THE STATE OF TEXAS	§	**CHAPTER 380 PROGRAM**
	§	**AGREEMENT FOR**
	§	**ECONOMIC DEVELOPMENT**
COUNTY OF BRAZOS	§	**INCENTIVES**

This AGREEMENT (the "AGREEMENT") is entered into by and between the **CITY OF BRYAN,** a home-rule municipal corporation of Brazos County, Texas, hereinafter referred to as the "CITY", and **VILLA MARIA PARTNERSHIP, LLC**, a Delaware Limited Liability Company, hereinafter called "DEVELOPER". CITY and DEVELOPER may be referred to jointly herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, DEVELOPER holds a territory reservation AGREEMENT with Big Shots, LLC, which territory includes the Bryan/College Station area; and

WHEREAS, DEVELOPER, or its permitted successors and assigns, plans to construct and operate an approximately 52,000 square foot golf recreational and entertainment complex ("the PROJECT"), which will be constructed and operated in a manner generally consistent with other Big Shots Golf locations and operations in Texas; and

WHEREAS, DEVELOPER and CITY desire for DEVELOPER to lease from the CITY a portion of the former Travis B. Bryan Municipal Golf Course property ("the LAND"), more particularly described in Exhibit "1-A", to construct the PROJECT; and

WHEREAS, the CITY is authorized by the Texas Constitution and Chapter 380 of the Texas Local Government Code to make GRANTS of public resources to promote state and local economic development and to stimulate business and commercial activity in Bryan; and

WHEREAS, as an inducement to the DEVELOPER, the City Council has determined that a grant in the form of a cash incentive payment in the amount of $100,000.00 and the waiver of certain PROJECT related permit fees of the DEVELOPER in exchange for DEVELOPER's execution of a long term ground lease and the completion of the PROJECT will promote local economic development, stimulate business and commercial activity, and create jobs within the CITY; and

NOW THEREFORE, the CITY and DEVELOPER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Section 1. <u>Definitions.</u>

1.1 "DEVELOPER AFFILIATE" means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with DEVELOPER. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or

indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of DEVELOPER or (ii) direct or cause the direction of management or policies of DEVELOPER, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of DEVELOPER or any Affiliate of such lender.

1.1 "GROUND LEASE" means the Ground Lease between the CITY and DEVELOPER with respect to the lease of the LEASED PREMISES to the DEVELOPER, attached hereto as Exhibit "1", and incorporated herein by this reference.

1.3 "LAND" means a portion of the former Travis B. Bryan Municipal Golf Course property, more particularly described in Exhibit "A" of the GROUND LEASE, attached hereto as Exhibit "1-A".

1.4 "LEASED PREMISES" means the LAND, together with (i) the PROJECT IMPROVEMENTS, as and when constructed on the LAND, and all alterations and modifications thereof pursuant to the terms of the GROUND LEASE and all other Improvements, (ii) all air rights and air space above the LAND and (iii) all of CITY's (Landlord's) right, title and interest, if any, in and to all rights, privileges and easements appurtenant to the LAND including any intangible property rights, concessions, pouring and branding rights, advertising and development rights.

1.5 "PERSON" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

1.6 "PROJECT" shall have the meaning set forth in Appendix "A" of the GROUND LEASE.

1.7 "PROJECT IMPROVEMENTS" shall have the meaning set forth in Appendix "A" of the GROUND LEASE.

1.8 "PROJECT IMPROVEMENTS WORK" shall have the meaning set forth in Appendix "A" of the GROUND LEASE.

1.9 "QUALIFIED PROJECT COSTS" means PROJECT and pre-development costs actually incurred by DEVELOPER directly related to the development, entitlement, acquisition and implementation of the PROJECT, including architectural, engineering, environmental, consultant, legal and other professional fees; title, and survey, and project management costs.

Section 2. <u>Term.</u>

2.1 This AGREEMENT shall be effective as of the date of execution by all parties. This AGREEMENT will terminate on the date all obligations under this AGREEMENT have been fulfilled unless earlier terminated.

Section 3. <u>DEVELOPER's Requirements.</u>

3.1 In consideration of the CITY entering into this AGREEMENT providing for the payment of funds

and a waiver of certain permit fees constituting a Grant to DEVELOPER under the terms and conditions set forth herein, DEVELOPER agrees to:

a. Execute the GROUND LEASE no later than ten (10) days after approval by the Bryan City Council.

b. Cause the PROJECT IMPROVEMENTS WORK to be completed by the dates set forth in the GROUND LEASE, as same may be subject to extension thereunder.

c. During the Term of this AGREEMENT, DEVELOPER shall not allow the ad valorem taxes owed to CITY on the LEASED PREMISES, the PROJECT IMPROVEMENTS or any property owned by DEVELOPER and located within the City of Bryan to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall DEVELOPER fail to render for taxation any property owned by DEVELOPER and located within the City of Bryan.

d. The design and construction of the PROJECT IMPROVEMENTS on the LEASED PREMISES shall comply with all ordinances of the CITY applicable to the PROJECT.

e. DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the grant provided in Section 4 of this AGREEMENT, plus 10% per annum from the date the reimbursement was made. Repayment shall be paid within 120 days after the date DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f).

Section 4. <u>Grants by CITY.</u>

4.1 <u>Cash Incentive Payment.</u> In consideration for DEVELOPER agreeing to develop the PROJECT in accordance with the terms of the GROUND LEASE and this AGREEMENT, the City shall provide DEVELOPER with a one-time cash incentive payment in the amount of One Hundred Thousand Dollars and No Cents ($100,000.00) to be used by DEVELOPER for Qualified Project Costs incurred after January 1, 2017, but before execution of this AGREEMENT and any Qualified Project Costs incurred after the execution of this AGREEMENT. The City shall pay DEVELOPER the $100,000.00 cash incentive payment within thirty (30) days of execution by all parties of the GROUND LEASE. Pursuant to Section 9 below, the one-time cash incentive payment shall be subject to repayment by DEVELOPER to CITY, in the event DEVELOPER fails to comply with all DEVELOPER requirements set out in Section 3, above.

4.2 <u>Fee Waiver.</u> In addition, CITY agrees to waive all fees for building, mechanical, plumbing, or electrical permits in relation to the PROJECT from the time this AGREEMENT is executed until the date set for completion as provided for in the GROUND LEASE. Pursuant to Section 9 below, the permit fee waivers are subject to repayment by DEVELOPER to CITY, in the event DEVELOPER fails to comply with all DEVELOPER requirements set out in Section 3, above.

4.3 Collectively. The one-time cash incentive payment of $100,000.00 and the fee waivers described in this Section 4 are collectively referred to herein, as the "GRANTS".

Section 5. Condition Precedent.

5.1 CITY's obligation to make the GRANTS provided for in Section 4 of this AGREEMENT, is contingent and conditioned upon the approval and execution of the GROUND LEASE by the DEVELOPER and CITY (hereafter referred to as the "Condition Precedent"). If the Condition Precedent is not satisfied, and has not been waived in writing by the CITY, the CITY shall have the right to terminate this AGREEMENT, in which case this AGREEMENT shall immediately terminate, cease and become null, void and of no further force or effect.

Section 6. Indemnification.

6.1 **DEVELOPER does hereby agree to waive all claims, release, indemnify, defend and hold harmless the CITY, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of DEVELOPER, its officers, agents, or employees arising out of or in connection with the performance of this AGREEMENT, and DEVELOPER will at its own cost and expense defend and protect the CITY from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct) of the CITY, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by DEVELOPER to waive all claims, release, indemnify, defend and hold harmless the CITY from the consequences of the CITY's own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage.**

6.2 **The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the DEVELOPER or any contractor or subcontractor under workman's compensation or other employee benefit acts.**

Section 7. Access to Books and Records.

7.1 The DEVELOPER agrees to provide the CITY access to books and records of the DEVELOPER during regular business hours upon reasonable notice. The CITY shall have the right to require the DEVELOPER to submit any necessary information, documents, invoices, receipts or other records to verify Qualified Project Costs incurred by DEVELOPER and the completion of construction of the

PROJECT. DEVELOPER shall maintain such records for a period of five (5) years after termination of this AGREEMENT.

Section 8. Force Majeure.

8.1 It is expressly understood and agreed by the Parties to this AGREEMENT that if the performance of any obligation hereunder is delayed by of any act of FORCE MAJEURE, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

8.2 For the purposes of this section, the term "Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this AGREEMENT or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money.

8.3 Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of the CITY in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this AGREEMENT or any Applicable Law; and (vii) failure of the other Party to perform any of its obligations under this AGREEMENT within the time or by the date required pursuant to the terms of this AGREEMENT for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) any strike or labor dispute involving the employees of the DEVELOPER or any Affiliate of the DEVELOPER, other than industry or nationwide strikes or labor disputes; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

Section 9. Default and Termination.

9.1 A default shall exist under this AGREEMENT if either Party fails to perform or observe any material covenant contained in this AGREEMENT. The non-defaulting Party shall immediately notify in writing the defaulting Party upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

9.2 If a default shall occur and continue after thirty (30) days' notice of the same, the non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, without the necessity of future notice to or demand upon the defaulting Party.

9.3 In the event the DEVELOPER defaults on its performance of any of the DEVELOPER Obligations under Section 3 of this AGREEMENT, after receipt of notice and expiration of the cure period, if such default is uncured, this AGREEMENT may be terminated in writing by the CITY and the CITY is entitled to the re-payment of the sum of One Hundred Thousand Dollars ($100,00.00) from DEVELOPER and the payment by DEVELOPER of an amount equal to the running total of permit fees that have been waived by the CITY pursuant to this AGREEMENT. DEVELOPER shall make payment to the CITY within thirty (30) days of presentment of written notice of termination and a written accounting of fees waived by the CITY. The City's ability to seek repayment of the GRANTS and DEVELOPER's obligation to repay shall survive the termination of this AGREEMENT. An Assignment by DEVELOPER of the GROUND LEASE will not relieve DEVELOPER of its obligations and liabilities under this AGREEMENT.

Section 10. Miscellaneous.

10.1. Successors and Assigns. This AGREEMENT shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign its interest in this Agreement or permit a Change in Control (as defined in the Ground Lease) of Developer without the prior written approval of the City Council unless such assignment or Change in Control is permitted under the Ground Lease to occur without the approval of the City or City Council pursuant to the terms of the Ground Lease and so long as Developer assigns its interest in this Agreement to the same entity to which Developer as Tenant under the Ground Lease assigned its rights under the Ground Lease. In connection with any assignment permitted under this Agreement, such assignee shall agree in writing to assume all of the Developer's obligations under this Agreement and such written agreement shall be in a form reasonably acceptable to the City. The Developer shall promptly provide the City with a copy of the assignment instrument and assignee's written agreement to assume Developer's obligations under this Agreement.

10.2. Notices. Any notices sent under this AGREEMENT shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to CITY:
City of Bryan
P.O. Box 1000
Bryan, Texas 77805
Attention: City Manager

If to DEVELOPER:
Villa Maria Partnership, LLC
3030 LBJ Freeway, Suite 600
Dallas, TX 75234
Attention: Chief Legal Officer

10.3. Severability. If any provision of this AGREEMENT is held to be illegal, invalid or unenforceable under present or future laws effective while this AGREEMENT is in effect, such provision shall be automatically deleted from this AGREEMENT and the legality, validity and enforceability of the remaining provisions of this AGREEMENT shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this AGREEMENT a provision that is legal, valid, and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

10.4. Texas law to apply. This AGREEMENT shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this AGREEMENT shall be in a court of appropriate jurisdiction in Brazos County, Texas.

10.5 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

10.6 Sole Agreement. This AGREEMENT constitutes the sole and only AGREEMENT of the Parties hereto respecting the subject matter covered by this AGREEMENT, and supersedes any prior understandings or written or oral AGREEMENTs between the parties.

10.7 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

10.8. Rights and Remedies Cumulative. The rights and remedies provided by this AGREEMENT are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.9. No Waiver. CITY's failure to take action to enforce this AGREEMENT in the event of DEVELOPER's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent CITY from taking action to enforce this AGREEMENT on subsequent occasions.

10.10 Incorporation of Recitals. The Parties agree that the recitals contained in the preamble to this AGREEMENT are true and correct and are hereby incorporated herein as part of this AGREEMENT.

10.11 Headings. The paragraph headings contained in this AGREEMENT are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

10.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the

parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this AGREEMENT shall survive termination.

10.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this AGREEMENT or any amendments or exhibits hereto.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this AGREEMENT to be effective on this the 12th day of February, 2020 ("the Effective Date").

[Signature Pages to Follow]

CITY OF BRYAN, TEXAS:

Andrew Nelson, Mayor

VILLA MARIA PARTNERSHIP, LLC

Emily C. Decker, Secretary

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 10th day of February, 2020 by Emily C. Decker, Secretary of Villa Maria Partnership, LLC, a limited liability company, on behalf of said limited liability company. .

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 10th day of February, 2020.

Mychelle Alonso
Notary Public In and For
The State of Texas

Sept. 26, 2023
My Commission Expires:

Mychelle Alonso
Notary's Printed Name

NOTARY PUBLIC STATE OF TEXAS
MYCHELLE ALONSO
Notary ID #124659681
My Commission Expires
September 26, 2023

EXHIBIT "1-A"
Land – Sheet 1

STRONG SURVEYING, LLC
FIRM NO. 10093500
1722 Broadmoor Ste. 105
Bryan, Texas 77802
Phone: (979) 776 – 9836
Fax: (979) 731 – 0096
Email: curtis@strongsurveying.com

EXHIBIT "A"
SHEET 1 OF 2

CITY OF BRYAN
11.78 ACRE LEASE TRACT
OUT OF
LOT 2, BLOCK 1
COUNTRY CLUB LAKE ADDITION
CALLED 149.72 ACRES
VOLUME 3015, PAGE 65
ZENO PHILLIPS SURVEY, A – 45
BRAZOS COUNTY, TEXAS
JANUARY 7, 2020

All that certain lot, tract or parcel of land being 11.78 acres situated in the ZENO PHILLIPS SURVEY, Abstract No. 45, Brazos County, Texas and being a part of that certain Lot 2, Block 1, Country Club Lake Addition as described in Plat of record in Volume 3015, Page 65, Official Records of Brazos County, Texas, said 11.78 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap set for the southwest corner, a 1/2" Iron rod with Cap set for the most southerly corner of said Lot 2, Block 1, Country Club Lake Addition bears S 32 ° 33 ' 02 " E a distance of 240.42 feet;

THENCE around a curve in a clockwise direction having a delta angle of 6 ° 16 ' 24 ", an arc distance of 13.71 feet, a radius of 125.17 feet, and a chord of N 15 ° 20 ' 04 " W, a distance of 13.70 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the left;

THENCE around a curve in a counterclockwise direction having a delta angle of 27 ° 25 ' 34 ", an arc distance of 239.20 feet, a radius of 499.72 feet, and a chord of N 33 ° 55 ' 46 " W, a distance of 236.92 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the right;

THENCE around a curve in a clockwise direction having a delta angle of 15 ° 22 ' 18 ", an arc distance of 240.90 feet, a radius of 897.94 feet, and a chord of N 44 ° 13 ' 42 " W, a distance of 240.18 feet to a 1/2" Iron Rod with Cap set for the end of this curve;

THENCE N 0 ° 12 ' 28 " E a distance of 231.48 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 89 ° 47 ' 32 " E a distance of 178.87 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 04 ° 59 ' 10 " E a distance of 516.42 feet to a 1/2" Iron Rod with Cap set for the northwest corner, a 3/4" Iron Pipe found for reference near the most westerly corner of said Lot 2, Block 1, Country Club Lake Addition bears N 58 ° 48 ' 43 " W a distance of 1185.84 feet;

THENCE S 89° 47 ' 32 " E a distance of 305.23 feet to a 1/2" Iron Rod with Cap set for the northeast corner, a 1/2" Iron Rod found for the most northerly corner of Lot 1, Block 1, Country Club Lake Addition as described in Volume 3015, Page 65 bears N 6 ° 15 ' 05 " E a distance of 2300.12 feet;

EXHIBIT "1-A"
Land – Sheet 2

STRONG SURVEYING, LLC
FIRM NO. 10093500
1722 Broadmoor Ste. 105
Bryan, Texas 77802
Phone: (979) 776 – 9836
Fax: (979) 731 – 0096
Email: curtis@strongsurveying.com

THENCE S 04 ° 34 ' 14 " E a distance of 593.91 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 89 ° 47 ' 32 " E a distance of 93.03 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 0 ° 12 ' 28 " W a distance of 488.29 feet to a 1/2" Iron Rod with Cap set for the beginning of a curve;

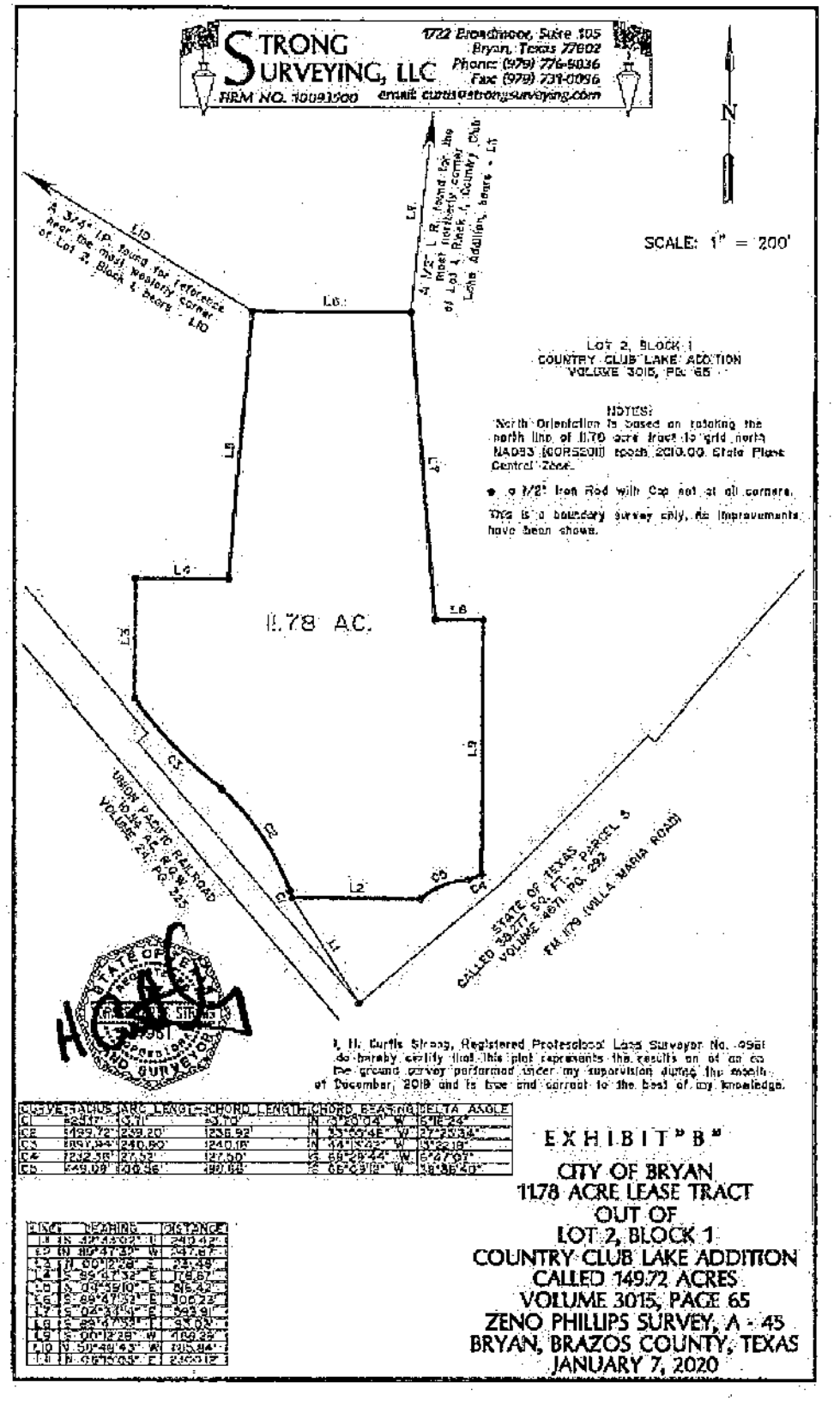
THENCE around a curve in a clockwise direction having a delta angle of 6 ° 47 ' 07 ", an arc distance of 27.52 feet, a radius of 232.35 feet, and a chord of S 69 ° 29 ' 44 " W, a distance of 27.50 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the left;

THENCE around a curve in a counterclockwise direction having a delta angle of 38 ° 38 ' 40 ", an arc distance of 100.56 feet, a radius of 149.09 feet, and a chord of S 68 ° 09 ' 12 " W, a distance of 98.66 feet to a 1/2" Iron Rod with Cap set for the end of this curve;

THENCE N 89 ° 47 ' 32 " W a distance of 247.67 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 11.78 ACRES OF LAND MORE OR LESS, according to a survey performed on the ground during December 2019 under the supervision of H. Curtis Strong, Registered Professional Land Surveyor No. 4961 and working under Firm No. 10093500. North Orientation is based on rotating the north line to Grid North NAD83 (CORS 2011) epoch 2010.00 State Plane Central Zone.

STATE OF TEXAS
REGISTERED
PROFESSIONAL
LAND SURVEYOR

EXHIBIT "1-A"
Land – Sheet 3



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	52.47'	3.71'	3.70'	N 02°20'04" W	4°16'24"
C2	1199.72'	239.20'	238.92'	N 33°33'45" W	27°23'34"
C3	1197.94'	240.80'	240.18'	N 44°52'42" W	11°31'18"
C4	1212.58'	27.42'	27.42'	S 68°28'44" W	1°17'07"
C5	449.09'	200.36'	198.68'	S 65°03'12" W	25°35'20"

LINE	BEARING	DISTANCE
L1	N 42°43'02" E	240.42'
L2	N 89°47'32" W	247.87'
L3	N 00°12'28" E	23.49'
L4	S 89°47'32" E	78.67'
L5	S 00°12'28" E	116.42'
L6	S 89°47'32" E	300.23'
L7	S 00°12'28" E	543.91'
L8	S 89°47'32" E	93.00'
L9	S 00°12'28" W	169.25'
L10	N 50°49'43" W	185.84'
L11	N 66°15'05" E	230.12'

EXHIBIT "B"
CITY OF BRYAN
11.78 ACRE LEASE TRACT
OUT OF
LOT 2, BLOCK 1
COUNTRY CLUB LAKE ADDITION
CALLED 149.72 ACRES
VOLUME 3015, PAGE 65
ZENO PHILLIPS SURVEY, A - 45
BRYAN, BRAZOS COUNTY, TEXAS
JANUARY 7, 2020

Exhibit "1"
Ground Lease

GROUND LEASE AGREEMENT

by and between

CITY OF BRYAN,
as Landlord

and

VILLA MARIA PARTNERSHIP, LLC
as Tenant

Dated as of , 2020

BIGSHOTS AGGIELAND DEVELOPMENT

BRYAN, TEXAS

TABLE OF CONTENTS

Page

ARTICLE I GENERAL TERMS 1
1.1 Definitions 1
1.2 Rules of Usage 1

ARTICLE II REPRESENTATIVES 2
2.1 Landlord Representative 2
2.2 Tenant Representative 2

ARTICLE III LEASED PREMISES 3
3.1 Grant of Leased Premises; Habendum 3
3.2 Delivery of Possession; Covenant of Quiet Enjoyment; Leasehold Priority 3
3.3 Leased Premises Reservations 3
3.4 Construction Lay-down Areas 3

ARTICLE IV INTENTIONALLY RESERVED 4

ARTICLE V TERM 4
5.1 Term 4
5.2 Renewal Term 4
5.3 Tenant's Right to Terminate 4

ARTICLE VI RENT; FUNDING OBLIGATIONS 5
6.1 Payment of Rent 5
6.2 Rent 5
6.3 Calculation and Payment of Percentage Rent 5
6.4 Additional Rent 6
6.5 Place and Method of Payment 6
6.6 Accounting Standard 6
6.7 Tenant's Annual Statements 6
6.8 Books and Records 6
6.9 Landlord Audit 6
6.10 Overpayments; Underpayments 7
6.11 Independent Audit 7
6.12 Landlord's Improvements 8
6.13 Special Provisions for Landlord Use 8

ARTICLE VII CONDITION OF LEASED PREMISES 8
7.1 Condition of Leased Premises; Disclaimer of Representations and Warranties 8
7.2 Tenant's Risks 9

ARTICLE VIII CERTAIN TENANT DEADLINES AND DELIVERABLES 9
8.1 Intentionally Reserved 9
8.2 Intentionally Reserved 9
8.3 Intentionally Reserved 10
8.4 Tenant Deadlines 10
8.5 Informational Purposes Only; No Approval Required 10
8.6 Applicable Law 11

ARTICLE IX CONSTRUCTION OF THE PROJECT IMPROVEMENTS; GENERAL WORK REQUIREMENTS 11
9.1 General Provisions 11

TABLE OF CONTENTS
(continued)

9.2 Material Changes 11
9.3 Remedial Work 11
9.4 Work Performed on Project Improvements and Additional Work 12
9.5 Mechanics' Liens and Claims 14
9.6 Construction Safety Plan 14
9.7 Total Project Costs 14
9.8 Tree Protection 14
9.9 Intentionally Reserved 15
9.10 Cessation of Work for an Extended Period of Time 15
9.11 Project Construction Contract Bond 15

ARTICLE X DELAYS AND EFFECT OF DELAYS 15
10.1 Excusable Tenant Delay 15
10.2 Excusable Landlord Delay 16
10.3 Continued Performance; Exceptions 16

ARTICLE XI DISPUTE RESOLUTION 16
11.1 Intentionally Reserved 16
11.2 Intentionally Reserved 16
11.3 Intentionally Reserved 16
11.4 Intentionally Reserved 17
11.5 Dispute Resolution 17

ARTICLE XII USE AND OCCUPANCY; PERMITTED AND PROHIBITED USES; OPERATING REQUIREMENTS 18
12.1 Intentionally Reserved 18
12.2 Permitted Uses 18
12.3 Prohibited Uses 18
12.4 Continuous Operation During the Term 19
12.5 Shared Parking Facilities 20
12.6 Intentionally Reserved 20
12.7 Compliance with Applicable Laws and Permitted Encumbrances 21
12.8 Excavations 21
12.9 Intentionally Reserved 21
12.10 Marketing and Advertising 21

ARTICLE XIII IMPOSITIONS; NET LEASE 22
13.1 Taxes and Assessments 22
13.2 Tenant's Right to Contest Impositions 22
13.3 Failure to Pay Impositions 23
13.4 Net Lease 23

ARTICLE XIV REPAIRS AND MAINTENANCE; UTILITIES 24
14.1 Repairs and Maintenance 24
14.2 Utilities 24

ARTICLE XV OWNERSHIP OF IMPROVEMENTS AND TENANT'S PERSONAL PROPERTY; ADDITIONAL WORK 25
15.1 Title to the Project Improvements 25
15.2 Additional Work by Tenant 26
15.3 No Substitute for Permitting Processes 27
15.4 Surety Bonds for Additional Work 27

ARTICLE XVI LANDLORD'S RIGHT OF ENTRY 27
16.1 Access to Leased Premises by Landlord 27

TABLE OF CONTENTS
(continued)

ARTICLE XVII ADDITIONAL ENVIRONMENTAL PROVISIONS 28
17.1 No Hazardous Materials 28
17.2 Notice of Environmental Event 28
17.3 Environmental Audit 28
17.4 Tenant Release 29

ARTICLE XVIII CASUALTY DAMAGE 29
18.1 Damage or Destruction 29
18.2 Casualty Proceeds 29
18.3 Abatement 30
18.4 Option to Terminate 30

ARTICLE XIX INSURANCE AND INDEMNIFICATION 31
19.1 Policies Required 31
19.2 Blanket or Master Policy 35
19.3 Failure to Maintain 36
19.4 Intentionally Reserved 36
19.5 Additional Policy Requirements 36
19.6 General Obligations with Respect to Policies 38
19.7 Proceeds of Insurance 38
19.8 Indemnity by Tenant 38
19.9 Conduct of Claims 39
19.10 Failure to Defend 40
19.11 No Third Party Beneficiary 40
19.12 Intentionally Reserved 40
19.13 Intentionally Reserved 40
19.14 Indemnity by Landlord 40

ARTICLE XX CONDEMNATION 41
20.1 Condemnation of Substantially All of the Leased Premises 41
20.2 Condemnation of Part 41
20.3 Temporary Taking 42
20.4 Condemnation Proceedings 43
20.5 Notice of Condemnation 43
20.6 Condemnation by Landlord 43

ARTICLE XXI ASSIGNMENT, TRANSFER AND SUBLEASING 43
21.1 Assignment 43
21.2 Standards for Landlord Approval of Transfers; Costs 44
21.3 No Waiver of Rights by Landlord 44
21.4 Conditions to Effectiveness of Any Transfer 44
21.5 Acceptance of Rent 44
21.6 Use Agreements 45
21.7 Transfers by Landlord 45
21.8 No Release 45

ARTICLE XXII SURRENDER OF POSSESSION; HOLDING OVER 46
22.1 Surrender of Possession 46
22.2 Removal of Tenant's Personal Property 46
22.3 Holding Over 46

ARTICLE XXIII REPRESENTATIONS, WARRANTIES AND COVENANTS 47
23.1 Tenant's Representations and Warranties 47
23.2 Intentionally Reserved 48
23.3 Landlord's Representations and Warranties 48

TABLE OF CONTENTS
(continued)

ARTICLE XXIV DEFAULTS AND REMEDIES 48
24.1 Events of Default 48
24.2 Remedies 49
24.3 Intentionally Reserved 51
24.4 Limited Recourse Against Landlord 51
24.5 Right to Injunction 51
24.6 Effect of Termination 51

ARTICLE XXV LEASEHOLD MORTGAGES 52
25.1 Tenant's Limited Right to Grant Liens and Special Provisions Applicable to Permitted Project Financing Holders 52
25.2 Leasehold Mortgagee Not Bound 53
25.3 Default Notice 53
25.4 Notice to Leasehold Mortgagee 53
25.5 Procedure on Default 53
25.6 New Lease 55
25.7 New Lease Priority 55
25.8 Liability of New Tenant 55
25.9 Subordination by Landlord 55
25.10 Use Agreements and Rents 55
25.11 Legal Proceedings 56
25.12 Notices 56
25.13 Amendments 56
25.14 Fee Mortgages 56

ARTICLE XXVI GENERAL PROVISIONS 56
26.1 No Broker's Fees or Commissions 56
26.2 Controlling Body of Landlord Approval 57
26.3 Non-Appropriation 57
26.4 Recording of Memorandum of Lease 57
26.5 Interest on Overdue Obligations 57
26.6 Employment of Consultants 57
26.7 Estoppel Certificates 57
26.8 Open Records 58
26.9 Maintenance of Rights of Way, Easements and Licenses 58
26.10 Compliance with Anti-Forfeiture Laws 58
26.11 Intentionally Reserved 58
26.12 Intentionally Reserved 58
26.13 No Indirect Damages 58

ARTICLE XXVII INTENTIONALLY RESERVED 59

ARTICLE XXVIII MISCELLANEOUS 59
28.1 Accounting Terms and Determinations 59
28.2 Survival 59
28.3 Severability 59
28.4 Entire Agreement; Amendment 59
28.5 Table of Contents; Headings; Exhibits 59
28.6 Parties in Interest; Limitation on Rights of Others 59
28.7 Counterparts 60
28.8 Governing Law 60
28.9 Court Proceedings 60
28.10 Limitation to Capacity as the Landlord 60
28.11 Capacity of Persons Acting on Behalf of the Landlord 60
28.12 No Limitation on Landlord's Governmental Functions 60
28.13 Non-liability of the Landlord's Officials and the Tenant's Employees 61

TABLE OF CONTENTS
(continued)

28.14 Payment on Business Days 61
28.15 Time 61
28.16 Interpretation and Reliance 61
28.17 Attorneys' Fees 61
28.18 No Waivers 61
28.19 Joint and Several Liability 62
28.20 Relationship of the Parties; No Partnership 62
28.21 Non-Merger of Estates 62
28.22 Covenants Running with the Estates in Land 62
28.23 Payments by Either Party 62
28.24 Notice 62

TABLE OF CONTENTS
(continued)

APPENDICES, SCHEDULES AND EXHIBITS

Appendix A	Glossary of Defined Terms
Exhibit A	Land
Exhibit B	Memorandum of Lease
Exhibit C	Permitted Encumbrances
Exhibit D	Project Budget
Exhibit E	Project Construction Schedule

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "**Lease**") is made and entered into effective as of [____], 2020 (the "**Execution Date**") by and between the **CITY OF BRYAN**, a Texas home-rule municipal corporation ("**Landlord**"), and **VILLA MARIA PARTNERSHIP, LLC**, a Delaware limited liability company (collectively, "**Tenant**"). Landlord and Tenant are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

A. Landlord is the fee simple owner of that certain 12 acres of land, more or less, a portion of the former Travis B. Bryan Municipal Golf Course, which is more particularly described in Exhibit A located in Bryan, Brazos County, Texas.

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Leased Premises in accordance with the terms hereof.

C. In connection with its lease of the Leased Premises, Tenant desires to undertake the development, construction, operation and maintenance of a multi-story golf-centered recreational and entertainment complex with related parking and infrastructure in accordance with the terms hereof.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

ARTICLE I

GENERAL TERMS

1.1 **Definitions**. Unless the context shall otherwise require, capitalized terms used in this Lease shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A.

1.2 **Rules of Usage**. The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) "Include", "includes" and "including" shall be deemed to be followed by ", but not limited to," whether or not they are in fact followed by such words or words of like import.

(2) "Writing", "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws in Appendix A means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by Appendix A are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Lease and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word "or" will have the inclusive meaning represented by the phrase "and/or".

(10) "Shall" and "will" have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of calendar day shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question in Bryan, Texas.

(12) References to "$" or to "dollars" shall mean the lawful currency of the United States of America.

(13) "Not to be unreasonably withheld" when used herein with respect to any Approval shall be deemed to be followed by ", conditioned or delayed" whether or not it is in fact followed by such words or words of like import.

ARTICLE II

REPRESENTATIVES

2.1 **Landlord Representative**. Landlord hereby designates the City Manager of the City or his designee to be the representative of Landlord (the "**Landlord Representative**"), and shall have the right, from time to time, to change the individual or individuals who are the Landlord Representative by giving at least ten (10) calendar days prior written Notice to Tenant thereof. The only functions under this Lease of the Landlord Representative shall be as expressly specified in this Lease. With respect to any such action, decision or determination to be taken or made by Landlord under this Lease, the Landlord Representative shall take such action or make such decision or determination or shall notify Tenant in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination of any one of the individuals from time to time serving as the Landlord Representative acting alone and without the joinder of the other individuals then serving as the Landlord Representative shall be binding on Landlord but only in those instances in which this Lease specifically provides for the Approval, decision, confirmation or determination of the Landlord Representative and in no other instances; *provided, however*, that notwithstanding anything in this Lease to the contrary, the Landlord Representative shall not have any right to modify, amend or terminate this Lease.

2.2 **Tenant Representative**. No later than thirty (30) days after the Execution Date, Tenant shall designate in writing to Landlord a person from time to time to serve as the representative of Tenant (the "**Tenant Representative**"), who shall be authorized to act on behalf of Tenant under this Lease. Tenant shall have the right, from time to time, to change the individual who is the Tenant Representative by giving at least ten (10) calendar days' prior written Notice to Landlord thereof. With respect to any such action, decision or determination to be taken or made by Tenant under this Lease, the Tenant Representative shall take such action or make such decision or

determination or shall notify Landlord in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any written Approval, decision, confirmation or determination hereunder by the Tenant Representative shall be binding on Tenant; *provided, however*, that notwithstanding anything in this Lease to the contrary, the Tenant Representative shall not have any right to modify, amend or terminate this Lease.

ARTICLE III

LEASED PREMISES

3.1 **Grant of Leased Premises; Habendum**. In consideration of and pursuant to the covenants, agreements and conditions set forth herein, effective as of the Execution Date, Landlord does lease, let, demise and rent unto Tenant, and Tenant does rent and lease from Landlord, on and subject to the terms, conditions and provisions of this Lease, the Leased Premises, for the Term set forth in Article V hereof.

TO HAVE AND TO HOLD the Leased Premises unto Tenant for the Term pursuant to the terms and conditions of this Lease.

3.2 **Delivery of Possession; Covenant of Quiet Enjoyment; Leasehold Priority.**

3.2.1 **Delivery of Possession**. On the Execution Date, Landlord will deliver to Tenant possession and occupancy of the Leased Premises subject only to (i) the Permitted Encumbrances, (ii) the rights and reservations of Landlord under this Lease and (iii) all Applicable Laws. Tenant shall not have the right to use or occupy any part of the Leased Premises prior to the Execution Date.

3.2.2 **Covenant of Quiet Enjoyment**. Landlord covenants that Tenant, upon paying the Rent and upon keeping, timely observing and performing the terms, covenants and conditions of this Lease to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use and enjoy the Leased Premises during the Term without ejection or interference by or from Landlord or any other Person claiming by, through or under Landlord (other than Persons claiming by, through or under Tenant), subject only to (i) the Permitted Encumbrances, (ii) Applicable Law, (iii) the rights and reservations of Landlord under this Lease.

3.2.3 **Intentionally Reserved**.

3.2.4 **Operational Rights; Revenue**. Subject to the terms and provisions of this Lease, Tenant shall have full and exclusive control of the management and operation of the Leased Premises. Without limiting the generality of the foregoing, but subject to the terms of this Lease, Tenant shall own all revenues of any source generated by or from the Leased Premises or the operation or management thereof, including all sublease and other rental or license fees, and all advertising and signage revenues of any type whatsoever.

3.3 **Leased Premises Reservations**. Notwithstanding anything in this Lease to the contrary, Landlord hereby reserves (and the Leasehold Estate shall not include) the following (the "**Leased Premises Reservations**"):

3.3.1 **Ingress and Egress**. For the benefit of the public and Landlord, the non-exclusive right of ingress and egress to, from and across the outside public areas located on the Leased Premises.

3.3.2 **Utilities**. The right of the City to install under or below ground level at the Leased Premises any and all utilities (and appurtenances related thereto) that the City deems reasonably necessary; *provided, however*, that the location, route, construction and use thereof will not materially interfere with the operation of the Leased Premises by Tenant, as a whole, pursuant to the terms of this Lease.

3.4 **Construction Lay-down Areas**. Tenant shall confine all Construction Work during the Term to within the Leased Premises. Notwithstanding the foregoing, in the event that Tenant reasonably requires the use of a portion of any real property in the immediate vicinity of the Land owned by Landlord as a construction lay-down area in connection with Construction Work during the Term, Tenant may request in writing the Approval of the

Landlord Representative (such Approval not to be unreasonably withheld) for Tenant's use of such areas as are reasonably necessary to cause the completion of the construction of the Construction Work, as applicable, in accordance with the terms of this Lease. In the event that the Landlord Representative grants such Approval in its reasonable discretion, then the area so Approved by the Landlord Representative ("**Construction Lay-down Area**") shall become a portion of the Leased Premises under the same terms and conditions as the other Leased Premises hereunder, as applicable, and such other terms and conditions as may be contained in the Approval of the Landlord Representative, except that (i) Tenant shall have no obligation for any Impositions with regard to such area and (ii) Tenant's right to use such area shall immediately expire upon the date specified in the Approval of Landlord Representative, as to the Project Improvements, or the completion of the Additional Improvements in accordance with the terms of this Lease, as to the Additional Work, as the case may be, and Tenant shall be limited to the use of such area as a construction lay-down and staging area in connection with the performance of such Construction Work. Within thirty (30) calendar days of expiration of Tenant's right to use such area, Tenant shall restore same to as good or better condition as existed when Tenant first entered such area.

