations on demand. Nothing herein shall require the Seller to first seek or exhaust any remedy against the Buyer, its successors and assigns, or any other person obligated with respect to the Buyer's Obligations. It is agreed that the Seller may, upon any breach or default of the Buyer, or at any time thereafter, make demand upon Parent and receive payment and performance of the Buyer's Obligations, with or without notice or demand for payment or performance by the Buyer, its successors or assigns, or any other person. Suit may be brought and maintained against Parent, at the Seller's election, without joinder of the Buyer or any other person as parties thereto.

(c) Parent agrees that its obligations to Seller under this Guaranty shall be primary, absolute, continuing and unconditional, irrespective of and unaffected by any of the following actions or circumstances (regardless of any notice to or consent of Parent): (i) the genuineness, validity, regularity and enforceability of this Agreement or any other document executed in connection herewith; (ii) any extension, renewal, amendment, change, waiver or other modification of this Agreement or any other document executed in connection herewith; (iii) Buyer's voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization, or similar proceedings affecting the Buyer or any of its assets; or (iv) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

(d) Notice of any adverse change in the Buyer's financial condition or of any other fact which might materially increase the risk of Parent is also waived by Parent. All settlements, compromises, accounts stated and agreed balances made in good faith between Buyer, its successors or assigns, on the one hand, and Seller, its successors or assigns, on the other hand, shall be binding upon and shall not affect the liability of Parent. Without limiting the generality of the foregoing, Parent waives any and all benefits and defenses under California Civil Code ("**Civil Code**") including those arising under Sections 2847, 2848 and 2849 and agrees that Parent shall have no right of subrogation against Buyer and no right of contribution against any other guarantor unless and until all Buyer's Obligations have been paid and satisfied in full. To the extent the waiver of Parent's rights of subrogation, reimbursement and contribution as set forth herein is found by a court of competent jurisdiction to be void or

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voidable for any reason, Parent's rights of subrogation and reimbursement against Buyer, shall be junior and subordinate to any rights Seller may have against Buyer.

(e) In accordance with Civil Code Section 2856,

(i) Parent waives all rights and defenses available to Parent by reason of the Civil Code including, without limitation, Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433 including, without limitation, any and all rights or defenses Parent may have by reason of protection afforded to the principal with respect to any of the Buyer's Obligations pursuant to the anti-deficiency or other Laws of California limiting or discharging the principal's indebtedness or such other obligations.

(ii) Parent waives any and all benefits and defenses under Civil Code Section 2819, and agrees that by doing so Parent's liability shall continue even if Seller alters any of the Buyer's Obligations under this Agreement or any other document executed in connection herewith in any respect or Seller's remedies or rights against Buyer are in any way impaired or suspended without Parent's consent.

(iii) Parent waives any and all benefits and defenses under Civil Code Section 2809 and agrees that by doing so Parent's liability may be larger in amount and more burdensome than that of Buyer.

(iv) Parent hereby waives any and all benefits and defenses under Civil Code Sections 2845, 2849 and 2850, including, without limitation, the right to require Seller to proceed against Buyer, to exercise any right or remedy under this Agreement or any other document executed in connection herewith, or to pursue any other remedy or to enforce any other right.

(f) Any modification, limitation or discharge of all or any part of Buyer's Obligations arising out of or by virtue of any bankruptcy, arrangement, reorganization or similar proceeding for relief of Buyer under Federal or State Law initiated by or against Buyer shall not modify, limit, lessen, reduce, impair, discharge or otherwise affect Parent's obligations hereunder in any manner whatsoever. If at any time any payment or portion thereof of Buyer's Obligations, whether or not made by or for the account of Parent, is set aside by any court or trustee having jurisdiction as a voidable preference or fraudulent conveyance or must otherwise be restored or returned by Seller to Buyer under any insolvency, bankruptcy or other federal and/or state Laws or as a result of any dissolution, liquidation or reorganization of Buyer or upon or as a result of the appointment of any receiver, intervenor or conservator of, or trustee or similar officer of Buyer or any substantial part of Buyer's properties or assets, or in connection with any compromise or settlement relating to any of the above, Parent hereby agrees that this Guaranty shall continue and remain in full force and effect or be reinstated, as the case may be, all as though such payment(s) had not been made.

15.27 Like-Kind Exchange Cooperation. Seller and Buyer acknowledge and agree that the purchase and sale of the Property may be part of a tax-deferred exchange under Section 1031 of the Code for Buyer. Seller hereby agrees to take all commercially reasonable steps on or before the Closing Date, at no cost to Seller, to facilitate such exchange if requested by Buyer,

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provided that such exchange shall not affect the representations, warranties, liabilities, covenants and obligations of the parties to each other under this Agreement. Notwithstanding anything to the contrary contained in the foregoing, if Buyer so elects to close the acquisition of the Property as an exchange, then (i) Buyer, at its sole option, may delegate its obligations to acquire the Property under this Agreement, and may assign its rights to receive the Property from Seller, to a deferred exchange intermediary (an "Intermediary") or to an exchange accommodation titleholder, as the case may be; (ii) such delegation and assignment shall in no way reduce, modify or otherwise affect the obligations of Buyer pursuant to this Agreement; (iii) Buyer shall remain fully liable for its obligations under this Agreement as if such delegation and assignment shall not have taken place; (iv) the Intermediary or exchange accommodation titleholder, as the case may be, shall have no liability to Seller; (v) the closing of the acquisition of the Property by Buyer or the exchange accommodation titleholder, as the case may be, shall be undertaken by direct deed, assignment or other appropriate instruments of conveyance from Seller to Buyer (or to exchange accommodation titleholder, as the case may be); and (vi) there shall be no unreasonable delay of the Closing Date in conjunction therewith.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

Seller:

Fairbanks Ranch Country Club, Inc.,
a California non-profit corporation

By: John E. Glancy
Name: JOHN E. GLANCY
Title: PRESIDENT

Buyer:

Bay Club Fairbanks Ranch, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Solely for purposes of Section 15.26 of this Agreement:

Parent:

BC Equity Ventures LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

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

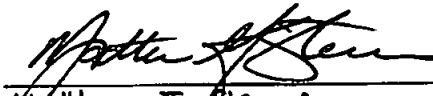
Seller:

Fairbanks Ranch Country Club, Inc.,
a California non-profit corporation

By: _____
Name: _____
Title: _____

Buyer:

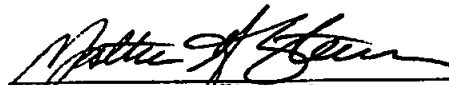
Bay Club Fairbanks Ranch, LLC
a Delaware limited liability company

By: 
Name: Matthew J. Stevens
Title: President & CEO

Solely for purposes of Section 15.26 of this Agreement:

Parent:

BC Equity Ventures LLC,
a Delaware limited liability company

By: 
Name: Matthew J. Stevens
Title: President & CEO

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The undersigned, acting as the Title Company, hereby acknowledges receipt of the Agreement signed and dated by both Seller and Buyer and accepts the instructions set forth in the Agreement to be performed or observed by Title Company.

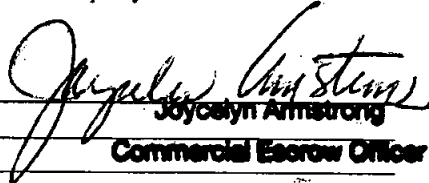
Title Company:

Chicago Title Company

By: _____

Name: _____

Title: _____


Joycelyn Armstrong
Commercial Escrow Officer

APPENDIX A
TO AGREEMENT FOR PURCHASE AND SALE

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"Affiliate" means, with respect to the person or entity, any other person or entity which controls, is controlled by, or is under common control with, such original person or entity. For the purposes of this definition "control" means the ability to directly or indirectly manage, determine and control the operations and business affairs of a person or entity, whether through the ownership of at least fifty percent (50%) of the voting securities, by contract or otherwise.

"Business" means the business of the Seller, including, without limitation, owning and operating the Club.

"Change of Control" means, with respect to any Person, the occurrence of any of the following events, whether in a single transaction or a series of related transactions: (a) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of such Person representing fifty percent (50%) or more of the total voting power represented by the Person's then-outstanding voting securities, whether by tender offer, or otherwise; or (b) the consummation of a merger or consolidation of such Person with any other corporation, other than a merger or consolidation which would result in the voting securities of such Person outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of such Person or such surviving entity outstanding immediately after such merger or consolidation, or the liquidation of such Person or the sale or disposition by such Person of all or substantially all of such Person's assets.

"Closing Documents" means, collectively, this Agreement, the Bill of Sale, Assignment of Intangibles and Assumption Agreement, the Escrow Agreement and all other agreements and instruments described in, contemplated by or executed in connection with the foregoing that have been or are to be executed and delivered in connection with the transactions contemplated hereby or thereby.

"Code" means the Internal Revenue Code of 1986, as amended.

"Effective Dissolution" means the later of (i) the dissolution and liquidation of the Seller, or (ii) the dissolution and liquidation of any liquidating trust or similar-type entity established for the benefit of the Members, including for the purposes of collecting any amounts owed to Seller, enforcing any rights under this Agreement, paying any contingent or unforeseen liabilities or obligations of Seller, and otherwise undertaking the rights and obligations of Seller under Section 4.4 of this Agreement.

"Encumbrance" means any lien, charge, claim, security interest, adverse claim, levy, mortgage, pledge or other encumbrance of any nature whatsoever.

"GAAP" means the United States generally accepted accounting principles, consistently applied.

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"Governmental Authority" means any federal, state, regional, or local governmental body of the United States of America or other political subdivision thereof and any other regulatory or administrative agency or commission (to the extent that the rules, regulations or orders of such authority have the force of Law).

"Indebtedness" means (a) any liability, contingent or otherwise, of the Seller (i) for borrowed money (whether or not the recourse of the lender is to the whole of the property or only to a portion thereof) or (ii) evidenced by a note, debenture or similar instrument or letter of credit (including a purchase money obligation or other obligation relating to the deferred purchase price of property); (b) any liability of the kind described in the preceding clause which the Seller has guaranteed or which is otherwise its legal liability; (c) any monetary obligation secured by an Encumbrance (other than Permitted Encumbrances) to which the Property of the Seller is subject; and (d) all capitalized lease obligations of the Seller with respect to the Property.

"Knowledge of Seller" or "Seller's Knowledge" or similar phrases mean the existing actual knowledge of Steve Wittert, Mike Kendall, John Glancy and Steve Foster without any duty to inquire or inspect any item related to such representation or warranty, and without the attribution of the knowledge of others, as of the date of this Agreement and the Closing Date, as applicable.

"Latest Balance Sheet" means the unaudited balance sheet and related statement of income prepared by Buyer and Seller, of the most recent month end prior to the Closing Date.

"Law" means any federal, state, municipal or local statute, law, ordinance, code, principle of common law, regulation or rule enacted, promulgated or imposed by any Governmental Authority.

"Material Adverse Effect" means any occurrence, development, change, event, violation, inaccuracy, circumstance, condition, or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on: the business, liabilities, assets, operations, results of operations, or condition (financial or otherwise) of the Business. Notwithstanding the foregoing, none of the following shall be deemed, either alone or in combination, to constitute a Material Adverse Effect: (i) conditions generally affecting the industries in which the Seller and the Business operates; (ii) any effect arising out of the public announcement of the transactions contemplated hereby or this Agreement; (iii) any effect resulting from any breach by Buyer of any provision of this Agreement; (iv) any change in the general economic, political or financial conditions of the United States; (v) any effect resulting from acts of war (whether or not declared), sabotage or terrorism, military action or the escalation thereof; (vi) any effect resulting from any changes after the date of this Agreement in applicable Law, regulations or rules or accountancy principles; (vii) any effect resulting from the taking of any action by Seller, Buyer or any of Buyer's Affiliates required to be taken pursuant to this Agreement, or the taking of any action by Seller and such action is approved or consented to in advance and in writing by Buyer; or (viii) any effect resulting from the compliance, or failure to comply, with the WARN Act or any similar state Law; provided, however, that any occurrence, development, change, event, violation, inaccuracy, circumstance, condition, or effect referred to in clause (i), (iv), (v) and (vi) immediately above shall be taken into account in

determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such occurrence, development, change, event, violation, inaccuracy, circumstance, condition, or effect has a disproportionate effect on the Business when compared to the industry in which the Business conducts its business taken as a whole.

"Members" means any person or entity that holds a Membership as of the Closing.

"Member Liabilities" means any liabilities or obligations under the Membership Agreements, or any obligations or liabilities related to Members; including without limitation, honoring any classes of Members, any claim of equity or ownership interest in the Business, and any liabilities associated with the receipt of initiation payments, dues, transfer fees or return of equity.

"Membership" means any membership or other right, license or privilege which authorizes the holder to utilize all or any portion of the Real Property pursuant to a Membership Agreement, or otherwise.

"Membership Agreements" means, individually and collectively any written agreement or Contract entered into by a Member in connection with the offer, sale and/or issuance of a Membership and all rules and regulations, membership plans, by-laws and such other documentation relating to any Membership.

"Nondisclosure Agreement" means that certain Confidentiality Agreement, dated as of October 7, 2014 between Seller and The Bay Club Company.

"Permitted Encumbrance" means (a) Encumbrances for Taxes, fees, levies, duties or other governmental charges of any kind which are not yet delinquent or are being contested in good faith by appropriate proceedings which suspend the collection thereof and for which appropriate reserves have been established in accordance with GAAP, (b) pledges, deposits or other Encumbrances securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance, other social security legislation or similar programs mandated by Laws), (c) Encumbrances arising from zoning, entitlement, conservation restriction and other land use and environmental regulations regulating the use or occupancy of real property or the activities conducted thereon that are imposed by any Governmental Authority having jurisdiction over such real property and are not violated by the current use or occupancy of such real property or the operation of the business as currently conducted thereon, and which would not be reasonably likely to result in a Material Adverse Effect, (d) statutory or common law liens to secure obligations to landlords, lessors or rents under leases or rental agreements, and (e) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business as to which there is no default or breach on the part of the party incurring such Encumbrances.