ARTICLE IV

INTENTIONALLY RESERVED

ARTICLE V

TERM

5.1 Term. The term of this Lease shall be for twenty-five (25) years (or as extended by the Renewal Option) and shall commence on the Execution Date, and the Term shall expire on the Lease Expiration Date (as may be extended by the Renewal Option, the "**Term**").

5.2 **Renewal Term**. Subject to the terms and conditions of this Lease and provided that (i) this Lease is in full force and effect and (ii) no Tenant Default exists on either the date of exercise or on the date of commencement of the Renewal Term, Tenant shall have the right to two (2) renewal options (each, a "**Renewal Option**") to extend the Term of this Lease for an additional term of ten (10) years each (each, a "**Renewal Term**") that commences at 12:00 a.m. on the day immediately following the expiration of the Term then in effect, and upon the same terms, conditions and covenants as are contained herein by delivering written notice to Landlord (the "**Renewal Notice**") of such election no more than twenty-four (24) months and no less than twelve (12) months prior to the expiration of the Term then in effect; *provided, however*, that notwithstanding the foregoing, (i) Percentage Rent shall be calculated during the Renewal Term in accordance with Section 6.3.1, and (ii) Tenant's right to exercise the Renewal Option shall be subject Tenant having timely delivered the Renewal Notice to Landlord pursuant to the terms and conditions of this Section 5.2. For the avoidance of confusion, the Parties hereto agree that the maximum Term of this Lease shall be forty-five (45) years from the Execution Date.

5.3 **Tenant's Right to Terminate**. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to terminate this Lease in the event that Tenant's Adjusted Gross Revenue is negative, and has remained negative for a continuous period of eighteen (18) months following the Substantial Completion of the Project Improvements Work, other than as a result of a Casualty, Condemnation Action or a failure of Tenant to perform its obligations under this Lease. If Tenant elects to terminate this Lease in accordance with the immediately preceding sentence, Tenant shall provide to Landlord written notice of such election no later than thirty (30) days following the date on which Tenant is required pursuant to the terms of this Lease to deliver to Landlord the Quarterly Statement showing that Tenant's Adjusted Gross Revenue has been continuously negative for a period of eighteen (18) months. Further, any such notice of termination shall be accompanied by a written certification, executed by a Responsible Officer of Tenant, certifying that Tenant's Adjusted Gross Revenue has been continuously negative for the period of eighteen (18) months immediately preceding the date on which the notice of termination is given. If Tenant fails to exercise its termination right within the 30-day period as provided for in this Section 5.3, Tenant shall be deemed to have waived such right and may not terminate this Lease pursuant to this Section 5.3.

ARTICLE VI

RENT; FUNDING OBLIGATIONS

6.1 **Payment of Rent**. Tenant shall pay to Landlord, without abatement, demand, set-off or counterclaim (except as expressly provided for herein), all Rent in accordance with Section 28.23. Tenant hereby acknowledges and agrees that (i) Landlord and Tenant have expressly negotiated that except as otherwise expressly provided in this Lease, Tenant's covenants to pay Rent (and all other sums payable by Tenant under this Lease) are separate and independent from Landlord's obligations hereunder, including any covenant to provide services and other amenities, if any, hereunder and (ii) had the Parties not mutually agreed upon the independent nature of Tenant's covenants to pay all Rent hereunder, Landlord would have required a greater amount of Rent in order to enter into this Lease, if at all.

6.2 **Rent**. Commencing on the Execution Date, and during each Lease Year thereafter, Tenant covenants and agrees to pay to Landlord rent as follows (collectively, "**Rent**"):

(a) Percentage Rent for each Lease Year of the Term as provided in Section 6.3.1, which Percentage Rent shall be due and payable in accordance with Section 6.3.2;

(b) The Additional Rent as provided in Section 6.4, which Additional Rent shall be due and payable in accordance with Section 6.4.

6.3 **Calculation and Payment of Percentage Rent**.

6.3.1 **Percentage Rent**. Subject to the terms of Section 6.12 with respect to the Leased Premises commencing with the first Lease Year of the Term and continuing thereafter for the remainder of the Term, Tenant shall pay Landlord annual rental (the "**Percentage Rent**") equal to the following percentages multiplied by the Adjusted Gross Revenue for such Lease Year set forth opposite such percentage.

Lease Year	Revenue Percentage
Lease Year 1	0%
Lease Year 2	0%
Lease Year 3	2%
Lease Year 4	4%
Lease Years 5 - Lease Expiration Date	6%

In no event shall the Percentage Rent due for any Lease Year (beginning in Lease Year 4) be less than the average of the Percentage Rent payable during the two (2) Lease Years immediately preceding such Lease Year (the "**Minimum Rent**"). Notwithstanding this statement, if in Lease Year 8 the Percentage Rent has been more than the Minimum Rent for the prior two (2) Lease Years, than the Minimum Rent obligation is removed for the duration of the Term.

6.3.2 **Payment of Percentage Rent**. Tenant shall furnish to Landlord within twenty (20) days after the end of each quarter during the Term of this Lease a complete statement (the "**Quarterly Statement**") of the amount of Adjusted Gross Revenue made from the Leased Premises during said quarter, the Quarterly Statement to be in such form and style, and contain such details and breakdown as Landlord may reasonably require. Tenant shall pay to Landlord on or before the date which is thirty (30) days following the earlier of: (i) Tenant's furnishing of said Quarterly Statement and (ii) the date on which Tenant was required under the Lease to furnish such Quarterly

Statement, the amount which is equal to the percentage set forth above, times the amount of Adjusted Gross Revenue occurring during the quarter represented by said statement.

6.4 **Additional Rent**. Tenant covenants and agrees to pay, as additional rental, all of the following (collectively, the "**Additional Rent**"):

(a) All Impositions as and when required to be paid under the terms of this Lease;

(b) All costs, expenses, liabilities, obligations and other payments of whatever nature which Tenant has agreed to pay under the provisions of this Lease as and when required to be paid pursuant to the terms of this Lease.

6.5 **Place and Method of Payment**. All Percentage Rent shall be paid to Landlord, without notice or demand, and all Rent shall be paid as required by this Lease and in the manner set forth in Section 6.1.

6.6 **Accounting Standard**. For purposes of determining Percentage Rent and the preparation of all financial statements required to be delivered to Landlord under this Lease, Adjusted Gross Revenues shall be determined on an accrual basis in accordance with GAAP (the "**Accounting Standard**"). The Accounting Standard shall be consistently applied during the Term and shall be used for the preparation and maintenance by all books and records required to be maintained by or on behalf of Tenant under the terms of this Lease.

6.7 **Tenant's Annual Statements**. In addition to Tenant's obligations to deliver the Quarterly Statements as set forth in Section 6.3.2, Tenant, at its sole cost and expense, shall provide to Landlord annually, within ninety (90) calendar days after the end of each Lease Year during the Term, (i) a statement of Adjusted Gross Revenues for the Lease Year that just ended, and (ii) the calculation of the Percentage Rent, each of which has been prepared by Tenant and audited by a national independent public accounting firm selected by Tenant, together with such auditor's opinion issued in connection with such audit. Such opinion shall be addressed to Landlord and Tenant and shall certify that (i) the statement of Adjusted Gross Revenues and Percentage Rent present fairly, in all material respects, the Adjusted Gross Revenues and Percentage Rent for such Lease Year, (ii) the audit has been conducted in accordance with all applicable Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants and generally accepted auditing standards and (iii) based on such audit, there is a reasonable basis for concluding that the statement of Adjusted Gross Revenues in question is free of any material misstatement. Subject to the provisions of Section 6.10 and Section 6.11 below, in the event the auditor's opinion for any Lease Year demonstrates that there has been an overpayment or underpayment of Percentage Rent or any other amount payable to Landlord for such Lease Year, any such overpayments or underpayments shall be credited or paid, as applicable, in accordance with the provisions of Section 6.10 below.

6.8 **Books and Records**. Tenant shall keep, or cause to be kept, full, complete and proper books, records and accounts of Adjusted Gross Revenues and Percentage Rent by Lease Year, on an accrual basis and determined in accordance with the Accounting Standard. The books of account and all other records relating to or reflecting Adjusted Gross Revenues and Percentage Rent shall be kept at a business office within the Leased Premises, or at such other location reasonably Approved by the Landlord Representative, and the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than five (5) calendar days' Notice to Tenant, to examine and inspect such books of account and other records for the purpose of investigating and verifying the accuracy of any statement of Adjusted Gross Revenue or Percentage Rent; *provided, however,* that Tenant shall keep such books of account and records and make them available for inspection or audit by Landlord only for five (5) years after the end of each Lease Year in question, but in no event longer than three (3) years after the Lease Expiration Date.

6.9 **Landlord Audit**. Landlord, at its expense (except as provided herein), shall have the right, at any time during the Term and within the earlier of (i) five (5) years after the Lease Year in question and (ii) three (3) years following the Lease Expiration Date to audit those portions of the books and records for the Leased Premises which relate to the calculation of Adjusted Gross Revenues or Percentage Rent for such Lease Year or as otherwise necessary to confirm Tenant's compliance with the terms of this Lease Agreement. Any such audit will be

commenced and conducted with reasonable promptness, after reasonable notice to Tenant and by an auditor whose fee for such audit is not calculated on a contingent basis.

6.10 Overpayments; Underpayments.

6.10.1 Tenant's Annual Statement. Subject to Landlord's right to perform its own audit pursuant to Section 6.10.2 below, if any annual statement delivered by Tenant pursuant to Section 6.7 discloses (i) an overpayment of Percentage Rent during the prior Lease Year, then Tenant shall be entitled to a credit in the amount of such overpayment against Percentage Rent next coming due under this Lease until such credit is extinguished; *provided, however*, that during the last Lease Year of the Term, in the event that the credit for such overpayment of Percentage Rent is not extinguished by actual credits against Percentage Rent during such Lease Year, Landlord shall pay to Tenant the amount of such overpayment of Percentage Rent which was not actually extinguished by credits against Percentage Rent within thirty (30) calendar days of Landlord's receipt of the annual audit for the last Lease Year pursuant to Section 6.7, or (ii) an underpayment of Percentage Rent during the prior Lease Year, Tenant shall pay to Landlord, contemporaneously with delivery of its annual statement pursuant to Section 6.7, the amount of such underpayment of Percentage Rent for the prior Lease Year.

6.10.2 Landlord's Audit. Subject to Tenant's rights to disagree with said findings or some portion of the same pursuant to the terms of this Section 6.10.2, in the event an audit performed by or on behalf of Landlord pursuant to Section 6.9 shall indicate that Tenant has (i) underpaid Percentage Rent during any Lease Year covered by such audit, Tenant shall pay to Landlord, within thirty (30) calendar days after Tenant's receipt of a copy such audit and without Notice or demand, the amount of such underpayment of Percentage Rent together with interest at the Default Rate on the amount of such underpayment from the date such Percentage Rent was originally due until paid, or (ii) overpaid Percentage Rent during any Lease Year covered by such audit, Tenant shall be entitled to a credit in the amount of such overpayment against Percentage Rent next coming due under this Lease until such credit is extinguished; *provided, however,* that during the last Lease Year of the Term, in the event that the credit for such overpayment of Percentage Rent is not extinguished by actual credits against Percentage Rent during such Lease Year, Landlord shall pay to Tenant, within thirty (30) calendar days Landlord's receipt of the annual audit for the last Lease Year pursuant to Section 6.7, the amount of such overpayment of Percentage Rent which was not actually extinguished by credits against Percentage Rent. In the event that the audit by or on behalf of Landlord pursuant to Section 6.9 shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of Adjusted Gross Revenues for any Lease Year covered by such audit, Tenant shall reimburse Landlord for all Landlord's actual and reasonable out-of-pocket expenses in connection with such audit by or on behalf of Landlord, including the engagement of an independent accountant or accounting firm, within thirty (30) calendar days after Tenant's receipt of a copy of such audit. Notwithstanding the foregoing, in the event that Tenant shall give Notice to Landlord within thirty (30) calendar days after Tenant's receipt of a copy an audit by or on behalf of Landlord pursuant to Section 6.9 that Tenant disagrees with said findings or some portion of the same, Tenant will promptly (i) pay Landlord the underpaid Percentage Rent, together with interest thereon at the Default Rate from the date such Percentage Rent was originally due until paid, by an amount equal to that portion that Tenant does not disagree with, and (ii) reimburse Landlord for the cost of Landlord's audit if the agreed upon discrepancy shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of Adjusted Gross Revenues for any Lease Year in question. If no Notice is given by Tenant to Landlord during said thirty (30) calendar day period, Tenant shall be deemed to have given Notice as of the last day of said period that it agrees with the entire disputed amount of Landlord's audit.

6.11 Independent Audit. If Tenant and Landlord fail to agree to a settlement of the disputed amounts under Section 6.10.2 above (whether as to all or a portion of Landlord's or its auditor's findings) within forty-five (45) calendar days after Notice by Tenant to Landlord of its dispute under Section 6.10.2, then Tenant shall designate (subject to the Approval of the Landlord Representative) an independent public accounting firm that is not a Person Related to or otherwise retained or employed by Landlord, Tenant or any Person Related to either of them, and other than the firm which performed Landlord's or Tenant's audit, to audit such disputed report, audit or calculation, and any overpayment or excess deposit or expenditure or underpayment or insufficient deposit or expenditure revealed by the additional audit of said independent accountants, shall be credited, paid or deposited, as applicable, in accordance with Section 6.10.2 above. If the additional audit shows an understatement of aggregate Adjusted Gross Revenues for all Business Operations equal to or in excess of three percent (3%) of aggregate Adjusted Gross Revenues for all Business Operations for any Lease Year in question, and Tenant has not previously

paid Landlord for the cost of its audit pursuant to Section 6.10.2 above, then Tenant shall reimburse Landlord for the cost of Landlord's audit pursuant Section 6.9. Additionally, if the additional audit pursuant to this Section 6.11 indicates (i) an understatement by Tenant of aggregate Adjusted Gross Revenues for all Business Operations for all Lease Years covered by such audit by an amount equal to or in excess of three percent (3%) of actual aggregate Adjusted Gross Revenues for all Business Operations for such Lease Year(s), then Tenant shall pay the entire cost of the additional audit, (ii) an overstatement by Tenant of aggregate Adjusted Gross Revenues for all Business Operations for all Lease Years covered by such audit by an amount equal to or in excess of three percent (3%) of actual aggregate Adjusted Gross Revenues for all Business Operations for such Lease Year(s), then Landlord shall pay the entire cost of the additional audit and (iii) that actual aggregate Adjusted Gross Revenues for all Business Operations for all Lease Year(s) covered by such audit were neither understated nor overstated by an amount equal to or in excess of three percent (3%), then Landlord and Tenant shall share equally the cost of the additional audit.

6.12 **Landlord's Improvements**. Anything else herein notwithstanding, Tenant obligation to pay Landlord Percentage Rent shall be abated for any portion of the Term prior to the date ("**Landlord's Substantial Completion Notice Date**") on which Landlord provides to Tenant Notice that is has substantially completed the Landlord's Improvements, which Notice shall be accompanied by a certificate of substantial completion issued by the project architect for the Landlord's Improvements or such other documentation reasonably available to Landlord sating that Landlord has substantially completed the Landlord's Improvements. On Landlord's Substantial Completion Notice Date, Tenant shall immediately commence payment of Percentage Rent in accordance with the terms hereof; *provided, however*, Tenant shall not be obligated to pay to Landlord any Percentage Rent for the period prior to Landlord's Substantial Completion Notice Date.

6.13 **Special Provisions for Landlord Use**. In order to support the public function of the City and to better serve its residents, Tenant shall provide the following additional services, on an annual basis during the Term, and free of charge to Landlord:

6.13.1 **Access to Meeting Room**. Landlord shall be provided with access to Tenant's meeting room, provided that Tenant's meeting room is not otherwise booked, reserved or in use in accordance with Tenant's business.

ARTICLE VII

CONDITION OF LEASED PREMISES

7.1 **Condition of Leased Premises; Disclaimer of Representations and Warranties**. TENANT ACKNOWLEDGES AND AGREES:

(a) THAT NEITHER LANDLORD NOR ANY RELATED PARTY OF LANDLORD MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND LANDLORD HEREBY DISCLAIMS AND TENANT WAIVES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LEASED PREMISES (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER UNDERLYING THE LEASED PREMISES AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF THE LEASED PREMISES), (ii) THE SUITABILITY OF THE LEASED PREMISES OR THEIR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH TENANT MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE TERM, (iii) THE LAND USE REGULATIONS APPLICABLE TO THE LEASED PREMISES OR THE COMPLIANCE THEREOF WITH ANY APPLICABLE LAWS, (iv) THE FEASIBILITY OF THE PROJECT IMPROVEMENTS WORK, (v) THE EXISTENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS, (vi) THE CONSTRUCTION OF THE PROJECT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS ON THE LEASED PREMISES OR (vii) ANY OTHER MATTER RELATING TO THE PROJECT IMPROVEMENTS OR ANY OTHER IMPROVEMENTS AT ANY TIME CONSTRUCTED OR TO BE CONSTRUCTED THEREON;

(b) THAT NO REVIEW, APPROVAL OR OTHER ACTION BY LANDLORD UNDER THIS LEASE SHALL BE DEEMED OR CONSTRUED TO BE SUCH A REPRESENTATION OR WARRANTY;

(c) THAT TENANT SHALL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT, AND TENANT SHALL HAVE INSPECTED AND HAD FULL OPPORTUNITY TO BECOME FAMILIAR WITH, THE CONDITION OF THE LEASED PREMISES, THE BOUNDARIES THEREOF, ALL LAND USE REGULATIONS APPLICABLE THERETO AND OTHER MATTERS RELATING TO THE DEVELOPMENT THEREOF; AND

(d) TENANT'S ACCEPTANCE OF THE LEASED PREMISES ON THE EXECUTION DATE WILL BE STRICTLY ON AN "AS IS, WHERE IS" BASIS INCLUDING THE ENVIRONMENTAL CONDITION OF THE LEASED PREMISES.

7.2 **Tenant's Risks**. TENANT AGREES THAT NEITHER LANDLORD NOR ANY OF LANDLORD'S AFFILIATES OR RELATED PARTIES SHALL HAVE ANY RESPONSIBILITY FOR ANY OF THE FOLLOWING (COLLECTIVELY, THE "**TENANT'S RISKS**"):

(a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON, OTHER THAN INFORMATION PRODUCED BY LANDLORD (AS OPPOSED TO A THIRD PARTY);

(b) THE CONDITION, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION OR VALUE OF THE LEASED PREMISES;

(c) THE COMPLIANCE OF THE LEASED PREMISES OR ANY OTHER PROPERTY OF LANDLORD WITH ANY APPLICABLE LAND USE REGULATIONS OR ANY APPLICABLE LAW;

(d) THE FEASIBILITY OF THE PROJECT, PROJECT IMPROVEMENTS WORK OR ANY ADDITIONAL WORK;

(e) THE EXISTENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS;

(f) THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LEASED PREMISES OR ANY ADJACENT PROPERTY; AND

(g) ANY OTHER MATTER RELATING TO ANY PROJECT IMPROVEMENTS OR ADDITIONAL IMPROVEMENTS.

IT IS UNDERSTOOD AND AGREED BY TENANT (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT, INCLUDING ITS RELATED PARTIES) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE FINANCIAL CONDITION, CREDITWORTHINESS, CONDITION, AFFAIRS, STATUS AND NATURE OF ANY PERSON, THE LEASED PREMISES OR ANY OTHER PROPERTY.

ARTICLE VIII

CERTAIN TENANT DEADLINES AND DELIVERABLES

8.1 **Intentionally Reserved**.

8.2 **Intentionally Reserved**.

8.3 **Intentionally Reserved**.

8.4 **Tenant Deadlines**. Subject to extension as a result of an Excusable Tenant Delay Period and/or Landlord Delay, in accordance with the terms of this Lease, Tenant shall meet the following deadlines in connection with the following matters:

8.4.1 **Project Financing**. Tenant shall provide to Landlord Representative reasonable evidence that Tenant has obtained Permitted Project Financing that, in Landlord Representative's reasonable discretion, is sufficient to complete Tenant's Project Improvements Work, which evidence shall be provided to Landlord on or before June 30, 2020.

8.4.2 **Approval of Project Plans**. Tenant shall submit to Landlord the Project Plans for Landlord Representative's Approval, such Approval not to be unreasonably withheld. The Project Plans for the Project Improvements submitted for Approval by Landlord shall include a completed parking analysis which shall confirm that the Project Improvements include adequate parking facilities (the "**Tenant's Parking Facility**") with not less than one (1) parking space per 100 square feet of enclosed gross floor area within the Project Improvements, which Tenant's Parking Facility shall be constructed in accordance with the City's Code of Ordinances. Tenant submit the Project Plans for Landlord's Approval pursuant to this Section 8.4.2 on or before June 30, 2020.

8.4.3 **Scheduled Project Start Date Milestone**. Tenant shall cause the construction of the Project Improvements Work to commence on or before thirty (30) calendar days of the date on which Tenant receives Landlord Representative's approval of the Project Plans.

8.4.4 **Project Construction Status Reports**. Tenant shall provide written reports to Landlord Representative regarding the status of the Project Improvements Work not less frequently than once every month, which reports shall include (i) any new or additional facts discovered by Tenant or any circumstances known to Tenant that occur during the course of the Project Improvements Work which in Tenant's reasonable opinion materially change the Total Project Costs or materially affect Tenant's ability to achieve Substantial Completion and Commencement of Operations on or before the Substantial Completion Deadline, including any Excusable Tenant Delay or Landlord Delay and reasonable detail of such facts or circumstances, (ii) any material change to the Project Construction Schedule or the Project Budget and (iii) such other information that Landlord may reasonably request with regard to the status of the Project Improvements.

8.4.5 **Substantial Completion**. Tenant shall cause Substantial Completion and Commencement of Operations to occur on or before the Substantial Completion Deadline.

8.4.6 **Substantial Completion Certificate**. On or before Substantial Completion Deadline, Tenant shall deliver to Landlord Representative a written certification, which has been executed by the Project Architect (the "**Substantial Completion Certificate**"), certifying the date upon which Substantial Completion and the Commencement of Operations actually occurred, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same.

8.4.7 **Final Completion**. On or before the date which is one hundred eighty (180) calendar days after Substantial Completion, Tenant shall cause Final Completion of the Project Improvements Work to occur; and, upon the occurrence of Final Completion of the Project Improvements Work, deliver to Landlord Representative: (i) a written certification (together, with such documents as Landlord shall reasonably request to substantiate same), which has been executed by a Responsible Officer of Tenant, certifying that (a) all aspects of Final Completion of the Project Improvements Work have been achieved, along with such documentation as is necessary (or as Landlord may reasonably require) to substantiate same and the date of Final Completion and (b) Tenant has fulfilled its obligations under Section 9.7. Tenant shall obtain a final certificate of occupancy within one hundred eighty (180) calendar days after Substantial Completion of the Project Improvements Work.

8.5 **Informational Purposes Only; No Approval Required**. Information that is submitted to Landlord for informational purposes only shall require no Approval by Landlord; *provided, however*, such

information may be used by Landlord for the purpose of confirming that Tenant has complied with its obligations under this Lease including its obligations to meet the timetables and deadlines set forth in Section 8.4.

8.6 **Applicable Law**. No Approvals or confirmations by Landlord or Landlord Representative under this Lease shall relieve or release Tenant from any Applicable Laws relating to the design, construction, development, operation or occupancy of the Project Improvements (including Applicable Laws that are procedural, as well as or rather than, substantive in nature). The Approval by Landlord or Landlord Representative of any matter submitted to Landlord or Landlord Representative pursuant to this Lease, which matter is specifically provided herein to be Approved by Landlord or Landlord Representative shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Tenant from, any requirement hereunder for the Approval of Landlord or Landlord Representative.

ARTICLE IX

CONSTRUCTION OF THE PROJECT IMPROVEMENTS; GENERAL WORK REQUIREMENTS

9.1 **General Provisions**.

9.1.1 **Project Improvements**. Tenant shall design, develop and construct, or have designed, developed and constructed, the Project Improvements within the Leased Premises in accordance with the terms and conditions of Project Plans, this Lease and all Applicable Laws, and shall use commercially reasonable efforts to adhere to the Project Construction Schedule (subject to any Excusable Tenant Delay and/or Landlord Delay permitted in accordance with the terms of this Lease), in each case, at Tenant's sole cost, risk and expense.

9.2 **Material Changes**. Tenant shall, prior to commencing any Project Improvement Work that includes substantial changes, obtain the Approval of Landlord Representative of any modification to the Project Plans that would result in a Material Change to the Project Improvements, such Approval not to be unreasonably withheld.

9.3 **Remedial Work**.

9.3.1 **Tenant's Remedial Work**. Tenant hereby acknowledges that it has received and reviewed the Environmental Reports. Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigations, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event or any Hazardous Materials present at, in, on, or under the Leased Premises ("**Tenant's Remedial Work**") other than the Landlord's Remedial Work. Prior to undertaking any Tenant's Remedial Work, Tenant shall obtain the Approval (not to be unreasonably withheld) of Landlord Representative of the steps Tenant proposes to take with respect to any Tenant's Remedial Work and Tenant shall select, subject to the Approval of Landlord Representative, an independent environmental consultant or engineer to oversee Tenant's Remedial Work. To the extent Landlord has a claim against any third Person with respect to any Environmental Event that is included in Tenant's Remedial Work, Landlord hereby assigns to Tenant, as of the date Tenant is required to perform the related Tenant's Remedial Work, such claim insofar as it relates to the cost of Tenant's Remedial Work or any damages suffered by Tenant in connection with such Environmental Event, and Landlord shall reasonably cooperate with Tenant and provide Tenant with such information as Tenant shall reasonably request in pursuing such claim against any such Person. Notwithstanding the foregoing, or anything else in this Lease, Tenant and Landlord agree that it shall be Landlord's sole responsibility to perform or cause to be performed and to pay for the cost of performing, any and all corrective or remedial actions (including all investigations, monitoring, etc.) of any Recognized Environmental Conditions set forth in the Environmental Reports that result in the need for corrective or remedial work at, in, or under the Leased Premises.

9.3.2 **Landlord's Remedial Work**. Landlord shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all

investigations, monitoring, etc.) required by Applicable Law to be performed with respect to any Recognized Environmental Conditions set forth in the Environmental Reports or to the extent caused by Landlord from and after the Execution Date ("**Landlord's Remedial Work**"). Tenant shall promptly inform Landlord of any such Environmental Event or any Hazardous Material discovered by Tenant (or any agent, contractor, subcontractor, other tenant or licensee of Tenant) in, on or under the Leased Premises and promptly shall furnish to Landlord any and all reports and other information available to Tenant concerning the matter. Landlord and Tenant shall promptly thereafter meet to discuss the steps to be taken to investigate and, if necessary, remedy such matter, including mutual selection of an independent environmental consultant to evaluate the condition of the Leased Premises and any materials thereon and therein. If it is determined pursuant to an evaluation conducted by the mutually selected independent environmental consultant that remediation of the same is required by this Section 9.3.2, then Landlord shall pay the costs of such evaluation and Tenant shall perform Landlord's Remedial Work at Landlord's cost and expense and with due diligence and in compliance with all Applicable Laws.

9.3.3 **Intentionally Reserved**.

9.3.4 **Waste Disposal**. All construction wastes resulting from any Construction Work shall be disposed of appropriately by Tenant based on its waste classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

9.3.5 **No Cost to Landlord**. For the avoidance of doubt it is understood and agreed that Landlord shall not be responsible for the cost of any of Tenant's Remedial Work.

9.4 **Work Performed on Project Improvements and Additional Work**.

9.4.1 **General Requirements**. Tenant shall not do or permit others to do any Construction Work, (i) unless and until Tenant shall have first procured and paid for all Governmental Authorizations then required for the Construction Work then being performed, (ii) with respect to any Project Improvements Work and Material Additional Work only, unless and until Tenant shall have submitted the Project Plans or the Material Additional Work Plans, as applicable, for Approval pursuant to the terms of this Lease, as and if required, and such Approval has been obtained as and if required by the terms of this Lease, (iii) unless and until Tenant shall have delivered to Landlord Representative evidence of its compliance with Section 9.4.4 and (iv) unless and until Tenant is in compliance with all Insurance Covenants. It is understood and agreed that, to the extent permitted by Applicable Law, such permits and authorizations may be procured in stages subject to, and with the benefit of, all requirements of Applicable Laws. All Construction Work shall be (i) prosecuted with due diligence and completed with all reasonable dispatch in accordance with the terms of this Lease, (ii) designed, constructed and performed in a good and workmanlike manner in accordance with standard design or construction practice, as applicable, for the design or construction of improvements similar to the Improvements in question or the performance of the work in question, pursuant to a Project Design Contract and a Project Construction Contract, (iii) constructed and performed using qualified workers and subcontractors, (iv) constructed and performed in accordance with all Applicable Law, the requirements of this Lease and the requirements, rules and regulations of all insurers of the Leased Premises and (v) subject to Section 9.5 below, free of any Liens other than any Leasehold Mortgage permitted pursuant to this Lease. Tenant shall take commercially reasonable measures and precautions to minimize the risk of damage, disruption or inconvenience caused by such work on properties in the immediate vicinity of the Leased Premises in accordance with the Operating Standard and make adequate provisions for the safety of all Persons affected thereby in connection with any Construction Work. Except and to the extent as otherwise expressly set forth herein, Tenant shall be responsible for all costs incurred in connection with any Construction Work. Dust, noise and other effects of such work shall be controlled using commercially accepted methods so as to comply with all Applicable Laws.

9.4.2 **Record Drawings and Other Documents**. Upon completion of any Project Improvements Work or any Material Additional Work, Tenant shall furnish to Landlord (i) three (3) complete, legible, full-size sets of record drawings (prepared in accordance with any Project Design Contract in the case of the Project Improvements Work, and in accordance with accepted industry standards, to the extent appropriate considering the work performed in the case of any Material Additional Work in question) and (ii) copies (certified by Tenant as being true, correct and complete in all material respects) of all Governmental Authorizations required for the use, occupancy and operation of all aspects and areas of the Leased Premises in accordance with the terms of

this Lease, including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease.

9.4.3 **Retention of Drawings and Other Documents**. Tenant shall retain and at all times maintain at a business office within the Leased Premises at least one (1) complete, legible, full-size set of all working drawings in accordance with accepted industry standards regarding the Project Improvements, to the extent appropriate considering all work performed to date and the Improvements as they then exist, and certified true copies of all Governmental Authorizations, including (if applicable) all certificates of occupancy or their equivalent for the Leased Premises as they then exist, as shall then be required by any Governmental Authority. After termination or expiration of this Lease, Landlord may use (but not own) for purposes related to the Project Improvements all such working drawings subject to the terms of the applicable Project Design Contract, and at all times during the Term, the same shall be available to Landlord and its agents and employees who shall have the right, at all reasonable times during Business Hours and upon not less than two (2) calendar days' notice to Tenant, to examine, inspect, review, copy and otherwise use the same, all in accordance with the Project Design Contract.

9.4.4 **Contract Requirements**. Tenant shall cause (i) all contracts with any contractor regarding the construction of any Construction Work to be entered into with a Qualified Contractor and to require such contractor to perform such Construction Work in a good and workmanlike manner, (ii) all contracts with any architect or design professional regarding any Construction Work to be entered into with a Qualified Design Professional, (iii) any Project Design Contract and any Material Additional Work Design Contract to permit Landlord to use (but not own) any plans and specifications to which Tenant is then entitled pursuant to any such Project Design Contract or Material Additional Work Design Contract, subject to the terms of the applicable contract, (iv) the Project Construction Contract and any Material Additional Work Construction Contract to provide for statutory retainage in accordance with the then current requirements of the Texas Property Code and to contain a representation and warranty that the Construction Work covered by such agreements will be warranted from defects in workmanship and materials for a period of at least one (1) year from the date of Final Completion of such Construction Work (unless a longer period of time is provided for by the manufacturer or supplier of any materials or equipment which is a part of such Construction Work) and an assignment to Landlord of the right to enforce such warranty as to any Project Improvements, to the same extent as if Landlord were a party to the contract and (v) the Project Construction Contract to (a) cover all of the Project Improvements Work through Final Completion, (b) provide for a fixed price or a guaranteed maximum price for all such work, (c) require Substantial Completion to be achieved in accordance with the terms of this Lease, (d) be bonded by a Qualified Surety pursuant to statutory payment and performance bonds which have been Approved by Landlord Representative, such Approval not to be unreasonably withheld, naming Landlord as a co-obligee (collectively, the "**Project Construction Contract Bond**") and which covers the payment and performance obligations of such Project Contractor under the Project Construction Contract and (e) require that upon Substantial Completion, Tenant will continue to retain an amount at least equal to two times the cost to complete the Project Improvements Work in order to achieve Final Completion unless a lesser amount is Approved by Landlord's Representative (collectively, the "**Project Construction Contract Requirements**").

9.4.5 **Landlord's Joinder in Permit Applications**. Landlord agrees, with reasonable promptness after receipt of a Notice therefor from Tenant, to execute, acknowledge and deliver (or to join with Tenant in the execution, acknowledgment and delivery of), at Tenant's cost and expense as a portion of Total Project Costs if incurred with regard to the Project Improvements Work, in its capacity as the ground lessor of the fee interest in the Leased Premises, as necessary and on terms (and with respect to any easement, along such route) as Approved by Landlord: (i) any and all applications for replatting, rezoning, licenses, permits, vault space, alley closings or other Governmental Authorizations of any kind or character (including the resubdivision of the Leased Premises into a single lot or parcel or separate lots or parcels for purposes of assessment and taxation) required of Tenant by any Governmental Authority in connection with the operation, construction, alteration, repair or demolition, in accordance with this Lease, of Improvements located on the Leased Premises, and (ii) easements or rights-of-way for public utilities or similar public facilities over and across any portion of the Leased Premises which may be useful or necessary in the proper economic and orderly development of the Project Improvements to be erected thereon in accordance with this Lease; *provided, however,* that notwithstanding anything herein to the contrary, Landlord shall not be obligated to execute any agreement or do any other act that requires or could require Landlord to pay any sum or which would subject Landlord or any interest of Landlord in the Leased Premises or in any other property of Landlord to any monetary Lien; and nothing in this Section 9.4.5 shall constitute a waiver or

delegation of any Governmental Functions of Landlord or constitute the Approval by Landlord in its representative capacity as a Governmental Authority to any such applications.

9.5 **Mechanics' Liens and Claims**. IT IS THE INTENT OF LANDLORD AND TENANT THAT NOTHING CONTAINED IN THIS LEASE SHALL (1) BE CONSTRUED AS A WAIVER LANDLORD'S LEGAL IMMUNITY AGAINST MECHANIC'S LIENS ON ITS PROPERTY AND/OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANIC'S LIENS ON ITS PROPERTY, INCLUDING THE LEASED PREMISES, OR (2) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF LANDLORD FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, TENANT THAT WOULD GIVE RISE TO ANY SUCH MECHANIC'S LIEN AGAINST LANDLORD'S INTEREST IN THE LEASED PREMISES, THE PROJECT, OR ANY PROPERTY OF LANDLORD, OR IMPOSING ANY LIABILITY ON LANDLORD FOR ANY LABOR OR MATERIALS FURNISHED TO OR TO BE FURNISHED TO TENANT UPON CREDIT. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY IN THE LEASED PREMISES TO POST AND KEEP POSTED ON THE LEASED PREMISES SUCH NOTICES OF NON-RESPONSIBILITY AS LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD, AND THE FEE OF THE LEASED PREMISES, FROM MECHANIC'S LIENS. If any Lien shall be filed against Landlord's or Tenant's interest in the Leased Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises (collectively, any "**Mechanic's Lien**") by or on behalf of Tenant, any Affiliate of Tenant or anyone claiming by, through or under Tenant or any Affiliate of Tenant, Tenant shall, at its cost and expense but as a portion of Total Project Costs if incurred in connection with the Project Improvements Work, after notice of the filing thereof but in no event less than thirty (30) calendar days prior to the foreclosure of any such Mechanic's Lien, cause the same to be satisfied or discharged of record, or effectively prevent, to the reasonable satisfaction of Landlord Representative, the enforcement or foreclosure thereof against Landlord's or Tenant's interest in the Leased Premises by injunction, payment, deposit, bond, order of court or otherwise. If Tenant fails to satisfy or discharge of record any such Mechanic's Lien, or effectively prevent the enforcement thereof, by the date which is thirty (30) calendar days prior to the foreclosure thereof, then Landlord shall have the right, but not the obligation, to satisfy or discharge such Mechanic's Lien by payment to the claimant on whose behalf it was filed, and Tenant shall reimburse Landlord within fifteen (15) calendar days after demand for all amounts paid by Landlord (including reasonable attorneys' fees, costs and expenses), together with interest on such amounts at the Default Rate from the date of demand for such amounts by Landlord until reimbursed by Tenant, without regard to any defense or offset that Tenant has or may have had against such Mechanic's Lien claim. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all such Mechanic's Liens (including, all costs, expenses and liabilities, including reasonable attorneys' fees and court costs, so incurred in connection with such Mechanic's Liens).

9.6 **Construction Safety Plan**. Without in anyway limiting, waiving or releasing any of the obligations of Tenant under this Lease or any Applicable Law, Tenant agrees to require, pursuant to its construction contracts, that all Construction Work is performed, in accordance with the minimum security and safety standards and procedures to be followed in connection with any Construction Work and the performance thereof which reflects the security and safety standards and procedures that would be followed by a Reasonable and Prudent Developer or a Reasonable and Prudent Operator, as applicable.

9.7 **Total Project Costs**. Tenant covenants and agrees that it will provide or cause to be provided all funds necessary to pay Total Project Costs for the design, development and construction of the Project Improvements.

9.8 **Tree Protection**. Tenant will use best management practices recommended by Texas A&M Forest Service ("**Best Management Practices**") for the protection of existing community trees during Construction Work. Such practices shall include implementation of Tree Protection Zones around trees being retained on the Land and all trees on any Construction Lay-down Area. Tenant shall prohibit within Tree Protection Zones (i) stockpiling of any type, including construction material, debris, soil and mulch, (ii) altering of soils, including grade changes, surface treatment and compaction due to vehicle, equipment and foot traffic, (iii) trenching for utility installation or repair or irrigation system installation and (iv) attachment of anything to trunks or use of equipment that causes injury to the tree.

9.9 **Intentionally Reserved**.

9.10 **Cessation of Work for an Extended Period of Time**. In the event of a suspension of the construction of the Project Improvements by Tenant for (A) longer than thirty (30) consecutive calendar days or (B) ninety (90) calendar days in any three hundred sixty-five (365) calendar day period for any reason other than Excusable Tenant Delay and/or Landlord Delay (either such occurrence being a "**Cessation of Work**"), then, within thirty (30) calendar days after Tenant's receipt of Notice from Landlord informing Tenant that a Cessation of Work has occurred (which in the case of a period described in (B) may be one notice identifying each of the ninety (90) calendar days and need not be individual notices as to each calendar day), Tenant shall submit to Landlord a written completion plan detailing the measures that Tenant will implement to resume the construction of the Project Improvements and achieve Substantial Completion as required under this Lease and which plan shall (i) be adequate to provide Landlord with commercially reasonable assurance that, upon completion of such plan, Tenant will resume the construction of the Project Improvements and achieve Substantial Completion as required under this Lease and (ii) designate such reasonable major milestones as are reasonably appropriate in the circumstances as benchmarks for Tenant's progress in prosecuting such plan. If Landlord, in good faith, determines that any plan proposed by Tenant pursuant to this Section 9.10, fails to satisfy the foregoing requirements, Landlord shall deliver Notice to Tenant, specifying the reasons for Landlord's dissatisfaction with such plan, and Tenant shall, in good faith, propose such revisions to such plan as soon as practical as necessary to conform same to the requirements of this Section 9.10. If Landlord so requests, Tenant agrees to confer with Landlord regarding any plan required by Tenant pursuant to this Section 9.10 prior to submission to Landlord. After submittal to Landlord of a plan proposed by Tenant pursuant to this Section 9.10, Tenant shall promptly commence the implementation of such plan and thereafter diligently prosecute the Project Improvements Work in accordance with same.

9.11 **Project Construction Contract Bond**. Notwithstanding any language in this Lease to the contrary, Landlord covenants and agrees that so long as no Tenant Default then exists and provided that Tenant has promptly commenced and is diligently pursuing all claims under the Project Construction Contract Bond to cause the performance of the Project Improvements Work and the payment of all obligations in connection with same, Landlord will not exercise its rights as co-obligee under the Project Construction Contract Bond. Tenant covenants and agrees that (i) all proceeds received by or on behalf of Tenant under the Project Construction Contract Bond will be applied in satisfaction of Tenant's obligation hereunder to (a) complete the Project Improvements Work, and (b) pay the Total Project Costs and (ii) upon the occurrence and during the continuance of a Tenant Default, Landlord shall have the sole and exclusive right to enforce, and make claims under, the Project Construction Contract Bond.

ARTICLE X

DELAYS AND EFFECT OF DELAYS

10.1 **Excusable Tenant Delay**. Regardless of the existence or absence of references to Excusable Tenant Delay elsewhere in this Lease, the deadlines of Tenant set forth in Section 8.4 above and all other deadlines and time periods within which Tenant must fulfill the obligations of Tenant elsewhere in this Lease shall each be adjusted as appropriate to include Excusable Tenant Delay Periods unless otherwise expressly provided in this Agreement; *provided* that (i) the obligation to pay Rent as and when due pursuant to the terms of this Lease is not subject to adjustment or extension due to Excusable Tenant Delay and (ii) Tenant complies with the requirements of this Article X.

With respect to each occurrence of Excusable Tenant Delay, Tenant shall, within ten (10) calendar days after Tenant's knowledge of the occurrence of an event that Tenant reasonably believes to be an Excusable Tenant Delay, which may be a claim from the Project Contractor, give Notice to Landlord Representative of the event constituting Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period resulting therefrom and the basis therefor, Tenant's good faith estimate of any adjustment resulting therefrom that is to be made to the Project Construction Schedule or other time for performance, as the case may be, together with reasonable documentation supporting the adjustments proposed. If Landlord Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, Landlord Representative shall give Notice to Tenant of the claimed deficiency and Tenant shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from Tenant shall be required

with respect to a continuing Excusable Tenant Delay, except that Tenant shall promptly (and in no event less often than every thirty (30) calendar days) give Notice to Landlord Representative of any further changes in the Project Construction Schedule or the additional time for performance claimed by reason of the continuing delay. Landlord Representative shall have the right to challenge Tenant's assertion of the occurrence of an Excusable Tenant Delay, or Tenant's good faith estimate of the Excusable Tenant Delay Period, changes in the Project Construction Schedule or the additional time for performance claimed by reason of the Excusable Tenant Delay if Landlord Representative gives Notice to Tenant within thirty (30) calendar days after receipt by Landlord Representative of such claim of Excusable Tenant Delay or Notice from Tenant of further changes to such dates as a result of such Excusable Tenant Delay, as the case may be (which challenge shall be deemed to have been made if Landlord Representative gives Notice to Tenant of any claimed deficiency in documentation as provided for above in this Section 10.1).

10.2 **Excusable Landlord Delay**. Regardless of the existence or absence of references to Excusable Landlord Delay elsewhere in this Lease, any deadline or time period within which Landlord must fulfill the obligations of Landlord in this Lease shall each be adjusted as appropriate to include Excusable Landlord Delay Periods; *provided* that Landlord complies with the requirements of this Article X.

With respect to each occurrence of Excusable Landlord Delay, Landlord Representative shall, within ten (10) calendar days after Landlord's knowledge of the occurrence of an event that Landlord reasonably believes to be an Excusable Landlord Delay, give Notice to Tenant of the event constituting Excusable Landlord Delay, Landlord Representative's good faith estimate of the Excusable Landlord Delay Period resulting therefrom and the basis therefor, Landlord Representative's good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Tenant believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Tenant shall give Notice to Landlord Representative of the claimed deficiency and Landlord Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from Landlord Representative shall be required with respect to a continuing Excusable Landlord Delay, except that Landlord Representative shall promptly (and in no event less often than every thirty (30) calendar days) give Notice to Tenant of any further changes in the additional time for performance claimed by reason of the continuing delay. Tenant shall have the right to challenge Landlord Representative's assertion of the occurrence of an Excusable Landlord Delay, or Landlord Representative's good faith estimate of the Excusable Landlord Delay Period, or changes in the additional time for performance claimed by reason of Excusable Landlord Delay if Tenant gives Notice to Landlord Representative within thirty (30) calendar days after receipt by Tenant of such claim of Excusable Landlord Delay or Notice from Landlord Representative of further changes to such dates as a result of such Excusable Landlord Delay, as the case may be (which challenge shall be deemed to have been made if Tenant gives Notice to Landlord Representative of any claimed deficiency in documentation as provided for above in this Section 10.2).

10.3 **Continued Performance; Exceptions**. Upon the occurrence of any Tenant Delay or Landlord Delay, the Parties shall endeavor to continue to perform their obligations under this Lease so far as reasonably practical. Toward that end, Tenant and Landlord each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Tenant Delay or Landlord Delay occasioned by an Excusable Tenant Delay or Excusable Landlord Delay, as applicable, and shall use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Lease after the occurrence of any Excusable Tenant Delay or Excusable Landlord Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any Landlord Delay or Tenant Delay.

ARTICLE XI

DISPUTE RESOLUTION

11.1 **Intentionally Reserved**.

11.2 **Intentionally Reserved**.

11.3 **Intentionally Reserved**.

11.4 Intentionally Reserved.

11.5 Dispute Resolution.

11.5.1 Settlement By Mutual Agreement. In the event any dispute, controversy or claim between or among the Parties arises under this Lease or is related in any way to this Lease or the relationship of the Parties hereunder (a "**Dispute or Controversy**"), including a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Lease, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 11.5.1. In the event a Dispute or Controversy arises, either Party shall have the right to notify the other Party that it has elected to implement the procedures set forth in this Section 11.5.1. Within fifteen (15) calendar days after delivery of any such Notice by one Party to the other Party regarding a Dispute or Controversy, Landlord Representative and the Tenant Representative shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of Landlord Representative and the Tenant Representative, they shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) calendar days after the Notice of the Dispute or Controversy was delivered, or if no resolution is obtained through such alternative technique, or if no such meeting takes place within the fifteen (15)-calendar day period, then either Party may by notice to the other Party submit the Dispute or Controversy to mediation in accordance with the provisions of Section 11.5.2. Upon the receipt of notice of referral to mediation hereunder, the receiving Party shall be compelled to mediate the Dispute or Controversy in accordance with the terms of Section 11.5.2 without regard to the justiciable character or executory nature of such Dispute or Controversy.

11.5.2 Mediation. Each Party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of Section 11.5.1 shall be submitted to mediation as follows:

(a) A Party desiring to engage in mediation hereunder shall request such mediation in writing, which writing shall be delivered to the opposing Party and include a clear statement of the matter(s) in dispute.

(b) Within ten (10) calendar days after receipt of the request specified in (a) above, the Parties shall confer in an effort to select a mediator/neutral. In the event that the Parties are unable to agree upon a mediator/neutral, each Party shall select a licensed mediator, and both such mediators shall promptly confer and select a third mediator, which third mediator shall mediate the Parties' dispute.

(c) Within ten (10) calendar days following selection of the mediator/neutral, the Parties shall confer with the mediator/neutral to select a mutually agreeable date, time, and location for the mediation session. In the event that the Parties are unable to reach agreement on one or more of these points, the mediator/neutral shall have the authority to select the date, time, and/or location for the mediation session.

(d) All costs relating to the mediation, including the mediator/neutral's fees and travel costs, shall be borne equally by the Parties.

(e) The Parties agree that the mediation shall be governed by, and subject to §154.073 of the Texas Civil Practice & Remedies Code. All communications by and between the Parties and the mediator/neutral shall be considered to be confidential and may not be used as evidence against any Party in any judicial or administrative proceeding.

(f) The Parties agree that both before and during the pendency of the mediation process neither Party will seek to initiate any judicial or administrative proceeding against the other. Only upon (1) completion of the mediation process and (2) written verification by the mediator/neutral that further

mediation efforts are unlikely to result in resolution of the dispute, may either Party initiate a judicial or administrative proceeding against the other.

11.5.3 **Emergency Relief**. Notwithstanding any provision of this Lease to the contrary, either Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in Brazos County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved by mediation, notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that the mediation will still be used in an effort to resolve the Dispute or Controversy.

ARTICLE XII

USE AND OCCUPANCY; PERMITTED AND PROHIBITED USES; OPERATING REQUIREMENTS

12.1 **Intentionally Reserved**.

12.2 **Permitted Uses**. Tenant covenants and agrees that it shall use and occupy the Leased Premises and the Project Improvements solely for the following purposes, but not the Prohibited Uses (collectively, the "**Permitted Uses**"):

(a) The designing, developing, constructing, furnishing and opening the Project Improvements pursuant to the terms and conditions of this Lease and the other Project Documents;

(b) The use of the Leased Premises and the Project Improvements as a multi-story golf-centered recreational and entertainment complex, under the tradename "BigShots Aggieland," equivalent to a Comparable Recreational Property operated in accordance with the Operating Standard and containing at least the amenities described in the Project Plans, together with the right to provide additional facilities and incidental uses reasonably related to such use, including commercial retail operations, restaurant uses, and business and communication centers;

(c) Temporary special event uses that do not exceed five (5) calendar days in duration, to the extent, and only to the extent, (i) Tenant obtains the advance Approval of the Landlord Representative for the same, such Approval not to be unreasonably withheld, and (ii) such uses are consistent with the Operating Standard and the priority Permitted Uses described in subparagraph (b) above and do not distract from such priority Permitted Uses;

(d) Live performances to the extent and only to the extent (i) such live performances occur inside of the Leased Premises and in accordance with Tenant's regular course of business and (ii) such performances are consistent with the Operating Standard and the priority Permitted Uses described in subparagraph (b) above and do not distract from such priority Permitted Uses;

(e) Maintenance and Repair Work pursuant to Section 14.1.1 hereof;

(f) Additional Work pursuant to Section 15.2.1 and the establishment and operation of such Additional Improvements in accordance with the above Permitted Uses; and

(g) Any other uses reasonably related or incidental to any of the foregoing and not inconsistent with any of the foregoing that are not Prohibited Uses.

12.3 **Prohibited Uses**. Tenant shall not use, or permit the use of, the Leased Premises, or any portion thereof, for any other, different or additional purpose that is not a Permitted Use without first obtaining the Approval of the Landlord Representative (such Approval not to be unreasonably withheld). Tenant agrees that the Permitted Uses are subject to Tenant's compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Leased Premises. Notwithstanding the Permitted Uses hereunder, Tenant agrees that it shall not (collectively, the "**Prohibited Uses**"):

(a) Create, cause, maintain or permit any public or private nuisance in, on or about the Leased Premises; *provided, however*, in no event will Landlord be entitled to assert that a Permitted Use held in compliance with Applicable Laws constitutes a public or private nuisance;

(b) Operate, or allow any Person to operate, in, on or about the Leased Premises any store or other facility a principal or significant portion of the business of which is a "sexual oriented business" as such term is defined in the City Codes;

(c) Use or allow the Leased Premises to be used for the sale or display to the public of any lewd or offensive sign or advertisement that offends the community standards including any sign or advertisement that promotes lewd or offensive activities for any public performance of any lewd or offensive activities that offends the community standards;

(d) Use or allow the Leased Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;

(e) Use or allow the Leased Premises to be used as a place of permanent residence by any Person or for any time share purposes;

(f) Use or permit the Leased Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold or used in connection with Tenants' operations permitted hereunder shall not be deemed to be a warehouse), convalescent care facility or mortuary; or

(g) Use or permit the use of the Leased Premises as a "gaming establishment" (as such term is defined in Section 103-03 of the Code of Ordinances, City of Bryan, Texas), a gentlemen's club (or other establishment that allows full or partial nudity), a tattoo parlor, a massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor.

The provisions of this Section 12.3 shall inure to the benefit of, and be enforceable by Landlord and its successors and assigns. No other Person, including any guest or patron of the Leased Premises, shall have any right to enforce the prohibitions as to the Prohibited Uses.

12.4 Continuous Operation During the Term.

12.4.1 Covenant to Operate. Subject to the provisions of Section 5.3 and Section 12.4.2 hereof, commencing on Substantial Completion of the Project Improvements Work and continuing thereafter during the remainder of the Term, Tenant covenants, at Tenant's sole cost and expense to:

(a) operate the Leased Premises, and cause the same to be operated, diligently and continuously for not less than seventy five hours per calendar week for the Permitted Use and in accordance with the Operating Standard without interruption for any reason other than Down Times (as defined in Section 12.4.2 below);

(b) perform all Maintenance and Repair Work in accordance with Section 14.1.1; and

(c) possess all Personal Property necessary for the operation of the Leased Premises and maintain all spare parts and inventory, in each case consistent with the requirements of clause (a) of this Section.

12.4.2 Down Times. Tenant may temporarily cease to operate areas or all or substantially all of the Leased Premises during the Term for, and only for, limited periods of down time ("**Down Times**") for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) During the period following any fire, windstorm, hail, flooding or other Casualty or condemnation or other exercise by a Governmental Authority of the power of eminent domain to the extent, and only to the extent, necessary in order to repair and restore the Project Improvements in accordance with the terms of this Lease;

(b) During any period of any Additional Work permitted pursuant to the terms of this Lease or otherwise Approved by Landlord;

(c) As a result of such other commercially reasonable interruptions as are incidental to the normal operation of the Leased Premises; or

(d) to the extent and only to the extent the same is not the result of Tenant's failure to timely fulfill its obligation under this Lease, including its obligations to comply with Applicable Laws as provided in this Lease, during any period required by Applicable Law;

provided, however that during all Down Times Tenant shall (i) use its commercially reasonable efforts to minimize the disruption of such Down Time and (ii) use its commercially reasonable efforts to minimize the disruption to the areas of the Leased Premises which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the Leased Premises.

12.4.3 **Continuous Conduct of Additional Work**. During the Term, Tenant covenants to conduct or cause to be conducted all elements of any Additional Work diligently and continuously, subject only to interruptions and delays caused by Excusable Tenant Delay or Landlord Delay, and in a manner consistent with the requirements of this Article XII.

12.4.4 **Continuing Obligation**. No cessation of operations pursuant to Down Times shall relieve Tenant of any obligations under this Lease (including the obligation to pay Rent unless expressly provided otherwise pursuant to the terms of this Lease) other than the relevant portions of the covenant of continuous operation contained in Section 12.4.1. Tenant acknowledges and agrees that (i) its continuous use and occupancy of the Leased Premises and its payment of Rent provide a significant benefit on which Landlord in part economically depends, (ii) violation of the covenants of continuous use, occupancy and operation in Section 12.4.1 and Section 12.4.5 shall each be a material breach of this Lease subject to the terms and conditions of Article XXIV and (iii) Landlord considers such covenants of continuous use, occupancy and operation a valuable contractual interest with which no other landlord should interfere by attempting to induce Tenant to move to other premises.

12.4.5 **Operation by Subtenants**. Tenant shall require all Subtenants to (i) be open for business on all weekdays and weekend days (other than Legal Holidays) and (ii) maintain minimum operating hours during each such weekday and weekend day that are consistent with the Operating Standard; *provided, however*, that such hours/days of operation may be changed for specific retail/service businesses if operation during such hours/days is not customary for the type of retail/service business operated by the Subtenant in the Project Improvements when compared to similar operations in Comparable Recreational Properties.

12.5 **Shared Parking Facilities**. If Landlord deems it necessary or convenient to construct further parking in addition to any parking facilities constructed as part of the Landlord's Improvements (the "**Landlord's Initial Parking Facility**"), Landlord may construct, at its cost and expense additional parking facilities (the "**Landlord's Additional Parking Facility**", and, together with the Landlord's Initial Parking Facility, the "**Landlord's Parking Facility**", and together with the Tenant's Parking Facility, the "**Parking Facilities**") adjacent to the Tenant's Parking Facility, but located in the Park. Tenant's Parking Facility and Landlord's Parking Facility are considered shared use for the Leased Premises and the Park. The Parties each hereby grant to the other Party during the Term of this Lease a non-exclusive license in and to the Parking Facilities for the sole purpose of permitting parking of passenger vehicles. Landlord and Tenant shall use reasonable efforts to coordinate any special events taking place on their respective parcels (i.e. in the Park or in the Leased Premises) such that there shall be adequate parking within the Parking Facilities to accommodate demand.

12.6 **Intentionally Reserved**.

12.7 **Compliance with Applicable Laws and Permitted Encumbrances**.

12.7.1 **Compliance with Applicable Laws; Maintenance of Governmental Authorizations**. Tenant shall throughout the Term (i) within the time periods permitted by Applicable Law, comply or cause compliance with all Applicable Laws applicable to the Leased Premises, and not use or permit the use of the Leased Premises in any manner which violates any Applicable Law; *provided, however,* that Tenant shall not be responsible for any failure to comply with Applicable Laws to the extent caused by Landlord or its Related Parties and (ii) maintain all Governmental Authorizations necessary to use and operate the Leased Premises in accordance with the terms of this Lease and not use or occupy (or knowingly permit the Leased Premises to be used or occupied) or do (or knowingly permit to be done) any act or thing upon or within the Leased Premises in a manner that would in any way give any Governmental Authority legal grounds to revoke any Governmental Authorization affecting the Leased Premises.

12.7.2 **Permitted Encumbrances**. Tenant shall throughout the Term, comply or cause compliance with the Permitted Encumbrances, *provided, however*, Tenant shall not be responsible for any failure to comply with the Permitted Encumbrances to the extent caused by Landlord or its Related Parties.

12.8 **Excavations**. If, at any time, Tenant conducts any excavation on the Leased Premises in connection with this Lease, in connection with such excavation, Tenant shall notify the owners of all lands, buildings and structures adjacent to the Leased Premises or other land to be excavated, and shall take all other actions and safeguards required of an excavating landowner and undertake all other actions and safeguards required pursuant to any Applicable Laws.

12.9 **Intentionally Reserved**.

12.10 **Marketing and Advertising**. Tenant shall use commercially reasonable good-faith efforts to (i) advertise the Leased Premises (which may, as appropriate, include advertising in conjunction with any other businesses of Tenant or any of their Affiliates as Tenant may desire, in local, regional and national markets through co-operative advertising campaigns implemented by Tenant) and (ii) create, implement and manage practical and innovative programs that market the Leased Premises and promote (including public relations activities) its value as a recreational destination in an effort to realize its potential for increased attendance and sales. None of such advertising, marketing and signage shall take away from or diminish the first-class nature of the Leased Premises and shall be consistent and implemented in accordance with the Operating Standard. In connection with any such advertising, Tenant shall use reasonable good faith efforts to include therein the use of the words "**Bryan, Texas**." In connection therewith, Landlord does hereby grant to Tenant the personal and nontransferable right and license to use the service mark of the City of Bryan in the development and promotion of the Leased Premises. The right granted to Tenant herein shall not be assigned, transferred or otherwise conveyed without Landlord's prior written consent. Tenant acknowledges Landlord's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Tenant shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Tenant acknowledges that use of the service mark shall not create in Tenant's favor any right, title, or interest in or to the service mark, but all uses of the service mark by Tenant shall inure to the benefit of Landlord. Upon termination of this Lease in any manner provided herein, Tenant will cease and desist from all use of the service mark in any way (and will at Landlord's request deliver up to Landlord, or its duly authorized representatives, all material and papers upon which the service mark appears), and Tenant shall at no time adopt or use, without Landlord's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.

ARTICLE XIII

IMPOSITIONS; NET LEASE

13.1 **Taxes and Assessments**.

13.1.1 **Impositions on Leased Premises**. Tenant shall be subject to, and responsible for, the payment of all Impositions levied on the Leased Premises payable for the period from and after the Execution Date and for the remainder of the Term.

13.1.2 **Payment of Impositions**.

(a) Throughout the Term, Tenant shall pay, or cause to be paid, all Impositions directly to the taxing authority or other payee therefor. Such payment shall be completed prior to the date on which such Imposition would become delinquent, subject to Section 13.2 below. If any Imposition legally may be paid in installments prior to delinquency, whether or not interest shall accrue on the unpaid balance thereof, Tenant shall have the option to pay such installments or portions thereof as shall be properly allocated to periods within the Term, together with any accrued interest. Tenant shall furnish to Landlord, promptly upon receipt thereof, copies of all notices of Property Taxes. Within thirty (30) calendar days after payment by Tenant of a Property Tax, and in any event prior to date of delinquency, Tenant shall deliver to Landlord reasonable evidence of the payment thereof. Other than with respect to Property Taxes, Tenant shall be obligated to provide evidence of the payment of Impositions only when specifically requested to do so by Landlord, at any time and from time to time, and then only as to Impositions that have been paid, are payable or for which notice for the payment thereof has been received within the twenty-four (24) months prior to the date of Landlord's request.

(b) Notwithstanding anything to the contrary herein, (1) all Impositions with respect to the fiscal year or tax year in which the Execution Date occurs shall be apportioned so that Tenant shall pay only the portion of the Impositions that is applicable to the period after the Execution Date and (2) all Impositions for the fiscal year or tax year in which the Lease Expiration Date occurs or this Lease is earlier terminated shall be apportioned so that Tenant shall pay only the portion of such Impositions that are attributable to the period prior to the Lease Expiration Date.

13.2 **Tenant's Right to Contest Impositions**.

13.2.1 **Notice**. Tenant shall have the right in its own name, and at its sole cost and expense, to contest the validity or amount, in whole or in part, of any Impositions, by appropriate proceedings timely instituted in accordance with any protest procedures permitted by applicable Governmental Authority (a "**Tax Proceeding**"); provided Tenant at all times effectively stays or prevents any non-judicial or judicial sale of any part of the Leased Premises or the Leasehold Estate created by this Lease or any interest of Landlord or Tenant in any of the foregoing, by reason of non-payment of any Impositions. Tenant shall diligently pursue all such Tax Proceedings in good faith. Further, Tenant shall, incident to any such Tax Proceeding, provide such bond or other security as may be required by the applicable Governmental Authority, if any. TENANT SHALL INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD INDEMNITEES HARMLESS FROM ANY AND ALL SUCH IMPOSITIONS AND ALL CLAIMS, COSTS, FEES, AND EXPENSE RELATED TO ANY SUCH IMPOSITIONS OR TAX PROCEEDING, INCLUDING ANY AND ALL PENALTIES AND INTEREST, AND TENANT SHALL PROMPTLY PAY ANY VALID FINAL ADJUDICATION ENFORCING ANY IMPOSITIONS AND SHALL CAUSE ANY SUCH FINAL ADJUDICATION TO BE TIMELY SATISFIED PRIOR TO ANY TIME PERIOD WITHIN WHICH ANY NON-JUDICIAL OR JUDICIAL SALE COULD OCCUR TO COLLECT ANY SUCH IMPOSITIONS. NOTWITHSTANDING THE FOREGOING, TENANT SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND AND HOLD LANDLORD AND LANDLORD INDEMNITEES HARMLESS FROM ANY IMPOSITIONS, CLAIMS, COSTS, FEES AND EXPENSES TO THE EXTENT RESULTING FROM LANDLORD'S FAILURE TO NOTIFY TENANT OF ANY SUCH TAX PROCEEDINGS, OR LANDLORD'S SOLE NEGLIGENCE OR WILLFUL MISCONDUCT.

13.2.2 **Payment**. Upon the entry of any determination, ruling or judgment in any Tax Proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as is finally determined in such Tax Proceedings, the payment of which may have been deferred during the prosecution thereof, together with any Claims, costs, fees, interest, penalties, charges or other liabilities in connection therewith. Nothing herein contained, however, shall be construed so as to allow such Imposition to remain unpaid for such length of time as shall permit the Leased Premises or the Leasehold Estate, or any part thereof, to be sold or taken by any Governmental Authority for the non-payment of any Imposition. Tenant shall promptly furnish Landlord with copies of all notices, filings and pleadings in all such Tax Proceedings. If Landlord chooses to participate in any such Tax Proceedings, the Landlord shall have the right, at its expense, to participate therein; provided Landlord takes no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay Impositions.

13.2.3 **Reduction of Assessed Valuation**. Tenant at its expense may, if it shall so desire, endeavor at any time or times to obtain a reduction in assessed valuation of the Leased Premises for the purpose of reducing Impositions thereon. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for any such reduction in assessed value and any such tax refund shall be the property of Tenant (unless the same was paid by Landlord and not reimbursed by Tenant).

13.2.4 **Rendition**. Landlord hereby grants and gives permission to Tenant to render the Leased Premises from time to time during the Term. Landlord agrees to cooperate with Tenant in seeking the delivery of all notices of Impositions to Tenant directly from the applicable authorities.

13.2.5 **Joinder of Landlord**. To the extent such joinder is required by applicable Governmental Authority for such Tax Proceeding, Landlord shall cooperate in any such Tax Proceeding as reasonably requested by Tenant, at Tenant's sole cost and expense, whether or not Landlord is joined pursuant thereto.

13.2.6 **Prima Facie Evidence**. The certificate, advice, bill or statement issued or given by any Governmental Authority authorized by law to issue the same or to receive payment of an Imposition shall be prima facie evidence of the existence, non-payment or amount of such Imposition.

13.3 **Failure to Pay Impositions**. Notwithstanding anything to the contrary contained in this Lease and except as provided in Section 13.2 above, in the event Tenant fails to pay any Imposition pursuant to the provisions of this Lease before the date the same becomes delinquent, Landlord may, after giving Tenant ten (10) calendar days' notice of its intention to do so, pay or cause to be paid any such Imposition which is delinquent and Tenant shall, within thirty (30) calendar days following Landlord's demand and notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment in full by Tenant.

13.4 **Net Lease**. Except for costs that Landlord has specifically agreed to pay pursuant to the express terms of this Lease, (i) Landlord shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Lease, the Leased Premises or any Impositions and (ii) it is expressly understood and agreed that this is a completely net lease intended to assure Landlord the Rent herein reserved on an absolutely net basis. Tenant hereby acknowledges and agrees that (i) except for the express provisions of this Lease pursuant to which Tenant is entitled to a credit against or abatement of Rent, Landlord and Tenant have expressly negotiated that Tenant's covenants to pay Rent under this Lease are separate and independent from Landlord's obligations hereunder, including any covenant to provide repairs, services and other amenities, if any, hereunder, or the occurrence of any event, occurrence or situation during the Term, whether foreseen or unforeseen and howsoever extraordinary or beyond the contemplation of the Parties, including any Down Times (whether pursuant to Additional Work or otherwise) and (ii) had the parties not mutually agreed upon the independent nature of Tenant's covenants to pay all Rent hereunder, Landlord would have required a greater amount of Rent in order to enter into this Lease, if at all. **AS SUCH, EXCEPT FOR THE EXPRESS PROVISIONS OF THIS LEASE PURSUANT TO WHICH TENANT IS ENTITLED TO A CREDIT AGAINST OR ABATEMENT OF RENT, TENANT WAIVES ANY RIGHT NOW OR HEREAFTER CONFERRED UPON IT AT LAW OR IN EQUITY TO ANY ABATEMENT, DEDUCTION, SUSPENSION, DEFERMENT, DIMINUTION OR REDUCTION OF, OR SET-OFF OR DEFENSE AGAINST ANY RENT AND ANY**

OTHER SUMS FOR WHICH TENANT IS OBLIGATED UNDER THIS LEASE ON ACCOUNT OF SUCH EVENT, HAPPENING, OCCURRENCE OR SITUATION.

ARTICLE XIV

REPAIRS AND MAINTENANCE; UTILITIES

14.1 **Repairs and Maintenance**.

14.1.1 **Tenant's Obligation**. Tenant shall, commencing on the Execution Date and throughout the remainder of the Term, at its own expense, at no cost or expense to Landlord and in compliance with Applicable Laws, do the following (collectively, the "**Maintenance and Repair Work**"):

(a) Perform all Maintenance and otherwise keep and maintain, or cause to be kept and maintained, the Leased Premises and all Personal Property located within the Leased Premises in good working repair in accordance with the Operating Standard and in compliance with all Applicable Laws;

(b) Promptly make, or cause to be made, all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen, to the Leased Premises, including those which constitute Capital Repairs, to keep the Leased Premises clean, in good working repair, order and condition in accordance with the Operating Standard and in compliance with all Applicable Laws;

(c) Perform all alterations, upgrades, improvements, renovations or refurbishments to the Leased Premises, including Capital Repairs, necessary to keep the Leased Premises in a condition consistent with the standards of Comparable Recreational Properties;

(d) Provide, maintain and repair any water/sewer pipes, chilled water lines, electrical lines, gas pipes, conduits, mains and other utility transmission facilities necessary for Tenant's operations from the Leased Premises as provided in Section 14.2.

This Section 14.1 shall not apply to any damage or destruction by fire or other Casualty within the scope of Section 18.4 in the event Tenant is entitled to, and timely makes the election permitted under Section 18.4 to, terminate this Lease. Further, this Section 14.1 shall not apply to any damage caused by any Condemnation Action within the scope of Section 20.1.1 in the event Tenant is entitled to, and timely makes the election permitted under Section 20.1.1, to terminate this Lease.

14.1.2 **Standards Required for Maintenance and Repair Work**. The necessity for and adequacy of Maintenance and Repair Work pursuant to Section 14.1.1 shall be measured by the Operating Standard, *provided* that Tenant shall perform, or cause to be performed, all Maintenance and Repair Work also in accordance with Section 9.4, Section 9.5, Section 9.6, Article XV and Article XIX.

14.1.3 **No Services Provided by Landlord**. Following the Execution Date, Landlord shall not be required to furnish any services or facilities or to perform any maintenance, repair or alterations in or to the Leased Premises other than as and if expressly required under the terms of this Lease. Other than as and if expressly required under the terms of this Lease, Tenant hereby assumes the full and sole responsibility for the condition, operation, security, repair, replacement, maintenance and management of the Leased Premises during the Term.

14.2 **Utilities**.

14.2.1 **Utility Costs**. Landlord shall not be obligated to furnish or pay for any utilities for the Leased Premises. Tenant shall cause the necessary mains, conduits and other facilities to be provided and maintained (from and within the property lines of the Leased Premises to the connection with the supplying utility in the streets immediately adjacent to the Leased Premises) to supply water, gas, telephone, electricity and other utility services commonly supplied to and within Comparable Recreational Properties similar to the Project Improvements, and Tenant shall, at Tenant's sole cost and expense, subject to the obligations of the applicable utility provider,

maintain and repair all water pipes, conduits, electric lines, gas pipes and other transmission facilities in, on or servicing the Leased Premises during the Term, *provided* that to the extent the same are not located in or on the Leased Premises, the obligation of Tenant shall be only to maintain such pipes, conduits, lines or other facilities to the connection points located in the streets immediately adjacent to the Leased Premises. During the Term, Tenant shall pay, or cause to be paid, for all water used in the Leased Premises and all rents, fees or charges imposed for water used, and for any sewage charge, or assessment, whether imposed by meter or otherwise. Tenant shall comply with all water conservation measures required by Applicable Laws. During the Term, Tenant shall also pay, or cause to be paid, for all gas, electricity, fuel and other utilities used or consumed to heat, cool, light, illuminate or otherwise power the Leased Premises and outside lighting and signs, if any, for the Leased Premises on or surrounding the Leased Premises (excluding costs of municipal street lighting) or otherwise delivered thereto. No interruption or malfunction of any utility services shall constitute an eviction or disturbance of Tenant's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in Rent.

14.2.2 **Utility Upgrade and Extension Costs**. Tenant shall cause the necessary mains, conduits and other facilities to be provided and maintained (from and within the property lines of the Leased Premises and beyond to the connection with the supplying utility in the streets immediately adjacent to the Leased Premises) to supply any additional volume or type of utility services required in connection with Construction Work, Tenant's operations at the Leased Premises or otherwise, and Tenant shall, at its sole cost and expense, subject to the obligations of the applicable utility provider, maintain and repair such additional or other utility service facilities in, on or servicing only the Project Improvements during the Term, *provided* that to the extent the same are not located in or on the Leased Premises, the obligation of Tenant shall be only to maintain such pipes, conduits, lines or other facilities to the connection points located in the streets immediately adjacent to the Project Improvements. Tenant shall pay, or cause to be paid, rents, charges and fees imposed for use of such additional volume or type of utility services. "**Utility Upgrade and Extension Costs**" shall mean the total of all costs, expenses, rents, charges and fees arising under this Section 14.2.2. No interruption or malfunction of any additional volume or type of utility services shall constitute an eviction or disturbance of Tenant's possession of the Leased Premises or a breach of the covenant of quiet enjoyment, and no such interruption or malfunction shall result in any abatement or reduction in Rent.

ARTICLE XV

OWNERSHIP OF IMPROVEMENTS AND TENANT'S PERSONAL PROPERTY; ADDITIONAL WORK

15.1 Title to the Project Improvements.

15.1.1 **During Lease Term; Upon Termination of Lease Term**. Title to all of the Project Improvements constructed on the Leased Premises and all equipment, fixtures, machinery, furniture, furnishings and other Personal Property therein erected, constructed, installed or placed in or affixed to the Project Improvements by or on behalf of Tenant, shall be and remain in the Tenant for and during the Term. Subject to the provisos hereinafter set forth, upon the Lease Expiration Date, title to all of the Project Improvements automatically shall vest in Landlord without the payment of any compensation therefore, and neither Tenant nor anyone claiming by, through or under Tenant shall have any claim thereto or any right, title or interest therein except as may have been otherwise agreed to in writing by Landlord in nondisturbance, easement or comparable agreements or in this Lease, provided however that Landlord shall have no right, title or interest in any Personal Property at the Leased Premises bearing any of Tenant's trademarks or including any of Tenant's intellectual property. Notwithstanding anything herein to the contrary, Tenant shall, to the extent provided in Section 22.2, remove and retain title to any or all Personal Property (including any FF&E) owned by Tenant and located in the Leased Premises, in accordance with the provisions of Section 22.2. Although the provisions hereof are intended to be self-executing, Tenant hereby agrees, upon the Lease Expiration Date, to (i) execute any further deed, bill of sale or other document reasonably requested by Landlord to confirm Landlord's ownership of and fee simple title to the Project Improvements free and clear of all rights, titles and interests of any Persons claiming by, through or under Tenant and Tenant's grant and conveyance thereof to Landlord hereby made and (ii) cause all Leasehold Mortgagees to execute and deliver to Landlord recordable releases in full of all liens and security interests in and to the Project Improvements.

15.1.2 **Intentionally Reserved.**

15.1.3 Waste; Sale or Disposal of Personal Property.

(a) Tenant shall neither do nor permit nor suffer any waste to or upon the Leased Premises.

(b) Provided that no Tenant Default then exists, Tenant shall have the right, at any time and from time to time, to sell, dispose of or replace any Personal Property or FF&E located at the Leased Premises; *provided, however*, that if such Personal Property or FF&E are necessary for operation of the Leased Premises at the Operating Standard, Tenant shall then, or prior thereto or as reasonably necessary thereafter, replace or substitute (i) such Personal Property with property not necessarily of the same character but capable of performing the same function as that performed by the Personal Property and (ii) such FF&E with Property with the same or better quality and just as suitable for its intended purpose.

15.2 Additional Work by Tenant.

15.2.1 Changes, Alterations, and Additional Improvements. After the Substantial Completion of the Project Improvements Work and subject to the limitations and requirements contained elsewhere in this Lease, Tenant shall have the right at any time and from time to time to construct additional or replacement Improvements on Land ("**Additional Improvements**"), at its sole cost and expense, and to make, at its sole cost and expense, changes and alterations in, to or of the Project Improvements, subject, however, in all cases to the terms, conditions and requirements of this Section 15.2. For purposes of this Lease, "**Additional Work**" collectively shall refer to (i) construction or installation of any such Additional Improvements and changes and alterations in, to or of the Project Improvements under this Section 15.2.1, (ii) any Casualty Repair Work, (iii) any Condemnation Repair Work, (iv) Tenant's Remedial Work, or (v) any other construction, installation, or removal work in, to or of the Leased Premises required or permitted to be pursuant to the terms of this Lease. The performance of Additional Work shall, in all cases, comply with the requirements of this Section 15.2.1.

(a) Tenant shall not commence any Material Additional Work unless and until Tenant complies with the following procedures and requirements and obtains the Approvals specified below:

(i) Tenant shall obtain the Approval of Landlord with respect to the Material Additional Work Specifications, which Approval will not be unreasonably withheld provided that such Additional Improvements do not materially interfere with the operation of Project Improvements for its intended purpose as a multi-story golf-centered recreational and entertainment complex in accordance with the Operating Standard and this Lease, and the Approval of Landlord Representative as to all other Material Additional Work Submission Matters;

(ii) Tenant shall deliver all Material Additional Work Submission Matters to Landlord Representative at least thirty (30) calendar days prior to the commencement of any Material Additional Work. Upon receipt from Tenant of any Material Additional Work Submission Matters, Landlord Representative shall review the same and shall promptly (but in any event within thirty (30) calendar days after receipt) give Notice to Tenant of the Approval or disapproval of (x) Landlord with respect to the Material Additional Work Specifications and (y) Landlord Representative with respect to all other Material Additional Work Submission Matters, and, if disapproval, setting forth in reasonable detail the reasons for any such disapproval;

(iii) To the extent that, and from time to time as, Landlord Representative gives Notice to Tenant of the Approval of Landlord or Landlord Representative, as applicable, of any of the Material Additional Work Submissions Matters, Tenant shall have the right to proceed (upon issuance of all necessary Governmental Authorizations to so proceed) with the portion of Material Additional Work which has been Approved by Landlord or Landlord Representative, as applicable. If Landlord Representative gives Notice to Tenant of disapproval of any of the Material Additional Work Submission Matters by Landlord or Landlord Representative, as applicable, Tenant shall have the right within sixty (60) calendar days after the date of such Notice to resubmit any such Material Additional Work Submission Matters to Landlord Representative,

altered as necessary in response to Landlord's or Landlord Representative's, as applicable, reasons for disapproval, until the Material Additional Work Submission Matters shall be Approved by Landlord or Landlord Representative, as applicable. All subsequent resubmissions of any Material Additional Work Submission Matter by Tenant must be made within thirty (30) calendar days after the date of Notice of disapproval from Landlord or Landlord Representative, as applicable, as to the prior resubmission; and

(iv) All Material Additional Work shall, once commenced, be completed in accordance with all Material Additional Work Submission Matters which have been Approved by Landlord or Landlord Representative, as applicable, and the Material Additional Work Plans and, subject to Excusable Tenant Delay and/or Landlord Delay, Tenant shall use commercially reasonable efforts to cause Final Completion of the Material Additional Work to occur on or before the date for the same specified in the Material Additional Work Construction Schedule which has been Approved by Landlord Representative.