"Person" means any individual, partnership, limited liability company, limited liability partnership corporation, association, joint stock company, trust, joint venture, unincorporated organization or governmental entity (or any department, agency or political subdivision thereof).

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"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before any Governmental Authority.

"Tax" means any tax (including any income tax, franchise tax, capital gains tax, estimated tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, occupation tax, inventory tax, occupancy tax, withholding tax or payroll tax), escheat, levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee and any related charge or amount (including any fine, penalty or interest) that is, has been or may in the future be (a) imposed, assessed or collected by or under the authority of any Governmental Authority, or (b) payable pursuant to any tax-sharing agreement or similar contract.

"Tax Return" means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information that is, has been or may in the future be filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

Exhibit A

Land Legal Description

That certain real property located in the City of San Diego, County of San Diego, State of California, described as Lot B of Tentative Map 02-199-0 and delineated as Lot 2, Fairbanks Country Club Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 10730, filed in the Office of the County Recorder of San Diego County, September 29, 1983.

Exhibit B

Bill of Sale, Assignment of Intangibles and Assumption Agreement

**BILL OF SALE, ASSIGNMENT OF INTANGIBLES AND ASSUMPTION
AGREEMENT**

THIS BILL OF SALE, ASSIGNMENT OF INTANGIBLES AND ASSUMPTION AGREEMENT (this "Agreement") is dated as of [_____], 2015, by and among Fairbanks Ranch Country Club, Inc., a California non-profit corporation ("Seller"), on the one hand, and Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company (the "Buyer"), on the other hand, both of whom may be referred to herein as the "Parties."

RECITALS

A. Seller, Buyer and BC Equity Ventures LLC, a Delaware limited liability company ("Parent") are parties to that certain Agreement for Purchase and Sale, dated as of February 23, 2015 (as amended, restated, modified or supplemented from time to time, the "Purchase Agreement"). Capitalized terms used in this Agreement without definition shall have the meaning ascribed to such terms in the Purchase Agreement.

B. This Agreement is made pursuant to, as required by, and subject to the terms and conditions of the Purchase Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Bill of Sale. Effective as of the Closing, Seller does hereby grant, sell, transfer, assign, convey and deliver to Buyer, all of Seller's right, title, and interest in, to and under all of the Property (other than the Excluded Property), free and clear of all Encumbrances other than Permitted Encumbrances.
2. Assignment. Effective as of the Closing, Seller hereby assigns, transfers and sets over to Buyer, without representation or warranty, express or implied, except as set forth in the Purchase Agreement, all of Seller's right, title and interest, in, to and under all of the Personal Property, including without limitation all Intangible Personal Property, free and clear of all Encumbrances other than Permitted Encumbrances.
3. Assumption of Obligations. Effective as of the Closing, Buyer and Parent, as applicable, hereby assumes and agrees to perform all of the Assumed Liabilities.
4. No Amendment of Purchase Agreement. Notwithstanding any other provision of this Agreement to the contrary, nothing contained in this Agreement shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including the warranties, covenants, agreements, conditions, representations or, in general, any of the rights and remedies, and any of the obligations and indemnifications of the Parties set forth in the Purchase Agreement. Nothing contained in this Agreement is intended to provide any rights to the Buyer or Seller beyond those rights expressly provided to the Buyer or Seller in the Purchase Agreement. This Agreement is intended only to effect the transfer of certain property and rights, and the assumption of certain liabilities, transferred, assigned and

assumed pursuant to the Purchase Agreement and shall be governed entirely in accordance with the terms and provisions of the Purchase Agreement. Any inconsistencies or ambiguities between this Agreement and the Purchase Agreement shall be resolved in favor of the Purchase Agreement.

5. As Is. BUYER IS ACQUIRING TITLE TO THE PROPERTY AND EXCEPT AS SET FORTH IN THE PURCHASE AGREEMENT THE PROPERTY IS BEING CONVEYED "AS IS, WHERE IS, AND WITH ALL FAULTS". EXCEPT FOR ANY WARRANTIES AND REPRESENTATIONS MADE IN THE PURCHASE AGREEMENT OR IN ANY OF THE CLOSING DOCUMENTS, THE SELLER, DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY TYPE OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS.

6. Binding Effect. All of the terms and provisions of this Agreement whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective legal representatives, successors and permitted assigns.

7. Further Assurances. The Parties hereby agree from time to time to execute and deliver such further assurance and other transfers, assignments and documents and do all matters which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

8. Multiple Counterparts and Signatures. Multiple copies of this Agreement have been executed by the parties hereto. Each such executed copy will have the full force and effect of an original executed instrument. Signatures of the parties to this Agreement transmitted by facsimile or email will be binding upon such parties transmitting such signatures by such means.

9. Governing Law; Interpretation. This Agreement is made in San Diego, California, and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal Laws of the State of California without regard to principles of conflicts of Laws.

* * * * *

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

FAIRBANKS RANCH COUNTRY CLUB,
INC.

By: _____

Name: _____

Title: _____

BUYER:

BAY CLUB FAIRBANKS RANCH, LLC

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF LIQUOR ESCROW AGREEMENT

TRANSFER OF ALCOHOLIC BEVERAGE LICENSE(S)
ESCROW INSTRUCTIONS

TO: Chloe Flowers, Senior Vice President
Bay Commercial Bank
3895 East Castro Valley Blvd – Ste. A
Castro Valley, CA. 94552

Tel: 510-300-8140
Date:
Escrow Officer: C. Flowers
Escrow No. 210

IT IS AGREED BETWEEN THE TRANSFEROR AND INTENDED TRANSFEREE THAT NONE OF THE SAID CONSIDERATION WILL BE PAID FOR THE TRANSFER OF THE LICENSE(S) UNTIL SUCH TIME AS ESCROW AGENT HAS BEEN ADVISED IN WRITING BY DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL ("ABC") THAT THE TRANSFER OF SAID LICENSE HAS BEEN APPROVED.

A. THE TRANSFEROR: Fairbanks Ranch Country Club, Inc.

WHOSE MAILING ADDRESS IS: 15150 San Dieguito Road, Rancho Santa Fe, CA 92067

B. AND INTENDED TRANSFEREE: DDR Partners, Inc.

WHOSE MAILING ADDRESS IS: c/o Western Athletic Clubs, Inc., One Lombard Street, San Francisco, CA 94111

C. Will complete all Department of ABC Requirements to cause license(s) to be transferred to Intended Transferee:

Kind of Licenses: Type
 License No. 795175

Now Located at: 15150 San Dieguito Road, Rancho Santa Fe, CA 92067

1. Pursuant to Section 24073 of the Business and Professions Code of the State of California, Intended Transferee shall cause Notice of Intended Transfer to be filed in the Office of the County Recorder upon receipt of the total purchase price for the transfer. Intended Transferee shall deliver to Escrow Agent a conformed copy of said Notice, and Intended Transferee shall deliver a copy of said Notice of Intended Transfer, certified by the County Recorder, to the ABC.

2. Prior to the release of ABC Form 226 "Applicant's Statement That Consideration Has Been Deposited in Escrow", Intended Transferee shall deliver to BAY COMMERCIAL BANK Escrow Services (hereinafter, Escrow Agent), the purchase price of CASH in the amount of \$,000.00 all of which shall be allocated to the liquor license.
3. License Renewal Fees which may become due prior to the transfer of the liquor license shall be paid prior to the date they become due by Transferee.

INITIALS (Transferor(s)) _____

INITIALS (Intended Transferee(s)) _____

This section must be initialed by Transferor and Intended Transferee

TRANSFEROR AND INTENDED TRANSFEEE HEREBY ACKNOWLEDGE THAT IN THE EVENT ESCROW AGENT IS NOTIFIED BY THE ABC THAT A "TAX HOLD" HAS BEEN PLACED ON THE LIQUOR LICENSE OF THE TRANSFEROR BY THE STATE BOARD OF EQUALIZATION, EMPLOYMENT DEVELOPMENT DEPARTMENT, FRANCHISE TAX BOARD, CITY AND/OR COUNTY DELINQUENT BUSINESS TAXES AND/OR INTERNAL REVENUE SERVICE UNDER PROVISIONS OF BUSINESS AND PROFESSIONS CODE 24049, AND, THAT TO THE BEST OF ESCROW AGENT'S KNOWLEDGE, AFTER APPROPRIATE INQUIRY, NOTHING AT THE TIME OF SUCH NOTIFICATION IS PREVENTING THE TRANSFER OF THE LIQUOR LICENSE EXCEPT THE "RELEASE OF SAID TAX HOLD", THEN ESCROW AGENT IS HEREBY AUTHORIZED AND INSTRUCTED TO PAY, WITHOUT FURTHER INSTRUCTION FROM THE TRANSFEROR AND INTENDED TRANSFEEE, FROM THE FUNDS DEPOSITED INTO ESCROW BY INTENDED TRANSFEEE, TO THE TAXING AGENCY HAVING PLACED SAID "TAX HOLD", PER THEIR WRITTEN DEMAND DELIVERED TO ESCROW AGENT. UPON TRANSFER OF THE LIQUOR LICENSE THE AMOUNT RELEASED WILL BE DEDUCTED FROM SELLERS PROCEEDS.

FURTHER, TRANSFEROR AND INTENDED TRANSFEEE ACKNOWLEDGE AND UNDERSTAND THAT THE PAYMENT OF THE DEMAND FROM SAID TAXING AUTHORITY MAY OR MAY NOT CONSTITUTE FULL OR FINAL PAYMENT THEREOF AND DOES NOT RELIEVE THE TRANSFEROR OF ITS LIABILITY THERETO AND THAT THE TAXING AUTHORITY MAY STILL IMPOSE SUCCESSOR LIABILITY UPON THE INTENDED TRANSFEEE.

TRANSFEROR AND INTENDED TRANSFEEE HOLD ESCROW AGENT HARMLESS AND WITHOUT LIABILITY FOR FOLLOWING THESE INSTRUCTIONS AND THE EARLY RELEASE OF INTENDED TRANSFEEE'S FUNDS, AND INTENDED TRANSFEEE IS TO LOOK TO TRANSFEROR FOR RESTITUTION IN THE EVENT INTENDED TRANSFEEE SHOULD NOT ACQUIRE THE LIQUOR LICENSE IN QUESTION.

INITIALS (Transferor(s)) _____

INITIALS (Intended Transferee(s)) _____

This section must be initialed by Transferor and Intended Transferee

D. UPON APPROVAL OF THE TRANSFER OF THE LICENSE BY THE ABC ESCROW AGENT SHALL;

1. Out of said purchase price, Escrow Agent is authorized to pay the claims of such of the bona fide creditors of Transferor who shall file their claims with Escrow Agent not later than the date on which

written notice of transfer from the ABC is received by Escrow Agent..

2. All claims approved by Transferor shall be deemed to be bona fide and Escrow Agent may pay such approved claims. Should any claims be filed which Transferor refuses to approve, Escrow Agent shall notify the claimant; and the pro rata amount thereof shall be retained by Escrow Agent for a period of 25 days; and if not attached, shall be paid to Transferor in accordance with Section 24074 of the Business and Professions Code of the State of California.

3. If such purchase price shall not be sufficient to pay said claims in full, Escrow Agent is to distribute said consideration pursuant to the provisions of Section 24074.1 of the Business and Professions Code of the State of California; provided, however, that prior to such distribution, Escrow Agent shall deliver written notice of each creditor setting forth the distribution to be made in accordance with this paragraph, which notice shall provide that such creditor may dispute such distribution if it can show reasonable proof that such distribution would violate the provisions of Section 24074.1 of the Business and Professions Code of the State of California.

4. Escrow Agent shall pay the balance remaining of such purchase price, after payment of creditor claims and other expenses, to UMB Bank, N.A. as escrow agent for Transferor and Intended Transferee, Account No. _____ or by check to UMB Bank, Corporate Trust and Escrow, Attn: Leigh Lutz 1670 Broadway, Denver CO 80202 for deposit in the Stonetree Escrow as otherwise directed by Transferor and Intended Transferee.

GENERAL PROVISIONS

TAXES: Escrow Agent is not to be concerned as to any unpaid beverage, unemployment, social security, personal property, sales tax, or any other tax or contribution, any federal liens, or any unpaid salaries or wages, unless otherwise specifically instructed in this escrow. SHOULD ESCROW AGENT BE DIRECTED AND INSTRUCTED IN THESE INSTRUCTIONS TO MAKE ANY SUCH PAYMENT, SAME MAY OR MAY NOT CONSTITUTE FULL OR FINAL PAYMENT THEREOF.

OTHER AGREEMENTS: Unless otherwise provided herein, Escrow Agent is not to be concerned with any conditional sales contract, lease contract or security agreement that may affect the herein referred to personal property, and is not responsible for the delivery of any papers other than described herein. Escrow Agent is not a party to, or bound by any agreement which may be deposited under, evidenced by, or arise out of these instructions, other than these instructions.

AGENCY RESPONSIBILITY: Escrow Agent is to make no examination of the property nor of the title thereto; Escrow Agent acts as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, or with respect to form or execution of the same, or the identity, authority, or right of any person executing or depositing the same.

DEFAULTS: Escrow Agent shall not be required to take or be bound by notice of any default of any person, or to take any action with respect to such default involving any expense or liability, unless notice in writing is given to the Escrow Agent at the office above named, of such default by the undersigned or any of them, and unless it is indemnified in a manner satisfactory to it against such expense or liability.

These instructions shall not be subject to revision or modification except upon receipt by Escrow Agent at the office above named of the written instructions of all of the parties hereto or their successors in interest.

NOTICES: Escrow Agent shall be protected in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be signed by the proper party or parties.

JUDGMENT: Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct, and Escrow Agent shall have no duties to anyone except those signing these instructions.

COUNSEL: Escrow Agent may advise with legal counsel in the event of any dispute or questions as to the construction of the foregoing instructions, or Escrow Agent's duties thereunder, and Escrow Agent shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of counsel.

DISAGREEMENTS: In the event of any disagreement between the undersigned or any of them, and/or the person or persons named in the foregoing instructions, and/or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein or affected hereby, Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in doing so doing Escrow Agent shall not be or become liable for damages or interest to the undersigned or any of them or to any person named in the foregoing instructions for its failure or refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to continue to refrain and refuse so to act until;

1. the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers, and property involved herein or affected hereby; and/or
2. all differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing, signed by all of the persons interested.

In the event of such disagreement, Escrow Agent in its discretion, may file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and deposit with the court all documents and property held hereunder, and the undersigned agree to pay all reasonable costs and counsel fees incurred by Escrow Agent in such action and said costs and fees shall be included in the judgment in any such action.

FEES AND CHARGES: In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or modifications thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, Escrow Agent shall be reasonably compensated therefor and reimbursed for all costs and expenses occasioned

thereby. Escrow Agent shall have a first lien on the property and papers held by it hereunder for such compensation and expenses, and the parties hereto agree jointly and severally to pay the same, and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done hereunder.

For its ordinary services hereunder, the Escrow Agent shall be entitled to an initial fee of \$.00 which is Non-refundable, payable concurrently with its acceptance hereof, by Intended Transferee and to additional compensation, if applicable, paid by Transferee as follows:

Federal Express fees will be in addition to the escrow fee.

\$15.00 for each claim in excess of three (3) paid through escrow

\$50.00 for each disputed claim of Transferor

CANCELLATION: In the event this escrow is cancelled, Transferor or Intended Transferee will nevertheless pay the escrow fees plus all costs and expenses of Escrow Agent. Notwithstanding anything in these instructions to the contrary, Escrow Agent may, at his discretion, resign at any time prior to receipt of written notice from the ABC that the license(s) has been transferred by giving five (5) days written notice to the ABC and parties hereto, and shall be entitled to reimbursement only for those costs and expenses incurred by Escrow Agent to the date of such resignation. Upon cancellation by the parties or resignation of Escrow Agent, after deducting Escrow Agent's fees and/or costs or expenses, the balance of funds and documents shall be returned to the parties who shall have deposited the same, except as otherwise provided in the "DEFAULTS" section above.

SIGNATURES: These instructions may be executed in counterparts, each of which so executed shall be deemed an original, irrespective of the date of its execution and delivery; and said counterparts together shall constitute one and the same instrument.

Each of the undersigned states he has read the foregoing instructions, understands and agrees to them.

DEPOSITS. All funds received in the escrow shall be deposited with other escrow funds in a non-interest bearing general escrow account or accounts of BAY COMMERCIAL BANK, unless otherwise instructed verbally or in written form.

TRANSFEE

TRANSFEROR

By:
Its:

By:
Its:

Exhibit D

Post-Closing Membership

The following will apply to Members of the Club as of the Closing Date all of which are set forth on Schedule 5.2(bb) ("**Existing Members**") following the Closing:

a. Buyer will waive any initiation fee for Existing Members including all Golf, Non-Resident, Social, Junior Executives and Tennis-Only Members (and their immediate family) who join Buyer's Club within thirty (30) days of the Closing Date. Golf, Non-Resident Members and Junior Executive Members will be allowed to choose from a Buyer Club Golf Family Membership (as set forth on Attachment D-1) or from various Buyer Club West Membership Options (as set forth on Attachment D-2) and will have one hundred eighty (180) days after the Closing Date to move among these options to decide on a final membership choice (to the extent a term is not otherwise provided, such terms under Attachment D-1 shall not change for a period of five (5) years after the Closing Date). Social Members will be offered the Buyer's Club West Premier Membership. Tennis-Only Members will be offered a Buyer's Club West Premier Membership. For a period of five (5) years following the Closing Date, there will be no food and beverage minimum for any Existing Members. Buyer will include a provision in their membership application to Existing Members that part of acceptance as a new Bay Club member is a release of claims against Seller.

b. , For the term of the Ground Lease, no special or capital assessments may be imposed on the Existing Members at any time after Closing.

c. Buyer will form a Club Advisory Committee (the "**Club Advisory Committee**") and a Golf Advisory Committee composed of Club Golf family Members to consult on future capital improvements, service standards, tournaments, and social activities of the Club.

d. For a period of five (5) years following the Closing Date, Buyer will continue a spacing between golf tee times of at least ten (10) minutes.

ATTACHMENT D-1

GOLF FAMILY MEMBERSHIP TERMS FOR EXISTING MEMBERS

- Exclusive access to Protected Tee Times. The Club Annual Golf Calendar Events (see Attachment 4) consisting of scheduled tournaments, guest days, Team Play, etc. define the first set of Protected Tee Times. Seller Members will have the ability to register in advance of all other membership tiers. Details will be determined based on each individual activity. The second set of Protected Tee Times are during the following hours of the day during every week of the year: Monday(if open)/Tuesday/Wednesday/Thursday from 8am thru 11 am; Friday from 9:30am thru 12:30pm; Saturday from 7:30am thru 10:30am; and Sunday from 9:30am thru 12:30pm. Club Golf members can reserve Protected Tee Times 7 days in advance. If a Protected Tee Time in the second set of Protected Tee Times is not reserved by an Club Golf member 48 hours in advance of the tee time, then that tee time will be opened to Club West members. Protected Tee Times shall remain as set forth herein for a period of ten (10) years following the Closing Date; provided that after five (5) years, Buyer may change the time of the protected tee times so long as such tee times remain for the same length of time.
- Preferred access to Non-Protected Tee Times by giving Club Golf members tee time booking 5 days in advance of Club West members. For example, if Club West members can book Non-Protected Tee Times 30 days in advance then Club Golf members could book these tee times 35 days in advance. Such preferred access to Non-Protected Tee Times shall remain as set forth herein for a period of five (5) years following the Closing Date.
- For a period of five (5) years following the Closing Date, (1) no green, cart, range, locker or bag storage fees at Club and (2) one locker is included in the family membership for Seller Golf Members. All new Seller Home Club Memberships will pay for lockers, range and bag storage (fees to be determined by Buyer).
- For a period of five (5) years following the Closing Date, no Food & Beverage minimum.
- For a period of five (5) years following the Closing Date, preferred access to all practice facilities as follows: Seller Members will have preferred access to practice facilities, Additional availability will be determined based on demand and condition of the practice facilities. Management will be required to keep conditions consistent with a first-tier country club.
- Dues will be \$975/month thru the end of 2016 and will increase a maximum of 5% per year in 2017, 2018, and 2019.
- For a period of five (5) years following the Closing Date, access to all Bay Club properties (reservations may apply).
- For a period of five (5) years following the Closing Date, unlimited access to all sports (golf, tennis, and squash)- cart fees included at non-Club clubs.
- For a period of five (5) years following the Closing Date, 30 day advance booking privileges for all sports & childcare.
- For a period of five (5) years following the Closing Date, 10 Complimentary Activity passes each month (guest, green, cart, court fees)-green fees require two passes per participant.
- For a period of five (5) years following the Closing Date, unlimited CONNECT workspace hours at Bay Club locations with CONNECT areas.

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- For a period of five (5) years following the Closing Date, discount on equipment rentals and family cabanas.
- 4% discount off all club charges except dues.
- Any other privileges added to the Club West Diamond membership privileges.

}

ATTACHMENT D-2

DIAMOND

- Access to 12 properties, including Bay Club StoneTree + Silicon Valley Capital Club (reservations may apply)
- Unlimited complimentary sports reservations, including golf, tennis, and squash (cart fees included)
- 30-day advance booking privileges for all sports activities and childcare
Reservation restrictions may apply;
- Ten complimentary activity passes each month good for guest fees, greens fees, and court fees
Greens fees require two passes per participant.
- Unlimited CONNECT workspace hours at Courtside and Cupertino
- Discounts on equipment rentals and family cabanas
- 4% off ALL CLUB CHARGES
Does not apply to dues charges. Discount will be reflected on monthly statement, not at point of sale.

	Ind.	Cpl.	Fam.
--	------	------	------

Initiation Fee:	\$5,000	\$6,250	\$7,500
Monthly Dues	\$500	\$650	\$800

PLATINUM

- Access to 12 properties, including Bay Club StoneTree + Silicon Valley Capital Club (reservations may apply)
- Access to and 50% off sports reservations, including golf, tennis, and squash (cart fees included)
- Complimentary use during select non-prime time hours (golf after 2:00 pm, tennis Monday-Friday 12:00-5:00 pm)
- 14-day advance booking for all sports activities and childcare
Reservation restrictions may apply.
- Eight complimentary activity passes each month good for guest fees, greens fees, and court fees
Greens fees require two passes per participant
- 50 CONNECT workspace hours each month at Courtside and Cupertino
- Discounts on equipment rentals and family cabanas
- 3% off ALL CLUB CHARGES
Does not apply to dues charges. Discount will be reflected on monthly statement, not at point of sale.

	Ind.	Cpl.	Fam.
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Initiation Fee:	\$3,500	\$4,250	\$5,000
Monthly Dues	\$350	\$500	\$600

PREMIER

- Access to 12 properties, including Bay Club StoneTree + Silicon Valley Capital Club (reservations may apply)
- Access to and 25% off sports reservations, including golf, tennis, and squash (cart fees included)
- 8-day advance booking for all sports activities and childcare
Reservation restrictions may apply.
- Four complimentary activity passes each month good for guest fees, greens fees, and court fees
Greens fees require two passes per participant.
- 30 CONNECT workspace hours each month at Courtside and Cupertino
- Discounts on equipment rentals and family cabanas
- 2% off ALL CLUB CHARGES
Does not apply to dues charges. Discount will be reflected on monthly statement, not at point of sale.

	Ind.	Cpl.	Fam.
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Initiation Fee:	\$2,400	\$3,000	\$3,600
Monthly Dues	\$280	\$420	\$500

**Exhibit E
Escrow Agreement**

ESCROW AGREEMENT

Escrow Agreement (this "**Agreement**") dated as of [_____], 2015 by and among Bay Club Fairbanks Ranch, LLC, a Delaware limited liability company ("**Buyer**"), Fairbanks Ranch Country Club, Inc., a California non-profit corporation ("**Seller**"), and UMB Bank, N.A., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

RECITALS

A. Buyer, Seller and BC Equity Ventures LLC, a Delaware limited liability company ("**Parent**") have entered into an Agreement for Purchase and Sale, dated as of February 23, 2015 (as amended, modified, restated or supplemented from time to time, the "**Purchase Agreement**").

B. At the Closing, Buyer shall deposit or cause to be deposited with the Escrow Agent into an escrow account (the "**Escrow Account**") an amount equal to Nine Hundred Forty Thousand Dollars (\$940,000) (the "**Initial Escrow Funds**").

C. Buyer, or its assignee, and Seller have deposited with Bay Commercial Bank (the "**Liquor Escrow Agent**") the Liquor Escrow Amount (as defined in the Purchase Agreement) in the sum of \$60,000 pursuant to that certain Transfer of Alcoholic Beverage License(s) Escrow Instructions (the "**Liquor Escrow Agreement**"), dated as of the date hereof, by and among Seller, Buyer and the Liquor Escrow Agent.

D. Upon termination of the Liquor Escrow Agreement, any sums remaining thereunder shall be deposited with Escrow Agent (the "**Additional Escrow Deposit**" and together with the Initial Escrow Funds, the "**Escrow Funds**") to be disbursed in accordance with the terms and conditions of this Escrow Agreement.

Buyer and Seller desire that UMB Bank, N.A. act as Escrow Agent, and Escrow Agent is willing to act in such capacity.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree to the terms of this Agreement as follows:

1. **Commencement of Duties.** Simultaneously with the execution and delivery of this Agreement, Buyer shall transfer or cause to be transferred to the Escrow Agent the Initial Escrow Funds by wire transfer of immediately available fund to the Escrow Account and the Escrow Agent shall acknowledge receipt of the Initial Escrow Funds. Upon receipt of the Initial Escrow

Funds, the duties and obligations of each of the parties to this Agreement will commence. Upon the termination of the Liquor Escrow Agreement, Buyer and Seller shall instruct the Liquor Escrow Agent to deliver to the Escrow Agent, and the Escrow Agent will acknowledge receipt of, the Additional Escrow Deposit.

2. Methods of Disposition of the Escrow Funds. The Escrow Agent will hold the Escrow Funds in its possession until authorized hereunder to deliver such Escrow Funds, or a portion thereof, as follows:

(a) As directed in a writing executed by both Buyer and Seller;

(b) Upon receipt of an executed certificate in the form of Schedule I hereto, as directed in such certificate;

(c) Upon receipt of an executed certificate in the form of Schedule II hereto, as directed in such certificate;

(d) On ¹ (the “**Distribution Date**”), the Escrow Agent shall deliver all remaining Escrow Funds held in escrow to Buyer and all such remaining Escrow Funds shall be used by Buyer to make the Capital Improvements in accordance with the terms of the Purchase Agreement;

(d) As directed pursuant to Section 4; or

(e) Subject to Section 4, upon the issuance of an order by a court of competent jurisdiction directing the Escrow Agent with respect to the action which is the subject of any disputed portion of the Escrow Funds.