(b) Any Additional Work shall, when completed, be of such a character as not to reduce the value and utility of any Improvements below the value and utility immediately before such Additional Work and shall not weaken or impair the structural integrity of any Improvements.

(c) The cost of any Additional Work shall be paid in cash or its equivalent pursuant to customary construction disbursement procedures for the performance of such work, including taking commercially reasonable measures to cause the Leased Premises to be free from all Liens and Encumbrances or security interests, subject to Tenant's right to dispute any Lien pursuant to Section 9.5.

15.3 **No Substitute for Permitting Processes**. The review for compliance by Landlord of any matter submitted to Landlord pursuant to Section 15.2 shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, all permitting processes of Governmental Authorities applicable to the Additional Work.

15.4 **Surety Bonds for Additional Work**. Prior to the commencement of any Additional Work that will cost in excess of One Million and No/100 Dollars ($1,000,000.00), whether or not such work is Material Additional Work, and at all times during the performance of such Additional Work and for so long after the completion thereof that any of Tenant's other contractors and subcontractors (other than the Additional Work Construction Contractor) have not been paid in full in respect to the Additional Work, Tenant shall cause the Additional Work Construction Contractor to obtain, keep and maintain performance and payment bonds from a Qualified Surety in a total amount equal to one hundred percent (100%) of the costs of the Additional Work.

ARTICLE XVI

LANDLORD'S RIGHT OF ENTRY

16.1 **Access to Leased Premises by Landlord**.

16.1.1 **During Construction Work**. Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and all portions thereof, without charges or fees, during the period of the performance of any Construction Work for the purposes of assuring compliance with this Lease or for performing or undertaking any rights or obligations of Landlord pursuant to the terms of this Lease; *provided* that with respect to access other than in connection with a Tenant Default, Landlord shall (i) not materially hinder or interfere with the Construction Work or the activities of Tenant's contractors, (ii) take such reasonable protective caution or measures as Tenant may reasonably request, given the stage of the Construction Work at the time of such entry and (iii) use commercially reasonable efforts to minimize interference with Tenant's use and operation of the Leased Premises then being undertaken by Tenant pursuant to the terms of this Lease. Nothing in this Lease, however, shall be interpreted to impose an obligation upon Landlord to conduct any inspections.

16.1.2 **No Construction Work Ongoing**. Upon Substantial Completion of the Project Improvements Work and as to areas where no Construction Work is then ongoing, Landlord shall have the right of

access, for itself and its authorized representatives, to the Leased Premises and any portion thereof, without charges or fees, at all reasonable times during the Term and upon not less than twenty-four (24) hours advance Notice for the purposes of (i) inspection (during Business Hours only), (ii) exercising its rights under Section 17.3, or (iii) exhibition of the Leased Premises to others for lease or sale during the last thirty-six (36) months of the Term (during Business Hours only); *provided, however*, that (x) such entry and Landlord's activities pursuant thereto shall be conducted in such a manner as to minimize interference with Tenant's use and operation of the Leased Premises then being conducted in the Leased Premises pursuant to the terms of this Lease and (y) nothing herein shall be intended to require Landlord to deliver Notice to Tenant or to only enter during any specific period of time, in connection with a Tenant Default or in order for Landlord to perform any of its obligations under this Lease.

16.1.3 **Access During an Emergency**. Notwithstanding Section 16.1.1 and Section 16.1.2, Landlord shall have the right of access, for itself and its authorized representatives, to the Leased Premises and any portion thereof, without charges or fees, in connection with an Emergency, so long as Landlord uses reasonable efforts to (i) notify Tenant by telephone of any such Emergency prior to entering the Leased Premises and as soon as reasonably possible, but in no event later than three (3) calendar days after Landlord enters the Leased Premises and (ii) minimize interference with Tenant's use and operation of the Leased Premises then being conducted in the Leased Premises pursuant to the terms of this Lease.

ARTICLE XVII

ADDITIONAL ENVIRONMENTAL PROVISIONS

17.1 **No Hazardous Materials**. Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Leased Premises by Tenant or its Subtenants and shall use commercially reasonable efforts to prevent Tenant's and its Subtenants' invitees and guests from generating, using, releasing, storing or disposing of any Hazardous Materials in or about the Leased Premises; *provided, however* that Tenant and its Subtenants may use, store and dispose of reasonable quantities of Hazardous Materials as may be reasonably necessary for Tenant to operate the Leased Premises pursuant to the terms of this Lease so long as such Hazardous Materials are commonly used, or permitted to be used, by Reasonable and Prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws. For the avoidance of doubt, in no event shall the terms of this Section 17.1 limit Tenant's obligations set forth in Section 9.3.

17.2 **Notice of Environmental Event**. Tenant shall give Landlord prompt oral and follow-up written notice within twenty-four (24) hours of any actual or threatened Environmental Event of which Tenant has actual knowledge. Tenant shall perform Tenant's Remedial Work in accordance with all Environmental Laws to the reasonable satisfaction of the applicable Governmental Authority. Upon any Environmental Event (except to the extent constituting Landlord's Remedial Work), in addition to all other rights available to Landlord under this Lease, at law or in equity, Landlord shall have the right, but not the obligation, at its option (i) to require Tenant, at its sole cost and expense, to address and remedy such Environmental Event, in which event Landlord shall have the right to Approve (which Approval shall not be unreasonably withheld) any actions taken by Tenant to address and remedy the Environmental Event, or (ii) if Tenant has failed to commence action to address and remedy the Environmental Event within a reasonable time after notice is given to Landlord, and such failure continues for thirty (30) calendar days after written notice thereof from Landlord to Tenant, to perform, at Tenant's sole cost and expense, any lawful action necessary to address and remedy the same, in which event Tenant shall pay the costs thereof to Landlord, within ten (10) calendar days after written demand therefor.

17.3 **Environmental Audit**. Landlord, at its sole cost and expense, shall have the right, but not the obligation, to conduct, at its expense, periodic environmental audits of the Leased Premises (including the air, soil, surface water and groundwater at or near the Leased Premises) and Tenant's compliance with Environmental Laws with respect thereto. If (i) any Governmental Authority requires testing or other action with respect to the Leased Premises, (ii) such testing or other action is not required in connection with Landlord's Remedial Work, (iii) Tenant fails to perform such testing or other action and (iv) Landlord incurs expenses in complying with such requirement, then Tenant shall pay to Landlord the reasonable costs therefor within ten (10) calendar days after written demand therefor.

17.4 **Tenant Release**. WITHOUT LIMITING TENANT'S INDEMNITY OBLIGATIONS UNDER THIS LEASE, TENANT HEREBY RELEASES LANDLORD AND LANDLORD INDEMNITEES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT TENANT MAY HAVE WITH RESPECT TO THE LEASED PREMISES AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT SOLELY WITHIN THE SCOPE OF TENANT'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.

ARTICLE XVIII

CASUALTY DAMAGE

18.1 **Damage or Destruction**.

18.1.1 **During the Term**. If, at any time during the Term, the Leased Premises or any part thereof shall be damaged or destroyed by Casualty, then Tenant shall use reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to Persons or Property and, within a reasonable period of time thereafter, remediate any hazard and restore such Leased Premises to a safe condition, whether by repair or by demolition, removal of debris or screening from public view. Subject to Section 18.4, Tenant shall, to the extent allowed by Applicable Law, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and subject to Excusable Tenant Delay and/or Landlord Delay) to repair, restore, replace or rebuild such Leased Premises as nearly as practical to a condition substantially equivalent to that existing immediately prior to such Casualty and in accordance with the terms of this Lease. Such repair, restoration, replacement or rebuilding, including temporary repairs for the protection of other Property pending the completion of any such work, remediation of hazards and restoration of such Leased Premises to a safe and presentable condition or any demolition and debris removal required are sometimes referred to in this Lease as the "**Casualty Repair Work**."

18.2 **Casualty Proceeds**.

18.2.1 **Requirements for Disbursement when Lease is Not Terminated**. Provided that (i) no Tenant Default then exists and (ii) Tenant shall not have terminated this Lease pursuant to Section 18.4.1, insurance proceeds paid pursuant to the policies of insurance required to be carried by Tenant under Article XIX for loss of or damage to such Leased Premises (other than Tenant's Business Interruption Policy) (the "**Casualty Proceeds**") shall be paid and delivered to Tenant to be applied to the payment of the direct and out-of-pocket costs of the Casualty Repair Work. Tenant shall be entitled to receive such Casualty Proceeds directly from the insurer; *provided, however*, that Tenant shall be required to deliver Notice to Landlord, executed by a Responsible Officer of Tenant, within five (5) calendar days after Tenant's receipt of such Casualty Proceeds from the insurer stating that such Casualty Proceeds were advanced to Tenant by the insurer for payment of costs of Casualty Repair Work yet to be performed or that (x) such Casualty Proceeds represent amounts paid by Tenant for direct, out-of-pocket cost of Casualty Repair Work or which are then due and payable to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Casualty Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or then due and (y) except for the amount stated in such Notice to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Casualty Repair Work known to the Persons signing such Notice which is then due to Persons being paid, after due inquiry.

18.2.2 **Disbursements of Excess Proceeds after Casualty Repair Work**. If the Casualty Proceeds received by Tenant shall exceed the entire direct, out-of-pocket costs of the Casualty Repair Work, Tenant shall be entitled to retain any such excess Casualty Proceeds after Tenant has furnished to Landlord evidence reasonably satisfactory to Landlord that all Casualty Repair Work has been completed in a good and workmanlike

manner and that no Mechanic's Liens exist or may arise in connection with the Casualty Repair Work and after all Rent then due hereunder has been paid and after any Tenant Defaults hereunder have been cured.

18.2.3 **Uninsured Losses/Policy Deductibles**. As Casualty Repair Work progresses during the Term, Tenant shall be obligated to pay for all costs and expenses of any such Casualty Repair Work that are not covered by Casualty Proceeds or for which Casualty Proceeds are inadequate.

18.3 **Abatement**. In the event a Casualty occurs that materially interferes with Tenant's ability to operate at the Leased Premises in accordance with the terms of this Lease, Rent will be abated during the period in which Tenant's Business Interruption Policy ceases to provide coverage to Tenant (whether with respect to the deductible period or the period following the exhaustion of the proceeds related thereto) and ending on the earlier of (i) the date the relevant Casualty Repair Work is substantially complete, and (ii) the date the Casualty or the related Casualty Repair Work no longer materially interferes with Tenant's ability to operate at the Leased Premises, in accordance with the terms of this Lease. In the event that Tenant shall fail to maintain in full force and effect Tenant's Business Interruption Policy at the time of a Casualty (and which provides coverage for the period after the occurrence of such Casualty) as required pursuant to the terms of this Lease, Tenant shall not be entitled to the foregoing adjustment in Rent until the date upon which Tenant's Business Interruption Policy, as required pursuant to the terms of this Lease, would have ceased to provide coverage to Tenant had Tenant in fact maintained same.

18.4 **Option to Terminate**.

18.4.1 **Tenant's Right to Terminate**. In the event (i) a Casualty occurs and it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative (such Approval not to be unreasonably withheld) that it will take longer than two (2) years from the commencement of the Casualty Repair Work to complete the Casualty Repair Work with respect to the Leased Premises or (ii) a Casualty occurs during the last five (5) years of the Term and (a) it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative (such Approval not to be unreasonably withheld) that it will take longer than one (1) year from the commencement of the Casualty Repair Work to complete the Casualty Repair Work with respect to the Leased Premises or (b) it is reasonably determined by an independent contractor selected by Tenant and Approved by the Landlord Representative (such Approval not to be unreasonably withheld) that it will cost more than sixty percent (60%) of the replacement cost of Project Improvements to complete the Casualty Repair Work with respect to the Leased Premises, then Tenant may, at its option (exercised within one hundred eighty (180) calendar days after such Casualty), terminate this Lease by satisfying each of the following which shall be conditions precedent to the effectiveness of any such termination (x) serving Notice upon Landlord within such period setting forth Tenant's election to terminate this Lease as a result of such Casualty as of the end of the calendar month in which such Notice is received by Landlord and (y) paying to Landlord, concurrently with the service of such Notice, the Rent and other payments, including Impositions, which would otherwise have been payable up to the effective date of such termination. Upon the service of such Notice and the making of such payments within the period aforesaid, this Lease shall cease and terminate on the date specified in such Notice with the same force and effect as if such date were the date originally fixed as the Lease Expiration Date. In addition to Tenant's obligations under Article XXII, Tenant shall thereafter be obligated to demolish and remove all debris with respect to the Leased Premises which have been damaged by such Casualty in a manner consistent with Section 9.4 and 9.5, if Landlord so requires. Failure by Tenant to terminate this Lease within the foregoing time period shall constitute an election by Tenant to keep this Lease in full force and effect, in which event Tenant shall commence to perform the Casualty Repair Work in accordance with the terms of this Lease.

18.4.2 **Payment of Rent Upon Termination**. With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of any termination of this Lease as provided in Section 18.4.1, but which are not then capable of ascertainment, estimated amounts of such items shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimate as and when the same become determined.

18.4.3 **Excess Proceeds Upon Termination**. In the event this Lease shall be terminated pursuant to the provisions of Section 18.4.1, Casualty Proceeds shall be paid to Landlord and held in trust by Landlord, and such Casualty Proceeds shall be payable to, and shall be applied as follows and in this order: (i) to

Tenant or Landlord, as applicable, to pay for the reasonable costs of razing the Project Improvements and clearing the Land of debris in accordance with this Lease and all Applicable Law, to the extent either Landlord or Tenant actually does perform such work, (ii) to Landlord, to pay any outstanding Rent (and establishing a reserve to pay any that cannot then be determined), (iii) to Landlord, to pay to release from the Leased Premises and from any interest of Landlord hereunder any Mechanic's Liens caused by Tenant or arising out of work performed with respect to the Leased Premises by, or in satisfaction of any obligation of, Tenant hereunder, (iv) to a Permitted Project Financing Holder, any outstanding amounts due under any Permitted Project Financing, (v) to Tenant, one hundred percent (100%) of the insurable replacement cost value of the Personal Property, and (vi) the remainder to Tenant.

ARTICLE XIX

INSURANCE AND INDEMNIFICATION

19.1 Policies Required.

19.1.1 Policies Required During Construction of Projects Improvements Work.

(a) *Builder's Risk Policies for Project Improvements Work.* Following the Execution Date and prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that (i) the Project Contractor or any of Tenant's other contractors or subcontractors has not been paid in full with respect to the Project Improvements Work or (ii) any Person has any repair obligations with respect to the Project Improvements Work, Tenant shall, at its cost and expense as a portion of Total Project Costs, obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "**Builder's Risk Policies for Project Improvements Work**") affording coverage of such Project Improvements Work, whether permanent or temporary, and, to the extent not covered by a separate policy, all materials intended for incorporation into the Leased Premises, whether stored on-site or off-site, and all machinery, equipment and tools, whether owned, leased or borrowed and brought on-site and/or otherwise utilized but not incorporated into the Project Improvements, by Tenant or Tenant's other contractors and subcontractors, including temporary buildings, site huts, trailers and offices and their contents and all other property of the insured or in their care, custody or control while at the construction site or in storage facilities on- or off-site and all equipment used by any contractor in connection with the Project Improvements, as applicable, whether owned, hired or leased related thereto, against loss or damage due to Insured Casualty Risks by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time in the City of Bryan, Texas. The Builder's Risk Policies for Project Improvements Work shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of the Project Improvements and the cost of the Project Improvements Work, using a completed value form (with permission to occupy upon completion of work or occupancy), naming Tenant as the insured and Landlord Insured as additional insureds, and with any deductible not exceeding One Hundred Thousand and No/100 Dollars ($100,000.00) per loss for Insured Casualty Risks, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(b) *Auto Policies for Project Improvements Work.* In the event any vehicles are to be used in connection with any Project Improvements Work by the Project Contractor and Tenant's other contractors and subcontractors, prior to the commencement of the use of such vehicles in connection with such Project Improvements Work, and at all times during such use through completion of such use, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain business automobile liability insurance policies (the "**Auto Policies for Project Improvements Work**") covering all vehicles, whether owned or non-owned and hired or borrowed vehicles, used in connection with the Project Improvements Work, naming Landlord Insured as additional insured, affording protection against liability for bodily injury and death and/or for property damage in an amount not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed One Hundred Thousand and No/100 Dollars ($100,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as

the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. In addition to the Auto Policies for Project Improvements Work described above, in the event any Hazardous Materials will be transported, loaded or unloaded by the Project Contractor or Tenant's other contractors or subcontractors, prior to such transport, loading or unloading, and at all times during such transport, loading or unloading through completion thereof, Tenant shall cause the relevant contractor or subcontractor to obtain, keep and maintain in its Auto Policy for Project Improvements Work a motor trucker or carrier pollution endorsement related to claims arising out of the transporting and loading or unloading of such Hazardous Materials.

(c) *Workers' Compensation Policies for Project Improvements Work.* Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's Workers' Compensation Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain, keep and maintain workers' compensation insurance policies and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage (with statutory limits) under the laws of the State of Texas for all Persons employed by the Project Contractor and Tenant's other contractors and subcontractors in connection with the Project Improvements Work.

(d) *General Liability Policy for Project Improvements Work.* Prior to commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's GL Policy, Tenant shall cause the Project Contractor and Tenant's other contractors and subcontractors to obtain keep and maintain a commercial general liability insurance policy ("**GL Policy for Project Improvements Work**"), written on an occurrence basis and limited to the Project Improvements Work and the Leased Premises naming such contractor or subcontractor as the insured and Tenant and Landlord Insured as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death and/or property damage occurring, in, upon or about the Leased Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Leased Premises and containing provisions for severability of interests. The Project Contractor's GL Policy for Project Improvements Work shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain the Excess/Umbrella Policy for Project Improvements Work without gaps in coverage between the GL Policy for Project Improvements Work and the Excess/Umbrella Policy for Project Improvements Work (but not less than $5,000,000.00 each occurrence, $2,000,000.00 personal and advertising injury, $5,000,000.00 completed operations aggregate, $5,000,000.00 general aggregate, $5,000.00 medical payments and $250,000.00 fire legal liability) and (ii) the self-insured retention not to exceed One Hundred Thousand and No/100 Dollars ($100,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy for Project Improvements Work shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) broad form property damage coverage, (v) completed operations and products liability coverage for a period of two (2) years after Commencement of Operations, (vi) cross liability endorsement, (vii) hoists and elevators or escalators and (viii) an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability and providing for related clean-up of the Leased Premises and any affected adjacent property. The GL Policy for Project Improvements Work of Tenant's other contractors and subcontractors shall be in such amount and such policy limits as meets the Insurance Standard for such contractors and subcontractors.

(e) *Excess/Umbrella Policy for Project Improvements Work.* Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, in addition to Tenant's Excess/Umbrella Policies, Tenant shall cause the

Project Contractor to obtain, keep and maintain an excess or umbrella liability insurance policy ("**Excess/Umbrella Policy for Project Improvements Work**"), written on an occurrence basis, in an amount not less than [Twenty-Five Million and No/100 Dollars ($25,000,000.00)] per occurrence and in the aggregate for personal injury, bodily injury and death and/or property damage liability combined, such policy to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies, naming Tenant as insured and Landlord Insured as additional insured. Tenant shall cause Tenant's other contractors and subcontractors to obtain, keep and maintain an excess or umbrella liability insurance policy in such amount as meets the Insurance Standard for such contractors and subcontractors. Pollution Liability Excess/Umbrella coverage limit will be provided at Five Million and No/100 Dollars ($5,000,000.00).

(f) *Additional Insurance*. Prior to the commencement of any Project Improvements Work and at all times during the performance of such Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Project Improvements Work, Tenant shall, or shall cause the Project Contractor and Tenant's other contractors and subcontractors to, obtain, keep, and maintain (i) such other and additional insurance as is, from time to time, required by all Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall, at the election of Landlord, name Landlord as loss payee or Landlord Insured as additional insured in a manner consistent with their being named loss payees or additional insureds in the policies required above in this Section 19.1.1 and shall comply with all applicable requirements set forth in Section 19.5.**Intentionally Reserved**.

19.1.3 Policies Required During Construction of Additional Improvements Work. The same types of insurance policies as are required during the construction of the Project Improvements Work pursuant to Section 19.1.1 shall be required during the performance of any Additional Work with evidence thereof provided to Landlord as required in Section 19.5.2 prior to the commencement of any Additional Work, and all such policies shall be maintained in effect during performance of any Additional Work as if such work was Project Improvements Work. The policy limits and deductibles for policies for Additional Work shall be the same as for those policies required in Section 19.1.1, unless otherwise agreed between Tenant and Landlord Representative.

19.1.4 Property Insurance Policy. No later than the Substantial Completion of the Project Improvements Work or Material Additional Work, as applicable, and at all times during the remainder of the Term, Tenant shall, at its sole cost and expense, obtain, keep, and maintain a special form (formerly "**all risk**") property insurance policy (the "**Property Insurance Policy**") providing for coverage of the Project Improvements, any Additional Improvements and the Personal Property against loss or damage due to Insured Casualty Risks covered by the broadest form of extended coverage insurance generally available on commercially reasonable terms from time to time available in the City of Bryan, Brazos County, Texas, and affording coverage for, among other things, demolition and debris removal (with a $1,000,000 sublimit), landscaping (with a $250,000 sublimit), compliance with law (with a $1,000,000 sublimit), losses from malicious acts of any employee or agent of an insured and, to the extent available on commercially reasonable terms, terrorism, naming Tenant as the first named insured and Landlord as loss payee for a sum at least equal to one hundred percent (100%) of the insurable replacement cost of the Project Improvements, any Additional Improvements and the Personal Property (without reduction for physical depreciation or obsolescence), and with any deductible not exceeding One Hundred Thousand and No/100 Dollars ($100,000.00) per loss except as to wind and hail where the deductible may not exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per loss, unless, in each case, such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

19.1.5 Additional Policies Required by Tenant During the Term. Commencing upon Substantial Completion of the Project Improvements (unless otherwise provided below), and at all times during the remainder of the Term and continuing thereafter until Tenant has fulfilled all of its obligations under Article XXII (unless otherwise provided below), Tenant shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, the following insurance policies:

(a) *Commercial General Liability Policy*. A commercial general liability insurance policy ("**Tenant's GL Policy**"), written on an occurrence basis and limited to the Leased Premises, naming

Tenant as the named insured (with the effect that Tenant and its employees are covered) and Landlord Insured as additional insured, affording protection against liability arising out of personal injury, bodily injury and death or property damage occurring, in, upon or about the Leased Premises or resulting from, or in connection with, the construction, use, operation or occupancy of the Leased Premises and containing provisions for severability of interests. Tenant's GL Policy must specifically include host legal liquor liability and dram shop liability coverage; premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable; owners' and contractors' protective coverage; blanket contractual coverage; personal injury and advertising injury; broad form property damage coverage (including fire legal); incidental medical malpractice liability; broad form contractual liability; products/completed operations; independent contractors; cross liability endorsement and hoists and elevators or escalators, if exposure exists. Tenant's GL Policy shall be in such amount and such policy limits so that (i) the coverage, deductibles and limits meet the Insurance Standard and are adequate to maintain Tenant's Excess/Umbrella Policies without gaps in coverage between Tenant's GL Policy and Tenant's Excess/Umbrella Policies (but not less than $5,000,000.00 each occurrence, $2,000,000.00 personal and advertising injury, $5,000,000.00 completed operations aggregate, $5,000,000.00 general aggregate, $5,000.00 medical payments and $250,000.00 fire legal liability) and (ii) the self-insured retention not to exceed One Hundred Thousand and No/100 Dollars ($100,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms. Tenant's GL Policy shall also contain the following endorsements to the extent obtainable on commercially reasonable terms or necessary to meet the Insurance Standard: (i) premises and operations coverage with explosion, collapse and underground exclusions deleted, if applicable, (ii) owners' and contractors' protective coverage, (iii) blanket contractual coverage, including both oral and written contracts, (iv) host/legal liquor liability, and to the extent applicable, dramshop liability, (v) broad form property damage coverage, (vi) completed operations and products liability coverage for a period of three (3) years after Commencement of Operations, (vii) cross liability endorsement, (viii) hoists and elevators or escalators and (ix) and an endorsement (or, at Tenant's option, equivalent coverage under a separate policy) providing for protection from pollution liability and providing for related clean-up of the Leased Premises and any affected adjacent property.

(b) *Auto Policy.* A business automobile liability insurance policy covering all vehicles, whether owned, non-owned and hired or borrowed vehicles, used in connection with the construction, maintenance or operation of the Leased Premises, naming Tenant as the insured and Landlord Insured as additional insured, affording protection against liability for bodily injury and death or for property damage in an amount not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit per occurrence or its equivalent and with a self-insured retention not to exceed One Hundred Thousand and No/100 Dollars ($100,000.00) per loss, unless such retention is lower than what is available on commercially reasonable terms and, so long as the higher retention meets the Insurance Standard, Tenant shall be entitled to maintain the retention that is available on commercially reasonable terms.

(c) *Workers' Compensation Policy.* A workers' compensation insurance policy and any and all other statutory forms of insurance now or hereafter prescribed by Applicable Law, providing statutory coverage (with statutory limits) under the laws of the State of Texas for all Persons employed by Tenant in connection with the Leased Premises, and employers liability insurance policy (collectively, the "**Tenant's Workers' Compensation Policy**") affording protection of not less than One Million and No/100 Dollars ($1,000,000.00) for bodily injury by accident (each accident), not less than One Million and No/100 Dollars ($1,000,000.00) for bodily injury by disease (each employee) and not less than One Million and No/100 Dollars ($1,000,000.00) bodily injury by disease (policy limit) and with each deductible not exceeding One Hundred Thousand and No/100 Dollars ($100,000.00) per loss, unless such deductible is lower than what is available on commercially reasonable terms and, so long as the higher deductible meets the Insurance Standard, Tenant shall be entitled to maintain the deductible that is available on commercially reasonable terms.

(d) *Excess/Umbrella Policies.* An excess or umbrella liability insurance policies ("**Tenant's Excess/Umbrella Policies**"), written on an occurrence basis, in an amount not less than (i) Ten Million and No/100 Dollars ($10,000,000.00) per occurrence and in the aggregate for personal injury, bodily injury and

death or property damage liability combined, and (ii) Ten Million and No/100 Dollars ($10,000,000.00) per occurrence and in the aggregate for hazard and casualty coverage, such policies to be written on an excess basis above the coverages required hereinabove (specifically listing such underlying policies) and following the form of such underlying policies. Pollution Liability Excess/Umbrella coverage limit will be provided at Five Million and No/100 Dollars ($5,000,000.00).

(e) *Business Interruption Policy.* Commencing on the first date that Tenant is required to obtain a Property Insurance Policy, a business interruption insurance policy or, alternatively, sub-limit coverage under the Property Insurance Policy (the "**Tenant's Business Interruption Policy**") that is in an amount sufficient to cover one hundred percent (100%) of continuing normal operating expenses for a period of twelve (12) months (including all Rent payable under this Lease, all debt service and payroll) naming Tenant as the insured and containing a deductible that meets the Insurance Standard. To the extent available on commercially reasonable terms in compliance with the Insurance Standard, the maximum deductible under such policy shall be no more than thirty (30) calendar days. There shall be an agreed amount clause or a waiver of co-insurance. Notwithstanding the foregoing, Tenant is not required to carry a Tenant Business Interruption Policy for any years that Tenant is not required under this Lease to be paying Rent.

(f) *Special Policies for Contractor Engaged in Pollution or Hazardous Materials Related Activities.* At any time during the Term, in the event any Project Contractor, any Material Additional Work Construction Contractor or any other of Tenant's other contractors and subcontractors is to remove and/or dispose of any Hazardous Materials from in, upon or about the Leased Premises, then prior to the commencement of such removal and disposal, and at all times during such removal and disposal through completion thereof, Tenant shall cause to be obtained, kept and maintained, as a minimum, a pollution or environmental impairment liability insurance policy written on a claims made basis, that names Tenant as the insured and Landlord Insured as additional insured, insuring against liability for bodily injury and death or for property damage occurring in, upon or about the Leased Premises as a result of the removal and disposal of any Hazardous Materials in an amount not less than Five Million and No/100 Dollars ($5,000,000.00) combined single limit per occurrence.

(g) *Additional Insurance.* In addition to all insurance policies and coverage required above in this Section 19.1, Tenant covenants, at its sole cost and expense, commencing on the Execution Date and at all times necessary during the Term and through the date Tenant has fulfilled its obligations under Article XXII, to obtain, keep and maintain or cause to be obtained, kept and maintained, all other additional insurance policies on the Leased Premises, as they exist at all times from time to time (i) as required by Applicable Laws and (ii) such other and additional insurance as may be reasonably required to meet the Insurance Standard. Such other and additional insurance policies shall name Landlord as loss payee or Landlord Insured as an additional insured in a manner consistent with such Persons' being named as loss payee or additional insured in the policies required above in this Section 19.1.5 and shall comply with all other requirements set forth in Section 19.5.

19.1.6 Adjustments in Policies. Without limiting the other provisions of this Lease with respect to policy limits and coverage, Tenant covenants and agrees that upon request, and in no event more often than once every five (5) years during the Term, Tenant will review and analyze, with a third party insurance consultant reasonably acceptable to both Landlord Representative and Tenant, the policies that it is required to carry pursuant to the terms of this Lease to insure that same meet the Insurance Standard. Upon completion of such analysis and review, Tenant shall deliver a copy of such analysis and review to Landlord together with a Notice to Landlord which has been certified by a Responsible Officer of Tenant stating the results of such analysis and review and any adjustments to the policy limits, deductibles and coverages so as to meet the Insurance Standard.

19.2 Blanket or Master Policy. Any one or more of the types of insurance coverages required in Section 19.1 (except that the GL Policy for Project Improvements Work, GL Policy for Additional Work and Tenant's GL Policy shall have a general aggregate limit that shall be site specific to the Leased Premises) may be obtained, kept and maintained through a blanket or master policy or excess/umbrella policies insuring other entities (such as Affiliates of Tenant), *provided* that (i) such blanket or master policy or excess/umbrella policies and the coverage effected thereby comply with all applicable requirements of this Lease and (ii) the protection afforded

under such blanket or master policy or excess/umbrella policies shall be no less than that which would have been afforded under a separate policy or policies relating only to the Leased Premises. If any excess or umbrella liability insurance coverage required pursuant hereto is subject to an aggregate annual limit and is maintained through such blanket or master policy, and if such aggregate annual limit is impaired as a result of claims actually paid by more than fifty percent (50%), Tenant shall immediately give Notice thereof to Landlord and, within ninety (90) calendar days after discovery of such impairment, to the fullest extent reasonably possible, cause such limit to be restored by purchasing additional coverage if higher excess limits have not been purchased.

19.3 **Failure to Maintain**.

19.3.1 **Landlord May Procure Insurance**. If at any time and for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver to Landlord proof of, any of the insurance required under Section 19.1 and such failure continues for ten (10) calendar days after Notice thereof from Landlord to Tenant, Landlord may, but shall have no obligation to, procure single interest insurance for such risks covering Landlord Insured (or, if no more expensive, the insurance required by this Lease), and Tenant shall, within ten (10) calendar days following Landlord's demand and Notice, pay and reimburse Landlord therefor with interest at the Default Rate from the date of payment by Landlord until repayment of Landlord in full by Tenant.

19.3.2 **Work Stoppage**. If any time prior to the commencement of, or during, any Construction Work for any reason Tenant fails to provide, maintain, keep in force and effect, or deliver Landlord proof of, any of the insurance required hereunder, Landlord shall have the right to deliver Notice to Tenant of such failure and in the event that Tenant shall have failed to cure such failure within five (5) calendar days of delivery of such Notice, order Tenant, the Project Contractor, the Material Additional Work Construction Contractor or Tenant's other contractors and subcontractors, as applicable, to stop such Construction Work until such time that the insurance policies required hereunder shall have been obtained, and proof furnished to Landlord that such policies are in full force and effect. Such a work stoppage shall not constitute an Excusable Tenant Delay.

19.4 **Intentionally Reserved**.

19.5 **Additional Policy Requirements**.

19.5.1 **Approval of Insurers; Certificate and Other Requirements**.

(a) All insurance policies required to be carried by Tenant pursuant to the terms of this Lease shall be effected under valid policies issued by insurers authorized to do business in the State of Texas and which have an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VI". In the event that Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time. Landlord and Tenant may utilize insurers with lower ratings with the prior written Approval of the other Party.

(b) Each and every insurance policy required to be carried by Tenant pursuant to this Lease in which Landlord is named as loss payee or Landlord Insured as additional insured in accordance with the terms of this Lease shall (i) contain an endorsement to the effect that the "other insurance" clause which may appear therein is not applicable to Landlord Insured, (ii) join Landlord as loss payee and Landlord Insured as additional insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of Landlord or Landlord Insured, as applicable;

(c) Each and every insurance policy required to be carried by Landlord pursuant to this Lease, if any, in which Tenant is named as loss payee or additional insured in accordance with the terms of this Lease shall (i) contain an endorsement to the effect that the "other insurance" clause which may appear

therein is not applicable to Tenant, (ii) join Tenant as loss payee and addition insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of Tenant;

(d) Each and every insurance policy required to be carried by or on behalf of either Party pursuant to this Lease shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled, non-renewed or coverage thereunder materially reduced unless the other Party shall have received Notice of cancellation, non-renewal or material reduction in coverage, in each such case (except for Notice of cancellation due to non-payment of premiums) such Notice to be sent to the other Party not less than thirty (30) calendar days (or the maximum period of calendar days permitted under Applicable Law, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. In the event any insurance policy required to be carried by or on behalf of either Party pursuant to this Lease is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the Notice shall be sent to the other Party on the earliest possible date but in no event less than ten (10) calendar days prior to the effective date of such cancellation.

(e) Except as otherwise provided for herein, each and every insurance policy required to be carried by either Party pursuant to this Lease shall provide that the policy is primary and that any other insurance of any insured or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and non-contributing. Each of said insurance policies shall also provide that any loss shall be payable in accordance with the terms of such policy notwithstanding any action, inaction or negligence of the insured or of any other Person (including Tenant or Landlord Insured) which might otherwise result in a diminution or loss of coverage, including "breach of warranty", and the respective interests of Tenant and Landlord Insured shall be insured regardless of any breach or violation by Tenant, Landlord Insured or any other Person of any warranty, declaration or condition contained in or with regard to such insurance policies.

(f) Tenant shall require all subcontractors performing any of the Construction Work to carry insurance naming Landlord Insured as an additional insured and otherwise complying with the requirements of Section 19.1 of this Lease; *provided, however*, the amount and type of such subcontractor's insurance must be commensurate with the amount and type of the subcontract, but in no case less than what would be required by a Reasonable and Prudent Developer or a Reasonable and Prudent Operator, as applicable. Tenant shall provide certificates of insurance regarding all such subcontractor policies to Landlord in accordance with Section 19.5.2.

(g) Tenant shall comply in all material respects with all rules, orders, regulations and requirements of the Board of Fire Underwriters or any other similar body having jurisdiction, in the case of fire insurance policies.

19.5.2 Delivery of Evidence of Insurance. With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Lease, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) calendar days before the expiration of any policy required hereunder previously obtained, the Party required to obtain, keep or maintain such policy shall deliver evidence reasonably acceptable to the other Party showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 28 form) issued by a Responsible Officer of the issuer of such policies, or in the alternative, a Responsible Officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, endorsements, term and termination provisions thereon and confirmation that the required premiums have been paid, and, in the case of Tenant only, along with a similar certificate executed by a Responsible Officer of Tenant. Further, each Party agrees to promptly deliver Notice to the other Party of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder. Upon request, Tenant, at its expense, shall provide Landlord with a copy or duplicate of Tenant's insurance policies.

19.5.3 **Waiver of Right of Recovery**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND WITHOUT AFFECTING THE INSURANCE COVERAGES REQUIRED TO BE MAINTAINED HEREUNDER, LANDLORD AND TENANT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION AGAINST THE OTHER FOR ANY DAMAGE TO PROPERTY, AND RELEASE EACH OTHER FOR SAME, TO THE EXTENT THAT SUCH DAMAGE (I) IS COVERED (AND ONLY TO THE EXTENT OF SUCH COVERAGE WITHOUT REGARD TO DEDUCTIBLES) BY INSURANCE ACTUALLY CARRIED BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM OR (II) WOULD BE INSURED AGAINST UNDER THE TERMS OF ANY INSURANCE REQUIRED TO BE CARRIED UNDER THIS LEASE BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM. THIS PROVISION IS INTENDED TO RESTRICT EACH PARTY (IF AND TO THE EXTENT PERMITTED BY APPLICABLE LAW) TO RECOVERY AGAINST INSURANCE CARRIERS TO THE EXTENT OF SUCH COVERAGE AND TO WAIVE (TO THE EXTENT OF SUCH COVERAGE), FOR THE BENEFIT OF EACH PARTY, RIGHTS OR CLAIMS WHICH MIGHT GIVE RISE TO A RIGHT OF SUBROGATION IN ANY INSURANCE CARRIER. NEITHER THE ISSUANCE OF ANY INSURANCE POLICY REQUIRED UNDER, OR THE MINIMUM LIMITS SPECIFIED HEREIN SHALL BE DEEMED TO LIMIT OR RESTRICT IN ANY WAY LANDLORD'S OR TENANT'S LIABILITY ARISING UNDER OR OUT OF THIS LEASE PURSUANT TO THE TERMS HEREOF. TENANT SHALL BE LIABLE FOR ANY LOSSES, DAMAGES OR LIABILITIES SUFFERED OR INCURRED BY LANDLORD INSURED AS A RESULT OF TENANT'S FAILURE TO OBTAIN, KEEP AND MAINTAIN OR CAUSE TO BE OBTAINED, KEPT AND MAINTAINED, THE TYPES OR AMOUNTS OF INSURANCE REQUIRED UNDER THE TERMS OF THIS LEASE.

19.5.4 **Landlord as Additional Insured under Liability Insurance of Subtenants**. Tenant shall require that any Subtenants name Landlord Insured as an additional insured under their respective policies of liability insurance required to be carried under any Use Agreement.