Any delivery or other disbursement of any Escrow Funds to either Buyer or Seller shall be made by wire transfer of immediately available funds to the accounts set forth on Schedule III hereto.

3. Execution of Certificate. To the extent all or any portion of the Escrow Funds is required pursuant to the Purchase Agreement to be delivered to either Buyer or Seller, Buyer and Seller agree to promptly (but in no event more than two (2) Business Days after such amount is determined) execute and deliver a certificate prepared in accordance with Section 2 to the Escrow Agent.

4. Settlement of Disputes. All disputes and matters in question between any of the parties hereto arising out of or relating to any provision of this Escrow Agreement shall be submitted to nonbinding mediation to be held for a maximum of one day administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Mediation Rules then in effect. If such dispute cannot be resolved through mediation, it shall be resolved by binding arbitration before a panel of one arbitrator mutually acceptable to both Buyer and Seller, in accordance with the Commercial Arbitration Rules then in effect of the AAA, and any judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

¹ NTD: Insert date that is the 24 month anniversary of the Closing Date.

Notwithstanding anything herein to the contrary, all disputes with respect to the rights and obligations of Buyer and Seller under the Purchase Agreement shall be governed solely by the terms and conditions of the Purchase Agreement. The parties agree that the location for all mediation and arbitration hearing pursuant to this Section 4 shall be held in San Diego, California.

5. Investments; Disposition of Income.

(a) The Escrow Agent shall invest the Escrow Funds as directed in writing by Buyer and Seller. If the Escrow Agent does not receive written directions from Buyer and Seller, the Escrow Agent may invest the Escrow Funds in Federated Investors Prime #700 Trust Shares Money Market Fund. The Escrow Agent may use its own deposit accounts and any mutual funds for which the Escrow Agent is an advisor, manager, distributor or underwriter.

(b) The Escrow Agent shall be entitled to sell or redeem any such investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption.

(c) Income, if any, resulting from the investment of the Escrow Funds shall be retained by the Escrow Agent and shall be considered, for all purposes of this Agreement, to be part of the Escrow Funds. Buyer and Seller shall direct the Escrow Agent to distribute interest earned on the Escrow Funds to the party receiving such portion of the Escrow Funds as set forth on a duly executed certificate pursuant to Section 2.

6. Concerning the Escrow Agent.

(a) The Escrow Agent shall not be under any duty to give the Escrow Funds held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed pursuant to Section 5.

(b) This Escrow Agreement expressly sets forth all the duties of the Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall not be bound by the provisions of any other agreement among the parties hereto except this Escrow Agreement.

(c) The Escrow Agent shall not be liable, except for its own negligence or willful misconduct or breach of this Escrow Agreement, and, except with respect to claims based upon such negligence or willful misconduct or breach of this Escrow Agreement that are successfully asserted against the Escrow Agent, Buyer and Seller shall, on a separate (and not joint and several basis) indemnify and hold harmless the Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Escrow Agreement. Without limiting the foregoing, the Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its negligence or willful misconduct or breach of this Agreement) in the

investment or reinvestment of the Escrow Funds, or any loss of interest incident to any such delays.

(d) The Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the proprieties, validity or the service thereof. The Escrow Agent may act in reliance upon any instrument or signature reasonably believed by it to be genuine and may assume that any person purporting to give notice or advice, accept receipt of or execute any document or make any statement in connection with the provisions hereof, has been duly authorized to do so.

(e) The Escrow Agent may act in good faith pursuant to the advice of counsel with respect to any matter relating to this Escrow Agreement and shall not be liable for any action taken or omitted in accordance with such advice.

(f) The Escrow Agent is serving as escrow holder only and has no interest in the Escrow Funds deposited hereunder. Any payments of income from this Escrow Agreement shall be subject to withholding of any applicable Taxes. The parties hereto will provide completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "**Tax Reporting Documentation**") at the time of execution of this Agreement and any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time. The parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement. Buyer shall be treated as the owner of the Escrow Funds for federal and state income tax purposes and Buyer will report all income, if any, that is earned on, or derived from, the Escrow Funds as its income, in such proportions, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto; provided that any interest or other income earned on, or derived from, the Escrow Funds that is allocated to Seller and set forth on a duly executed certificate pursuant to Section 2 shall be allocated to Seller upon distribution by Escrow Agent and shall be reported, by Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Funds by Seller. This Section 6(f) and Section 6(c) shall survive notwithstanding any termination of this Escrow Agreement or the resignation of the Escrow Agent.

(g) The Escrow Agent makes no representation as to the validity, value, genuineness or the collectability of any security or other documents or instrument held by or delivered to it.

(h) The Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining or taking or refraining from any action with respect to any securities or other property deposited hereunder.

BAY CLUB FAIRBANKS RANCH, LLC,
as grantor

to

STEWART TITLE OF CALIFORNIA, INC., as trustee
for the benefit of

VENTAS HEALTHCARE PROPERTIES, INC.,
as administrative agent for the benefit of Secured Parties (as defined in the Credit Agreement
(hereinafter defined)), as **beneficiary**

**LEASEHOLD DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF LEASES AND
RENTS AND SECURITY AGREEMENT (AND FIXTURE FILING)**

Dated: As of [____], 2015

Location: 3055 Olin Avenue, Suite 3000, San Jose, California

PREPARED BY AND UPON
RECORDATION RETURN TO:
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Rachel Brown, Esq.

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THIS LEASEHOLD DEED OF TRUST AND ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (AND FIXTURE FILING) (this "**Security Instrument**") is made as of this ____ day of _____, 2015, by **BAY CLUB FAIRBANKS RANCH, LLC**, a Delaware limited liability company, having its principal place of business at c/o One Lombard Street, San Francisco, California 94111 (together with its successors and assigns, "**Owner**"), as grantor, to **STEWART TITLE OF CALIFORNIA, INC.**, a California corporation, having an address at c/o 2850 Cordelia Road, Suite 100, Fairfield, California 94534, as trustee (together with its successors and assigns, "**Trustee**"), for the benefit of **VENTAS HEALTHCARE PROPERTIES, INC.**, a Delaware corporation, as administrative agent for the benefit of each Secured Party (as defined in the Credit Agreement (as hereinafter defined)) (in such capacity, together with its successors and/or assigns, in such capacity "**Mortgagee**"), as beneficiary, having an address at c/o Ventas, Inc., 353 North Clark Street, Suite 3300, Chicago, Illinois 60654. All capitalized terms not defined herein shall have the respective meanings set forth in the Credit Agreement.

RECITALS:

WHEREAS, pursuant to that certain Credit Agreement dated as of December 21, 2012, as amended by that certain First Amendment to Credit Agreement dated as of March 13, 2013, that certain Second Amendment to Credit Agreement dated as of May 30, 2013, that certain Third Amendment to Credit Agreement dated as of June 16, 2014, and that certain Fourth Amendment to Credit Agreement dated as of the date hereof (as further amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), by and among Fillmore WAC Holdings IV, LLC and WAC SFTC Holding, LLC, each a Delaware limited liability company (individually and/or collectively, as the context may require, the "**Borrower**"), the financial institutions from time to time party thereto as "**Lenders**", Mortgagee and the other parties thereto, Lenders and Mortgagee have agreed to make available to Borrower certain financial accommodations in an aggregate principal amount not to exceed \$375,000,000.00 (as the same may be increased pursuant to the terms of the Credit Agreement) on the terms and conditions set forth in the Credit Agreement;

WHEREAS, pursuant to the terms of that certain Guaranty dated as of [____], 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "**Guaranty**") made by Owner in favor of Mortgagee and the Secured Parties, Owner has guaranteed Borrower's obligations to Mortgagee and the Secured Parties on the terms and conditions contained therein;

WHEREAS, The City of San Diego, a California municipal corporation ("**Lessor**"), is the fee owner of the real property described in Exhibit A attached hereto (the "**Land**");

WHEREAS, Owner is the owner of the leasehold estate (the "**Leasehold Estate**") in said Land pursuant to the Lease Agreement (defined below); and

WHEREAS, Owner's execution and delivery of this Security Instrument to secure, among other things, its obligations under the Guaranty is a condition to Mortgagee, Lenders and the other Secured Parties making, and continuing to make, such financial accommodations to Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Owner, Owner agrees as follows:

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Owner does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Trustee, its successors and assigns, for the benefit of Mortgagee and its successors and assigns in the Lease Agreement and the Leasehold Estate created thereby in the Land (collectively, the "**Property**"):

- (a) Land. The Land;
- (b) Additional Land. All additional lands, estates and development rights hereafter acquired by Owner for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;
- (c) Lease Agreement. The Lease Agreement and the Leasehold Estate;
- (d) Assignments/Modifications. All assignments, modifications, extensions and renewals of the Lease Agreement and all credits, deposits, options, privileges and rights of Owner as tenant under the Lease Agreement, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Lease Agreement for a succeeding term or terms, and also including all the right, title, claim or demand whatsoever of Owner either in law or in equity, in possession or expectancy, of, in and to Owner's right, as tenant under the Lease Agreement, to elect under Section 365(h)(1) of the Bankruptcy Code to terminate or treat the Lease Agreement as terminated in the event (i) of the bankruptcy, reorganization or insolvency of Lessor, and (ii) rejection of the Lease Agreement by Lessor, as debtor in possession, or by a trustee for Lessor, pursuant to Section 365 of the Bankruptcy Code;
- (e) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");
- (f) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, including, but not limited to, those arising under and by virtue of the Lease Agreement, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Owner of, in and to the Land and the Improvements, including, but not limited to, those arising under or by virtue of the Lease Agreement, and every part and parcel thereof, with the appurtenances thereto;

(g) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Owner, or in which Owner has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Owner, or in which Owner has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Owner in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**" or "**UCC**"), and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Owner of any petition for relief under any Creditors Rights Laws (collectively, the "**Leases**") and (1) all right, title and interest of Owner, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and (2) all other consideration of whatever form or nature received by or paid to or for the account of or benefit of Owner or its agents or employees from any and all sources arising from or attributable to the Property and the Club located thereon, including, all Revenues, receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and/or occupancy of property or rendering of services by Owner and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Owner of any petition for relief under any Creditors Rights Laws (collectively, the "**Lease Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Lease Rents to the payment of the Obligations;

(i) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (collectively, the "**Insurance Proceeds**");

(j) Condemnation Awards. All condemnation awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property (collectively, the "Awards");

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Owner, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Owner therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Owner thereunder;

(n) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Owner with respect to the Property, including without limitation, the Accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Derivatives Contracts. Any interest rate protection agreement entered into by Owner in connection with any Derivatives Contract (as defined in the Credit Agreement) including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

(q) Letters of Credit. Any letter of credit issued for the account of Owner;

(r) Revenues. All Revenues which Owner is now or hereafter may become entitled or that Owner may demand or claim, arising or issuing from or out of the Property, the Club located thereon and/or Owner's businesses or arising out of the operation of the Property, the Club located thereon and/or Owner's businesses, and the right to receive and apply the

Revenues to the payment of the Obligations (the Revenues and the Lease Rents are referred to herein collectively as, the "Rents");

(s) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (r) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims; and

(t) Other Rights. Any and all other rights of Owner in and to the items set forth in subsections (a) through (s) above.

Section 1.2 Security Agreement. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Owner in the Property. By executing and delivering this Security Instrument, Owner hereby grants to Mortgagee and Trustee, as security for the Obligations (hereinafter defined), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code. To the extent permitted by law, Owner and Lender agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9102(40) and (41) and 9502 of the California Uniform Commercial Code. Owner is the owner of the Leasehold Estate in the Land. Owner hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Owner agrees to furnish any information requested by Lender promptly upon request by Lender. Owner also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements. Owner hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Owner or in Owner's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 1.2, to the extent that Owner's authorization above is not sufficient. To the extent permitted by law, Owner hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

Section 1.3 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. To the extent permitted by law, Owner and Lender agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Security Instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9102(40) and (41) and 9502 of the California Uniform Commercial Code. Owner is the owner of the Leasehold Estate in the Land. Owner hereby authorizes Lender at any time and from time to time to file any initial financing

statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Owner agrees to furnish any information requested by Lender promptly upon request by Lender. Owner also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements.

Section 1.4 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Mortgagee and to the use and benefit of Mortgagee and Trustee and their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Mortgagee and Secured Parties of the Obligations at the time and in the manner provided for its payment in the Note and the Credit Agreement; PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagee shall be well and truly paid the Obligations at the time and in the manner provided in the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, if Owner shall well and truly perform the other obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Credit Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 2 - DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 2.1 Definitions.

For all purposes of this Security Instrument, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Administrative Agent**” shall have the meaning assigned to such term in the Credit Agreement.

“**Affiliate**” shall have the meaning assigned to such term in the Credit Agreement.

“**ALTA**” shall mean American Land Title Association or any successor thereto.

“**Applicable Law**” shall mean all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Owner or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Owner, at any time in force affecting Owner or the Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to the Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“**Applicable Rate**” shall have the meaning assigned to such term in the Credit Agreement.

"Award" shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

"Bankruptcy Code" shall have the meaning assigned to such term in the Credit Agreement.

"Borrower" has the meaning given that term in the Recitals above.

"Business Day" shall have the meaning assigned to such term in the Credit Agreement.

"Casualty" shall have the meaning set forth in Section 9.2 hereof.

"Condemnation" shall mean a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Control" shall have the meaning assigned to such term in the Credit Agreement.

"Credit Agreement" shall have the meaning set forth in the Recitals.

"Creditors Rights Laws" shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

"Default" shall have the meaning assigned to such term in the Credit Agreement.

"Environmental Indemnity" shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower, Owner and certain other parties a party thereto in connection with the Loan for the benefit of Administrative Agent and each Secured Party, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Environmental Laws" shall have the meaning set forth in the Credit Agreement.

"Event of Default" shall have the meaning set forth in Section 11.1 hereof.

"Flood Insurance Acts" shall mean the National Flood Insurance Act of 1968, the Flood Insurance Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Flood Insurance Reform Act of 2004, and the Biggert-Waters Flood Insurance Reform Act of 2012, as each may be amended. **"Governmental Authority"** shall have the meaning assigned to such term in the Credit Agreement.

"Improvements" shall have the meaning set forth in Section 1.1(e) hereof.

"Indemnified Parties" shall have the meaning assigned to such term in the Credit Agreement.

"Land" shall have the meaning set forth in the Recitals.

"Lease" shall have the meaning set forth in Section 1.1(h) hereof.

"Lease Agreement" shall mean that certain Lease Agreement, dated December 6, 1982, between Lessor, as lessor, and Owner, as lessee, that certain First Amendment to Percentage Lease, as of the date hereof (the **"First Amendment"**).

"Lender" and **"Lenders"** shall have the meaning assigned to such term in the Credit Agreement.

"License" shall have the meaning set forth in Section 3.2 hereof.

"Lien" shall have the meaning assigned to such term in the Credit Agreement.

"Loan" shall have the meaning assigned to such term in the Credit Agreement.

"Loan Amount" shall mean an amount up to \$375,000,000.00.

"Loan Document" shall have the meaning assigned to such term in the Credit Agreement.

"Loan Party" shall have the meaning assigned to such term in the Credit Agreement.

"Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

"Maturity Date" shall have the meaning assigned to such term in the Credit Agreement.

"Mortgaged Property" means each Property (as defined in the Credit Agreement) that is encumbered by a Security Instrument (as defined in the Credit Agreement) in favor of Mortgagee pursuant to the Loan Documents.

"Note" shall have the meaning assigned to such term in the Credit Agreement.

"Obligations" shall have the meaning ascribed to such term in the Credit Agreement.

"Other Charges" shall have the meaning set forth in Section 5.1(a) hereof.

"Permitted Liens" shall have the meaning assigned to such term in the Credit Agreement.

"Person" shall have the meaning assigned to such term in the Credit Agreement.

"Personal Property" shall have the meaning set forth in Section 1.1(g) hereof.

"Policies" shall have the meaning specified in Section 6.8 hereof.

"Property" shall have the meaning set forth in Section 1.1 hereof.

"REA" shall mean, individually and/or collectively (as the context may require), each reciprocal easement, covenant, condition and restriction agreement or similar agreement affecting the Property (or any portion thereof) and any future reciprocal easement or similar agreement affecting the Property (or any portion thereof) entered into in accordance with the applicable terms and conditions hereof.

"Rents" shall have the meaning set forth in Section 1.1(r) hereof.

"Requisite Lenders" shall have the meaning assigned to such term in the Credit Agreement.

"Responsible Officer" shall have the meaning ascribed to such term in the Credit Agreement.

"Restoration Conditions" shall have the meaning set forth in Section 9.3(a)(i) hereof.

"Security Document" shall have the meaning assigned to such term in the Credit Agreement.

"Security Instrument" shall mean this Security Instrument (as defined in the Recitals), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Taxes" shall have the meaning set forth in Section 5.1(a) hereof.

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Owner.

"UCC" or **"Uniform Commercial Code"** shall have the meaning set forth in Section 1.1(g) hereof.

"Work Charge" shall have the meaning set forth in Section 5.3(a) hereof.

Section 2.2 Principle of Construction. All references to sections, exhibits and schedules are to sections, exhibits and schedules in or to this Security Instrument unless otherwise specified. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

Section 2.3 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Owner" shall mean "each Owner and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any of Mortgagee's successors and assigns," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," "Trustee" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein," and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee or any Secured Parties in protecting their interest in the Property, the Leases and the Rents and enforcing their rights hereunder.

ARTICLE 3 - ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

Section 3.1 Assignment. Owner hereby irrevocably and absolutely assigns to Mortgagee and Trustee all of Owner's right, title and interest in, to and under all current and future Leases and Rents. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property. The assignment of the Rents herein granted is not a pledge of Rents but is an absolute assignment of all Rents, issues, profits, leases now or hereafter arising from the ownership, occupancy or use of the Property and is primary security for the Obligations and shall be effective from the date hereof and not just in the event of an Event of Default. The rights of Mortgagee to collect and receive the Rents assigned hereunder or to exercise any of the rights or powers herein granted to Mortgagee shall, to the extent not prohibited by law, extend from the date hereof through the filing of any suit to foreclose the lien of this Security Instrument, the obtaining of any judgment foreclosing the lien of this Security Instrument, and any period allowed by law for the redemption of the Property after any foreclosure sale.

Section 3.2 Grant of License. Mortgagee confers upon Owner a revocable license (the "License") to collect and retain the Rents as they become due and payable, until the occurrence of an Event of Default. Upon the occurrence of an Event of Default, the License shall be automatically revoked and Mortgagee or Trustee may collect and apply the Rents pursuant to the terms hereof without notice and without taking possession of the Property. All Rents thereafter collected by Owner shall be held by Owner as trustee under a constructive trust for the benefit of Mortgagee and the Secured Parties. Owner hereby irrevocably authorizes and directs the Tenants to rely upon and comply with any notice or demand by Mortgagee or Trustee for the payment to Mortgagee or Trustee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the Tenants' undertakings under the Leases, and the Tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing. Owner hereby relieves the tenants from any liability to Owner by reason of relying upon and complying with any such notice or demand by Mortgagee. Mortgagee may apply, in its sole discretion, any Rents so collected by Mortgagee against any Obligation or any other obligation of Owner, or any other person or entity, under any document

or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Rents by Mortgagee or Trustee shall not cure or waive any Event of Default or notice of default or invalidate any acts done pursuant to such notice. If and when no Event of Default exists, Mortgagee or Trustee shall re-confer the License upon Owner until the occurrence of another Event of Default.

Section 3.3 Effect of Assignment. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the Tenants or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Mortgagee any duty to produce Rents or profits. Mortgagee shall not directly or indirectly be liable to Owner or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (f) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Owner arising under the Leases.

ARTICLE 4 - OBLIGATIONS SECURED

Section 4.1 Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations.

Section 4.2 Performance of Obligations. Owner shall perform its Obligations at the time and in the manner provided in this Security Instrument and the other Loan Documents to which it is a party.

Section 4.3 Incorporation by Reference. All the covenants, conditions and agreements contained in the Guaranty and all and any of the other Loan Documents to which Owner is a party, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 5 - PROPERTY COVENANTS

Owner covenants and agrees that:

Section 5.1 Taxes and Other Charges.

(a) Owner shall pay all real estate and personal property taxes, assessments, water rates or sewer rents (collectively "**Taxes**"), ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property (collectively, "**Other Charges**"), now or hereafter levied or assessed or imposed against the Property or any part thereof in accordance with the Credit Agreement and this Security Instrument. Owner shall furnish to Mortgagee the information and receipts regarding Taxes and the Other Charges in accordance with Section 4.2 of the Credit Agreement. Owner shall promptly pay for all utility

services provided to the Property (or any portion thereof) and Owner shall comply with the terms and provisions of Section 9.3 of the Credit Agreement.

(b) After prior written notice to Mortgagee, Owner, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Owner is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all Applicable Laws; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Owner shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Owner shall furnish such security as may be required in the proceeding, or deliver to Mortgagee such reserve deposits as may be requested by Mortgagee, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Mortgagee may pay over any such cash deposit or part thereof held by Mortgagee to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the lien of this Security Instrument being primed by any related lien.

Section 5.2 Warranty of Title. Owner has good, indefeasible, marketable and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Owner possesses an unencumbered leasehold estate in the Land and the Improvements except for the Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to the Permitted Liens and the liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Liens, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. Owner shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Mortgagee against the claims of all Persons whomsoever.

Section 5.3 Payment for Labor and Materials.

(a) Subject to Section 5.3(b) below, Owner will promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (each, a "**Work Charge**") and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never

permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Liens. Owner represents there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents.

(b) After prior written notice to Mortgagee, Owner, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Work Charge, the applicability of any Work Charge to Owner or to the Property or any alleged non-payment of any Work Charge, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Owner is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all Applicable Laws; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Owner shall promptly upon final determination thereof pay (or cause to be paid) any such Work Charge determined to be valid, applicable or unpaid; (v) such proceeding shall suspend the collection of such contested Work Charge from the Property or Owner shall have paid the same (or shall have caused the same to be paid) under protest; and (vi) Owner shall furnish (or cause to be furnished) such security as may be required in the proceeding, or as may be reasonably requested by Mortgagee, to insure payment of such Work Charge, together with all interest and penalties payable in connection therewith. Mortgagee may apply any such security or part thereof, as necessary to pay for such Work Charge at any time when, in the judgment of Mortgagee, the validity, applicability or non-payment of such Work Charge is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

Section 5.4 Applicable Laws.

(a) Owner shall promptly comply and shall cause the Property to comply in all material respects with all Applicable Laws affecting the Property, or the use thereof, including, without limitation, all Environmental Laws and Governmental Approvals.

(b) Owner shall from time to time, upon Mortgagee's request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee that the Property complies with all Applicable Laws or is exempt from compliance with all Applicable Laws.

(c) Owner shall give prompt notice to Mortgagee of the receipt by Owner of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 5.5 Maintenance and Use of Property. Owner shall cause the Property to be maintained in accordance with Section 7.3 of the Credit Agreement. Except as may be expressly permitted by the Credit Agreement, the Improvements and the Personal Property shall not be removed, demolished or altered (except for normal replacement of the Personal Property) without the consent of the Administrative Agent. Owner shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or

dilapidated or which may be affected by any proceeding of the character referred to in Section 6.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Owner shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Owner will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of the Administrative Agent.

Section 5.6 Waste. Owner shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security for the Loan. Owner will not, without the prior written consent of the Administrative Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 5.7 Access to Property. Owner shall permit agents, representatives and employees of Mortgagee and each Secured Party to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 5.8 Awards. Owner shall cooperate with Mortgagee in obtaining for the benefit of Secured Parties the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Mortgagee shall be reimbursed for any expenses incurred in connection therewith (including reasonable, actual attorneys' fees and disbursements, and the payment by Mortgagee of the expense of an appraisal on behalf of Owner in case of a Casualty or Condemnation affecting the Property or any part thereto) out of such Awards or Insurance Proceeds.

Section 5.9 Estoppel Certificates.

(a) Owner shall use its good faith commercially reasonable efforts to deliver to Mortgagee for the benefit of Secured Parties, promptly upon request, duly executed estoppel certificates from any one or more Tenants, if any, as required by Mortgagee attesting to such facts regarding the applicable Lease as Mortgagee may require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one (1) month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(b) Owner shall use its good faith commercially reasonable efforts to deliver to Mortgagee for the benefit of Secured Parties, upon request, estoppel certificates from each party under the REAs in form and substance reasonably acceptable to Mortgagee.

Section 5.10 Leases and Rents. Owner agrees to be bound by, and to comply with the terms and provisions of, Section 9.14 of the Credit Agreement. In addition, Owner (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner, provided, however, Owner shall not terminate or accept a surrender of a Lease without the Administrative Agent's consent; (iii) shall not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not, without the Administrative Agent's consent, alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the lessee or increase the obligations of lessor; and (vi) shall hold all security deposits under all Leases in accordance with Applicable Laws. Upon request, Owner shall furnish Mortgagee with executed copies of all Leases.

Section 5.11 No Joint Assessment. Owner shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

Section 5.12 REA Covenants. Owner agrees that without the Administrative Agent's prior written consent, Owner will not enter into any new REA or execute modifications or amendments to any existing REA. Owner shall enforce, shall comply with, and shall use commercially reasonable efforts to cause each of the parties to each REA to comply with all of the terms and conditions contained in such REA.

Section 5.13 Management of Property. Owner agrees to be bound by, and to comply with the terms and provisions of, Section 9.15 of the Credit Agreement. In addition, Owner shall not terminate, materially modify or amend any agreement providing for the management, leasing or operation of the Property (a "**Management Agreement**") entered into by Owner in accordance with Section 9.15 of the Credit Agreement. Owner represents, warrants and covenants that any future Management Agreement entered into by Owner in accordance with Section 9.15 of the Credit Agreement shall include a provision which provides that the Management Agreement is automatically terminated upon the transfer of the Property by Owner, either by sale, foreclosure, deed in lieu of foreclosure, or otherwise, to Administrative Agent, any Lender or any other purchaser of the Property. In the event Owner enters into a Management Agreement in accordance with Section 9.15 of the Credit Agreement, Owner and the manager thereunder shall execute Lender's standard form of assignment of management agreement.

Section 5.14 Lease Agreement. (a) Owner agrees to be bound by, and to comply with the terms and provisions of, Sections 7.11 and 9.10 of the Credit Agreement, each of which is incorporated herein by reference as if fully set forth herein. In addition, Owner shall promptly notify Mortgagee of any bankruptcy, reorganization or insolvency of the landlord under the Lease Agreement or of any notice thereof, and deliver to Mortgagee a true copy of such notice within five (5) Business Days of Owner's receipt.