19.6 **General Obligations with Respect to Policies**. The Parties hereby agree as follows:

(a) To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained pursuant to this Lease;

(b) To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;

(c) To ensure that all Casualty Proceeds are paid to the Party entitled to receive same pursuant to the terms of this Lease, including Section 18.4.3;

(d) Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Lease to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

(e) Promptly deliver Notice to the other Party of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

19.7 **Proceeds of Insurance**. Casualty Proceeds shall be payable in accordance with the provisions of Article XVIII.

19.8 **Indemnity by Tenant**.

19.8.1 **Agreement to Indemnify**. SUBJECT TO SECTION 19.5.3 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT TO THE EXTENT SPECIFICALLY EXCLUDED HEREFROM PURSUANT TO SECTION 19.8.2, TENANT HEREBY AGREES AND COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD AND LANDLORD INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS, DIRECTLY OR INDIRECTLY ARISING

OR ALLEGED TO ARISE OUT OF OR ANY WAY INCIDENTAL TO (i) ANY USE, OCCUPANCY OR OPERATION OF THE LEASED PREMISES BY OR ON BEHALF OF TENANT OR ANY OF TENANT'S RELATED PARTIES DURING THE TERM, OR DURING ANY PERIOD OF TIME, IF ANY, BEFORE OR AFTER THE TERM THAT TENANT MAY HAVE HAD POSSESSION OF THE LEASED PREMISES, (ii) ANY BREACH OF THE TERMS AND CONDITIONS OF THIS LEASE BY TENANT OR TENANT'S RELATED PARTIES, (iii) ANY ENVIRONMENTAL EVENT WHICH IS REQUIRED TO BE COVERED BY TENANT'S REMEDIAL WORK, OR (iv) THE ACT OR OMISSION OF TENANT OR TENANT'S RELATED PARTIES (COLLECTIVELY, THE "**TENANT LIABILITIES**"). THE FOREGOING INDEMNITY INCLUDES TENANT'S AGREEMENT TO PAY ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY LANDLORD AND ANY LANDLORD INDEMNITEE. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY LIABILITIES IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION OR THEORY OF STRICT LIABILITY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. ALTHOUGH TENANT HAS CAUSED LANDLORD INSURED TO BE NAMED AS LOSS PAYEE OR ADDITIONAL INSURED UNDER TENANT'S INSURANCE POLICIES, TENANT'S LIABILITY UNDER THIS INDEMNIFICATION PROVISION SHALL NOT BE LIMITED TO THE LIABILITY LIMITS SET FORTH IN SUCH POLICIES. THE OBLIGATIONS OF TENANT UNDER THIS SECTION 19.8.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE WITH RESPECT TO ANY CLAIMS OR LIABILITY ARISING IN CONNECTION WITH ANY EVENT OCCURRING PRIOR TO SUCH TERMINATION.

19.8.2 **Tenant's Exclusions**. TO THE EXTENT ANY OF THE CLAIMS FOR WHICH TENANT IS OBLIGATED TO INDEMNIFY LANDLORD AND LANDLORD INDEMNITEES PURSUANT TO SECTION 19.8.1 ARE CAUSED BY ANY OF THE FOLLOWING, SUCH CLAIMS SHALL NOT BE COVERED BY SUCH INDEMNITY:

(a) ANY INJURY TO OR DEATH OF ANY PERSON OR ANY PHYSICAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT, AND ONLY TO THE EXTENT, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY LANDLORD INDEMNITEE;

(b) LANDLORD'S OR ANY LANDLORD INDEMNITEE'S BREACH OF LANDLORD'S EXPRESS OBLIGATIONS UNDER THIS LEASE OR ANY APPLICABLE LAW; OR

(c) ANY ENVIRONMENTAL EVENT OR ANY HAZARDOUS MATERIALS PRESENT AT, IN, ON OR UNDER THE LEASED PREMISES CAUSED BY OR ARISING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR A LANDLORD INDEMNITEE FROM AND AFTER THE EXECUTION DATE, AND ANY ENVIRONMENTAL EVENT OR HAZARDOUS MATERIALS PRESENT AT, IN, ON OR UNDER THE LEASED PREMISES EXISTING ON OR PRIOR TO THE EXECUTION DATE AND SHOWN AS A RECOGNIZED ENVIRONMENTAL CONDITION IN THE ENVIRONMENTAL REPORTS.

19.9 **Conduct of Claims**. Landlord shall, reasonably promptly after the receipt of written notice of any Action or Proceeding or claim against Landlord or Landlord Indemnitees in respect of which indemnification may be sought pursuant to Section 19.8, notify Tenant of such Action or Proceeding or claim. In case any such Action or Proceeding or claim shall be made or brought against Landlord or Landlord Indemnitees, Tenant may, or if so requested by Landlord shall, assume the defense thereof with counsel of its selection reasonably acceptable to Landlord and which shall be reasonably competent and experienced to defend Landlord and/or Landlord Indemnitees. In such circumstances, the Landlord and Landlord Indemnitees shall (i) at no cost or expense to Landlord and/or Landlord Indemnitees, cooperate with Tenant and provide Tenant with such information and assistance as Tenant shall reasonably request in connection with such Action or Proceeding or claim, and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice in any such action or with respect to any such claim. If Tenant assumes the defense of the relevant claim or action, (i) Tenant shall not be liable for any settlement thereof which is made without its Approval and (ii) Tenant shall control the settlement of such claim or action; *provided, however*, that Tenant shall not conclude any settlement which requires any action or

forbearance from action or payment or admission by Landlord or any Landlord Indemnitee without the prior Approval of such Party, as applicable. The obligations of Tenant under Section 19.8 shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the acts of Landlord or Landlord Indemnitee (unless required by Applicable Law or applicable legal process) after the assertion of any claim which gave rise to the obligation to indemnify which prejudices the successful defense of the Action or Proceeding or claim without, in any such case, the prior written Approval of Tenant (such Approval not to be required in a case where Tenant has not assumed the defense of the Action or Proceeding or claim). If Tenant has assumed the defense of the relevant Action or Proceeding or claim, Landlord agrees to afford Tenant and its counsel the opportunity to be present at, and to participate in, conferences between Landlord and any Persons, including Governmental Authorities, or conferences between Landlord and representatives of or counsel for such Person, asserting any claim or action against Landlord or Landlord Indemnitees covered by the indemnity contained in Section 19.8 to the extent such conference relates to the subject matter of the claim or action covered by the indemnity contained in Section 19.8.

19.10 **Failure to Defend**. It is understood and agreed by Tenant that in the event that Landlord or any Landlord Indemnitee is made a defendant in any Action or Proceeding or Claim for which it is indemnified pursuant to this Lease, and Tenant fails or refuses to assume the defense thereof, after having received Notice by Landlord or any Landlord Indemnitee of its obligation hereunder to do so, Landlord or said Landlord Indemnitee may compromise or settle or defend any such Action or Proceeding or Claim, and Tenant shall be bound and obligated to reimburse Landlord and/or said Landlord Indemnitee for the amount expended by Landlord and/or Landlord Indemnitee in settling and compromising any such Action or Proceeding or Claim, or for the amount expended by Landlord and/or any Landlord Indemnitee in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by Landlord and/or any Landlord Indemnitee for defense or settlement of such Action or Proceeding or Claim. Any judgment rendered against Landlord and/or any Landlord Indemnitee or amount expended by Landlord and/or any Landlord Indemnitee in compromising or settling such Action or Proceeding or Claim shall be conclusive as determining the amount for which Tenant is liable to reimburse Landlord and/or any Landlord Indemnitee hereunder. To the extent that Landlord and/or any Landlord Indemnitee has the right to, and in fact does, assume the defense of such Action or Proceeding or Claim, Landlord and/or each Landlord Indemnitee shall have the right, at its expense, to employ independent legal counsel in connection with any Action or Proceeding or Claim, and Tenant shall cooperate with such counsel in all reasonable respects at no cost to Landlord or any Landlord Indemnitee.

19.11 **No Third Party Beneficiary**. The provisions of Sections 19.8, 19.9 and 19.10 are solely for the benefit of the Landlord, Landlord Indemnitees, Tenant, and Tenant's Related Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person.

19.12 **Intentionally Reserved**.

19.13 **Intentionally Reserved**.

19.14 **Indemnity by Landlord**. SUBJECT TO SECTION 19.5.3 AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD HEREBY COVENANTS AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TENANT AND TENANT INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS, TO THE EXTENT DIRECTLY OR INDIRECTLY ARISING OR ALLEGED TO ARISE OUT OF OR ANY WAY INCIDENTAL TO ANY OF THE FOLLOWING:

(a) ANY INJURY TO OR DEATH OF ANY PERSON OR ANY PHYSICAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT, AND ONLY TO THE EXTENT, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES;

(b) LANDLORD'S BREACH OF ITS EXPRESS OBLIGATIONS UNDER THIS LEASE OR ANY APPLICABLE LAW; OR

(c) ANY ENVIRONMENTAL EVENT OR ANY HAZARDOUS MATERIALS PRESENT AT, IN, ON OR UNDER THE LEASED PREMISES CAUSED BY OR ARISING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES FROM AND AFTER THE EXECUTION DATE, AND ANY ENVIRONMENTAL EVENT OR HAZARDOUS MATERIALS PRESENT AT, IN, ON OR UNDER THE LEASED PREMISES EXISTING ON OR PRIOR TO THE EXECUTION DATE AND SHOWN AS A RECOGNIZED ENVIRONMENTAL CONDITION IN THE ENVIRONMENTAL REPORTS.

THE OBLIGATIONS OF LANDLORD UNDER THIS SECTION 19.14 SHALL SURVIVE THE TERMINATION OF THIS LEASE WITH RESPECT TO ANY CLAIMS OR LIABILITY ARISING IN CONNECTION WITH ANY EVENT OCCURRING PRIOR TO SUCH TERMINATION. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST TENANT, AND THE FOREGOING INDEMNITY IS APPLICABLE TO SUCH ACTION OR PROCEEDING, THEN LANDLORD, UPON NOTICE FROM TENANT, SHALL RESIST AND DEFEND SUCH ACTION OR PROCEEDING BY COUNSEL REASONABLY SATISFACTORY TO TENANT.

ARTICLE XX

CONDEMNATION

20.1 Condemnation of Substantially All of the Leased Premises.

20.1.1 Termination Rights. If, at any time during the Term, title to the whole or Substantially All of the Leased Premises is taken in any Condemnation Action (or conveyed in lieu of any such Condemnation Action), other than for a temporary use or occupancy that is for one (1) year or less in the aggregate, this Lease shall terminate (except as to Section 20.1.2 hereof) and expire on the date of such taking (or conveyance) and all the Rent and other payments, including Impositions, shall be paid to the date of such taking (or conveyance). With respect to any Rent or other sums payable hereunder or pursuant hereto which are to be paid to Landlord in the event of such termination but which are not then capable of ascertainment, reasonable estimates of such items shall be made and such estimates shall be included in the aforesaid payment, and Landlord and Tenant shall make adjustments to correct any error in such estimates as and when the same become determined.

20.1.2 Condemnation Awards. All Condemnation Awards payable as a result of or in connection with any taking of the whole or Substantially All of the Leased Premises shall be paid and distributed in accordance with the provisions of this Section 20.1.2, notwithstanding the division of the Condemnation Award by a court or condemning authority in a Condemnation Action. Tenant shall be entitled to the entire proceeds of the Condemnation Award, less the amount of Landlord's Interest, which shall be payable to Landlord. The term "**Landlord's Interest**" shall mean the sum of (i) the then current fair market value of the portion of the Leased Premises taken (or conveyed) considered as unimproved, raw land, valued as a separate tract not part of a larger assemblage of land and valued on the basis of such parcel's then highest and best use, but encumbered by this Lease (i.e., the value of the remainder interest of Landlord), (ii) the then current fair market value of the portion of the Improvements paid for by Landlord, if any, and situated on the portion of the Land taken in its condition existing at the time of such taking (or conveyance), but encumbered by this Lease (i.e., the value of the remainder interest of Landlord); and (iii) any street improvements paid for by Landlord. The Condemnation Award payable to Landlord pursuant to this Section 20.1.2 shall be referred to as "**Landlord's Condemnation Award**".

20.1.3 Definitions of Substantially All of the Leased Premises. For purposes of this Article XX, "**Substantially All of the Leased Premises**" shall be deemed to have been taken if, by reason of the taking of title to or possession of the Leased Premises or any portion thereof by Condemnation Actions, an Untenantable Condition exists or is reasonably expected to exist for longer than [one (1)] year.

20.2 Condemnation of Part. In the event of a Condemnation Action affecting less than the whole or less than Substantially All of the Leased Premises, Tenant shall have the option to terminate this Lease by providing Landlord written notice thereof, within 90 days of receipt of such notice of the applicable Condemnation Action. To

the extent Tenant does not take action to terminate this Lease, then the Term shall not be reduced or affected in any way, and the following provisions shall apply:

20.2.1 **Condemnation Awards**. All Condemnation Awards payable as a result of or in connection with any taking of less than the whole or less than Substantially All of the Leased Premises shall be paid and distributed in accordance with the provisions of this Section 20.2.1, notwithstanding the division of the Condemnation Award by a court or condemning authority in a Condemnation Action. Tenant shall be entitled to the entire proceeds of the Condemnation Award, less the amount of Landlord's Condemnation Award, which shall be payable to Landlord. The Condemnation Award payable to Tenant pursuant to this Section 20.2.1 shall be paid to Tenant and applied by Tenant in the following order of priority: (i) payment of all costs of Condemnation Repair Work ("**Condemnation Expenses**") in excess of Landlord's Condemnation Award and (ii) paying any remainder to Tenant.

20.2.2 **Restoration of the Leased Premises**. Following a condemnation of less than the whole or Substantially All of the Leased Premises during the Term, Tenant shall, subject to the requirements of Section 15.2 and Article XIX, with reasonable diligence (subject to Excusable Tenant Delay and/or Landlord Delay), commence and thereafter proceed to repair, alter and restore the remaining part of the Leased Premises to substantially their former condition to the extent that the same may be feasible and in accordance with the Project Plans which have been Approved pursuant to the terms of this Lease, as and if required, to the extent practical and permitted by Applicable Laws. Such repairs, alterations or restoration, including temporary repairs for the protection of Persons or Property pending the completion of any part thereof are sometimes referred to in this Article XX as the "**Condemnation Repair Work**". Landlord shall be obligated to make payment, disbursement, reimbursement or contribution toward the Condemnation Expenses in an amount up to Landlord's Condemnation Award. Landlord shall make such payments or disbursements for Condemnation Expenses upon request from Tenant when accompanied by a certificate dated not more than fifteen (15) calendar days prior to such request, signed by a Responsible Officer of Tenant and any architect, engineer or construction manager in charge of the Condemnation Repair Work selected by Tenant, setting forth the following:

(a) That the sum then requested either has been paid by Tenant or is due to contractors, subcontractors, materialmen, architects, engineers or other Persons who have rendered services or furnished materials in connection with the Condemnation Repair Work, giving a reasonably detailed description of the services and materials and the several amounts so paid or due; and

(b) That except for the amount stated in such certificate to be due (or except for statutory or contractual retainage not yet due and payable), there is no outstanding indebtedness for such Condemnation Repair Work known to the Persons signing such certificate which is then due to Persons being paid, after due inquiry. Upon Tenant's compliance with the requirements of this Section 20.2.2, Landlord shall pay or cause to be paid to Tenant, or the Persons named in Tenant's request, the respective amounts stated therein to have been paid by Tenant or to be due to such Persons, as the case may be, but in no event shall the aggregate amount paid or payable by Landlord under this Article XX exceed the amount of Landlord's Condemnation Award. Amounts paid to Tenant by Landlord under this Section 20.2 shall be held by Tenant in trust for the purpose of paying Condemnation Expenses and shall be applied by Tenant to any such Condemnation Expenses or otherwise in accordance with the terms of this Section 20.2.2. All Condemnation Expenses in excess of Landlord's Condemnation Award shall be paid by Tenant.

20.3 **Temporary Taking**. If the whole or any part of the Leased Premises shall be taken in Condemnation Actions for a temporary use or occupancy of one (1) year or less, the Term shall not be reduced, extended or affected in any way, and Tenant shall continue to pay in full the Rent, without reduction or abatement, in the manner and the time herein specified. Except to the extent that Tenant is prevented from doing so pursuant to the terms of the order of the condemning authority or because it is not possible as a result of such taking, Tenant shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such temporary taking had not occurred. In the event of any such temporary taking, Tenant shall be entitled to receive the entire amount of any Condemnation Award made for such taking, whether such award is paid by way of damages, rent or otherwise, less any Condemnation Expenses paid by Landlord, *provided* that if the period of temporary use or occupancy shall extend beyond the Lease Expiration Date, Tenant shall be entitled to receive only that portion of any Condemnation Award (whether paid by way of damages, rent or otherwise) allocable to the

period of time from the date of such condemnation to the Lease Expiration Date, and Landlord shall be entitled to receive the balance of such Condemnation Award.

20.4 **Condemnation Proceedings**. Notwithstanding any termination of this Lease, (i) Tenant and Landlord each shall have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials and appeals therein and (ii) subject to the other provisions of this Article XX, Tenant shall have the right in any Condemnation Action to assert a separate claim for, and receive all condemnation awards for Tenant's Personal Property taken or damaged as a result of such Condemnation Action, and any damage to, or relocation costs of, Tenant's business as a result of such Condemnation Action. In the event of the commencement of any Condemnation Action, (i) Landlord shall undertake all commercially reasonable efforts to defend against, and maximize the Condemnation Award from, any such Condemnation Action, (ii) Landlord shall not accept or agree to any conveyance in lieu of any condemnation or taking without the prior consent of Tenant, which consent shall not be unreasonably withheld, delayed or conditioned, and (iii) Landlord and Tenant shall cooperate with each other in any such Condemnation Action and provide each other with such information and assistance as each shall reasonably request in connection with such Condemnation Action.

20.5 **Notice of Condemnation**. In the event Landlord or Tenant shall receive notice of any proposed or pending Condemnation Action affecting the Leased Premises, the Party receiving such notice shall promptly notify the other Party hereto.

20.6 **Condemnation by Landlord**. The provisions of this Article XX for the allocation of any Condemnation Awards are not intended to be, and shall not be construed or interpreted as, any limitation on or liquidation of any claims or damages (as to either amount or type of damages) of Tenant against Landlord in the event of a condemnation by Landlord of any portion or all of the Leased Premises or any other right, title or interest of Tenant under this Lease.

ARTICLE XXI

ASSIGNMENT, TRANSFER AND SUBLEASING

21.1 **Assignment**. The occurrence of any one of the following events (each a "**Transfer**") without the prior written Approval of the Landlord (which Approval shall not be unreasonably withheld subject to the Terms of Section 21.2.1 below) shall not be permitted hereunder, unless such event is a Permitted Transfer:

(a) Any direct or indirect sale, assignment, transfer, sublease, license or other disposition of the right, title, interest or obligation of Tenant under this Lease, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation);

(b) Any mortgage, pledge, encumbrance or other hypothecation of any right, title or interest of Tenant under this Lease; or

(c) Any direct issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of any Person or any transfer of an equity or beneficial interest in any Person that directly results in either (i) a change of the Controlling Person of Tenant or (ii) the creation of a Controlling Person of Tenant, where none existed before (either (i), (ii) or (iii) being a "**Change in Control**").

Notwithstanding the foregoing to the contrary, the following shall not constitute a Transfer (a "**Permitted Transfer**") and the Landlord's Approval to such Permitted Transfer shall not be required under this Lease:

(t) Any Use Agreement executed in accordance with the terms of Section 21.6 hereof;

(u) An assignment, sale, transfer, sublease or other disposition to an Affiliate of Tenant; *provided* that such an Affiliate is not a Prohibited Person and such Affiliate meets the Financial Test;

(v) An assignment, sale, transfer, sublease or other disposition to an authorized franchisee of Tenant, when such franchisee (i) has executed a franchise agreement with Tenant to operate a multi-story golf-centered recreational and entertainment complex at the Premises under the tradename "BigShots Aggieland," (ii) has agreed, in writing, to be bound by all of the provisions of this Lease, (iii) is not a Prohibited Person, and (iv) meets the Financial Test;

(w) Any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of any Person that either (i) results in there being no Controlling Person of Tenant, where none existed before or (ii) does not result in a change of the Controlling Person of Tenant or the creation of a Controlling Person of Tenant where none existed before;

(x) Any Leasehold Mortgage executed in connection with a Permitted Project Financing;

(y) An assignment of this Lease to an entity that is Controlled by ClubCorp, Inc. and is not a Prohibited Person and meets the Financial Test; or

(z) Any Foreclosure Event.

21.2 **Standards for Landlord Approval of Transfers; Costs**.

21.2.1 **Standards for Landlord Approval of Transfers**. Provided the following requirements are satisfied, Landlord will not unreasonably withhold its Approval to a Transfer:

(a) Landlord must first receive a written request for its Approval to such Transfer, together with reasonably detailed information concerning the type of Transfer, the interests affected by the Transfer, the identity, reputation and financial condition of the proposed transferee (the "**Tenant Transferee**"), the qualification or lack of qualification of the proposed transferee in the construction (if such Transfer is effectuated prior to Substantial Completion) and operation of Comparable Recreational Properties, and such other information related to the Transfer and the Tenant Transferee as Landlord may reasonably request;

(b) No uncured Tenant Default shall exist; and

(c) No breach by Tenant of the terms of this Lease for which Landlord has given Tenant Notice shall exist.

21.2.2 **Costs**. In connection with any request for Landlord's Approval under this Article XXI, and as a condition to Landlord's obligation to deliver its Approval, Tenant shall pay to Landlord all reasonable third-party costs and expenses incurred by Landlord in reviewing Tenant's request for Approval, whether or not Landlord grants such Approval.

21.3 **No Waiver of Rights by Landlord**. The Approval of Landlord of any proposed Transfer shall not be a waiver of any right to object to further or future proposed Transfers, and the Approval of Landlord's of each such successive proposed Transfer must be first obtained in writing from Landlord.

21.4 **Conditions to Effectiveness of Any Transfer**. Any proposed Transfer shall be void and shall confer no right upon the proposed transferee unless and until (i) the Approval of Landlord is obtained if such approval is required pursuant to the terms of Article XXI, (b) the transferee shall have assumed in writing each and every one of the terms, covenants and provisions of Tenant contained in this Lease with respect to the period from and after the Transfer, by an instrument delivered to Landlord, and (c) any then existing default under this Lease is fully cured (it being expressly acknowledged that Landlord may condition its Approval of any Transfer on the cure of any and all such defaults existing at the time of such proposed Transfer).

21.5 **Acceptance of Rent**. If Tenant makes a Transfer in violation of the provisions of this Lease, Landlord may collect rent from any such transferee. Landlord may apply the net rent collected to payment of the

Rent due hereunder, but no such Transfer or collection shall be deemed a waiver of any of the provisions of this Article XXI, an acceptance of the Tenant Transferee or a release of Tenant from its obligations under this Lease.

21.6 **Use Agreements**. Nothing contained in this Lease shall prevent or restrict Tenant from subletting portions of the Leased Premises to Subtenants under Use Agreements, in accordance with the terms of this Lease upon Landlord's Approval, which shall not be unreasonably withheld, *provided* that each such Use Agreement (i) shall be subject and subordinate to this Lease and any Leasehold Mortgage and to the rights of Landlord hereunder and the rights of any Leasehold Mortgagee thereunder, and shall expressly so state, (ii) shall be negotiated on an arms' length basis and (iii) otherwise is consistent with standards of Comparable Recreational Properties operated at the Operating Standard. Notwithstanding any such subletting, Tenant shall at all times remain liable for the performance of all of the covenants and agreements under this Lease on Tenant's part to be so performed. Tenant shall provide Landlord with copies of all Use Agreements executed by it, and of any amendments of and renewals thereof, which also shall comply with the requirements of this Section 21.6. Tenant shall, in connection with any assignment or sublease, provide notice to Landlord of the name, legal composition and address of any assignee or Subtenant. In addition, Tenant shall provide Landlord with a description of the nature of the assignee's or Subtenant's business to be carried on in the Leased Premises. Upon Landlord's request, Tenant shall make available to Landlord for review only at Tenant's offices a copy of any Assignment and Assumption Agreement.

21.7 **Transfers by Landlord**. Landlord may effect a Landlord Transfer of its interest in the Leased Premises, or any part thereof or interest therein, or this Lease at any time or from time to time to any Person (a "**Landlord Transferee**"). For purposes of this Section 21.7, a "**Landlord Transfer**" shall mean any sale, conveyance, assignment or other transfer by Landlord of all or a portion of the Leased Premises or this Lease or any part thereof or interest therein by Landlord. Landlord shall promptly give Notice to Tenant advising Tenant of the name of any Landlord Transferee. Any security given by Tenant to secure performance of Tenant's obligations under this Lease will be transferred by Landlord to the successor in interest of Landlord, and Landlord shall thereby be discharged of any further obligation relating thereto.

21.8 **No Release**.

21.8.1 **Tenant**. Notwithstanding any Transfer, Tenant shall remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other obligations under this Lease from and after such Transfer (even if future Transfers occur after the Transfer by Tenant, and regardless of whether or not Landlord's Approval has been obtained for those future Transfers), except that Tenant shall be relieved from any obligations arising under this Lease after the date of a Transfer if and only if all of the following occur:

(a) Tenant has notified Landlord of the name and address of the Tenant Transferee and the Controlling Person, if any, of such Tenant Transferee by the time of the Transfer;

(b) Such Transfer is a Permitted Transfer or is otherwise Approved by Landlord;

(c) The Tenant Transferee shall have assumed responsibility for the performance of all of Tenant's obligations under this Lease arising on and after the date of the Transfer pursuant to an instrument of assignment and assumption substantially in the form of the Assignment and Assumption Agreement Approved by Landlord, which Approval shall be limited to the question of whether such instrument, when duly executed, will accomplish its intended purposes under this Lease (the "**Assignment and Assumption Agreement**");

(d) As of the date of the Transfer the Tenant Transferee or any Person who is a Controlling Person of Tenant Transferee is not a Prohibited Person; and

(e) As of the date of the Transfer (after giving effect to the Transfer), the Tenant Transferee meets the Financial Test as of the end of the fiscal quarter ending immediately preceding such date.

The Tenant Transferee's satisfaction of the Financial Test (after giving effect to the Transfer) shall be evidenced by (and be deemed satisfied by) (i) representations to that effect by the Tenant Transferee in the

Assignment and Assumption Agreement and (ii) a letter addressed and delivered to Landlord and Tenant (at Tenant's or the Tenant Transferee's expense) from a firm of independent, certified public accountants of recognized national or regional standing and stating that, based upon an audit of the Tenant Transferee (after giving actual or pro forma effect to the Transfer) made in accordance with generally accepted auditing standings, in such firm's opinion the Financial Test is/was met as of the date of the Transfer, such letter to be subject to such qualifications and assumptions as are usual and customary at that time for opinions of auditing firms.

21.8.2 **Landlord**. No Landlord Transfer shall relieve Landlord from any of its obligations under this Lease for periods prior to such Landlord Transfer, but Landlord shall be relieved from any obligations under this Lease relating to periods on and after the date of the Landlord Transfer in question, and Tenant shall look solely to Landlord's successor in interest as to such obligations.

ARTICLE XXII

SURRENDER OF POSSESSION; HOLDING OVER

22.1 **Surrender of Possession**. Tenant shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of subtenancies (including any Subtenants), and in a clean condition and free of debris or as otherwise provided for in this Lease, subject to the terms of Article XVIII and Article XX hereof, and reasonable wear and tear. Upon the Lease Expiration Date, Tenant shall surrender the Leased Premises to Landlord in the condition required by Tenant's Remedial Work and in compliance with Applicable Laws. Upon such expiration or termination of this Lease, Tenant shall execute and deliver to Landlord a recordable termination of the Leasehold Estate.

22.2 **Removal of Tenant's Personal Property**.

22.2.1 **Tenant's Obligation to Remove**. All the Personal Property installed, placed or used in the operation of the Leased Premises throughout the Term shall be deemed to be the Property of Tenant or Subtenant, as the case may be. Tenant shall cause all such Personal Property to be removed within sixty (60) calendar days after the Lease Expiration Date, *provided* that Tenant shall promptly repair any damage to the Leased Premises caused by such removal.

22.2.2 **Landlord's Right to Remove**. Any Personal Property which shall remain in the Leased Premises after the expiration of sixty (60) calendar days after the Lease Expiration Date may, at the option of Landlord, be deemed to have been abandoned by Tenant and either may be retained by Landlord as its Property or be disposed of, without accountability, in such manner as Landlord Representative may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Tenant, together with reasonable attorneys' fees, charges and costs.

22.2.3 **Landlord Option to Purchase**. Instead of Tenant's removing the Personal Property (including any FF&E) installed, placed or used in the operation of the Leased Premises, Landlord may elect to purchase same to the extent owned by Tenant upon expiration or termination of this Lease, and to the extent that such Personal Property (including any FF&E) is not in any way branded with Tenant's trademarks or service marks. Landlord may exercise this right at any time within sixty (60) calendar days before expiration or termination of this Lease by written Notice to Tenant. The purchase price for such Personal Property (including any FF&E) shall be the taxable value of such Personal Property (including any FF&E) as set forth in the tax rolls of the County of Brazos, Texas. The purchase price shall be paid in immediately available funds on or prior to the Lease Expiration Date. If Landlord fails to exercise its option, Tenant shall cause the Personal Property (including any FF&E) not purchased pursuant to this Section 22.2.3 to be removed from the Leased Premises as required in Section 22.2.1.

22.3 **Holding Over**. In the case of any holding over or possession by Tenant after the Lease Expiration Date without the Approval of Landlord, Tenant shall be a tenant from month to month and shall pay Landlord as Percentage Rent an amount per month equal to one and a half times (1.5X) the highest month's Rent paid during the Term as adjusted on the first day of each Lease Year during the Term by the CPI Increase. Further, in the event

Tenant shall hold over beyond the Lease Expiration Date and any date for surrender of the Leased Premises set forth in Landlord's written Notice demanding possession thereof given following the Lease Expiration Date, Tenant shall reimburse Landlord for all actual reasonable expenses and losses incurred by Landlord by reason of Landlord's inability to deliver possession of the Leased Premises to a successor tenant free and clear of the possession of Tenant, together with interest on such expenses at the Default Rate from the date such expenses are incurred until reimbursed by Tenant, together with Landlord's reasonable attorneys' fees, charges and costs. The acceptance of Rent under this Section 22.3 by Landlord shall not constitute an extension of the Term of this Lease or afford Tenant any right to possession of the Leased Premises beyond any date through which such Rent shall have been paid by Tenant and accepted by Landlord. Such Rent shall be due to Landlord for the period of such holding over, whether or not Landlord is seeking to evict Tenant; and, unless Landlord otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of Landlord, whether or not Landlord has accepted any sum due pursuant to this Section 22.3. Notwithstanding the foregoing to the contrary, in the event Tenant holds over beyond the Lease Expiration Date, such holding over shall be an Event of Default and Landlord shall be entitled to execute its remedies as provided in this Lease.

ARTICLE XXIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

23.1 **Tenant's Representations and Warranties**. As an inducement to Landlord to enter into this Lease, Tenant represents and warrants to Landlord that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* Tenant is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The business which Tenant carries on and which it proposes to carry on may be conducted by Tenant. Tenant is duly authorized to conduct business in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) *Authority.* The execution, delivery and performance of this Lease by Tenant is within Tenant's powers, respectively, and have been duly authorized by all necessary action of Tenant.

(c) *Intentionally Reserved.*

(d) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Tenant of this Lease.

(e) *Valid and Binding Obligation.* This Lease is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Tenant, threatened against or affecting Tenant, which the management of Tenant in good faith believe that the outcome of which would (i) materially and adversely affect the validity or enforceability of, or the authority or ability of Tenant under, this Lease to perform its obligations under this Lease, or (ii) have a material and adverse effect on the consolidated financial condition or results of operations of Tenant or on the ability of Tenant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(g) *Conflict of Interest.* None of Tenant, or any Affiliate of Tenant, nor any of their officers, partners, members, shareholders, employees or agents are officials or employees of Landlord. In connection with Tenant's execution and performance of this Lease, neither Tenant nor any Affiliate of

Tenant has offered or agreed to confer any benefit on a Landlord employee or official or on an official, employee, agent or consultant of the Landlord.

23.2 **Intentionally Reserved**.

23.3 **Landlord's Representations and Warranties**. As an inducement to Tenant to enter into this Lease, Landlord represents and warrants to Tenant that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization*. Landlord is a municipality duly formed and validly existing under the laws of the State of Texas, with all necessary power and authority to enter into this Lease and to consummate the transactions herein contemplated.

(b) *Authority*. The execution, delivery and performance of this Lease by Landlord is within Landlord's powers, and have been duly authorized by all necessary action of Landlord.

(c) *No Consent*. Upon the execution of this Lease by the Landlord, the Landlord will have caused all governmental proceedings required to be taken by or on behalf of the Landlord to authorize the Landlord to make and deliver this Lease and to perform the covenants, obligations and agreements of the Landlord hereunder. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution or delivery of this Lease by the Landlord or the performance by the Landlord of its covenants, obligations and agreements hereunder, other than any such Approval which already has been given.

(d) *Valid and Binding Obligation*. This Lease is the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

(e) *No Pending Litigation, Investigation or Inquiry*. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Landlord, threatened against or affecting Landlord, which Landlord in good faith believes that the outcome of which would (i) materially and adversely affect the validity or enforceability of, or the authority or ability of Landlord under, this Lease to perform its obligations under this Lease, or (ii) have a material and adverse effect on the consolidated financial condition or results of operations of Landlord.

ARTICLE XXIV

DEFAULTS AND REMEDIES

24.1 **Events of Default**.

24.1.1 **Tenant Default**. The occurrence of any of the following shall be an "**Event of Default**" by Tenant or a "**Tenant Default**":

(a) The failure of Tenant to pay any Rent or any other payment required to be made by Tenant hereunder when due and payable under this Lease if such failure continues for more than ten (10) calendar days after Notice from Landlord to Tenant that such amount was not paid when due; *provided, however*, after three (3) such Notices in any Lease Year, no further Notices shall be required in such Lease Year;

(b) The failure of Tenant to perform any Insurance Covenant in any material respect if such failure continues for more than five (5) calendar days after Notice from Landlord to Tenant of such default with Notice under Section 19.3.1 constituting Notice under this paragraph (b);

(c) Any breach by Tenant of the terms or provisions of Article XXI;

(d) The failure of Tenant to keep, observe or perform any of the terms, covenants or agreements contained in this Lease on Tenant's part to be kept, performed or observed (other than those referred to in clauses (a)-(c) above) if: (1) such failure is not remedied by Tenant within fifteen (15) calendar days after Notice from Landlord to Tenant of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured fifteen (15) calendar days, Tenant fails to commence to cure such default within fifteen (15) calendar days after Notice from Landlord to Tenant of such default, or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within fifteen (15) calendar days but is otherwise reasonably susceptible of cure, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however,* that if such default is not cured within one hundred eighty (180) calendar days after notice from Landlord of such default, (notwithstanding Tenant's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Lease; or

(e) The (1) filing by Tenant of a voluntary petition in bankruptcy; (2) adjudication of Tenant as a bankrupt; (3) approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of Tenant under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (4) Tenant's assets are levied upon by virtue of a writ of court of competent jurisdiction; (5) insolvency of Tenant; (6) assignment by Tenant of all or substantially of their assets for the benefit of creditors; (7) initiation of procedures for involuntary dissolution of Tenant, unless within ninety (90) calendar days after such filing, Tenant causes such filing to be stayed or discharged; (8) Tenant ceases to do business in any manner; and (9) appointment of a receiver, trustee or other similar official for Tenant, or Tenant's property, unless within ninety (90) calendar days after such appointment, Tenant causes such appointment to be stayed or discharged; or

(f) Any representation or warranty made by Tenant in this Agreement was untrue in any material respect as of the Execution Date; or

(g) The conviction of Tenant or any Affiliate of Tenant involved in the Project in a federal or state felony criminal proceeding (including a conviction entered on a plea nolo contender, but excluding traffic violations and other minor offenses); or

(h) The entry of a final, non-appealable judgment against Tenant or any Affiliate of Tenant involved in the Project, which judgment contains a finding that any of the aforementioned committed fraud and/or embezzlement. There is specifically excluded from this subparagraph the entry of a settlement or other agreement disposing of a lawsuit in which no fault or wrongdoing is admitted.

24.1.2 **Landlord Default**. The occurrence of the following shall be an "**Event of Default**" by Landlord or a "**Landlord Default**": (i) the failure of Landlord to pay any of its monetary obligations to Tenant under this Lease when due and payable if such failure continues for ten (10) Business Days after Tenant gives Notice to Landlord that such amount was not paid when due; or (ii) the failure of Landlord to perform or observe any of the other obligations, covenants or agreements to be performed or observed by Landlord under this Lease within fifteen (15) calendar days after notice from Tenant of such failure; *provided, however*, that if such performance or observance cannot reasonably be accomplished within such fifteen (15) calendar days but is otherwise reasonably susceptible of cure, the time within which Landlord is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however,* that if such default is not cured within one hundred eighty (180) calendar days after notice from Tenant of such default, (notwithstanding Landlord's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Lease.

24.2 **Remedies**. Subject to the provisions of this Article XXIV and Section 26.13:

24.2.1 Landlord's Remedies. Subject to this Article XXIV and Section 26.13, upon the occurrence of any Tenant Default, Landlord may, in its sole discretion, pursue any one or more of the following remedies without any Notice or demand whatsoever:

(a) Landlord may (but under no circumstance shall be obligated to) terminate this Lease pursuant to Section 24.2.3 and upon such termination Landlord may forthwith reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind (except as otherwise set forth herein) and be entitled to recover, as damages under this Lease, a sum of money equal to the total of (i) the reasonable cost of recovering the Leased Premises, (ii) the reasonable cost of removing and storing Tenant's Personal Property or any other occupant's Property, (iii) the unpaid Rent and any other sums accrued hereunder at the date of termination and (iv) a sum equal to the amount, if any, by which the present value of the total Rent which would have accrued to Landlord under this Lease for the remainder of the Term, if the terms of this Lease had been fully complied with by Tenant, exceeds the present value of the total fair market rental value of the Leased Premises for the balance of the Term. For the purposes of clause (iv) in the immediately preceding sentence, such un-accrued Percentage Rent shall be calculated based on the Percentage Rent payable during the twelve (12) months immediately preceding such termination. In the event Landlord shall elect to terminate this Lease, Landlord shall at once have all the rights of reentry upon the Leased Premises, without becoming liable for damages or guilty of trespass.