(b) Owner hereby expressly authorizes and appoints Mortgagee its attorney-in-fact to exercise any option to extend or renew the term of the Lease Agreement in the name of and upon behalf of Owner, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(c) Notwithstanding anything contained in the Lease Agreement to the contrary, Owner shall not further sublet any portion of the Property except as permitted in Section 9.14 of the Credit Agreement. Each such sublease hereafter made shall provide that (i) in the event of the termination of the Lease Agreement, the sublease shall not terminate or be terminable by the lessee thereunder; (ii) in the event of any action for the foreclosure of this Security Instrument, the sublease shall not terminate or be terminable by the lessee thereunder by reason of the termination of the Lease Agreement unless such lessee is specifically named and joined in any such action and unless a judgment is obtained therein against such lessee; and (iii) in the event that the Lease Agreement is terminated as aforesaid, the lessee under the sublease shall attorn to the lessor under the Lease Agreement or to the purchaser at the sale of the Property on such foreclosure, as the case may be. In the event that any portion of the Property shall be sublet pursuant to the terms of this subsection, such sublease shall be deemed to be included in the Property.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

Section 6.1 Authority. Owner has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Owner has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument, the Note, the Credit Agreement and the other Loan Documents on Owner's part to be performed.

Section 6.2 Validity of Security Instrument. (a) The execution, delivery and performance of this Security Instrument by Owner (i) are within the power and authority of Owner; (ii) have been authorized by all requisite organizational action of such parties; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required to operate the Property or any portion thereof, Owner's organizational documents, or any indenture, agreement or other instrument to which Owner is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for the recording of this Security Instrument in appropriate land records in the state where the Property is located and except for Uniform Commercial Code Filings relating to the security interest created hereby), (b) this Security Instrument has been duly executed and delivered by Owner through the undersigned authorized representative of Owner and (c) this Security Instrument constitutes the legal, valid and binding obligations of Owner. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Owner, including the defense of usury, nor would

the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditor's Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)), and Owner has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

Section 6.3 Intentionally Deleted.

Section 6.4 Agreements. Owner hereby makes each of the representations and warranties set forth in Sections 6.1(d), (g) and (o) of the Credit Agreement.

Section 6.5 Status of Property.

(a) Owner has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use laws, Environmental Laws (as defined in the Environmental Indemnity) and other similar Applicable Laws.

(c) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(d) The Property is served by public water and sewer systems.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public. The Property has either direct access to such public roads or streets or access to such public roads or streets by virtue of a perpetual easement or similar agreement inuring in favor of Owner and any subsequent owners of the Property.

(f) The Property is free from damage caused by fire or other casualty. The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Owner has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary

premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(g) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements and that are currently due and payable have been paid in full. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under Applicable Law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Security Instrument.

(h) Owner has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by the Credit Agreement, the Note, this Security Instrument, the Guaranty and the other Loan Documents.

(i) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance in all material respects with all Applicable Laws.

(j) No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Owner has obtained and will maintain flood insurance in accordance with the terms of the Credit Agreement. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(k) All the Improvements lie within the boundaries of the Land and any building restriction lines applicable to the Land.

(l) To Owner's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

Section 6.6 Condemnation. No Condemnation or other proceeding has been commenced or, to Owner's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of the access to the Property.

Section 6.7 Separate Lots. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 6.8 Insurance. Owner has obtained and has delivered to Mortgagee certified copies of all insurance policies (collectively, the "**Policies**") reflecting the insurance coverages, amounts and other requirements set forth in Section 7.5 of the Credit Agreement. There are no present claims of any material nature under any of the Policies, and to Owner's knowledge, no

Person, including Owner, has done, by act or omission, anything which would impair the coverage of any of the Policies.

Section 6.9 Use of Property. The Property is used exclusively as a luxury health club and other appurtenant and related uses. Owner shall not change the use of the Property without the Administrative Agent's consent.

Section 6.10 Lease. Except as disclosed in writing and approved by Mortgagee prior to the date hereof, (a) Owner is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable and in full force and effect; (c) all of the Leases are arms-length agreements with bona fide, independent third parties; (d) no party under any Lease is in default; (e) all Rents due have been paid in full and no Tenant is in arrears in its payment of Rent; (f) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (g) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (h) the premises demised under the Leases have been completed and the Tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (i) there exist no offsets or defenses to the payment of any portion of the Rents and Owner has no monetary obligation to any Tenant under any Lease; (j) Owner has received no notice from any Tenant challenging the validity or enforceability of any Lease; (k) there are no agreements with the Tenants under the Leases other than expressly set forth in each Lease; (l) the Leases are valid and enforceable against Owner and the Tenants set forth therein; (m) no Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to lease additional space at the Property, or any other similar provision; (n) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (o) no Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; (p) all security deposits relating to the Leases described in the Leases have been collected by Owner; (q) no brokerage commissions or finders fees are due and payable regarding any Lease; (r) each Tenant is in actual, physical occupancy of the premises demised under its Lease and (s) no Tenant is, to Owner's knowledge, a debtor in any state or federal bankruptcy or insolvency proceeding.

Section 6.11 Filing and Recording Taxes. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under Applicable Laws currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Credit Agreement, the Note and the other Loan Documents, including, without limitation, this Security Instrument, have been paid or will be paid, and, under current Applicable Laws, this Security Instrument is enforceable in accordance with its terms by Mortgagee (or any subsequent holder thereof) on behalf of the Lender, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditor's Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 6.12 Illegal Activity/Forfeiture.

(a) No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Owner's

knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

(b) There has not been and shall never be committed by Owner or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Owner's obligations under the Credit Agreement, the Note, the Guaranty, this Security Instrument and the other Loan Documents. Owner hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

Section 6.13 Permitted Liens. None of the Permitted Liens, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, adversely affects the value or marketability of the Property or any portion thereof, impairs the use or the operation of the Property or impairs Owner's ability to pay its obligations in a timely manner.

Section 6.14 Fraudulent Conveyance. Neither Owner, Borrower nor any other Guarantor (a) has entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has not received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Owner's, Borrower's and any other Guarantor's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Owner's, Borrower's and any other Guarantor's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Owner's, Borrower's and any other Guarantor's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than Owner's, Borrower's and any other Guarantor's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Owner's, Borrower's and the any other Guarantor's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Owner, Borrower and any other Guarantor do not intend to, and do not believe that they will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond their ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Owner, Borrower and any other Guarantor).

Section 6.15 REA Representations. Each REA is in full force and effect and neither Owner nor, to Owner's knowledge, any other party to any REA, is in default thereunder, and to the best of Owner's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. No REA has been modified, amended or supplemented.

Section 6.16 Lease Agreement. Owner hereby represents and warrants to Mortgagee the following with respect to the Lease Agreement:

(a) Recording; Modification. The Lease Agreement permits the interest of Owner to be encumbered by a mortgage subject to the terms in Section IV.A(3) of the Original Lease. There have not been amendments or modifications to the terms of the Lease Agreement, with the exception of written instruments which have been recorded or otherwise disclosed to Mortgagee. The Lease Agreement may not be terminated or surrendered early by Tenant without the prior written consent of Mortgagee. The "Leasehold Mortgage" provisions of Section IV.A(3) of the Original Lease may not be amended, modified, changed or cancelled without the consent of Mortgagee.

(b) No Liens. Except for the Permitted Liens, Owner's interest in the Lease Agreement is not subject to any liens or encumbrances superior to, or of equal priority with, this Security Instrument.

(c) Lease Agreement Assignable. Owner's interest in the Lease Agreement is assignable to Mortgagee upon notice to, but without the consent of, the lessor (or, if any such consent is required, it has been obtained prior to the date hereof). Subject to the terms of the Lease Agreement, the Lease Agreement is further assignable by Mortgagee, its successors and assigns.

(d) Default. As of the date hereof, the Lease Agreement is in full force and effect and no default has occurred under the Lease Agreement and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Lease Agreement.

(e) Notice. The Lease Agreement provides that notice of termination given under the Lease Agreement is not effective against Mortgagee unless a copy of the notice has been delivered to Mortgagee in the manner described in the Lease Agreement.

(f) Cure. Mortgagee is permitted the opportunity (including, where necessary, sufficient time to gain possession of the interest of Owner under the Lease Agreement) to cure any default under the Lease Agreement, which is curable after the receipt of notice of the lessor's intent to terminate the Lease Agreement for such default before the lessor thereunder may terminate the Lease Agreement.

ARTICLE 7 - FURTHER ASSURANCES

Section 7.1 Compliance with Guaranty. Owner shall comply with all covenants set forth in the Guaranty relating to acts or other further assurances to be made on the part of Owner in order to protect and perfect the lien or security interest hereof upon, and in the interest of Mortgagee in the Property.

Section 7.2 Authorization to File Financing Statements; Power of Attorney. Owner hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property and as necessary or required in connection herewith. For purposes of such filings, Owner agrees to furnish any information requested by Mortgagee promptly upon request by Mortgagee. Owner also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments

thereto or continuation statements, if filed prior to the date of this Security Instrument. Owner hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Owner or in Owner's own name to execute in Owner's name any such documents and otherwise to carry out the purposes of this Section 7.2, to the extent that Owner's authorization above is not sufficient and Owner fails or refuses to promptly execute such documents. To the extent permitted by law, Owner hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Section 7.3 Replacement Documents. Upon receipt of an affidavit of an officer of Mortgagee or any Lender as to the loss, theft, destruction or mutilation of the Note, this Security Instrument or any of the other Loan Documents which is not of public record, and in the case of any such mutilation, upon surrender and cancellation of the Note, this Security Instrument or such other Loan Document, Owner will issue, in lieu thereof, a replacement thereof, dated the date of the Note, this Security Instrument or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

Section 7.4 Recording of Security Instrument.

(a) Owner forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Mortgagee, for the benefit of Lenders, in, the Property. Owner will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Guaranty, this Security Instrument, the Credit Agreement and the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by Applicable Law so to do.

(b) Owner represents that it has paid (or will pay upon execution and delivery hereof) all state, county and municipal recording and all other taxes imposed upon the execution and recordation of this Security Instrument. If at any time Mortgagee determines, based on Applicable Law, that Lenders are not being afforded the maximum amount of security available from the Property as a direct or indirect result of applicable taxes not having been paid with respect the Property, Owner agrees that Owner will execute, acknowledge and deliver to Mortgagee, immediately upon Mortgagee's request, supplemental affidavits increasing the amount of the Obligations attributable to the Property to an amount determined by Mortgagee to

be equal to the lesser of (i) the greater of the fair market value of the Property (1) as of the date hereof and (2) as of the date such supplemental affidavits are to be delivered to Mortgagee, and (ii) the amount of the Obligations attributable to the Property, and Owner shall, on demand, pay any additional taxes.

Section 7.5 Further Acts, Etc. Owner will, at the cost of Owner, and without expense to Mortgagee or any Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lenders and/or Mortgagee, for the benefit of Lenders, the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Owner may be or may hereafter become bound to convey or assign to Lenders and/or Mortgagee, for the benefit of Lenders, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Owner, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Mortgagee to execute in the name of Owner or without the signature of Owner to the extent Mortgagee may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lenders in the Property. Owner grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee and Lenders at law and in equity, including without limitation, such rights and remedies available to Mortgagee and Lenders pursuant to this Section 7.5.

Section 7.6 Changes in Tax, Obligations, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in the Property, Owner will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Owner would be unlawful or taxable to Mortgagee or Lenders or unenforceable or provide the basis for a defense of usury then Mortgagee shall have the option by written notice of not less than ninety (90) days to declare the Obligations immediately due and payable.

(b) Owner will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by Applicable Law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Obligations immediately due and payable.

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Guaranty,

this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Owner will pay for the same, with interest and penalties thereon, if any.

ARTICLE 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 No Sale/Encumbrance. Except in accordance with the express terms and conditions contained in the Credit Agreement, Owner shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Owner, any constituent owner or other holder of a direct or indirect equity interest in Owner, any indemnitor or other guarantor of the Loan, any constituent owner or other holder of a direct or indirect equity interest in such indemnitor or guarantor, any manager or operating lessee of the Property that is affiliated with Owner or any constituent owner or other holder of a direct or indirect equity interest in such manager or such operating lessee.

ARTICLE 9 - INSURANCE

Section 9.1 Insurance. Owner shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Owner and the Property as required pursuant to the Credit Agreement and this Security Instrument.

Section 9.2 Casualty/Condemnation.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Owner shall give prompt notice of such damage to Mortgagee.

(b) Owner shall promptly give Mortgagee notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property (or any portion thereof) of which Owner has knowledge and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. At its election, Mortgagee may participate in any such proceedings, and Owner shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. If the Property (or any portion thereof) is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee, for the benefit of Lenders, of the Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof.

(c) In the event there occurs any Casualty or Condemnation to the Property, thereafter Owner shall diligently perform and complete the restoration of the Property lien free, in a good and workmanlike manner and in accordance with the terms and provisions of the Loan Documents.

Section 9.3 Proceeds Distribution. The following provisions shall apply in connection with the restoration of the Property:

(a) **Application of Proceeds.** After deducting from the insurance proceeds or Award received in connection with a Casualty or Condemnation all of its expenses incurred in

the collection and administration of such sums, including reasonable attorneys' fees actually incurred (the "**Net Proceeds**"), Administrative Agent shall apply the Net Proceeds or any part thereof:

(i) upon the written request of Owner, towards the restoration of the Property provided that the following conditions (the "**Restoration Conditions**") are met to the reasonable satisfaction of Administrative Agent:

(1) in Administrative Agent's judgment, the Property can with diligent restoration, be returned to a condition at least equal to the condition thereof that existed prior to the Casualty or Condemnation within the earlier to occur of (x) three hundred sixty-five (365) days after the occurrence of the Casualty or Condemnation or (y) one hundred eighty (180) days prior to the Maturity Date;

(2) no Default or Event of Default exists;

(3) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property;

(4) there are sufficient sums available (through Net Proceeds and contributions by Owner, the full amount of which shall, at Administrative Agent's option, have been deposited with Administrative Agent) for restoration or repair; and

(5) upon Administrative Agent's request, as a condition to any disbursement of Net Proceeds and/or any Award, Owner shall deliver to Administrative Agent such documents, instruments, certificates, agreements, contracts, opinions, reports, title insurance policies and waivers that Administrative Agent may reasonably request in connection with the restoration of the Property and the disbursement of Net Proceeds and/or Award with respect thereto, including, without limitation, plans and specifications, date down endorsements, lien waivers, sworn statements, certifications from engineers, architects and contractors, paid invoices and budgets.