(b) Landlord may (but under no circumstance shall be obligated to) terminate Tenant's right of occupancy of all or any part of the Leased Premises and reenter and repossess the Leased Premises by entry, forcible entry or detainer suit or otherwise, without demand or notice of any kind to Tenant and without terminating this Lease, without acceptance of surrender of possession of the Leased Premises, and without becoming liable for damages or guilty of trespass, in which event Landlord shall make commercially reasonable efforts to relet the Leased Premises or any part thereof for the account of Tenant for a period equal to or lesser or greater than the remainder of the Term on whatever terms and conditions Landlord, in Landlord's sole discretion, subject to commercially reasonable standards, deems advisable. Tenant shall be liable for and shall pay to Landlord all Rent payable by Tenant under this Lease plus an amount equal to (i) the reasonable cost of recovering possession of the Leased Premises, (ii) the reasonable cost of removing and storing any of Tenant's or any other occupant's Property left on the Leased Premises after reentry, (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Leased Premises, (iv) the reasonable cost of any repairs, changes, alterations or additions necessary for reletting and (v) the reasonable cost of reletting, all reduced by any sums received by Landlord through any reletting of the Leased Premises; *provided, however*, that while Tenant shall not be entitled to any excess of any sums obtained by reletting over and above Rent provided in this Lease to be paid by Tenant to Landlord, such excess shall be credited against amounts owed under Section 24.2.1(b)(i)-(v) above. For the purpose of such reletting, Landlord is authorized to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary. No reletting shall be construed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such Tenant Default and exercise its rights under Section 24.2.1(a) of this Lease.

(c) Landlord may (but under no circumstance shall be obligated to) enter upon the Leased Premises and do whatever Tenant is obligated to do under the terms of this Lease, including taking all reasonable steps necessary to maintain and preserve the Project Improvements; and Tenant agrees to reimburse Landlord on demand for any reasonable expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. No action taken by Landlord under this Section 24.2.1(c) shall relieve Tenant from any of its obligations under this Lease or from any consequences or liabilities arising from the failure to perform such obligations.

(d) Landlord may exercise any and all other remedies available to Landlord at law or in equity (to the extent not otherwise specified or listed in this Section 24.2), including enforcing specific performance of Tenant's obligation to construct the Project Improvements in accordance with the terms of

this Lease and to continuously operate the Leased Premises in accordance with the Operating Standard and pursuant to Sections 12.2, 12.3 and 12.4.

24.2.2 Tenant's Remedies. Subject to this Article XXIV and Section 26.13, upon the occurrence of any Landlord Default, Tenant may, at its sole discretion, have the option to pursue any one or more of the following remedies without any Notice or demand whatsoever:

(a) Tenant may terminate this Lease pursuant to Section 24.2.3; and

(b) Tenant may exercise any and all other remedies available to Tenant at law or in equity.

24.2.3 Right to Terminate. Upon the occurrence of a Tenant Default or a Landlord Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a **"Final Notice"**) of the non-defaulting Party's intention to terminate this Lease after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) calendar day period, if the Event of Default is not cured, this Lease shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) calendar day period the defaulting Party cures such Event of Default, then this Lease shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) calendar day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding.

24.2.4 Cumulative Remedies. Subject to the provisions of this Article XXIV, each right or remedy of Landlord and Tenant provided for in this Lease shall be cumulative of and shall be in addition to every other right or remedy of Landlord or Tenant provided for in this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease or hereafter existing at law or in equity, by statute or otherwise.

24.3 Intentionally Reserved.

24.4 Limited Recourse Against Landlord. Tenant covenants and agrees that any claim, judgment or decree of any court against Landlord and in favor of Tenant as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Lease on Landlord's part to be kept, observed and performed, shall be limited to the interest of Landlord in and to the Leased Premises (including any proceeds of sale or assignment) and the interest of Landlord in and to Casualty Proceeds, Condemnation Awards and title insurance proceeds, in each case paid with respect to Landlord's interest in the Leased Premises.

24.5 Right to Injunction. In addition to the remedies set forth in this Article XXIV, the Parties shall be entitled to seek injunctive relief prohibiting (or mandating) action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Lease for which such remedy is available hereunder, at law or in equity.

24.6 Effect of Termination. If Landlord or Tenant elects to terminate this Lease, as provided herein (whether such termination occurs pursuant to this Article XXIV or any other provision hereof), this Lease shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Lease shall not alter the then existing Claims, if any, of either Party for breaches of this Lease occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

ARTICLE XXV

LEASEHOLD MORTGAGES

25.1 Tenant's Limited Right to Grant Liens and Special Provisions Applicable to Permitted Project Financing Holders.

25.1.1 Tenant's Right to Mortgage or Pledge. Tenant shall have the unrestricted right, at any time and from time to time and without the Approval of Landlord during the Term, to grant Leasehold Mortgages as security for Permitted Project Financing (and no other Debt) made by a Permitted Project Financing Holder, and to modify, extend, replace, refinance or otherwise change any Leasehold Mortgage so long as such remains as security for Permitted Project Financing (and no other Debt) provided, and on the condition that, any such Leasehold Mortgage shall cover and encumber the entirety of Tenant's interest in the Leased Premises. In no event shall Landlord's interest in the Leased Premises or any other Property of Landlord be used as security or collateral for any obligation or Debt of Tenant or for the benefit of any Permitted Project Financing Holder, and (except to the extent of Landlord's interest in the Project Improvements during the Term) Landlord shall have no obligation to subordinate all or any of its interests or rights in this Lease or the Leased Premises to any Lien, including any Leasehold Mortgage

25.1.2 Special Provisions Applicable to Leasehold Mortgagees. Whenever in this Lease, the term Leasehold Mortgagee is used, such term (i) shall be limited to the Permitted Project Financing Holder designated by Tenant as a Leasehold Mortgagee in a Tenant's Notice of Project Financing delivered to Landlord pursuant to this Section 25.1.2 and (ii) shall not include such designated Permitted Project Financing Holder after there is not any outstanding commitment or unpaid indebtedness with respect to the Permitted Project Financing. The Parties agree that regardless of the actual number of Permitted Project Financing Holders with respect to the Permitted Project Financing, only one Person (acting either on its own behalf or as agent or nominee for all Permitted Project Financing Holders) with respect to the Permitted Project Financing may be designated by Tenant as a Leasehold Mortgagee in any individual Tenant's Notice of Project Financing and, as such, be treated as, and receive the benefits of, a Leasehold Mortgagee under this Lease. Regardless of the existence of the Permitted Project Financing or Leasehold Mortgage, no Person shall be deemed to be a Leasehold Mortgagee under this Lease, unless and until Tenant shall have delivered Notice (a "**Tenant's Notice of Project Financing**") to Landlord of the existence of the particular Permitted Project Financing and designating such Person as a Leasehold Mortgagee. To be effective for purposes of this Lease, such Tenant's Notice of Project Financing must include the following and be delivered timely in connection with such Permitted Project Financing:

(a) The name and address of the Person who will be acting as Leasehold Mortgagee under this Lease with respect to such Permitted Project Financing;

(b) A conformed original or certified or photostatic copy of the Leasehold Mortgage securing such Permitted Project Financing, along with evidence of recording of any Leasehold Mortgage;

(c) The stated maturity date of the Permitted Project Financing provided that nothing herein shall prohibit the Leasehold Mortgagee or Permitted Project Financing Holder from extending the maturity date of the Permitted Project Financing or require any consent of or further notice to the Landlord of any such extension; and

(d) A certification by Tenant to Landlord that (i) the Person designated by Tenant as the Leasehold Mortgagee is a Qualified Lender and (ii) the Leasehold Mortgagee included in Tenant's Notice of Project Financing secures the Permitted Project Financing and no other Debt.

Landlord shall be entitled to rely on all information contained in a Tenant's Notice of Project Financing for all purposes under this Lease. In the event any Leasehold Mortgage covered by a Tenant's Notice of Project Financing is transferred and assigned to a different Permitted Project Financing Holder, Tenant shall timely provide Landlord with a new Tenant's Notice of Project Financing with respect to the same containing all of the foregoing information. For the absence of doubt, it is understood and agreed that Landlord shall have no obligation under this

Lease to any Permitted Project Financing Holder for whom Landlord has not received a Tenant's Notice of Project Financing.

25.2 **Leasehold Mortgagee Not Bound**. No cancellation or surrender of this Lease prior to the expiration of the Term shall be effective as to any Leasehold Mortgagee unless resulting from a failure or refusal by a Leasehold Mortgagee to comply timely with the provisions of this Article XXV respecting the cure of Tenant Defaults under this Lease. No Leasehold Mortgagee shall be bound by any material modification of this Lease unless such modification is Approved by such Leasehold Mortgagee, which Approval shall not be unreasonably withheld unless the modification adversely affects the value of the Leasehold Mortgagee's collateral.

25.3 **Default Notice**. Landlord, upon delivering any Notice to Tenant of: (i) a Tenant Default or (ii) a termination of this Lease, shall at the same time deliver a copy of such Notice to the Leasehold Mortgagee with respect to which Landlord received notice under Section 25.1.2. No such Notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been delivered to the Leasehold Mortgagee with respect to which Landlord received notice under Section 25.1.2. From and after such Notice has been delivered to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the delivery of such Notice to it in which to remedy any default or acts or omissions which are the subject matter of such Notice or cause the same to be remedied, as Tenant is entitled to plus an additional thirty (30) calendar days or such additional reasonable period of time as may be required as long as Leasehold Mortgagee commences the cure within such thirty (30) calendar day period and diligently continues to pursue the cure thereafter, but in no event more than an additional sixty (60) calendar days after the delivery of such notice to Tenant. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant and Tenant hereby constitutes and appoints each Leasehold Mortgagee as Tenant's attorney-in-fact with full power, in Tenant's name, place and stead, at Tenant's cost and expense, to enter upon the Leased Premises to perform any of Tenant's obligations under this Lease.

25.4 **Notice to Leasehold Mortgagee**. Notwithstanding anything herein to the contrary, if any Tenant Default shall occur, Landlord shall have no right to terminate this Lease or terminate Tenant's right to possession of the Leased Premises without terminating this Lease unless Landlord shall deliver Notice to the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination. The provisions of Section 25.5 below shall apply if, within such thirty (30) calendar day termination notice period, any such Leasehold Mortgagee (i) pays or causes to be paid all amounts then due and in arrears as specified in the termination Notice to such Leasehold Mortgagee and which will become due during such thirty (30) calendar day period, and (ii) cures or, in good faith and with reasonable diligence and continuity, (a) commences to cure all non-monetary requirements of this Lease then in default and reasonably susceptible of being cured by such Leasehold Mortgagee or (b) if all such non-monetary defaults reasonably susceptible of being cured by such Leasehold Mortgagee are not cured within such thirty (30) calendar day period, then within an additional fifteen (15) calendar days after the end of such thirty (30) calendar day period, commences to exercise its rights to take possession of the Leased Premises as mortgagee (through seeking the appointment of a receiver or otherwise) or acquire or sell Tenant's interest in this Lease by foreclosure or assignment in lieu thereof or otherwise with respect to a Leasehold Mortgage (which may include a petition to lift any stay imposed in bankruptcy proceedings and any application to remove any injunction limiting its right to take such actions, so long as, in each case, the same is diligently and continuously pursued). The Leasehold Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Leased Premises or to continue to prosecute foreclosure proceedings pursuant to clause (ii) above, if and when such Event of Default shall be cured.

25.5 **Procedure on Default**.

25.5.1 **Leasehold Mortgagee's Rights Prior to Termination**. If Landlord shall elect to terminate this Lease or terminate Tenant's right to possession of the Leased Premises without terminating this Lease by reason of any Tenant Default, and a Leasehold Mortgagee shall have proceeded in the manner provided for in Section 25.4, the specified date for the termination of this Lease as fixed by Landlord in its termination notice shall be extended for such period of time as may be reasonably required to effectuate (i) the cure of all non-monetary obligations of Tenant then in default and reasonably susceptible of being cured by such Leasehold Mortgagee or (ii) the taking of possession of the Leased Premises or the acquisition or sale of the Leasehold Estate by foreclosure of

the Leasehold Mortgage by such Leasehold Mortgagee or assignment in lieu thereof to the extent, and only to the extent, that possession of the Leased Premises is necessary to cure such default; *provided, however* that such Leasehold Mortgagee shall pay all Rent and all other amounts accrued and unpaid by Tenant and shall continue to pay all Rent and other amounts under this Lease as the same become due and continue its good faith diligent efforts to effect such acquisition or sale and to cure all non-monetary requirements of this Lease then in default and reasonably susceptible of being cured by such Leasehold Mortgagee. No Leasehold Mortgagee shall become liable to Landlord as an assignee of this Lease until such time as said Leasehold Mortgagee, by foreclosure or otherwise, either acquires the interests of Tenant under this Lease or actually takes possession of the Leased Premises, and upon such Leasehold Mortgagee's assigning such rights and interests to another party in accordance with Section 25.5.5 or relinquishing such possession, as the case may be, such Leasehold Mortgagee shall have no further such liability.

25.5.2 Cure of Tenant Default. If the Tenant Default shall be cured pursuant to this Section 25.5 within the time periods specified in Section 25.4 and Section 25.5, as applicable or the Tenant Default is not reasonably susceptible of being cured by such Leasehold Mortgagee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

25.5.3 Cure of Default Upon Acquisition of Leasehold Estate. If a Leasehold Mortgagee is complying with Section 25.4 and Section 25.5.1, upon the acquisition of the Leasehold Estate by such Leasehold Mortgagee or any other permitted purchaser at a Foreclosure Event, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, *provided* that all Tenant Defaults to be cured pursuant to Section 25.5.1, which have not yet been cured and are reasonably susceptible of cure by such Leasehold Mortgagee or other permitted purchaser, shall thereafter be cured within such period of time as may be reasonably required to effectuate such cure, but in no event longer than the time period permitted under Section 25.5.1. Further, notwithstanding anything to the contrary contained in this Lease, in the event of a Foreclosure Event, the Minimum Rent obligation provided for in Section 6.3.1 of this Lease shall be reinstated for the remainder of the Term (regardless of the then-current Lease Year) and shall not expire during the Term.

25.5.4 Leasehold Mortgage Not a Transfer. The making of a Leasehold Mortgage shall not be deemed to constitute a Transfer of this Lease nor shall any Leasehold Mortgagee prior to a Foreclosure Event or the acquisition of the Leasehold Estate or other security by foreclosure or assignment in lieu of foreclosure, as such, be deemed to be a transferee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder prior to such acquisition of the Leasehold Estate.

25.5.5 Transfers After Acquisition Upon Default. Notwithstanding any other provision of this Lease to the contrary, any Leasehold Mortgagee or other permitted acquirer of the Leasehold Estate pursuant to a Foreclosure Event may, upon acquiring the Leasehold Estate under the Lease, subject to obtaining the Approval of Landlord to the extent required in accordance with Article XXI with respect to any such proposed Transfer of the Leasehold Estate, sell and assign the Leasehold Estate on such terms and to such Persons as are acceptable to such acquirer and thereafter shall be relieved of all obligations of "**Tenant**" under this Lease arising after the date of such Transfer, provided (i) such transferee assumes in writing for the benefit of Landlord all of the obligations of "**Tenant**" under this Lease and (ii) Landlord is notified of such Transfer and provided a copy of such assumption contemporaneously with such Transfer.

25.5.6 Post-Foreclosure Operation. Notwithstanding any other provisions of this Lease, in the event of the acquisition of the Leasehold Estate by any Leasehold Mortgagee or any other permitted purchaser at a Foreclosure Event, the operation of the Leased Premises by or on behalf of any such acquirer of the Leasehold Estate under this Lease shall be subject to the provisions and requirements of this Lease and such acquirer of the Leased Premises shall operate the Leased Premises in accordance with the requirements of this Lease.

25.5.7 Affiliate or Subsidiary of Leasehold Mortgagee. Landlord agrees that in lieu of the acquisition of the Leasehold Estate by Leasehold Mortgagee that the Leasehold Estate may be acquired by any Affiliate or Subsidiary of Leasehold Mortgagee and all rights and obligations of Leasehold Mortgagee hereunder shall be applicable to such Affiliate or Subsidiary.

25.6 **New Lease**. In case of the termination of this Lease for any reason whatsoever prior to the expiration of the Term (other than (i) a termination consented in writing by the applicable Leasehold Mortgagee or (ii) a termination permitted under this Lease as a result of the failure or refusal of such Leasehold Mortgagee to comply with the provisions of Section 25.4 and Section 25.5 hereof), including in the event of rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Applicable Law affecting creditors rights, Landlord shall give prompt Notice thereof to any Leasehold Mortgagee. Landlord shall, on written request of any such Leasehold Mortgagee, made at any time within thirty (30) calendar days after Notice from Landlord to such Leasehold Mortgagee of the termination of this Lease, enter into a new Lease with such Leasehold Mortgagee or an Affiliate or Subsidiary thereof within thirty (30) calendar days after receipt of such request, which new Lease shall be effective as of the date of such termination of this Lease for the remainder of the Term, on all terms and conditions of this Lease that would have been in effect on such date but for such termination, other than such terms as are not reasonably susceptible to being performed by Leasehold Mortgagee or an Affiliate or Subsidiary thereof (the "**New Lease**"); *provided, however*, that such Leasehold Mortgagee shall: (i) contemporaneously with the delivery of such request pay to Landlord all Rent and other amounts payable by Tenant hereunder which are then due; (ii) pay to Landlord at the time of the execution and delivery of the New Lease any and all reasonable, out-of-pocket costs and expenses of any kind which Landlord incurs with respect to the operation and maintenance of the Leased Premises after the rejection or disaffirmance of this Lease and any and all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with the New Lease, including the reasonable fees and expenses of Landlord's outside legal counsel; (iii) comply with the provisions of Section 25.5.6 regarding Approval of the Person proposed by such Leasehold Mortgagee to operate the Project Improvements and (iv) on or prior to the execution and delivery of the New Lease, agree in writing that promptly following the delivery of the New Lease such Leasehold Mortgagee or an Affiliate or Subsidiary thereof will perform or cause to be performed all of the other covenants, obligations and agreements contained in this Lease on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of the New Lease (except such covenants and agreements which are not reasonably susceptible of performance by such Leasehold Mortgagee). Landlord's execution of such a New Lease shall not in and of itself create any express or implied warranty by Landlord as to the condition of the Leased Premises. Landlord agrees not to accept a voluntary surrender, termination or modification of this Lease at any time while a Leasehold Mortgage shall remain a Lien on Tenant's Leasehold Estate without the prior written Approval of the Leasehold Mortgagee.

25.7 **New Lease Priority**. Any New Lease made pursuant to Section 25.6 shall have the same priority with respect to any Encumbrance on the fee of the Leased Premises as did this Lease as of the time of its termination, and the Tenant under such New Lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease; *provided, however* that (i) Landlord shall have no duty to defend any claim adverse to such right, title or interest being claimed by, through or under Tenant or Leasehold Mortgagee or an Affiliate or Subsidiary thereof and (ii) no Landlord Default shall be based upon any intervening right, title or interest in or to the Leased Premises being claimed by, through or under Tenant or Leasehold Mortgagee or an Affiliate or Subsidiary thereof. The provisions of Section 25.6 and this Section 25.7 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Section 25.6 and this Section 25.7 were a separate and independent contract made by Landlord, Tenant and such Leasehold Mortgagee.

25.8 **Liability of New Tenant**. The new Tenant under any New Lease entered into pursuant to Section 25.6, shall be liable to perform the obligations imposed on Tenant by such New Lease only during the period such Person has title to the Leasehold Estate (subject to the obligation to cure prior defaults to the extent required under Section 25.6).

25.9 **Subordination by Landlord**. Neither this Article XXV nor any other provision of this Lease requires, or shall be construed to require, Landlord to subordinate Landlord's interest in the Rent, this Lease or the Leased Premises (other than Landlord's interest in the Project Improvements during the Term) to a Leasehold Mortgage.

25.10 **Use Agreements and Rents**. After termination of this Lease and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a New Lease, Landlord will not terminate any Use Agreement or the rights of any Subtenant thereunder unless such Subtenant shall be in default under such Use

Agreement and has failed to cure same within the time provided under such Use Agreement, nor shall Landlord modify or amend any of the terms of any Use Agreement to which Landlord has agreed in writing to recognize and not disturb. During such periods Landlord shall receive all revenues payable under the Use Agreements, as agent of such Leasehold Mortgagee and shall deposit such revenues in a separate and segregated account in trust for the Leasehold Mortgagee, but may withdraw such sums as are required to be paid to Landlord under this Lease at the time and in the amounts due hereunder and as other sums are required to pay the cost of operations for the Leased Premises, as reasonably necessary, and, upon the execution and delivery of the New Lease, Landlord shall account to the Tenant thereunder for the balance, if any (after application as aforesaid) of the revenues payable under the Use Agreements received by Landlord from the operation of the Leased Premises, and Landlord shall thereupon assign the revenues payable under the Use Agreements to such Tenant and assign any Use Agreement to the Leasehold Mortgagee. The collection of revenues payable under the Use Agreements by Landlord acting as an agent pursuant to this section shall not be deemed an acceptance by Landlord for its own account of the attornment of any party under a Use Agreement unless Landlord shall have agreed in writing with such party that its tenancy or contract shall be continued following the expiration of any period during which a Leasehold Mortgagee may be granted a New Lease as Tenant, in which case such attornment shall take place upon the expiration of such period but not before. Except as expressly set forth in any nondisturbance and attornment agreements executed with respect to such Use Agreements, under no circumstances shall Landlord be obligated to perform any obligations of any Person under any Use Agreements.

25.11 **Legal Proceedings**. Landlord shall give Notice to the Leasehold Mortgagee with respect to which Landlord has received notice under Section 25.1.2 of any Actions or Proceedings between Landlord and Tenant under this Lease, at the same time Notice is provided to Tenant.

25.12 **Notices**. Notices from Landlord to any Leasehold Mortgagee shall be mailed to the address of the Leasehold Mortgagee set forth in a Tenant's Notice of Project Financing or to such other address as may have been furnished to Landlord by the applicable Leasehold Mortgagee in a Notice delivered to Landlord at the address for Landlord designated pursuant to the provisions of Section 28.4 and all Notices to a Leasehold Mortgagee shall in all respects be governed by the provisions of such Section 28.24.

25.13 **Amendments**. Landlord and Tenant shall reasonably cooperate in negotiating an amendment to this Lease from time to time for purposes of including any provision which may reasonably be requested by a Leasehold Mortgagee for the sole purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a default under the terms of this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any such agreed amendment, provided the same does not detrimentally affect Landlord's interest in the Leased Premises or rights under this Lease.

25.14 **Fee Mortgages**. Landlord shall have the right during the Term to execute a Mortgage encumbering Landlord's fee interest in and to the Leased Premises (subject to the Leasehold Estate and any New Lease required by a Leasehold Mortgagee), and Landlord's interest in this Lease and may at any time or from time to time make assignments of the Rent payable hereunder or otherwise grant security interests or liens upon such Rent; *provided, however,* Landlord covenants and agrees that contemporaneously with, and as a pre-condition to, granting any Mortgage against or with respect to its interest in the Leased Premises, Landlord shall cause such lender to enter into a recordable non-disturbance agreement containing non-disturbance provisions reasonably acceptable to Tenant and any then existing Leasehold Mortgagee and such lender protecting Tenant's rights under this Lease. Tenant's interests provided herein shall be subordinate to Landlord's fee interest in and to the Leased Premises.

ARTICLE XXVI

GENERAL PROVISIONS

26.1 **No Broker's Fees or Commissions**. Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Lease.

26.2 **Controlling Body of Landlord Approval**. Notwithstanding anything to the contrary set forth in this Lease, Tenant recognizes and agrees that any contracts or agreements or amendments thereto contemplated to be entered into by Landlord under the terms of this Lease which are entered into after the date of this Lease will be subject to the prior Approval of Controlling Body of Landlord, but not Approvals, Consents and confirmations expressly permitted in this Lease to be given by the Landlord Representative.

26.3 **Non-Appropriation**. Notwithstanding any other provision in this Lease, the Parties agree that (i) the provisions of this Section 26.3 shall prevail over any other provisions of this Lease and (ii) the obligation of Landlord to pay any money under any provision of this Lease is contingent upon an appropriation by Landlord in the amount of such payment or other monetary obligation. Neither Landlord nor its elected or appointed officials, officers, employees, agents, attorneys or other individuals acting on behalf of Landlord, make any representation or warranty as to whether any appropriation will, from time to time during the Term of this Lease, be approved by the Controlling Body of Landlord. Notwithstanding anything in this Lease to the contrary, the failure of Landlord to make an appropriation shall not cause Landlord to be in default under the terms of this Lease, there being no obligation imposed by law requiring the same; *provided, however*, in the event there is not an appropriation by Landlord related to a monetary obligation of Landlord under this Lease, Tenant, as its sole and exclusive remedy as a result thereof, may either (i) receive a credit (until paid) against the next occurring installments of Percentage Rent in the amount of the unpaid monetary obligation of Landlord plus interest at the Default Rate on such outstanding amounts or (b) terminate this Lease pursuant to Section 24.2.3.

26.4 **Recording of Memorandum of Lease**. Tenant may file of record a Memorandum of Lease in the form attached hereto as Exhibit B in the Real Property Records of Brazos County, Texas upon the Execution Date. Upon the Lease Expiration Date, Tenant shall execute such instruments reasonably requested by Landlord in recordable form which are sufficient to release of record any rights or interests of Tenant in and to the Leased Premises or the Leasehold Estate. In this connection, Tenant irrevocably and unconditionally appoints Landlord as its attorney-in-fact, coupled with an interest, which appointment shall survive the bankruptcy, insolvency or other legal disability of Tenant, solely to take all actions necessary to perform Tenant's obligations under this Section 26.4.

26.5 **Interest on Overdue Obligations**. All past due Rent shall bear interest at the Default Rate from the date(s) due (whether or not Landlord has given Notice to Tenant that such Rent is past due) until paid. No breach of Tenant's obligation to pay Rent shall have been cured unless and until the interest accrued thereon under this Section 26.5 shall have been paid to Landlord. In the event that Landlord fails to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease on or before the date due (or if no date is otherwise specified, the date which is thirty (30) calendar days after Tenant delivers Notice to Landlord of such failure), then such amount shall bear interest at the Default Rate from the date due until paid. No breach of Landlord's obligation to pay Tenant any amount owed by Landlord pursuant to the terms of this Lease shall have been cured unless and until the interest accrued thereon under this Section 26.5 shall have been paid to Tenant. All payments shall first be applied to the payment of accrued but unpaid interest.

26.6 **Employment of Consultants**. Landlord shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Landlord may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Landlord by Tenant under this Lease and, subject to Article XVI, to perform any inspection rights on behalf of Landlord. Tenant covenants and agrees to reasonably cooperate with such consultants in the same manner as Tenant is required to cooperate with Landlord pursuant to the terms of this Lease.

26.7 **Estoppel Certificates**.

26.7.1 **General**. Tenant and Landlord shall, at any time and from time to time upon not less than ten (10) calendar days' prior written request by the other Party, execute, acknowledge and deliver to Landlord or Tenant, as the case may be, a statement in writing certifying (i) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (ii) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (iii) the dates to which the Rent has been paid, and (iv) that, to the best knowledge of Landlord or Tenant, as the case may be, no

default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default). Upon request by Tenant, Landlord's estoppel certificate also shall be addressed to the Leasehold Mortgagees. Any Party requesting an estoppel certificate or other document under this Section shall reimburse the other Party at the time of execution and delivery of such estoppel certificate or other document all reasonable out-of-pocket costs and expenses incurred by such Party in connection with such estoppel certificate or other document, including fees and expenses of such Party's outside consultants and legal counsel.

26.8 **Open Records**. If any Person requests Landlord to disclose any information of a confidential, proprietary or trade secret nature relating to Tenant, this Lease or the Project under the Texas Public Information Act (Tex. Gov't. Code Ann Sec. 552.001 et seq.) or any equivalent or successor statute (the "**Open Records Act**") and such information is subject to, or potentially subject to, an exception under the Open Records Act, then prior to making any such disclosure and to the extent permitted under Applicable Law, Landlord shall send Notice to Tenant of such request within five (5) Business Days of the Landlord's receipt of such request. Within three (3) Business Days of the Tenant's receipt of such Notice from Landlord, Tenant shall notify Landlord in writing whether Tenant opposes the release and desires Landlord to request a determination from the Texas Attorney General (an "**Opinion Request**") as to whether the requested information must be disclosed pursuant to the Open Records Act. Contingent upon Tenant's timely cooperation, Landlord shall submit a timely request to the Texas Attorney General; *provided however* that Landlord shall only be required to comply with the foregoing to the extent that Landlord, in good faith, believes there is a reasonable basis for claiming that the requested information is subject to an exception under the Open Records Act and the Open Records Act permits Landlord to make an Opinion Request in the circumstance in question.

26.9 **Maintenance of Rights of Way, Easements and Licenses**. Tenant will maintain, preserve and renew for the benefit of Landlord and shall not materially change Landlord's right, title and interest in and to all rights-of-way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Project Improvements from time to time. Tenant will not, without the prior Approval of Landlord, initiate, join in or consent to any variance, private restrictive covenant or other public or private restriction as to the use of the Project Improvements or any portion thereof, or any declaration, plat or other document having the effect of subjecting the Project Improvements to the condominium or cooperative form of ownership. Tenant shall, however, comply with all restrictive covenants which may at any time affect the Project Improvements, ordinances and other public or private restrictions relating to the use of the Project Improvements.

26.10 **Compliance with Anti-Forfeiture Laws**. Tenant will not commit, permit or suffer to exist any act or omission affording any Governmental Authority the right of forfeiture against the Project Improvements or any part thereof. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of any Action or Proceedings against Tenant or all or any part of the Leased Premises or the Project Improvements, under any Applicable Law for which forfeiture of the Leased Premises or the Project Improvements or any part thereof is a potential result, shall, at the election of Landlord, constitute an event that Landlord may remedy pursuant to Section 13.3.

26.11 **Intentionally Reserved**.

26.12 **Intentionally Reserved**.

26.13 **No Indirect Damages**. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS LEASE OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT WILLFUL MISCONDUCT OR NEGLIGENCE OR THE WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF ITS EMPLOYEES, OFFICERS, OR AGENTS ACTING IN THEIR OFFICIAL CAPACITY, AFFILIATES OR RELATED PARTIES; *PROVIDED* THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

ARTICLE XXVII

INTENTIONALLY RESERVED

ARTICLE XXVIII

MISCELLANEOUS

28.1 **Accounting Terms and Determinations**. Unless otherwise specified, all accounting terms used in this Lease shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

28.2 **Survival**. Upon expiration or termination of this Lease, Tenant's covenants, representations and agreements in Section 19.8 shall survive such expiration or termination and shall remain in full force and effect until the later of the date (the "**Survival Date**") that is (i) two (2) years after the Lease Expiration Date and (ii) the date of payment in full of the Rent and all other amounts payable under this Lease for which claims have been made in writing by the Party due such payment on or before the date set forth in the preceding clause (i) of this Section 28.2; *provided, however*, that it is understood and agreed that this Lease shall continue in full force and effect with respect to all claims made in writing by either Party on or before the Survival Date until such claims are paid in full. In addition, the following terms and provisions of this Lease shall survive any expiration or termination of this Lease: Article I, Section 6.1 through Section 6.5 (as to payments applicable to the periods included in the Term), Article VII, Article XIII (as to periods included in the Term), Section 9.3 (as to periods included in the Term), Section 9.4, Section 15.1.1, Section 17.4, Section 18.4.2, Section 18.4.3, Section 19.5.3, Section 19.7, Section 19.9, Section 20.1.2, Section 20.2.1, Article XXII, Article XXIV, Article XXVI, Article XXVIII, and Appendix A (as to provisions that survive termination or expiration of this Lease).

28.3 **Severability**. If any term or provision of this Lease, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Lease, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

28.4 **Entire Agreement; Amendment**. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Lease nor any of the terms thereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the amendment, supplement, waiver or modification shall be sought and no such instrument may waive the requirement that SUCH amendment, supplement, waiver or modification be in writing.

28.5 **Table of Contents; Headings; Exhibits**. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Lease are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Lease. All Appendices and Exhibits attached to this Lease are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Lease and any Appendices or Exhibits, the text of this Lease shall control.

28.6 **Parties in Interest; Limitation on Rights of Others**. The terms of this Lease shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Lease, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in

respect of this Lease or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Lease.

28.7 **Counterparts**. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

28.8 **Governing Law**. THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).

28.9 **Court Proceedings**. Any suit, Action or Proceeding against any Party arising out of or relating to this Lease, any transaction contemplated hereby or any judgment entered by any court in respect of any thereof shall be brought in any Federal or state court located in Brazos County, Texas, and the Parties hereby submit to the exclusive jurisdiction of such courts for the purpose of any such suit, Action or Proceeding. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such suit, Action or Proceeding in any Federal or state court located in Brazos County, Texas, and any claim that any such suit, Action or Proceeding brought in any such court has been brought in an inconvenient forum.

28.10 **Limitation to Capacity as the Landlord**. The Parties acknowledge that all references to "Landlord" herein shall refer only to Landlord in its capacity as Landlord under this Lease. The term "Landlord" and the duties and rights assigned to it under this Lease, thus exclude any action, omission or duty of Landlord when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of Landlord's Governmental Functions may prevent the Landlord from performing its obligations under this Lease and shall not cause or constitute a default by the Landlord under this Lease or give rise to any rights or Claims against the Landlord in its capacity as "Landlord" hereunder, it being acknowledged that Tenant's remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of Landlord's Governmental Functions shall be governed by the laws and regulations concerning Claims against Landlord as a Governmental Authority. In addition, except as provided in Section 26.3, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Tenant to Landlord under this Lease as a result of any action or omission of Landlord when performing its Governmental Function.

28.11 **Capacity of Persons Acting on Behalf of the Landlord**. Notwithstanding anything to the contrary in this Lease, all references in this Lease to employees, agents, representatives, contractors and the like of Landlord shall refer only to Persons acting in Landlord's capacity as "Landlord" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of Landlord's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of Landlord shall be deemed to be acting in connection with the performance of Landlord's Governmental Functions.

28.12 **No Limitation on Landlord's Governmental Functions**. The Parties acknowledge that Landlord is a Governmental Authority operating pursuant to their charters and that no representation, warranty, consent, omission, Approval or agreement in this Lease by the Landlord shall be binding upon, constitute a waiver by or estop Landlord from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Lease be deemed to waive any immunities or privileges granted to Landlord when performing its Governmental Functions, which are provided under Applicable Law, including Section 101.0215(a) of the Texas Civil Practice and Remedies Code, as may be amended or replaced. For example, Approval by the "Landlord" of the Project Plans shall not constitute satisfaction of any requirements of, or the need to obtain any approval by the City's Fire Department, Department of Building Safety, Engineering Department and Planning Department acting in connection with the performance of their respective Governmental Functions. Any consent to jurisdiction by the Landlord is only with respect to matters arising in its capacity as a Party to this Lease and expressly does not constitute a waiver of the Landlord's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of Landlord's Governmental Functions.

28.13 **Non-liability of the Landlord's Officials and the Tenant's Employees**. No member of any legislative, executive, or administrative body of, or affiliated with, Landlord or its Related Parties, and no official, agent, employee or representative of Landlord or such body or any of their Related Parties (whether acting in the performance of the Landlord's Governmental Functions or otherwise) shall be personally liable to Tenant or any Person holding by, through or under Tenant, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by Landlord, or for any amount which may become due to Tenant or any Person holding by, through or under Tenant, or for any other obligation, under or by reason of this Lease. No officer, director, shareholder, member, agent, employee or representative of Tenant or its Related Parties shall be personally liable to Landlord or any Person holding by, through or under Landlord, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Tenant, or for any amount which may become due to Landlord or any Person holding by, through or under Landlord, or for any other obligation, under or by reason of this Lease.

28.14 **Payment on Business Days**. If any payment under such instrument is required to be made on a calendar day other than a Business Day, the date of payment shall be extended to the next Business Day.

28.15 **Time**. Times set forth in this Lease for the performance of obligations shall be strictly construed, time being of the essence of this Lease. All provisions in this Lease which specify or provide a method to compute a number of calendar days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a calendar day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Lease to times or hours of the calendar day shall refer to Central Standard Time or Central Daylight Time, as applicable.

28.16 **Interpretation and Reliance**. No presumption will apply in favor of any Party in the interpretation of this Lease or in the resolution of any ambiguity of any provision hereof.

28.17 **Attorneys' Fees**. If any Party to this Lease defaults in the performance of any covenants, obligations or agreements of such Party contained in this Lease and the other Party hereto places the enforcement of this Lease, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), or in the hands of any other means of dispute resolution, the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

28.18 **No Waivers**.

28.18.1 **General**. Unless expressly agreed to by such Party in writing, the failure of a Party hereto to insist, in any one or more instances, upon the strict performance by the other Party of any of such other Party's covenants, obligations or agreements under this Lease, or to exercise any right or remedy given the first Party upon a default by the other Party, shall not be construed as a discharge or invalidation of such covenant, obligation or agreement or as a waiver or relinquishment thereof for the future, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. As such, the covenants, obligations and agreements of the other Party and the rights and remedies of the first Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

28.18.2 **No Accord and Satisfaction**. Without limiting the generality of Section 28.18.1 above, the receipt by a Party of any payment of any money due to it hereunder with knowledge of a breach by the

other Party of any covenant, obligation or agreement under this Lease shall not be deemed or construed to be a waiver of such breach (other than as to such payment received). No acceptance by Landlord or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Lease, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. Landlord and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Lease.

28.18.3 **No Waiver of Termination Notice.** Without limiting the generality of Section 28.18.1 above, the receipt by a Party of any monies paid by the other Party after the termination in any manner of the term of this Lease, or after the giving by a Party of any Notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue or extend the Term of this Lease, or destroy, or in any manner impair the efficacy of, any such Notice of termination as may have been given hereunder by one Party to the other prior to the receipt of any such monies or other consideration, unless so agreed to in writing and executed by the terminating Party.

28.19 **Joint and Several Liability**. If Tenant at any time comprises more than one Person, all such Persons shall be jointly and severally liable for performance of every obligation of Tenant under this Lease.

28.20 **Relationship of the Parties; No Partnership**. The relationship of Tenant and Landlord under this Lease is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Lease to the contrary, no aspect of this Lease shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Tenant and Landlord.

28.21 **Non-Merger of Estates**. The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Leased Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Leased Premises shall join in the execution of a written instrument effecting such merger of estates.

28.22 **Covenants Running with the Estates in Land**. The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Lease, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Leased Premises, and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, Landlord and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Lease.

28.23 **Payments by Either Party**. All payments required to be made by either Party to the other Party pursuant to the terms of this Lease shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address as set forth in this Lease, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of this Lease. For the purposes of this Lease, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

28.24 **Notice**. Each provision of this Lease and other requirements with reference to the sending, mailing or delivery of any notice, consent, direction, Approval, instructions, request, request, reply, advice, confirmation and other communications (hereinafter severally and collectively called "**Notice**"), or with reference to the making of any payment by Tenant to Landlord, shall have been complied with when and if the procedures described in this Section have been complied with by the Party giving such Notice. All Notices must be in writing and given to such Party at the address set forth below or at such other address as such Party shall designate by Notice to the other Party and, and in all cases shall be either (i) sent by pre-paid, certified U.S. Mail with return receipt requested, (ii) delivered personally with receipt of delivery, (iii) sent by nationally recognized overnight

courier (e.g. Federal Express) with electronic tracking, (iv) sent by facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail postage prepaid) to the Party entitled thereto, or (v) sent by electronic mail. Such Notices shall be deemed to be duly given or made (i) in the case of U.S. mail in the manner provided above, three (3) Business Days after posting, (ii) if delivered personally with receipt of delivery, when actually delivered by hand and receipted unless such calendar day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, (iii) if sent by nationally recognized overnight courier with electronic tracking service, the next Business Day after depositing same with such overnight courier before the overnight deadline, and if deposited with such overnight courier after such deadline, then the next succeeding Business Day, (iv) in the case of facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail, postage prepaid), when sent so long as it was received between the hours of 9:00 a.m. and 5:00 p.m. on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day, or (v) in the case of electronic mail, when sent so long as it was sent between the hours of 9:00 AM and 5:00 PM on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties ("**Additional Addressees**") to whom Notice thereunder must be given, by delivering to the other Party five (5) calendar days' Notice thereof setting forth a single address for each such Additional Addressee; *provided, however*, that no Party shall have the right to designate more than two (2) such Additional Addressees.