(ii) if the Restoration Conditions are not satisfied, to the payment of the Obligations, whether or not due and as provided in Section 10.5 of the Credit Agreement or for any other purposes or objects for which Administrative Agent is expressly entitled to advance or apply funds under the Loan Documents; and

(iii) all without affecting the Lien of this Security Instrument, and any balance of such moneys then remaining shall be paid to Owner or whomever may be legally entitled thereto. Administrative Agent and the other Lenders shall not be held responsible for any failure to collect any Award or insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(b) Notwithstanding anything herein to the contrary, if (i) the Property can be restored to a condition at least equal to the condition thereof that existed prior to the Casualty or Condemnation within less than one hundred eighty (180) days after the occurrence of the casualty and at least six (6) months prior to the Maturity Date, (ii) the cost of restoration is less than \$250,000.00, and (iii) no Default or Event of Default exists, then any applicable insurance proceeds or Award shall be paid directly to Owner, and Owner shall use such proceeds or Award to diligently perform and complete the restoration of the Property lien free, in a good and workmanlike manner and in accordance with the terms and provisions of the Loan Documents. At the option of Owner, after providing notice to Administrative Agent, the applicable insurance proceeds or Award shall be applied to the restoration of the Property or to payment of the Obligations.

ARTICLE 10 - PREPAYMENT; RELEASE OF PROPERTY

Section 10.1 Prepayment. The Obligations may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Credit Agreement.

Section 10.2 Release of Property. Owner shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Credit Agreement.

ARTICLE 11 - DEFAULT

Section 11.1 Event of Default. The term “Event of Default” as used in this Security Instrument, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following (and Owner shall be entitled to no notice of default other than as provided for below):

(a) **Credit Agreement.** The occurrence of an Event of Default under the Credit Agreement or any other Loan Document.

(b) **Foreclosure of Other Liens.** If the holder of any Lien on any of the Property (other than Administrative Agent or any of the other Secured Parties) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder or in respect thereof and such proceedings are not contested by Owner in good faith as expressly permitted in and pursuant to Section 7.6 of the Credit Agreement.

(c) **Due on Sale/Encumbrance.** If any of the representations or covenants in Section 8.1 hereof are breached or violated.

(d) **Further Encumbrances.** Except as expressly permitted under the Credit Agreement or any other Loan Document, and except for the Permitted Liens, Owner creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Lien on all or any material part of the Property and allows such Lien to remain for more than thirty (30) days (regardless of whether such Lien is expressly subordinate to the lien of this Security Instrument or any other Security Document).

ARTICLE 12 - RIGHTS AND REMEDIES UPON DEFAULT

Section 12.1 Remedies. Upon the occurrence and during the continuance of any Event of Default hereunder or under any other Loan Document, Owner agrees that Mortgagee may or acting by or through Trustee may, on the terms set forth in the Credit Agreement, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Owner and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee or Trustee:

- (a) declare the outstanding Obligations to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Owner therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Guaranty, the Credit Agreement or in the other Loan Documents;
- (f) recover judgment on the Guaranty either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Owner, any guarantor or indemnitor under the Loan or any other Person liable for the payment of the Obligations;
- (h) the license granted to Owner under Section 3.2 hereof shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Owner and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Owner and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Owner agrees to surrender possession of the Property and of such books, records and accounts to

Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Owner with respect to the Property, whether in the name of Owner or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Owner to pay monthly in advance to Mortgagee or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Owner; (vi) require Owner to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Owner may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, counsel, agents and employees;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Credit Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Security Instrument;

(j) surrender the insurance policies maintained pursuant to the Credit Agreement and this Security Instrument, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Obligations in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Owner hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Owner to collect such insurance premiums;

(k) apply the undisbursed balance of any deposit made by Owner with Mortgagee in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion; and/or

(l) pursue such other remedies as Mortgagee and Lenders may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 10.1 of the Credit Agreement

shall occur, the entire amount of the outstanding Obligations shall be automatically due and payable, without any further notice, demand or other action by Mortgagee or Secured Parties.

Upon the occurrence of an Event of Default under this Security Instrument, Mortgagee, pursuant to the appropriate provisions of the California Commercial Code, shall have an option to proceed with respect to both the real property portion of the Property and the Personal Property in accordance with its rights, powers and remedies with respect to such real property, in which event the default provisions of the California Commercial Code shall not apply. Such option shall be revocable by Mortgagee as to all or any portion of the Personal Property at any time prior to the sale of the remainder of the Property. In such event Mortgagee shall designate Trustee to conduct the sale of the Personal Property in combination with the sale of the remainder of the Property. Should Mortgagee elect to sell the Personal Property or any part thereof which is real property or which Mortgagee has elected to treat as real property or which may be sold together with the real property as provided above, Mortgagee or Trustee shall give such notice of default and election to sell as may then be required by law. The parties agree that if Mortgagee shall elect to proceed with respect to any portion of the Personal Property separately from such real property, five (5) days' notice of the sale of the Personal Property shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee and Lenders shall include, but not be limited to, reasonable attorneys' fees, costs and expenses, and other expenses incurred by Mortgagee and Lenders.

In addition, Mortgagee shall have the right to appoint a receiver when permitted under Section 564 of the California code of Civil Procedure, including, without limitation, in order to enforce Mortgagee's rights under Section 2929.5 of the California Civil Code. The receiver shall have all of the rights and powers to the fullest extent permitted by law. The receiver shall have the right to apply Rents to cleanup, remediation or other response actions concerning the release or threatened release of Hazardous Materials, whether or not such actions are pursuant to an order of any federal, state or local governmental agency.

Section 12.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee for its own account or for the account of Secured Parties pursuant to the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as set forth in the Credit Agreement or otherwise determined by Secured Parties.

Section 12.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Owner and without releasing Owner from any obligation hereunder, make any payment or do any act required of Owner hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 12.3, shall constitute a portion of the Obligations and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed

payment or act or in appearing in, defending, or bringing any such action or proceeding, shall bear interest at the Applicable Rate under the Credit Agreement, including any interest accruing at the Post-Default Rate thereupon for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee or Trustee together with interest thereon calculated at the Applicable Rate under the Credit Agreement, including any interest accruing at the Post-Default Rate thereupon shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 12.4 Actions and Proceedings. Mortgagee or Trustee has the right to appear in, and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Owner, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 12.5 Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Owner existing at the time such earlier action was commenced.

Section 12.6 Other Rights, Etc.

(a) The failure of Mortgagee or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Owner shall not be relieved of Owner's obligations hereunder by reason of (i) the failure of Mortgagee or Trustee to comply with any request of Owner or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Guaranty or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee and/or Lenders extending the time of payment or otherwise modifying or supplementing the terms of the Guaranty, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Owner, and Mortgagee and Secured Parties shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Credit Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Obligations to any other security held by Mortgagee in such order and manner as set forth in the Credit Agreement or as otherwise determined by Secured Parties. Mortgagee or Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the

right of Mortgagee or Trustee thereafter to foreclose this Security Instrument. The rights of Mortgagee or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Mortgagee nor Trustee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 12.7 Right to Release any Portion of the Property. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 12.8 Right of Entry. Upon reasonable notice to Owner, Mortgagee and its respective agents shall have the right to enter and inspect the Property at all reasonable times.

Section 12.9 Bankruptcy.

(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Owner in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Owner, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Owner a petition under the Bankruptcy Code and Owner, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Owner shall give Mortgagee not less than ten (10) days' prior notice of the date on which Owner shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Owner within such ten-day period a notice stating that (i) Mortgagee demands that Owner assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Owner the notice described in the preceding sentence, Owner shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

Section 12.10 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens,

titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment, performance and discharge of the Obligations.

ARTICLE 13 - ENVIRONMENTAL HAZARDS

Section 13.1 Environmental Covenants. Owner has provided representations, warranties and covenants regarding environmental matters set forth in the Environmental Indemnity and Owner shall comply with the aforesaid covenants regarding environmental matters.

ARTICLE 14 - INDEMNIFICATIONS

Section 14.1 General Indemnification. Owner shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) the failure of Owner to perform any obligations as and when required by this Security Instrument; (b) any failure at any time of any of Owner's representations or warranties made under this Security Instrument to be true and correct; (c) any act or omission by Owner, any Affiliate of Owner, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Property or Improvements; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) any failure of the Property or any part thereof to be in compliance with any Applicable Laws; (h) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; and/or (i) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loan. Any amounts payable to Indemnified Parties by reason of the application of this Section 14.1 shall become immediately due and payable and Owner shall bear interest at the Applicable Rate under the Credit Agreement, including any interest accruing at the Post-Default Rate from the date loss or damage is sustained by Indemnified Parties until paid.

Section 14.2 Mortgage and Intangible Tax Indemnification. Owner shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents.

ARTICLE 15 - INTENTIONALLY OMITTED

ARTICLE 16 - WAIVERS

Section 16.1 Marshalling and Other Matters. Owner hereby waives, to the extent permitted by law, the benefit of all Applicable Laws now or hereafter in force regarding appraisement, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Owner hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Owner, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Applicable Laws.

Section 16.2 Waiver of Notice. Owner shall not be entitled to any notices of any nature whatsoever from Mortgagee or Trustee except with respect to matters for which this Security Instrument or the Credit Agreement specifically and expressly provides for the giving of notice by Mortgagee or Trustee to Owner and except with respect to matters for which Owner is not permitted by Applicable Laws to waive its right to receive notice, and Owner hereby expressly waives the right to receive any notice from Mortgagee or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee or Trustee to Owner.

Section 16.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Mortgagee and Lenders under this Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Mortgagee and Lenders may have against Owner pursuant to the Credit Agreement, this Security Instrument, the Guaranty or the other Loan Documents, or existing at law or in equity or otherwise. Mortgagee's and Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Mortgagee and Lenders may determine in their sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Event of Default with respect to Owner shall not be construed to be a waiver of any subsequent Event of Default by Owner or to impair any remedy, right or power consequent thereon.

Section 16.4 Sole Discretion of Mortgagee. Whenever pursuant to this Security Instrument, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Mortgagee and shall be final and conclusive.

Section 16.5 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY LAW, OWNER, MORTGAGEE AND SECURED PARTIES EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND

WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY OWNER, MORTGAGEE AND SECURED PARTIES, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDERS, MORTGAGEE AND OWNER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY OWNER, MORTGAGEE AND LENDERS.

Section 16.6 Waive of Foreclosure Defense. Owner hereby waives any defense Owner might assert or have by reason of Mortgagee's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Mortgagee.

Section 16.7 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, nor consent to any departure by Owner therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Owner, shall entitle Owner to any other or future notice or demand in the same, similar or other circumstances.

Section 16.8 Remedies of Owner. In the event that a claim or adjudication is made that Mortgagee, any Secured Party or any of their agents have acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, such Secured Party, Mortgagee or such agent, as the case may be, has an obligation to act reasonably or promptly, Owner agrees that Mortgagee, Secured Parties and their agents shall not be liable for any monetary damages, and Owner's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Mortgagee or any Secured Party has acted reasonably shall be determined by an action seeking declaratory judgment. Mortgagee and Secured Parties agree that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

Section 16.9 Waiver of Statute of Limitations. To the extent permitted by Applicable Laws, Owner hereby expressly waives and releases to the fullest extent permitted by Applicable Law, the pleading of any statute of limitations as a defense to payment and performance of the Obligations and performance of its obligations hereunder, under the Guaranty, Credit Agreement or other Loan Documents.

Section 16.10 Waiver of Counterclaim. Owner hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Mortgagee or Trustee, any Lender or any of their agents.

ARTICLE 17 - NOTICES

Section 17.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Credit Agreement.

ARTICLE 18 - APPLICABLE LAW

Section 18.1 Governing Law. (A) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND MADE BY OWNER AND ACCEPTED BY MORTGAGEE, FOR THE BENEFIT OF SECURED PARTIES, IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT AND THE NOTE, AND THIS SECURITY INSTRUMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE, SECURED PARTIES OR OWNER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND OWNER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND OWNER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 18.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 19 - MISCELLANEOUS PROVISIONS

Section 19.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Owner, Mortgagee or Trustee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 19.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Owner, Mortgagee and their respective successors and assigns forever.

Section 19.3 Inapplicable Provisions. If any term, covenant or condition of the Credit Agreement, the Note, this Security Instrument or any other Loan Document is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed without such provision.

Section 19.4 Headings, Etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 19.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 19.6 Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 19.7 Limitation on Mortgagee's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

Section 19.8 Survival. This Security Instrument and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lenders of the Loan and the execution and delivery to Lenders of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth in the Credit Agreement, this Security Instrument, the Guaranty, the Note or the other Loan Documents.

Section 19.9 Cost of Enforcement. In the event (a) that this Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Owner or any of its constituent Persons or an assignment by Owner or any of its constituent Persons for the benefit of its creditors, or (c) any Secured Party and/or Mortgagee exercises any of their other remedies under the Credit Agreement, this Security Instrument, the Note and the other Loan Documents, Owner shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Mortgagee, any Secured Party and Owner in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes. Any amounts payable to Administrative Agent and any Secured Party pursuant to this Section 19.9 shall become immediately due and payable upon demand and shall bear interest at the Post-Default Rate from the date of such demand until the date such amounts have been paid.