(A) **LANDLORD: CITY OF BRYAN, TEXAS**

(1) Notices. All notices to the Landlord shall be sent to:

City of Bryan, Texas
c/o Bryan City Manager
300 S. Texas Ave
Bryan, Texas 77803
Fax: (979) 209-5106
Email: kregister@bryantx.gov

with a copy to:

City Attorney
300 S. Texas Ave.
Bryan, Texas 77803
Fax: (979) 209-5160
Email: jhampton@bryantx.gov

(B) **TENANT: VILLA MARIA PARTNERSHIP, LLC**

(1) Notices. All notices to the Tenant shall be sent to:

Villa Maria Partnership, LLC
3030 LBJ Freeway, Suite 600
Dallas, Texas 75234
Attn: Chief Legal Officer
Fax: (972) 888-7583
Email: Emily.decker@clubcorp.com

with a copy to:

Julia Offenhauser
Lathrop GPM LLP
500 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

Email: Julia.offenhauser@lathropgpm.com

[Signature Page to Follow]

This Lease is executed to be effective for all purposes as of the Execution Date.

LANDLORD:

CITY OF BRYAN, TEXAS

_____
Andrew Nelson, Mayor

ATTEST:

_____
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

TENANT:

VILLA MARIA PARTNERSHIP, LLC

_____
By: _____
Its: _____

APPENDIX A
TO
LEASE AGREEMENT

GLOSSARY OF DEFINED TERMS

"**Action**" or "**Proceedings**" means any legal action, lawsuit, proceeding, arbitration, or investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"**Additional Improvements**" has the meaning set forth in Section 15.2.1.

"**Additional Rent**" has the meaning set forth in Section 6.4.

"**Additional Work**" has the meaning set forth in Section 15.2.1.

"**Adjusted Gross Revenues**" shall mean, for any applicable period, the total of all value, compensation, interest, revenue and income, including proceeds of sales of every kind (whether in cash, checks, drafts, on credit, gift and merchandise certificates or "in kind") resulting from any Business Operations conducted on, in or from the Leased Premises by or on behalf of Tenant, any Controlling Person of Tenant, any Affiliate of Tenant or of any Controlling Person of Tenant, or any Subtenant of Tenant (whether or not such Subtenant is an Affiliate of Tenant, a Controlling Person of Tenant or an Affiliate of a Controlling Person of Tenant), including the proceeds of Tenant's Business Interruption Policy actually received by Tenant with respect to the Leased Premises or any Business Operations conducted on, in or from the Leased Premises and all Condemnation Awards for the temporary taking of the Leased Premises. "**Adjusted Gross Revenues**" shall not include: (1) gratuities paid by third party patrons directly over to employees of Tenant in the normal course of business; (2) state and municipal excise, sales and use taxes collected from patrons of the Leased Premises as a part of or based upon the sales price of any goods or services (or payments in lieu thereof), whether such taxes are now in force or are later enacted; (3) Condemnation Awards (other than awards for temporary taking), Casualty Proceeds or damage awards and other amounts received relating to claims for physical loss, physical taking or physical damage to the Leased Premises, except for proceeds relating to Tenant's Business Interruption Policy; (4) financing proceeds; (5) the exchange of merchandise between stores or warehouses of Tenant where such exchanges are of merchandise of equivalent value and are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which has theretofore been made at, in, on or from the Leased Premises; (6) sales of fixtures after use thereof in the conduct of Tenant's business in the Leased Premises so long as such fixtures are replaced by fixtures of equivalent or higher value or utility; (7) non-cash sales, such as coupons, discounts and employee meals and discounts; (8) the selling price of all merchandise returned by customers which were purchased at or from the Leased Premises and were returned for full credit or the amount of discounts or allowances made therefor; (9) refunds in the ordinary course of business; (10) receipts of vending, souvenir dispensing or arcade/game machines to the extent payable to a Person other than Tenant or any Person Related to Tenant; (11) INTENTIONALLY RESERVED; (12) the amount of service charges paid to credit card issuers other than Tenant and its Related Parties; (13) amounts received from charitable collections and promotional sales in connection with charitable collections to the extent those amounts received are contributed to a public, tax-exempt charity that is not a Person Related to Tenant; or (14) proceeds from the sale of gift certificates (provided that the prices of goods or services sold in redemption of gift certificates shall be included in Adjusted Gross Revenues at the time of redemption). As used herein, "in kind" payments shall be deemed to be the full value to the customer/public of the goods or services provided or, in the event that the goods or services are of the type for which a regulated fee has been established, the said fee shall be such regulated value. For the avoidance of doubt, one hundred percent (100%) of the value, compensation, interest, revenue and income, including proceeds of sales of every kind (whether in cash, checks, drafts, on credit, gift and merchandise certificates or "in kind") resulting from any Sublease shall be included Adjusted Gross Revenues excepting only those matters which are excluded from Adjusted Gross Revenues as described above.

"**Affiliate**" of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term "control," "controlling," or "controlled by" shall mean the possession, directly or indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of

directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

"**Applicable Laws**" means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include but not be limited to the Antiquities Code of Texas (Chapter 191, Texas National Resources Code, as amended), the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), the Texas Architectural Barriers Act (Chapter 469, Texas Government Code, as amended), all City Codes, Environmental Laws and any applicable Federal wage requirements. Tenant acknowledges that there may be certain "**Applicable Laws**" that apply to the Project as a result of the City being involved in its development.

"**Approval**," "**Approve**" or "**Approved**" means (i) with respect to any item or matter for which the approval of Landlord or Landlord Representative, as the case may be, is required under the terms of this Lease, the specific approval of such item or matter by Landlord pursuant to a written instrument executed by Landlord or Landlord Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed approval, and no approval by Landlord or Landlord Representative pursuant to this Lease shall be deemed to constitute or include any approval required in connection with any City Code or Governmental Functions of Landlord, or the City, unless such written approval shall so specifically state; (ii) with respect to any item or matter for which the approval of Tenant is required under the terms of the Lease, the specific approval of such item or matter by Tenant or the Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or the Tenant Representative, as permitted pursuant to the terms of this Lease, and delivered to Landlord, and shall not include any implied or imputed approval; and (iii) with respect to any item or matter for which the approval of any other Person is required under the terms of this Lease, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to Landlord or Tenant, as applicable, and shall not include any implied or imputed approval.

"**Bankruptcy**" means any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, receivership, winding-up, liquidation, dissolution or composition or adjustment of debt, including any voluntary or involuntary proceeding pursuant to Sections 301, 302, 303 and/or 304 of the Bankruptcy Code or the voluntary election to wind-up, liquidate, dissolve or otherwise cease to operate.

"**Business Day**" means a calendar day of the year that is not a Saturday, Sunday, or Legal Holiday.

"**Business Hours**" means 9:00 a.m. through 5:00 p.m. on Business Days.

"**Business Operations**" means any and all activities, operations or services of any kind conducted or provided for any compensation or remuneration of any kind within the Leased Premises.

"**Capital Repairs**" shall mean any work (including all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) reasonably necessary to repair, restore, refurbish or replace (in each case, in a manner that extends the useful life thereof) any equipment, facility, structure or other Component, if such work is necessitated by:

(a) Any material defects in design, construction or installation of the Project Improvements;

(b) Physical Obsolescence;

(c) Functional Obsolescence;

(d) Requirements imposed by Applicable Laws;

(e) Requirements or recommendations of any insurance carrier insuring any portion of the Leased Premises; or

(f) Requirements of any manufacturer, supplier or installer of any Component, system or equipment at the Leased Premises stipulated in the operating manuals therefor.

Capital Repairs shall not include (i) any Maintenance, (ii) any Casualty Repair Work (except for Casualty Repair Work otherwise constituting Capital Repairs to the extent insurance proceeds are insufficient to complete such Casualty Repair Work for any reason other than as a result of a Tenant Default under this Lease) or (iii) any Condemnation Repair Work.

"**Casualty**" means physical damage, physical destruction or other property casualty resulting from any fire or any other sudden, unexpected or unusual cause.

"**Casualty Proceeds**" has the meaning set forth in Section 18.2.1.

"**Casualty Repair Work**" has the meaning set forth in Section 18.1.

"**Cessation of Work**" has the meaning set forth in Section 9.10.

"**Change in Control**" has the meaning set forth in Section 21.1.

"**City**" means the City of Bryan, Texas, a Texas home-rule municipal corporation (i.e. Landlord).

"**City Codes**" means all ordinances, codes and policies from time to time adopted by the City of Bryan, Texas, including, any building codes, fire or life safety codes, development codes and zoning ordinances, as same may be amended from time to time.

"**Claims**" means and includes any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

"**Commencement of Operations**" or "**Commence Operations**" means opening for business to the public and the actual commencement of operation of substantially all elements of the Project Improvements in accordance with the Operating Standard and the terms of this Lease and all other Project Documents and all Applicable Laws, except such minor elements that do not prevent Tenant from operating the Leased Premises and the Project Improvements as a whole in accordance with the Operating Standard.

"**Comparable Recreational Property**" means one or more multi-story golf-centered recreational and entertainment complexes that (i) have been constructed no earlier than five (5) years before the Execution Date of this Lease, (ii) are comparable in size and quality of construction to the Project Improvements and (iii) are located in the United States. For purposes of this Lease, the term Comparable Recreational Property shall include, as of the Execution Date (but which may not be included in the future if such property no longer meets the definition of

Comparable Recreational Property), each of: (a) the BigShots complex in Vero Beach, Florida; and (b) any TopGolf complex that otherwise complies with Items (i), (ii) and (iii) in the immediately preceding sentence.

"**Component**" means any item of real or tangible personal property that is incorporated in the Leased Premises or integral to the operation or maintenance of the Leased Premises and located in, on or under the Land in accordance with the terms of this Lease, including all structural members, all mechanical, electrical, plumbing, heating, ventilating, air conditioning, telecommunication, broadcast, video, sound and other equipment (including principal components of each such item of equipment), seats, food and beverage preparation, dispensing or serving equipment, electronic parts, signage, video replay and display equipment, sound systems and speakers and all computers and computer control equipment.

"**Condemnation Actions**" means a taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain or by appropriation and an acquisition by any Governmental Authority (or other Person with power of eminent domain) through a private purchase in lieu thereof, but shall not include the dedication of any portion of the Leased Premises necessary to obtain Governmental Authorizations or to comply with any other Applicable Law respecting the construction of any Improvements on the Leased Premises.

"**Condemnation Award**" means all sums, amounts or other compensation for the Leased Premises payable to Landlord or Tenant as a result of or in connection with any Condemnation Action.

"**Condemnation Expenses**" has the meaning set forth in Section 20.2.2.

"**Condemnation Repair Work**" has the meaning set forth in Section 20.2.2.

"**Construction Work**" means, collectively, the Project Improvements Work and any Additional Work, including Maintenance and Repair Work, Tenant's Remedial Work, any Casualty Repair Work and any Condemnation Repair Work.

"**Control**", "**Controlling**" or "**Controlled by**" mean the possession, directly or indirectly, of the power to either (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of a Person or (ii) direct or cause the direction of management or policies of a Person, whether through the ownership of voting securities or interests, by contract or otherwise (including any Transfer or Landlord Transfer, as applicable, or amendment of this Lease). For the purposes hereof, the general partner of any partnership (either general or limited) and the manager, managing member or managing director of any limited liability company shall always be deemed to be a Controlling Person of such partnership or limited liability company.

"**Controlling Body of Landlord**" means the City Council of Landlord.

"**Controlling Person of Tenant**" means any Person that directly or indirectly Controls the Tenant.

"**CPI**" means the United States Consumer Price Index for all Urban Consumers (also known as the CPI-U) for the Bryan-College Station Metropolitan Statistical Area (1982-1984=100), as published monthly (or if the same shall no longer be published monthly, on the most frequent basis available) by the Bureau of Labor Statistics, U.S. Department of Labor (but if such is subject to adjustment later, then the later adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, shall be used), or if such publication is discontinued, the CPI shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published (on the most frequent basis available) by an agency of the United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected jointly by Landlord and Tenant.

"**CPI Increase**" means the percentage increase in CPI over the preceding Lease Year as calculated by the fraction whose numerator is (i) the most current CPI available on the date of calculation minus (ii) the most current

CPI available on the first calendar day of the immediately preceding Lease Year in question (the "**Base CPI**"), and whose denominator is the Base CPI, but in no event shall the "**CPI Increase**" be less than zero.

"**Debt**" means for any Person without duplication:

(a) indebtedness of such Person for borrowed money;

(b) obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(c) obligations of such Person to pay the deferred purchase price of Property or services;

(d) obligations of such Person as tenant under any lease of any Property by such Person as tenant which would, in accordance with GAAP, be required to be classified and accounted for as a capital lease on the balance sheet of such Person;

(e) obligations of such Person under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) of such Person to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligation of another Person of the kinds referred to in clauses (a) through (d) above; and

(f) indebtedness or obligations of others of the kinds referred to in clauses (a) through (e) secured by any Lien on or in respect of any Property of such Person.

"**Debt to Equity Ratio**" means, for any Person on any date of its determination, the ratio of (i) such Person's consolidated total liabilities on such date determined in accordance with GAAP after giving effect to the Transfer or Permitted Transfer to such Person to (ii) such Person's Tangible Net Worth on such date.

"**Default Rate**" means the lesser of (i) the rate of interest from time to time published or otherwise announced by JPMorgan Chase Bank (or its successor; or if none, a banking institution designated by Tenant, subject to the Approval of the Landlord Representative), as its "prime rate" or "base rate" of interest (or, if it does not announce such a rate of interest, the most comparable rate of interest announced by it from time to time) plus six percent (6%) per annum or (ii) the Maximum Lawful Rate.

"**Emergency**" means any circumstance in which (i) Tenant, Landlord or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard a life or lives, Property or the environment against the likelihood of injury, damage or destruction due to an identified threat or (ii) Applicable Laws require that immediate action is taken in order to safeguard a life or lives, Property or the environment.

"**Encumbrances**" means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Leased Premises, whether evidenced by written instrument or otherwise evidenced.

"**Environmental Claim**" means any Action or Proceeding regarding the Leased Premises (i) arising under an Environmental Law or (ii) related to or arising out of an Environmental Event.

"**Environmental Event**" means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Leased Premises caused by a third party; (iii) any event on, at or from the Leased Premises or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; or (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Leased Premises which may cause a threat or actual injury to human health, the environment, plant or animal life.

"**Environmental Law(s)**" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16. U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

"**Environmental Reports**" means the following report(s) concerning the Leased Premises: (i) that certain Phase I Environmental Site Assessment, Terracon Project No. A1197060, dated November 13, 2019, prepared by Terracon Consultants, Inc.

"**Event of Default**" has the meaning set forth in Section 24.1.1 and Section 24.1.2.

"**Excess/Umbrella Policy for Project Improvements Work**" has the meaning set forth in Section 19.1.1(c).

"**Excusable Landlord Delay**" means any Landlord Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Landlord Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Landlord Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Landlord Delay.

"**Excusable Landlord Delay Period**" means with respect to any particular occurrence of Excusable Landlord Delay, that number of calendar days of delay in the performance by the Landlord of its obligations under the Agreement actually resulting from such occurrence of Excusable Landlord Delay.

"**Excusable Tenant Delay**" means any the Tenant Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Tenant Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Tenant Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Tenant Delay.

"**Excusable Tenant Delay Period**" means with respect to any particular occurrence of an Excusable Tenant Delay, that number of calendar days of delay in the performance by the Tenant of its obligations hereunder actually resulting from such occurrence of Excusable Tenant Delay.

"**Execution Date**" has the meaning set forth in the preamble to the Lease.

"**FF&E**" means, all furniture, fixtures, equipment, furnishings, machinery and other personal property located on or in the Project Improvements during the twenty-four (24) month period immediately preceding the earlier of the Lease Expiration Date or the date of earlier termination of the Ground Lease and all such other items of Personal as are necessary for operation of the Project Improvements at the Operating Standard.

"**Final Completion**" means (i) with respect to the Project Improvements Work or any component of the Project Improvements Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements in accordance in all material respects with the Project Plans (all of which have been Approved pursuant to the terms of this Lease, as and if required), all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term "**Substantial Completion,**" (B) the issuance of all final Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Leased Premises in accordance with the terms of this Lease including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease and (C) Commencement of Operations in accordance with the terms of this Lease and all Applicable Laws; and (ii) with respect to the Material Additional Work, means (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements in accordance in all material respects with the Material Additional Work Specifications, the Material Additional Work Plans, all Applicable Laws and all other requirements of this Lease, including the completion of the punch-list type items referred to in the definition of the term "**Substantial Completion,**" (B) the issuance of all final Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Leased Premises in accordance with the terms of this Lease including all Governmental Authorizations required to be issued to Tenant or its Affiliates to fulfill its obligations under this Lease (if any) and (C) Commencement of Operations as to all elements of the Leased Premises in accordance with the terms of this Lease and all Applicable Laws. Substantial Completion of such work and Improvements is a prerequisite to Final Completion of the same.

"**Final Notice**" has the meaning set forth in Section 24.2.3.

"**Financial Test**" means with respect to any Person (i) having a Tangible Net Worth equal to or greater than Ten Million and No/100 Dollars ($10,000,000.00) and (ii) having a Debt to Equity Ratio no greater than 3.2 to 2.

"**Financing**" means one or more loans obtained by Tenant from a Qualified Lender to fund a portion of the Total Project Costs.

"**Force Majeure**" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Lease or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of the Landlord in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Lease or any Applicable Law; and (vii) failure of the other Party to perform any of its obligations under this Lease within the time or by the date required pursuant to the terms of this Lease for the performance thereof; *provided, however*, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) any strike or labor dispute involving the employees of the Tenant or any Affiliate of the Tenant, other than industry or nationwide strikes or labor disputes; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

"**Foreclosure Event**" means any foreclosure of any Lien or security interest or conveyance in lieu of foreclosure under any Permitted Project Financing.

"**Functional Obsolescence**" shall mean any equipment, fixture, furnishing, facility, structure or any other Component of the Leased Premises that is not dysfunctional (and thus not Physically Obsolete), but is no longer reasonably optimal for its intended purposes or otherwise does not comply with the standards of Comparable Recreational Properties, by reason of (i) material innovations, inventions or improvements in the design, manufacture, operation or production of comparable equipment, systems or facilities that render more efficient, more satisfactory or more technologically advanced service or (ii) business patterns or practices (such as methods

for selling tickets or admitting patrons to the Project Improvements) that require the modification or addition of equipment or facilities.

"**GAAP**" means generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors, which are applicable in the circumstances as of the date in question. Accounting principles are applied on a "consistent basis" when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

"**Governmental Authority**" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation. Landlord shall not, in exercising its rights as landlord under this Lease, be considered a Governmental Authority.

"**Governmental Authorizations**" means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

"**Governmental Function**" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which Landlord is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Lease and the performance by Landlord of its obligations under this Lease shall not be considered a "**Governmental Function**."

"**Hazardous Materials**" means (i) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (ii) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment including soil and construction debris that may contain any of the materials described in this definition.

"**Impositions**" means all Property Taxes, all personal property taxes and all possessory interest taxes imposed or assessed upon the Leased Premises (including any interest of Tenant or Landlord hereunder), on any items of real property or Tenant's Personal Property located on the Leased Premises, all use and occupancy taxes, all excises, levies, license and permit fees, general and special, ordinary and extraordinary, foreseen and unforeseen, that are, with respect to this Lease, assessed, levied, charged, confirmed or imposed upon or with respect to or become payable out of or become a lien on the Leased Premises, or the appurtenances thereto, or for any use or occupation of the Leased Premises, or such franchises, licenses and permits as may be appurtenant or related to the use of the Leased Premises, this transaction or any documents to which Tenant is a party, creating or transferring an interest or estate in the Leased Premises, or any real estate taxes, assessments, excises, levies or fees, general or special, ordinary or extraordinary, foreseen or unforeseen (including assessments for public improvements and betterment, and any mass transit, park, child care and art contributions, assessments or fees) that are levied, imposed or assessed upon the fee simple estate of the Land (except any tax, assessment, excise, levy or fee payable with respect to the receipt of Rent or other sums due under this Lease). The term "**Impositions**" shall not mean or include any municipal, state, county or Federal capital, levy, estate, succession, inheritance or transfer taxes of Landlord (on a sale or other transfer of the fee estate in the Land by Landlord other than a transfer to Tenant) or any franchise taxes imposed upon any corporate owner of the fee estate in the Land or any part thereof, excluding the Texas margin tax and/or any other business tax imposed under Texas Tax Code Chapter 171 and/or any successor statutory provision; *provided, however*, that if, at any time during the Term, the methods or scope of taxation or assessment of real estate prevailing on the Execution Date shall be so changed that there shall be substituted for the whole or any part of the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or

imposed on real estate and the Improvements thereon or upon the possessory interest of Tenant in the Leased Premises, or any of Tenant's Personal Property described above in this definition, a capital levy or other tax levied, assessed or imposed on any of the Rent payable by Tenant to Landlord under this Lease, then all such capital levies or other taxes shall, to the extent that they are so substituted, be deemed to be included within the term "**Impositions**."

"**Improvements**" means all improvements, structures, buildings and fixtures of any kind whatsoever, other than trade fixtures which constitute Personal Property, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

"**Insolvency Event**" means, with respect to any Person, (i) such Person's (a) failure to not generally pay its debts as such debts become due, (b) admitting in writing its inability to pay its debts generally or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against such Person (a) seeking to adjudicate it a bankrupt or insolvent, (b) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (c) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its Property and, in the case of any such proceeding instituted against such Person, any such proceeding shall remain undismissed for a period of sixty (60) calendar days or any of the actions sought in such proceeding shall occur; or (iii) such Person's taking any corporate action to authorize any of the actions set forth above in this definition.

"**Insurance Covenant**" means all of the covenants and agreements of Tenant with respect to insurance policies and coverages to be maintained by Tenant and its contractors and subcontractors (of any tier) pursuant to and in accordance with this Lease.

"**Insurance Standard**" means such insurance policies, coverage amounts, types of coverage, endorsements or deductibles, as applicable, that (i) in connection with any Construction Work, that a Reasonable and Prudent Developer or Reasonable and Prudent Operator, as applicable, would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained with respect to the Leased Premises and such Construction Work and (ii) with respect to the operation and use of the Leased Premises, that a Reasonable and Prudent Operator would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained with respect to the Leased Premises and the ownership, operation and use thereof.

"**Insured Casualty Risks**" means physical loss or damage from fire, casualty, lightning, windstorm, hail, flooding, earth movement (including earthquake, landslide, subsidence and volcanic eruption), collapse, water damage, leakage from fire protection equipment or sprinkler systems, explosion (except steam boiler explosion), smoke, aircraft (including objects falling therefrom), motor vehicles, riot, riot attending a strike, civil commotion, sabotage, terrorism, vandalism, malicious mischief, theft, civil or military authority and all other peril (including resultant loss or damage arising from faulty materials, workmanship or design).

"**Land**" means the tract of land described in Exhibit A.

"**Landlord**" has the meaning set forth in the preamble to this Lease.

"**Landlord Default**" has the meaning set forth in Section 24.1.2.

"**Landlord Delay**" means any delay by Landlord in achieving performance of its obligations under this Lease to the extent that such delay has an effect on Tenant's ability to perform its obligations hereunder.

"**Landlord Indemnitees**" means Landlord or any Related Party of Landlord.

"**Landlord Insured**" means Landlord.

"**Landlord Mortgage Non-Disturbance Agreement**" has the meaning set forth in Section 25.14.

"**Landlord Representative**" has the meaning set forth in Section 2.1.

"**Landlord Transfer**" has the meaning set forth in Section 21.7.

"**Landlord Transferee**" has the meaning set forth in Section 21.7.

"**Landlord's Condemnation Award**" has the meaning set forth in Section 20.1.2.

"**Landlord's Improvements**" means the completion of: (i) certain infrastructure improvements in the park property located off of Villa Maria Road and adjacent to the Leased Premises (the "**Park**"), and (ii) an indoor sports and event center in the Park. The infrastructure improvements are a drive/road, water, and sewer into the Park, inclusive of a driveway cut into the Leased Premises. The sports and event center shall be an indoor facility with a minimum of 110,000 square feet suitable for basketball, volleyball, cheerleading, and gymnastics tournaments and other indoor sports and activities as determined by the City.

"**Landlord's Interest**" has the meaning set forth in Section 20.1.2.

"**Landlord's Remedial Work**" has the meaning set forth in Section 9.3.2.

"**Lease**" has the meaning set forth in the preamble to this Lease.

"**Lease Expiration Date**" means the last calendar day of the twenty-fifth (25th) year after the Execution Date, unless this Lease is either: (i) sooner terminated pursuant to any applicable provision hereof in which event such date of termination shall be the "Lease Expiration Date"; or (ii) extended pursuant to one or more Renewal Options, in which event the last calendar day of the final Renewal Term shall be the "Lease Expiration Date."

"**Lease Year**" means each twelve (12) full calendar month period during the Term, commencing on the Execution Date.

"**Leased Premises**" means the Land, together with (i) the Project Improvements, as and when constructed on the Land, and all alterations and modifications thereof pursuant to the terms of this Lease and all other Improvements, (ii) all air rights and air space above the Land and (iii) all of Landlord's right, title and interest, if any, in and to all rights, privileges and easements appurtenant to the Land including any intangible property rights, concessions, pouring and branding rights, advertising and development rights.

"**Leased Premises Reservations**" has the meaning set forth in Section 3.3.

"**Leasehold Estate**" means, collectively, (i) the leasehold estate in the Leased Premises granted under this Lease and (ii) all other rights, titles and interest granted to Tenant under this Lease.

"**Leasehold Mortgage**" means a Mortgage covering and encumbering all, and not less than all, of the Leasehold Estate, and Tenant's rights under this Lease and which Mortgage secures a Permitted Project Financing and no other Debt and is otherwise permitted by, and is made in accordance with the provisions of the this Lease.

"**Leasehold Mortgagee**" means, for only so long as the applicable Permitted Project Financing is outstanding, the Permitted Project Financing Holder (or any successor or assignee of a Permitted Project Financing who is a Permitted Project Financing Holder or successor or assignee of a holder of Permitted Project Financing who is a Permitted Project Financing Holder, whether or not the original holder was a Permitted Project Financing Holder) who is the Mortgagee named in any Mortgage that is a Leasehold Mortgage, the beneficiary named in any

deed of trust that is a Leasehold Mortgage or the holder of any lien or security interest named in any other security instrument that is a Leasehold Mortgage or any successor or assignee of any of the foregoing; *provided, however,* such Permitted Project Financing Holder is designated as a Leasehold Mortgagee in a Tenant's Notice of Project Financing delivered by Tenant to Landlord in accordance with Section 25.1.2 of this Lease.

"**Legal Holiday**" means any calendar day, other than a Saturday or Sunday, on which the City's administrative offices are closed for business.

"**Lien**" means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether choate or inchoate, whether real or personal tangible or intangible, now owned or hereafter acquired.

"**Maintenance**" means all work (including all labor, supplies, materials and equipment) which is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance and repair for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and Components that form any part of the Leased Premises in a manner reasonably consistent with the standards at other Comparable Recreational Properties. Maintenance shall include the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the Components; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) cleaning prior to, during and following, and necessary as a direct result of, all events at the Project Improvements; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use.

"**Maintenance and Repair Work**" has the meaning set forth in Section 14.1.1.

"**Material Additional Work**" means any Additional Improvements (i) that do not substantially conform in any material respect to the Permitted Uses or (ii) that constitute changes or alterations in, to or of the Project Improvements that do not conform to the Project Plans which have been Approved pursuant to the terms of this Lease.

"**Material Additional Work Architect**" means a Qualified Design Professional.

"**Material Additional Work Construction Contract**" means the construction contract to be entered into by Tenant with the Material Additional Work Construction Contractor for the construction of Material Additional Work.

"**Material Additional Work Construction Contractor**" means a Qualified Contractor.

"**Material Additional Work Construction Schedule**" means a schedule of critical dates relating to the construction of the Material Additional Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the proceeding task or event), which schedule, shall include the dates for (i) ordering and delivery of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or system of the Improvements, (ii) completion of the Material Additional Work Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of all necessary Governmental Authorizations), (iii) issuance of all Governmental Authorizations prerequisite to commencement of the Material Additional Work, (iv) commencement of the Material Additional Work and (v) Final Completion of the Material Additional Work. The "Material Additional Work Construction Schedule" shall be adjusted as appropriate to reflect the delay in the Material Additional Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of Section 10.1 of this Lease.

"**Material Additional Work Design Contract**" means the services contract to be entered into by Tenant with respect to the Material Additional Work Architect for the design of the Material Additional Work and preparation of the Material Additional Work Plans.

"**Material Additional Work Plans**" means individually and collectively, the concept drawings, schematic drawings, design development drawings and detailed construction drawings for the Material Additional Work prepared by the Material Additional Work Architect.

"**Material Additional Work Specifications**" means schematic design plans for the Material Additional Work showing all elements of the Material Additional Work and their effect on the Project Improvements (including conceptual plans, schematic plans and design development plans and specifications), conforming in all respects to the usual and customary standards of the American Institute of Architects for schematic design plans and submitted to Landlord for its Approval.

"**Material Additional Work Submission Matters**" means all of the following:

(a) the proposed Material Additional Work Construction Schedule, together with a statement of whether such Material Additional Work will require any Down Time and, if so, the duration and dates for such Down Time;

(b) the name and qualifications of the proposed Material Additional Work Architect and the Material Additional Work Construction Contractor;

(c) the Material Additional Work Specifications; and

(d) the Material Additional Work Plans.

"**Material Change**" means any modification to the Project Improvements that would cause the Project Improvements not to substantially conform in all material respects to those aspects of the Project Plans previously Approved by Landlord such that (i) the Project Improvements would be materially and adversely impacted with respect to public safety and accommodation, exterior appearance, sustainability or overall capacity or (ii) the overall quality or scope of the Project Improvements would be materially diminished relative to the overall quality and scope reflected by the previously Approved Project Plans.

"**Maximum Lawful Rate**" means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Lease, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

"**Mechanic's Lien**" has the meaning set forth in Section 9.5.

"**Mortgage**" means a mortgage, a deed of trust, a security agreement or any other type of security instrument pursuant to which a Lien is granted to secure Debt.

"**Mortgagee**" means the trustee and beneficiary under, and the party secured by, any Mortgage

"**Notice**" has the meaning set forth in Section 28.24.

"**Open Records Act**" has the meaning set forth in Section 26.8.

"**Operating Standard**" means the operation of the Leased Premises on a full-service basis in a manner consistent with the standards of operations and operating plans that a Qualified Operator, acting as a Reasonable and Prudent Operator, would reasonably be expected to undertake and follow for the operation of a Comparable

Recreational Property; *provided, however*, Tenant shall not be required as a result of the aforesaid covenant to (i) provide amenities or facilities that are impracticable as a result of the physical constraints of the Project Improvements, (ii) undertake any actions prohibited by this Lease or (iii) perform any structural alterations to the Project Improvements, except to the extent otherwise required by this Lease including Maintenance and Repair Work.

"**Opinion Request**" has the meaning set forth in Section 26.8.

"**Parties**" or "**Party**" has the meaning set forth in the preamble to this Lease.

"**Percentage Rent**" has the meaning set forth in Section 6.3.1.

"**Permitted Encumbrances**" means those certain Encumbrances upon and/or exceptions to the title to the Leased Premises that are referenced and/or described on Exhibit C attached hereto.

"**Permitted Project Financing**" means one or more loans with a Qualified Lender secured by a Leasehold Mortgage, together with all modifications, renewals, supplements, substitutions and replacements thereof, entered into by Tenant for the purpose of financing or refinancing Tenant's obligations to design, develop and construct the Project Improvements and/or to operate and maintain the Project Improvements in accordance with the terms of this Lease.

"**Permitted Project Financing Holder**" means any Qualified Lender that is the owner and holder of any component of a Permitted Project Financing.

"**Permitted Transfer**" has the meaning set forth in Section 21.1.

"**Permitted Uses**" has the meaning set forth in Section 12.2.

"**Person**" means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

"**Personal Property**" means any and all movable equipment, furniture, trade fixtures and other tangible personal property that are owned by Tenant or its Subtenants and located on or within the Leased Premises and that do not constitute fixtures and can be removed from the Leased Premises without damage thereto.

"**Physical Obsolescence**" shall mean any equipment, fixture, furnishing, facility, surface, structure or any other Component of the Leased Premises that does not comply with Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship, ordinary wear and tear or damage (other than as a result of Tenant's failure to perform its maintenance obligations under this Lease). For the purposes of determining if an improvement is Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other Component shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or other Component has deteriorated or has been damaged to a degree that cannot be remedied through Maintenance (including replacement necessitated by repeated breakdown or failure of a Component despite Maintenance).

"**Prohibited Uses**" has the meaning set forth in Section 12.3.

"**Prohibited Person**" means:

a) Any Person, during the seven (7) years preceding the date of any Transfer (unless the same shall have been subsequently reversed, suspended, vacated, annulled, or otherwise rendered of no effect under any Applicable Law), by or against whom any federal or state bankruptcy or insolvency proceeding has been commenced, or for whom a receiver, conservator, physical agent or similar officer for the business or assets of such Person has been appointed;

b) Any Person (A) that is in monetary default or in breach of any nonmonetary obligation under any written agreement with the State of Texas or Landlord after notice and beyond any applicable cure periods, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that is subject of any of the matters set forth in clause (A), unless, in each instance, such monetary default or breach either (x) has been waived in writing by the State of Texas or Landlord, as applicable or (y) is being disputed in good faith in a court of law, administrative proceeding, arbitration, or other forum, or (z) is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default or breach;

c) Any Person (A) who has been convicted in a criminal proceeding (including a conviction entered on a plea of nolo contendere but excluding traffic violations and other minor offenses) for a felony or any crime involving moral turpitude or is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offenses) or a proceeding involving a crime of moral turpitude that is pending or who is an organized crime figure or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction, or (B) who, directly or indirectly controls, is controlled by, or is under common control with a Person who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or who is an organized crime figure. The determination as to whether any Person is an organized crime figure for purposes of this paragraph (b) shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; *provided, however*, that such Person shall not be deemed a Prohibited Person if Landlord, having actual acknowledge that such Person meets the criteria set forth in clauses (A) or (B) of this paragraph (b), entered into a contract and is then doing business with such Person ;

d) Any government, or any Person that is directly or indirectly Controlled (rather than only regulated) by a government, which is finally determined, beyond right to appeal, by the federal government or any agency, branch, or department thereof to be in violation (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government which is, or any Person which, directly or indirectly, is Controlled (rather than only regulated) by a government which is subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a federal court or by the federal government or any agency, branch, or department thereof;

e) Any government or any Person that, directly or indirectly, is Controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended;

f) Any Person, or a Person Controlled by or Controlling such Person, that has received written notice of (i) default in the payment to Landlord or the County of Brazos, Texas of any real property taxes, sewer rents or water charges, in an amount greater than Ten Thousand and No/100 Dollars ($10,000.00), or (ii) default under any contract between that Person and the Landlord or between that Person and the County of Brazos, Texas, unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to Tenant from Landlord that such Person is a Prohibited Person as a result of such default.

For the purposes of determining if any Person is a Prohibited Person, Tenant shall submit to Landlord the name of such Person and, except with respect to any Person that is publicly held, the name of each principal of such Person, together with such completed questionnaires or forms as are standard for Landlord to require. Notwithstanding anything to the contrary contained in this Lease, any provision in this Lease prohibiting a Person from being a Prohibited Person shall also apply to the principals of such Person unless such Person is a publicly traded entity. Within twenty (20) Business Days after receipt of all such names and fully-completed questionnaires or forms, as applicable, Landlord shall respond to Tenant regarding Landlord's determination, which determination shall be limited to whether such Person (and any principals thereof) is a Prohibited Person. If Landlord fails to respond to

Tenant within such twenty (20) Business Day period, then such Person shall be deemed not to be a Prohibited Person.

"**Project**" means the undertaking of Tenant to design, develop, finance, construct, furnish, open, operate and maintain the Project Improvements and the Commencement of Operations, all as required pursuant to the terms hereof and the other Project Documents.

"**Project Architect**" means James Kemper, or such subsequent Qualified Design Professional as Tenant identifies in a Notice to Landlord.

"**Project Budget**" means the total budget for the Total Project Costs, broken down in reasonable detail by cost categories including separate line items for the amount payable under each of the Project Construction Document and allowances and contingencies, together with any amendments thereto up to the Final Completion of the Project Improvements. The initial Project Budget is attached to this Lease as Exhibit D.

"**Project Construction Contract**" means the contract or contracts between Tenant and its Project Contractors for the Project Improvements.

"**Project Construction Contract Bond**" has the meaning set forth in Section 9.4.4.

"**Project Construction Contract Requirements**" has the meaning set forth in Section 9.4.4.

"**Project Construction Documents**" means any and all contracts, documents or other instruments entered into by or on behalf of Tenant or any other of its Affiliates for the development, design or construction of the Project Improvements, including the Project Construction Contract and the Project Design Contract.

"**Project Construction Schedule**" means a schedule of critical dates relating to the Project Improvements Work and the Commencement of Operations (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) ordering and delivering of critical delivery items, such as construction components or items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Project Improvements, (ii) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (iii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the Project Improvements Work, (iv) commencement of any of Tenant's Remedial Work and all other Project Improvements Work, (v) Substantial Completion of the Project Improvements and (vi) all material elements of pre-opening services. The Project Construction Schedule shall be adjusted as appropriate to reflect the delay in the Project Improvements Work by Tenant resulting from each occurrence of Excusable Tenant Delay in accordance with the provisions of this Lease. The initial Project Construction Schedule is attached to this Lease as Exhibit E.

"**Project Contractor**" means a Qualified Contractor.

"**Project Design Contract**" means the contract between Tenant and the Project Architect for the design of the Project Improvements and preparation of the Project Plans or such subsequent Project Design Contract as is executed by Tenant with a subsequent Project Architect in accordance with the terms of this Lease.

"**Project Documents**" means this Lease and all other documents, instruments and agreements entered into between Landlord and Tenant during the Term in connection with the transactions contemplated by this Lease, as such documents, instruments and agreements may be amended, supplemented, modified, renewed or extended from time to time.

"**Project Improvements**" means the Improvements and the Personal Property described in the Project Plans.

"**Project Improvements Work**" means the design, development and construction of the Project Improvements in accordance with the terms of this Lease.