Section 19.10 Offsets, Counterclaims and Defenses. Any assignee of Lenders' interest in and to the Credit Agreement, this Security Instrument, the Guaranty, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Owner may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Owner in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Owner.

Section 19.11 Liability. If Owner consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Owner, Mortgagees and Secured Parties and their respective successors and assigns forever.

Section 19.12 Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

ARTICLE 20 - DEED OF TRUST PROVISIONS

Section 20.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being

liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Owner and to Mortgagee. Mortgagee may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Mortgagee may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Mortgagee. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 20.2 Trustee's Fees. Owner shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 20.3 Certain Rights. With the approval of Mortgagee, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Mortgagee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Mortgagee may instruct Trustee to take to protect or enforce Mortgagee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 20.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by

applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 20.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Owner by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Owner.

Section 20.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Mortgagee or of the substitute trustee, Trustee ceasing to act shall execute and the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

ARTICLE 21 - STATE-SPECIFIC PROVISIONS

Section 21.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 21 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 21 shall control and be binding.

(a) Owner hereby requests that any notice of default and any notice of sale hereunder be mailed to it at its address set forth in the introductory paragraph of this Security Instrument; provided that Owner may change its address for such notices by giving written notice of such change in the manner provided in the Credit Agreement, in which event Mortgagee shall mail any notice of default and any notice of sale hereunder to Owner's changed address.

(b) Owner hereby waives any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so Owner shall be liable even if Borrower had no liability at the time of execution of the Credit Agreement, the Note, the Security Agreements or any other Loan Document, or thereafter ceases to be liable. Owner hereby waives any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so Owner's liability may be larger in amount and more burdensome than that of Borrower. Owner waives all rights to require Mortgagee or any Secured Party to pursue any other remedy it may have against Borrower, or any member of Borrower, or any other Loan Party, including any and all benefits under California Civil Code Section 2845, 2849 and 2850. Owner further waives any rights, defenses and benefits that may be derived from Sections 2787 to 2855, inclusive, of the California Civil Code or comparable provisions of the laws of any other jurisdiction and further waives all other suretyship defenses Owner would otherwise have under the laws of California or any other jurisdiction.

(c) Upon an Event of Default, Mortgagee in its sole discretion, without prior notice to or consent of Owner or any other Loan Party, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security it may hold for the Loan, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or any Loan Party, or (iv) exercise any other remedy against Borrower or any security. No such action by Mortgagee shall release or limit the liability of Owner, which shall remain liable under this Security Instrument after the action, even if the effect of the action is to deprive Owner of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower or any other Loan Party for any sums paid to Mortgagee or any other Secured Party, whether contractual or arising by operation of law or otherwise. Owner expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Mortgagee, any other Secured Party, or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

(d) Regardless of whether Owner may have made any payments to Mortgagee, Owner hereby waives: (i) all rights of subrogation, indemnification, contribution and any other rights to collect reimbursement from Borrower, any other Loan Party, or any other party for any sums paid to Mortgagee, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that Mortgagee may have against Borrower, and (iii) all rights to participate in any security now or later to be held by Mortgagee or any other Secured Party for the Loan. The waivers given in this subsection (d) shall be effective until the Loan has been paid and performed in full.

(e) Owner waives all rights and defenses arising out of an election of remedies by Mortgagee, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Owner's rights of subrogation and reimbursement against Borrower, or any other Loan Party by operation of Section 580d of the California Code of Civil Procedure or otherwise. Owner further waives any right to a fair value hearing under California Code of Civil Procedure Section 580a, or any other similar law, to determine the size of any deficiency owing (for which Owner would be liable hereunder) following a non-judicial foreclosure sale.

(f) Without limiting the foregoing or anything else contained in this Security Instrument, Owner waives all rights and defenses that Owner may have because Borrower's Loan is secured by real property. This means, among other things:

(i) That Mortgagee may collect from Owner without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Mortgagee or any other Secured Party forecloses on any real property collateral pledged by Borrower: (x) the amount of the Loan may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (y) Mortgagee may collect from Owner even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Owner may have to collect from Borrower or any other Loan Party.

This subsection (f) is an unconditional and irrevocable waiver of any rights and defenses each Owner may have because Borrower's Loan is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(g) Owner waives all rights and defenses arising out of any failure of the Mortgagee or any other Secured Party to disclose to Owner any information relating to the financial condition, operations, properties or prospects of Borrower or any other Loan Party now or in the future known to Mortgagee or any other Secured Party (Owner waiving any duty on the part of the Mortgagee or any other Secured Party to disclose such information).

If California Civil Code Section 3110.5 is applicable to Owner or Borrower in connection with the Loan, as soon as practicable following recordation of this Security Instrument Owner shall deliver to any general contractor a copy of the recorded Security Instrument, certified by the county recorder and shall otherwise fully comply with said Section 3110.5.

ARTICLE 22 - CROSS-COLLATERALIZATION

Section 22.1 Cross-Collateralization.

(a) Owner acknowledges that Administrative Agent and Secured Parties have agreed to make the Loan and other financial accommodations contemplated by the Credit Agreement to Borrower upon security of the collective interest of Owner, Borrower and the other Loan Parties in, among other things, the Mortgaged Properties and in reliance upon the aggregate of the Mortgaged Properties taken together being of greater value as collateral security than the sum of each individual Mortgaged Property taken separately. Owner acknowledges that its Obligations are secured by this Security Instrument together with the obligations of the other Loan Parties under the other Loan Documents (collectively, the "**Other Loan Party Obligations**") being secured by those Other Security Instruments (as defined below) given by Loan Parties to Administrative Agent for the benefit of Secured Parties, together with their respective Loan Documents securing or evidencing such Obligations, and encumbering the other individual Mortgaged Properties, all as more specifically set forth in the Credit Agreement. Owner agrees that each of the Loan Documents (including, without limitation, the Security Instruments (as defined in the Credit Agreement)) are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under this Security Instrument or any Other Security Instrument is an Event of Default under each of this Security Instrument and the Other Security Instruments; (ii) an Event of Default under any of the Loan Documents shall constitute an Event of Default under each of the other Loan Documents; (iii) each Security Instrument (as defined in the Credit Agreement) shall constitute security for the obligations of Loan Parties under the Loan Documents to which they are parties as if a single blanket lien were placed on all of the Mortgaged Properties as security for all such obligations; and (iv) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance and Owner waives any claims related thereto. Upon the occurrence of an Event of Default beyond any applicable notice and grace period, Administrative Agent shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the Other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Obligations and/or Other Loan Party

Obligations or the portion of the Obligations and/or Other Loan Party Obligations allocated to the Property in the Credit Agreement, and the lien and the security interest created by the Other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations and/or Other Loan Party Obligations then due and payable but still outstanding. Owner acknowledges and agrees that the Property and the other individual Mortgaged Properties are located in one or more cities and/or counties, and therefore Administrative Agent shall be permitted to enforce payment of the Obligations and/or Other Loan Party Obligations and the performance of any term, covenant or condition of the Note, the Guaranty, the Credit Agreement, this Security Instrument, the other Loan Documents or the Other Security Instruments and exercise any and all rights and remedies under the Note, the Guaranty the Credit Agreement, this Security Instrument, the other Loan Documents or the Other Security Instruments, or as provided by law or in equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Administrative Agent, in its sole discretion, in any one or more of the cities or counties in which the Property or any other individual Mortgaged Property is located. Neither the acceptance of this Security Instrument, the Note, the Credit Agreement, the other Loan Documents or the Other Security Instruments nor the enforcement thereof in any one city or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, the Credit Agreement, this Security Instrument, the other Loan Documents, or any Other Security Instruments through one or more additional proceedings in that city or county or in any other city or county. Any and all sums received by Administrative Agent or Lenders under the Note, the Guaranty, the Credit Agreement, this Security Instrument, and the other Loan Documents shall be applied to the Obligations and/or the Other Loan Party Obligations in such order and priority as Administrative Agent shall determine, in its sole discretion, without regard to the appraised value of the Property or any other individual Mortgaged Property. As used herein, the term **"Other Security Instruments"** shall mean all other Security Instruments (as defined in the Credit Agreement) securing any of the Other Loan Party Obligations.

(b) To the fullest extent permitted by law, Owner, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Owner, Owner's partners and others with interests in Owner, and of the Mortgaged Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of the Security Instruments (as defined in the Credit Agreement), and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Administrative Agent, on behalf of Secured Parties, under the Loan Documents to a sale of the Mortgaged Properties for the collection of the Obligations and/or the Other Loan Party Obligations without any prior or different resort for collection or of the right of Administrative Agent, on behalf of Secured Parties, to the payment of the Obligations and/or the Other Loan Party Obligations out of the net proceeds of the Mortgaged Properties in preference to every other claimant whatsoever. In addition, Owner, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Security Instruments (as defined in the Credit Agreement), any equitable right otherwise available to Owner which would require the separate sale of the Mortgaged Properties or require the Secured Parties to exhaust their remedies against any individual Mortgaged Property or any combination of the Mortgaged Properties before proceeding against any other individual Mortgaged Property or combination of

Mortgaged Properties; and further in the event of such foreclosure Owner does hereby expressly consent to and authorize, at the option of Administrative Agent, pursuant to the terms hereof, the foreclosure and sale either separately or together of any combination of the Mortgaged Properties.

ARTICLE 23 - LEASE AGREEMENT PROVISIONS

Section 23.1 No Merger of Fee and Leasehold Estates; Releases. So long as any portion of the Obligations shall remain outstanding, unless Mortgagee shall otherwise consent, the fee title to the Land and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Owner, Lessor or in any other Person by purchase, operation of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Property, including, but not limited to, the Leasehold Estate, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Mortgagee's rights in connection with the portion of the Property not so released.

Section 23.2 Owner's Acquisition of Fee Estate. In the event that Owner, so long as any portion of the Obligations remain outstanding, shall become the owner and holder of Lessor's fee interest in the portion of the Property demised pursuant to the Lease Agreement, the lien of this Security Instrument shall be spread to cover such interest and such interest shall be deemed to be included in the Property. Owner agrees, at its sole cost and expense, including without limitation, Mortgagee's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject the foregoing interest to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on such interest. The foregoing shall not be construed to permit Owner to acquire the aforesaid fee interest and Owner rights to acquire additional property shall remain subject to the restrictions relating thereto contained in the Loan Documents.

Section 23.3 Rejection of the Lease Agreement.

(a) If the Lease Agreement is terminated by Lessor for any reason in the event of the rejection or disaffirmance of the Lease Agreement by Lessor pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Owner, immediately after obtaining notice thereof, shall give notice thereof to Mortgagee, (ii) Owner, without the prior written consent of Mortgagee, shall not elect to treat the Lease Agreement as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Owner made without such consent shall be void and (iii) this Security Instrument and all the liens, terms, covenants and conditions of this Security Instrument shall extend to and cover Owner's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Lease Agreement or other termination of the Lease Agreement. In addition, Owner hereby assigns irrevocably to Mortgagee Owner's rights to treat the Lease Agreement as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Lease Agreement in the event any case, proceeding or other action is commenced by or against Lessor under the Bankruptcy Code or any comparable federal or state statute or law, provided that Mortgagee shall not exercise such rights and shall permit Owner to exercise such rights with the prior written consent of Administrative Agent, not to be

unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(b) Owner hereby assigns to Mortgagee Owner's right to reject the Lease Agreement under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Owner under the Bankruptcy Code or comparable federal or state statute or law, provided Mortgagee shall not exercise such right, and shall permit Owner to exercise such right with the prior written consent of Administrative Agent, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Owner shall desire to so reject the Lease Agreement, at Mortgagee's request, to the extent not prohibited by the terms of the Lease Agreement and applicable law, Owner shall assign its interest in the Lease Agreement to Mortgagee in lieu of rejecting the Lease Agreement as described above, upon receipt by Owner of written notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Owner under the Lease Agreement and to provide adequate assurance of future performance of Owner's obligations thereunder.

(c) , Owner hereby assigns to Mortgagee Owner's right to seek an extension of the 60-day period within which Owner must accept or reject the Lease Agreement under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Owner under the Bankruptcy Code or comparable federal or state statute or law, provided Mortgagee shall not exercise such right, and shall permit Owner to exercise such right with the prior written consent of Administrative Agent, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Owner shall desire to so reject the Lease Agreement, at Mortgagee's request, to the extent not prohibited by the terms of the Lease Agreement and applicable law, Owner shall assign its interest in the Lease Agreement to Mortgagee in lieu of rejecting such Lease Agreement as described above, upon receipt by Owner of written notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Owner under the Lease Agreement and to provide adequate assurance of future performance of the applicable Owner's obligations thereunder.

(d) Owner hereby agrees that if the Lease Agreement is terminated for any reason in the event of the rejection or disaffirmance of the Lease Agreement pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any Personal Property of Owner not removed from the Property by Owner as permitted or required by the Lease Agreement, shall at the option of Mortgagee be deemed abandoned by Owner, provided that Mortgagee may remove any such Personal Property required to be removed by Owner pursuant to the Lease Agreement and all reasonable out-of-pocket costs and expenses associated with such removal shall be paid by Owner within five (5) days of receipt by Owner of an invoice for such removal costs and expenses.

**[Remainder of Page Intentionally Left Blank;
Signature Page Follows]**

IN WITNESS WHEREOF, this Security Instrument has been executed by the undersigned as of the day and year first above written.

**BAY CLUB FAIRBANKS RANCH,
LLC,**
a Delaware limited liability company

By: _____
Name: David J. Nadeau
Title: Chief Financial Officer

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2015 before me, _____ (here insert name and title of the officer), personally appeared David J. Nadeau who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 COME]

APN's: [_____]