"**Project Plans**" means the detailed working construction drawings for the Project Improvements prepared by the Project Architect and delivered by Tenant to Landlord for Approval in accordance with the terms of this Lease.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"**Property Insurance Policy**" has the meaning set forth in Section 19.1.5.

"**Property Taxes**" means any real estate ad valorem taxes and assessments, or any other similar form of tax or assessment now or hereinafter levied and assessed against the property in question.

"**Qualified Contractor**" means a general contractor that, on the date its name and qualifications are submitted to Landlord, and if such general contractor thereafter becomes (or replaces the prior) Project Contractor, at all times until Final Completion of the Project Improvements Work, shall satisfy all of the following criteria:

(a) licensed and otherwise in compliance with all Applicable Laws to do business and act as a general contractor in the State of Texas and the City of Bryan, Texas for the type of work proposed to be performed by such contractor;

(b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent construction contract from a Qualified Surety;

(c) well experienced as a general contractor in comparable work; and

(d) neither such general contractor nor its Affiliate is in default under any material obligation to Landlord under any other contract between such contractor or its Affiliate and Landlord.

Notwithstanding the foregoing, as of the Execution Date Crossland Construction satisfies the requirements of a Qualified Contractor for purposes of qualifying as the Project Contractor.

"**Qualified Design Professional**" means an architect that, on the date its name and qualifications are submitted to Landlord, and if such architect thereafter becomes a Project Architect, at all times until Final Completion of the Project Improvements Work, satisfies all of the following criteria:

(i) Licensed and otherwise in compliance with all Applicable Laws to do business and act as an architect in the State of Texas and in the City of Bryan, Texas for the type of work proposed to be performed by such architect;

(ii) Well experienced as an architect in comparable work; and

(iii) Neither such architect nor any of its Affiliates is in default under any material obligation to Landlord under any other contract between such architect or any of its Affiliates and Landlord.

Notwithstanding the foregoing, each of Demonica Kempner Architects and Austin Engineering satisfies the requirements of a Qualified Design Professional for purposes of qualifying as a Project Architect.

"**Qualified Lender**" means a Person which is a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company; an insurance company organized and existing under the laws of the United States or any state thereof; an institutional investor such as, without limitation, a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code of 1986, as amended, or other public or private investment entity which at the date hereof or in the future, is in the business of

investing in the real estate assets or making real estate loans, a mutual fund, hedge fund or investment trust; a brokerage or investment banking organization; an employees' welfare, benefits, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency or any combination of the foregoing; *provided, however*, no such Person may be a Qualified Lender for purposes of this Lease if (i) such Person is a Controlling Person of Tenant, an Affiliate of a Controlling Person of Tenant or an Affiliate of Tenant or (ii) during the seven (7) years preceding the date in question, any of the following events have occurred with respect to such Person unless the same shall have been subsequently reversed, suspended, vacated, annulled, or otherwise rendered of no effect under Applicable Law:

(a) The initiation of any federal or state bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, physical agent or similar officer for the business or assets of any such Person; or

(b) The conviction of such Person in a federal or state felony criminal proceeding (including a conviction entered on a plea nolo contendere but excluding traffic violations and other minor offenses) or such Person or its Affiliate is a defendant in a felony criminal proceeding (excluding traffic violations and other minor offenses) that is pending.

"**Qualified Operator**" means an operator that (i) operates, on a full-service basis, either directly or through Subsidiaries at least two (2) Comparable Recreational Properties; (ii) meets the Financial Test as of the end of the fiscal quarter ending immediately preceding such date; and (iii) an Insolvency Event with respect to such operator or, in the case of the foregoing guaranty, its parent company does not then exist.

"**Qualified Surety**" means any surety which has been approved by Landlord and which has an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VIII" (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Lease, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

"**Qualifying Third Party Liability**" means the amount actually paid by Tenant to a third Person (and not to any Person that is a Related Party to Tenant) pursuant to a final judgment entered in an Action or Proceeding or pursuant to a settlement Approved by Landlord but only to the extent of any damages that are caused by any of the following:

(a) Any injury to or death of any individual or any physical damage to real or tangible personal property to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Indemnitee related to the Leased Premises;

(b) Landlord's or any Landlord Indemnitee's breach of its express obligations under this Lease or Applicable Law;

(c) Any Environmental Event or any Hazardous Materials present at, in, on or under the Leased Premises caused by or arising from the negligence or willful misconduct of Landlord or a Landlord Indemnitee from and after the Execution Date; or

(d) Any Environmental Event constituting Landlord's Remedial Work.

"**Quarterly Statement**" shall have the meaning set forth in Section 6.3.2.

"**Reasonable and Prudent Developer**" means a developer of projects similar in scope, size and complexity to the Leased Premises seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would

reasonably and ordinarily be expected from a skilled and experienced developer of projects similar to the Leased Premises complying with all Applicable Laws and engaged in the same type of undertaking.

"**Reasonable and Prudent Operator**" means an operator of recreational complex similar in scope, size and complexity to the Project Improvements seeking to perform its contractual obligations and in so doing and in the general conduct of its undertakings exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Qualified Operator of Comparable Recreational Properties complying with all Applicable Laws and engaged in the same type of undertaking.

"**Related Party**" or "**Related Parties**" means with respect to any Person, such Person's partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), invitees, licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, tenants, and subtenants. For the avoidance of doubt, in no event shall Tenant or any of its Related Parties be deemed or considered to be a "Related Party" of Landlord.

"**Rent**" has the meaning set forth in Section 6.2.

"**Responsible Officer**" means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Lease, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

"**Subsidiary**" means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

"**Substantial Completion**" means, (i) when used with respect to the Project Improvements Work or any component of the Project Improvements Work, (A) the substantial completion of all aspects of such work and Improvements in accordance in all material respects with the Project Plans (as Approved pursuant to the terms of this Lease, as and if required) and all Applicable Laws and in accordance in all material respects with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, substantially all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to Commence Operations and (ii) when used with respect to Additional Work or any component of Additional Work, (A) the substantial completion of all aspects of such work and Improvements in accordance in all material respects with all Applicable Laws (and with respect to Material Additional Work only, the Material Additional Work Plans) and in accordance in all material respects with the requirements for the same contained in this Lease such that, subject only to minor punch-list type items, all such work and Improvements are complete and, regardless of such punch-list type items, all of the Improvements are ready for use and occupancy for their intended purposes and are operational in accordance with the Operating Standard and (B) the receipt of all Governmental Authorizations then necessary to commence or resume, as applicable, operations of the Leased Premises pursuant to the terms of this Lease.

"**Substantial Completion Certificate**" has the meaning set forth in Section 8.4.6.

"**Substantial Completion Deadline**" means twenty-four (24) months after the Execution Date as such date may be extended by (i) an Excusable Tenant Delay Period, but as limited in Section 10.1, or (ii) Landlord Delay, each in accordance with the terms of this Lease.

"**Substantially All of the Leased Premises**" has the meaning set forth in Section 20.1.3.

"**Subtenant**" means any Person in possession of any portion of the Leased Premises pursuant to a Use Agreement.

"**Survival Date**" has the meaning set forth in Section 28.2.

"**Tangible Net Worth**" means, for any Person as of any date on which the amount thereof is being determined, the stockholders' or similarly calculated equity of such Person determined in accordance with GAAP, minus the sum of (i) the amount of any write-up in the book value of any assets resulting from the revaluation thereof, or any write-up in the excess of the cost of the assets acquired, and (ii) the aggregate of all residual values and intangible assets appearing on the asset side of that Person's statement of financial position (balance sheet) including all amounts for goodwill, patents, patent rights, trademarks, trade names, copyrights, design rights, franchises, bond discounts, underwriting expenses, treasury stock, organization expense and other similar items, if any.

"**Tax Proceeding**" has the meaning set forth in Section 13.2.1.

"**Tenant**" has the meaning set forth in the preamble to this Lease.

"**Tenant Default**" has the meaning set forth in Section 24.1.1.

"**Tenant Delay**" means any delay by Tenant in achieving performance of its obligations under this Lease, including any of the deadlines set forth in Section 8.4 of this Lease with respect to the Project Improvements Work.

"**Tenant Indemnitees**" means Tenant or any Related Party of Tenant.

"**Tenant Liabilities**" has the meaning set forth in Section 19.8.1.

"**Tenant Representative**" has the meaning set forth in Section 2.2.

"**Tenant Transferee**" has the meaning set forth in Section 21.2.1(a).

"**Tenant's Business Interruption Policy**" has the meaning set forth in Section 19.1.6(c).

"**Tenant's Excess/Umbrella Policies**" has the meaning set forth in Section 19.1.6(d).

"**Tenant's GL Policy**" has the meaning set forth in Section 19.1.6(a).

"**Tenant's Interest**" has the meaning set forth in Section 20.2.1.

"**Tenant's Notice of Project Financing**" has the meaning given to such term in Section 25.1.2 hereof.

"**Tenant's Parking Facility**" has the meaning set forth in Section 8.4.2.

"**Tenant's Remedial Work**" has the meaning set forth in Section 9.3.1.

"**Tenant's Risks**" has the meaning set forth in Section 7.2.

"**Tenant's Workers' Compensation Policy**" has the meaning set forth in Section 19.1.6(c).

"**Term**" has the meaning set forth in Section 5.1.

"**Total Project Costs**" means all costs directly incurred by Tenant through the Project Completion Date for the design, construction and development of the Project Improvements that conform to the Project Plans for Project

Improvements (as Approved pursuant to the terms of this Lease, as and if required) in accordance with the terms of this Lease, including the cost of such Project Improvements, furniture, trade fixtures, equipment and other personal property, construction, architectural, engineering and design costs and fees, legal fees, contractor's fees, development fees, permits and approvals from Governmental Authorities, title examination and surveying costs, financing fees, and other transactional costs; *provided, however*, in no event shall such costs and expenses be paid or internally allocated to Tenant or Affiliates of Tenant.

"**Transfer**" has the meaning set forth in Section 21.1.

"Tree Protection Zone" is an area where construction activities are prohibited or restricted to prevent injury to preserved trees, especially during pre-construction, and includes the Critical Root Zone or beyond. The Critical Root Zone is the area of soil extending from the tree trunk where roots required for future tree health and survival are located; this area can also be identified as a circle with a minimum radius of 1' for every 1" in trunk diameter at 4.5' above ground.

"**Untenantable Condition**" means the existence of a condition (but only to the extent the same is not the result of a failure or refusal of Tenant to perform its obligations under this Lease including a failure or refusal to mitigate) pursuant to which the operation of the Leased Premises, in Tenant's commercially reasonable business judgment, cannot be practically conducted in the remaining portion of the Leased Premises (taking into account the amount of Condemnation Award available for restoration), due to physical constraints, Applicable Laws, provisions of any insurance policy required to be maintained by Tenant pursuant to the terms of this Lease or the terms, conditions and covenants of this Lease, in substantially the same manner as conducted immediately prior to such taking.

"**Use Agreement**" means a use, lease, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Leased Premises for any Permitted Use.

"**Utility Upgrade and Extension Costs**" has the meaning set forth in Section 14.2.2.

EXHIBIT A
TO
LEASE AGREEMENT

Land

[See attached]

STRONG SURVEYING, LLC
FIRM NO. 10093500
1722 Broadmoor Ste. 105
Bryan, Texas 77802
Phone: (979) 776 – 9836
Fax: (979) 731 – 0096
Email: curtis@strongsurveying.com

EXHIBIT "A"
SHEET 1 OF 2

CITY OF BRYAN
11.78 ACRE LEASE TRACT
OUT OF
LOT 2, BLOCK 1
COUNTRY CLUB LAKE ADDITION
CALLED 149.72 ACRES
VOLUME 3015, PAGE 65
ZENO PHILLIPS SURVEY, A – 45
BRAZOS COUNTY, TEXAS
JANUARY 7, 2020

All that certain lot, tract or parcel of land being 11.78 acres situated in the ZENO PHILLIPS SURVEY, Abstract No. 45, Brazos County, Texas and being a part of that certain Lot 2, Block 1, Country Club Lake Addition as described in Plat of record in Volume 3015, Page 65, Official Records of Brazos County, Texas, said 11.78 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap set for the southwest corner, a 1/2" Iron rod with Cap set for the most southerly corner of said Lot 2, Block 1, Country Club Lake Addition bears S 32 ° 33 ' 02 " E a distance of 240.42 feet;

THENCE around a curve in a clockwise direction having a delta angle of 6 ° 16 ' 24 ", an arc distance of 13.71 feet, a radius of 125.17 feet, and a chord of N 15 ° 20 ' 04 " W, a distance of 13.70 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the left;

THENCE around a curve in a counterclockwise direction having a delta angle of 27 ° 25 ' 34 ", an arc distance of 239.20 feet, a radius of 499.72 feet, and a chord of N 33 ° 55 ' 46 " W, a distance of 236.92 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the right;

THENCE around a curve in a clockwise direction having a delta angle of 15 ° 22 ' 18 ", an arc distance of 240.90 feet, a radius of 897.94 feet, and a chord of N 44 ° 13 ' 42 " W, a distance of 240.18 feet to a 1/2" Iron Rod with Cap set for the end of this curve;

THENCE N 0 ° 12 ' 28 " E a distance of 231.48 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 89 ° 47 ' 32 " E a distance of 178.87 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 04 ° 59 ' 10 " E a distance of 516.42 feet to a 1/2" Iron Rod with Cap set for the northwest corner, a 3/4" Iron Pipe found for reference near the most westerly corner of said Lot 2, Block 1, Country Club Lake Addition bears N 58 ° 48 ' 43 " W a distance of 1185.84 feet;

THENCE S 89° 47 ' 32 " E a distance of 305.23 feet to a 1/2" Iron Rod with Cap set for the northeast corner, a 1/2" Iron Rod found for the most northerly corner of Lot 1, Block 1, Country Club Lake Addition as described in Volume 3015, Page 65 bears N 6 ° 15 ' 05 " E a distance of 2300.12 feet;

STRONG SURVEYING, LLC
FIRM NO. 10093500
1722 Broadmoor Ste. 105
Bryan, Texas 77802
Phone: (979) 776 – 9836
Fax: (979) 731 – 0096
Email: curtis@strongsurveying.com

THENCE S 04 ° 34 ' 14 " E a distance of 593.91 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 89 ° 47 ' 32 " E a distance of 93.03 feet to a 1/2" Iron Rod with Cap set for angle point;

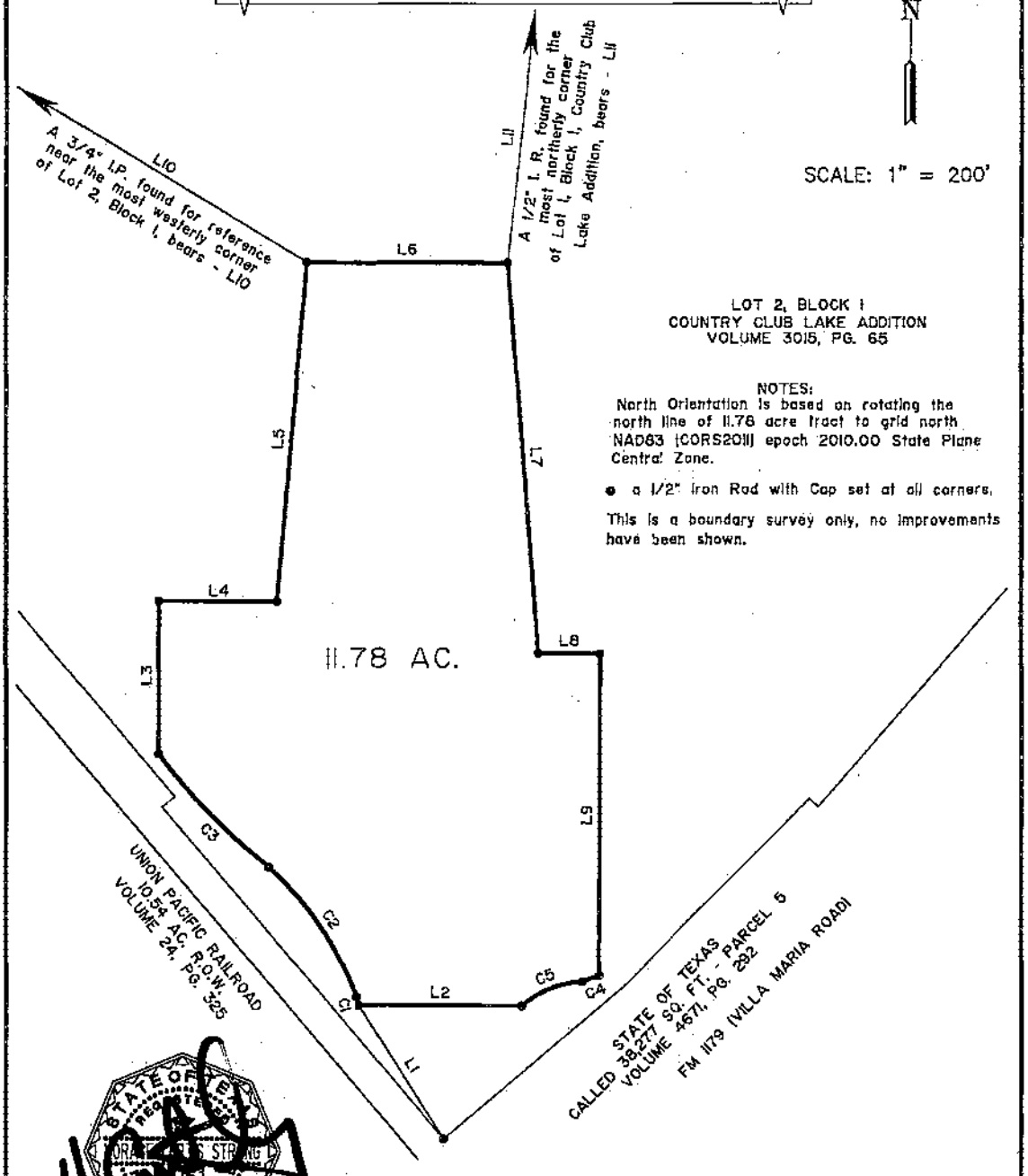
THENCE S 0 ° 12 ' 28 " W a distance of 488.29 feet to a 1/2" Iron Rod with Cap set for the beginning of a curve;

THENCE around a curve in a clockwise direction having a delta angle of 6 ° 47 ' 07 ", an arc distance of 27.52 feet, a radius of 232.36 feet, and a chord of S 69 ° 29 ' 44 " W, a distance of 27.50 feet to a 1/2" Iron Rod with Cap set for the end of this curve and the beginning of a non-tangent curve to the left;

THENCE around a curve in a counterclockwise direction having a delta angle of 38 ° 38 ' 40 ", an arc distance of 100.56 feet, a radius of 149.09 feet, and a chord of S 68 ° 09 ' 12 " W, a distance of 98.66 feet to a 1/2" Iron Rod with Cap set for the end of this curve;

THENCE N 89 ° 47 ' 32 " W a distance of 247.67 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 11.78 ACRES OF LAND MORE OR LESS, according to a survey performed on the ground during December 2019 under the supervision of H. Curtis Strong, Registered Professional Land Surveyor No. 4961 and working under Firm No. 10093500. North Orientation is based on rotating the north line to Grid North NAD83 (CORS 2011) epoch 2010.00 State Plane Central Zone.

STRONG SURVEYING, LLC
FIRM NO. 10093500
1722 Broadmoor, Suite 105
Bryan, Texas 77802
Phone: (979) 776-9836
Fax: (979) 731-0096
email: curtis@strongsurveying.com



LOT 2, BLOCK 1
COUNTRY CLUB LAKE ADDITION
VOLUME 3015, PG. 65

NOTES:
North Orientation is based on rotating the north line of 11.78 acre tract to grid north NAD83 (CORS2011) epoch 2010.00 State Plane Central Zone.

● a 1/2" Iron Rod with Cap set at all corners.

This is a boundary survey only, no improvements have been shown.

I, H. Curtis Strong, Registered Professional Land Surveyor No. 4961 do hereby certify that this plat represents the results on of on the ground survey performed under my supervision during the month of December, 2019 and is true and correct to the best of my knowledge.

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	125.17'	13.71'	13.70'	N 15°20'04" W	6°16'24"
C2	499.72'	239.20'	236.92'	N 33°55'46" W	27°25'34"
C3	897.94'	240.90'	240.18'	N 44°13'42" W	15°22'18"
C4	232.36'	27.62'	27.60'	S 69°29'44" W	6°47'07"
C5	149.09'	100.56'	98.66'	S 68°09'12" W	38°38'40"

LINE	BEARING	DISTANCE
L1	S 32°33'02" E	240.42'
L2	N 89°47'32" W	247.67'
L3	N 00°12'28" E	231.48'
L4	S 89°47'32" E	178.67'
L5	N 04°59'10" E	516.42'
L6	S 89°47'32" E	305.23'
L7	S 04°34'14" E	593.91'
L8	S 89°47'32" E	93.03'
L9	S 00°12'28" W	488.29'
L10	N 58°48'43" W	1165.64'
L11	N 06°15'05" E	2300.12'

EXHIBIT "B"

CITY OF BRYAN
11.78 ACRE LEASE TRACT
OUT OF
LOT 2, BLOCK 1
COUNTRY CLUB LAKE ADDITION
CALLED 149.72 ACRES
VOLUME 3015, PAGE 65
ZENO PHILLIPS SURVEY, A - 45
BRYAN, BRAZOS COUNTY, TEXAS
JANUARY 7, 2020

Exhibit A
Page 5

RURDITT LAND PLACE

EXHIBIT B
TO
LEASE AGREEMENT

Memorandum of Lease

MEMORANDUM OF LEASE

THE STATE OF TEXAS §
§
COUNTY OF [BRAZOS] §

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made and entered into effective as of the [_____] calendar day of [_____], by and between CITY OF BRYAN, a Texas home-rule municipal corporation ("**Landlord**"), and VILLA MARIA PARTNERSHIP, LLC, a Delaware limited liability company (collectively "**Tenant**").

A. Landlord and Tenant have entered into that certain LEASE AGREEMENT (the "**Lease**") having an execution date of [_____], pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the real property located in Brazos County, Texas described on Exhibit A attached hereto (the "**Leased Premises**") pursuant to the terms and conditions of the Lease; and

B. Landlord and Tenant desire to execute this Memorandum to provide notice of Tenant's rights, titles and interest under the Lease and in and to the Leased Premises.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Section 1. **Definitions and Usage**. Unless the context shall otherwise require, capitalized terms used in this Memorandum shall have the meanings assigned to them in the Lease, which also contains rules as to usage that shall be applicable herein.

Section 2. **Lease**. The Leased Premises have been leased to Tenant pursuant to the terms and conditions of the Lease, which is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Lease, the Lease shall control.

Section 3. **Lease Term**. Landlord has leased the Leased Premises to Tenant for an initial Term commencing at 12:00 a.m. on _____, 2020 and ending, unless sooner terminated in accordance with the provisions of the Lease, at 11:59 p.m. on _____, 20__.

Section 4. **Successors and Assigns**. This Memorandum and the Lease shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject however, to the provisions of the Lease regarding assignment.

LANDLORD:

CITY OF BRYAN, TEXAS

By:
Name: _____
Title: _____

TENANT:

VILLA MARIA PARTNERSHIP, LLC

_____
By:
Its:

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

This instrument was acknowledged before me on _____, 2020 by _____, the _____ of _____, a _____, on behalf of such entity.

_____
Printed Name: _____
Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020 by _____, _____ of _____, a _____, on behalf of such entity.

_____
Printed Name: _____
Notary Public in and for the State of Texas
My Commission Expires: _____

After recording, return to:

_____
_____
_____
_____
_____

EXHIBIT C
TO
LEASE AGREEMENT

Permitted Encumbrances

1. Easements and building setback lines as shown and/or noted on the plat recorded in Volume 3015, page 65, Official Public Records of Brazos County, Texas.

2. Easement granted to State of Texas by City of Bryan as set out in instrument dated November 27, 2001, recorded in Volume 4672, Page 1 of the Official Public Records of Brazos County, Texas.

3. Affidavit giving notice of on-site wastewater treatment system, executed by Roy G. Ross, dated September 6, 2001 recorded in Volume 4334, page 117 of the Official Public of Brazos County, Texas.

4. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records.

EXHIBIT D
TO
LEASE AGREEMENT

Project Budget

[See Attached]

Big Shots Construction

	Target	
52	Number of Bays	
35225	Total SF	
15455	Interior SF	
19770	Exterior SF	
2	Number of Levels	
100%	Cost of Construction Adjustment	

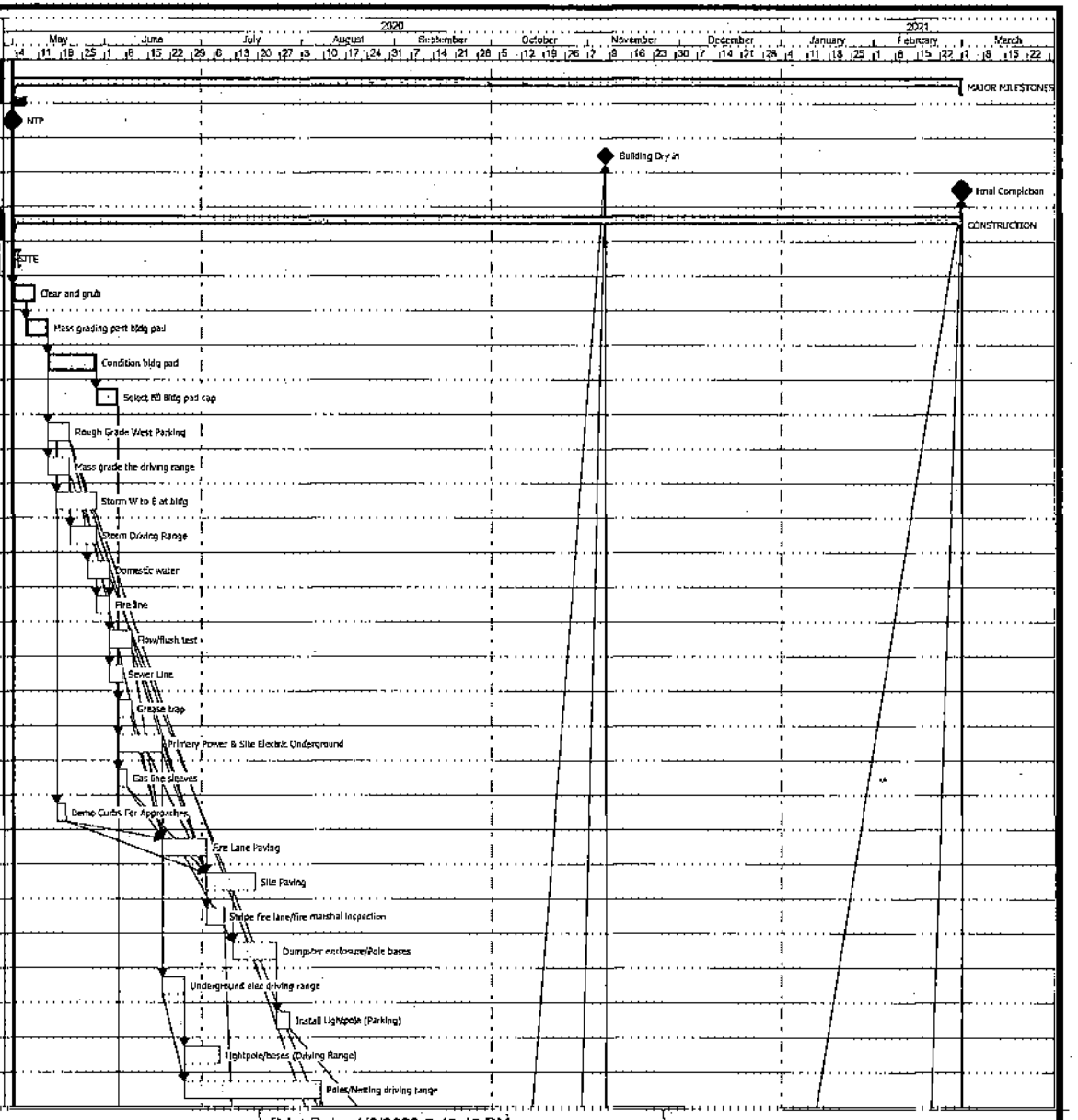
Description	Quantity	Unit	Per unit	Total
I. Building Construction				
Civil/Site Work	35,225	SF	$ 10	$ 352,250
Construction Cost	35,225	SF	$ 147	$ 5,178,075
Parking Spaces (5 per Bay)	52	Allow	$ 10,000	$ 520,000
Range Lights	1	Allow	$ 100,000	$ 100,000
Subtotal:				**$ 6,150,325**
II. Site Construction Items				
Poles & Netting	1	Allow	$ 1,500,000	$ 1,500,000
Range Turf	1	Allow	$ 750,000	$ 750,000
Putting Course	1	Allow	$ 250,000	$ 250,000
Landscape & Irrigation	35,225	SF	$ 2.50	$ 88,063
Exterior / Interior Signage	35,225	SF	$ 2.50	$ 88,063
Audio/Visual	35,225	SF	$ 9	$ 317,025
Security/IT/Wifi	35,225	SF	$ 8	$ 281,800
Tee Box Technology	52	Allow.	$ 14,500	$ 754,000
Retail Merchandising	0	Allow.	$ -	$ -
Range Equipment	52	Allow.	$ 1,500	$ 78,000
Kitchen Equipment	15,455	SF	$ 35	$ 540,925
Ball Management System	52	Allow.	$ 1,500	$ 78,000
Subtotal:				**$ 4,725,875**
III. FFE/Soft Costs				
Building FFE	15,455	SF	$ 25	$ 386,375
Tee Line FFE	52	Allow.	$ 2,500	$ 130,000
Golf Balls and Clubs	52	Allow.	$ 2,500	$ 130,000
CG&S/Start Up	15,455	SF	$ 7	$ 108,185
Subtotal:				**$ 754,560**
IV. Professional Fees				
Architect/Engineer/Interior Design	7.00%	%	$ 11,630,760	$ 814,153
Legal	0.50%	%	$ 11,630,760	$ 58,154
Reimbursables	0.50%	%	$ 11,630,760	$ 58,154
Subtotal:	**6.78%**			**$ 930,461**
V. Other Misc.				
Project Management	2.00%	%	$ 12,561,221	$ 251,224
Permit/Entitlements	0.25%	%	$ 12,561,221	$ 31,403
Marketing Expense	0.00%	%	$ 12,561,221	$ -
Interim Interests	0.00%	%	$ 12,561,221	$ -
Planning Contingency	7.00%	%	$ 12,561,221	$ 879,285
Subtotal:	**8.47%**			**$ 1,161,913**
SF affected	35,225			
Cost psf	$390			
Hard Costs as % of Total Budget:	34%			
Base Project Total				**$ 13,723,134**
Cost of Construction Index				100%
Location Adjusted Project Total				**$ 13,723,134**

EXHIBIT E
TO
LEASE AGREEMENT

Project Construction Schedule

[See attached]

Line	Name	Duration	Start	Finish
	MAJOR MILESTONES	**209d**	**5/1/2020**	**2/26/2021**
2	NTP		5/1/2020 *	5/1/2020
3	Building Dry in		11/5/2020	11/5/2020
4	Final Completion		2/26/2021	2/26/2021
	CONSTRUCTION	**209d**	**5/1/2020**	**2/26/2021**
	SITE		**5/1/2020**	**5/1/2020**
7	Clear and grub	5d	5/1/2020	5/7/2020
8	Mass grading past bldg pad	5d	5/6/2020	5/12/2020
9	Condition bldg pad	10d	5/13/2020	5/27/2020
10	Select fill Bldg pad cap	5d	5/28/2020	6/3/2020
11	Rough Grade West Parking	5d	5/13/2020	5/19/2020
12	Mass grade the driving range	5d	5/13/2020	5/19/2020
13	Storm W to E at bldg	8d	5/15/2020	5/27/2020
14	Storm Driving Range	5d	5/20/2020	5/27/2020
15	Domestic water	5d	5/26/2020	6/1/2020
16	Fire line	3d	5/28/2020	6/1/2020
17	Flow/flush test	5d	6/2/2020	6/8/2020
18	Sewer Line	3d	6/2/2020	6/4/2020
19	Grease trap	3d	6/4/2020	6/8/2020
20	Primary Power & Site Electric Underground	10d	6/4/2020	6/17/2020
21	Gas line sleeves	2d	6/4/2020	6/5/2020
22	Demo Curbs For Approaches	2d	5/15/2020	5/18/2020
23	Fire Lane Paving	10d	6/18/2020	7/1/2020
24	Site Paving	10d	7/2/2020	7/16/2020
25	Stripe fire lane/fire marshal inspection	3d	7/2/2020	7/7/2020
26	Dumpster enclosure/Pole bases	10d	7/10/2020	7/23/2020
27	Underground elec driving range	5d	6/18/2020	6/24/2020
28	Install Lightpole (Parking)	3d	7/24/2020	7/28/2020
29	Lightpole/bases (Driving Range)	7d	6/25/2020	7/6/2020
30	Poles/Netting driving range	30d	6/25/2020	8/6/2020



CROSSLAND CONSTRUCTION COMPANY, INC.

Big Shots

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Start Date: 5/1/2020
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Print Date: 1/2/2020 2:49:49 PM
Update as of:: 5/1/2020

View: Bar Chart View

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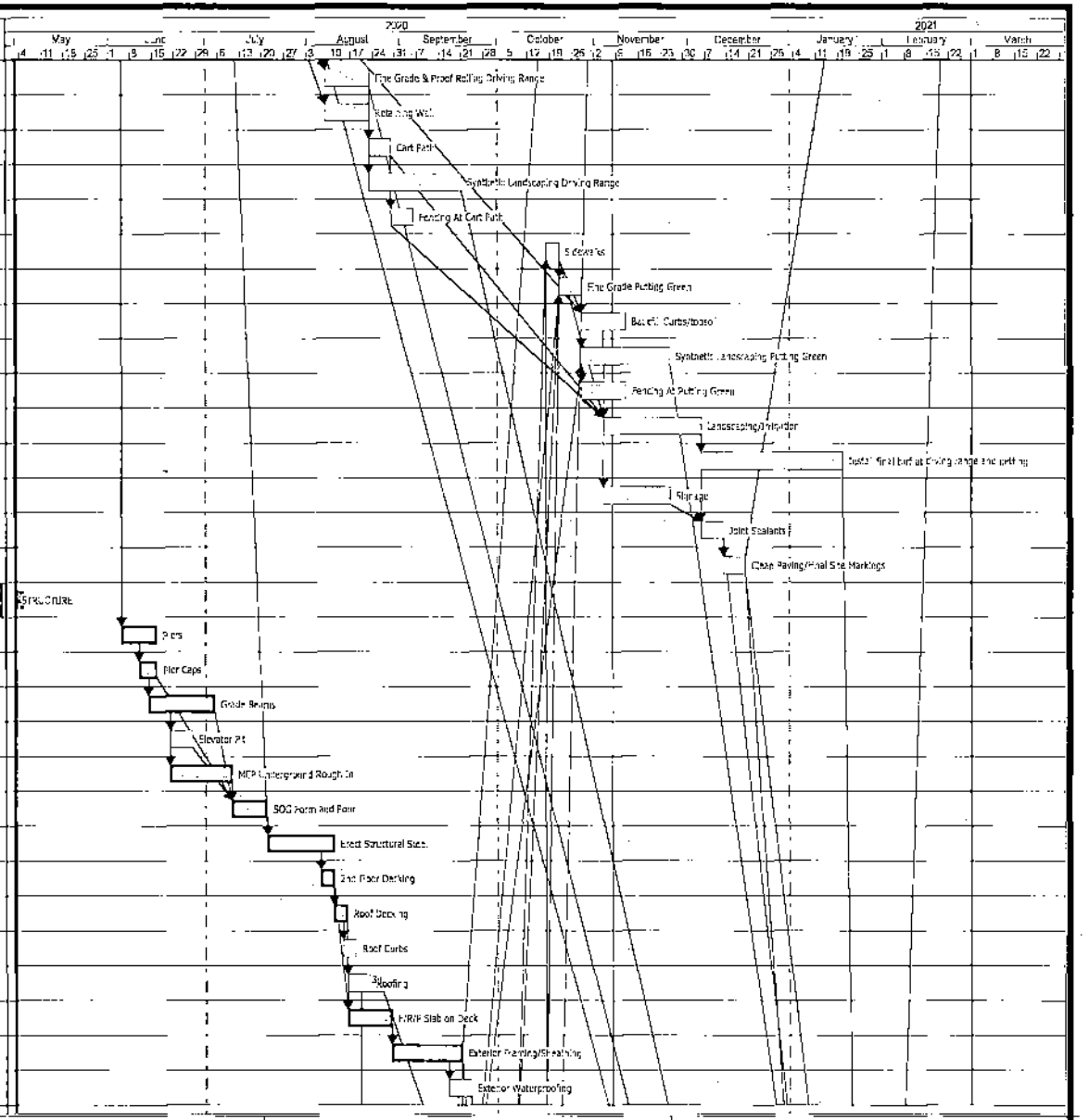
Page 1 of 4

Line	Name	Duration	Start	Finish
31	Fine Grade & Proof Rolling Driving Range	10d	8/7/2020	8/20/2020
32	Retaining Wall	10d	8/7/2020	8/20/2020
33	Cart Path	5d	8/21/2020	8/27/2020
34	Synthetic Landscaping Driving Range	20d	8/21/2020	9/18/2020
35	Fencing At Cart Path	5d	8/28/2020	9/3/2020
36	Sidewalks	3d	10/16/2020	10/20/2020
37	Fine Grade Putting Green	5d	10/21/2020	10/27/2020
38	Backfill Curbs/topsoil	10d	10/28/2020	11/10/2020
39	Synthetic Landscaping Putting Green	20d	10/28/2020	11/24/2020
40	Fencing At Putting Green	10d	10/28/2020	11/10/2020
41	Landscaping/Irrigation	20d	11/4/2020	12/3/2020
42	Install final turf at drving range and netting	30d	12/4/2020	1/18/2021
43	Signage	15d	11/4/2020	11/24/2020
44	Joint Sealants	5d	12/4/2020	12/10/2020
45	Clean Paving/Final Site Markings	5d	12/11/2020	12/17/2020
	STRUCTURE		**5/1/2020**	**5/1/2020**
47	Piers	8d	6/4/2020	6/15/2020
48	Pier Caps	4d	6/10/2020	6/15/2020
49	Grade Beams	15d	6/12/2020	7/2/2020
50	Elevator Pit	5d	6/19/2020	6/25/2020
51	MEP Underground Rough In	13d	6/19/2020	7/8/2020
52	SOG Form and Pour	8d	7/9/2020	7/20/2020
53	Erect Structural Steel	15d	7/21/2020	8/10/2020
54	2nd Floor Decking	3d	8/6/2020	8/10/2020
55	Roof Decking	3d	8/11/2020	8/13/2020
56	Roof Curbs	3d	8/13/2020	8/17/2020
57	Roofing	5d	8/14/2020	8/20/2020
58	F/R/P Slab on Deck	10d	8/14/2020	8/27/2020
59	Exterior Framing/Sheathing	15d	8/28/2020	9/18/2020
60	Exterior Waterproofing	5d	9/16/2020	9/22/2020



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View: Bar Chart View

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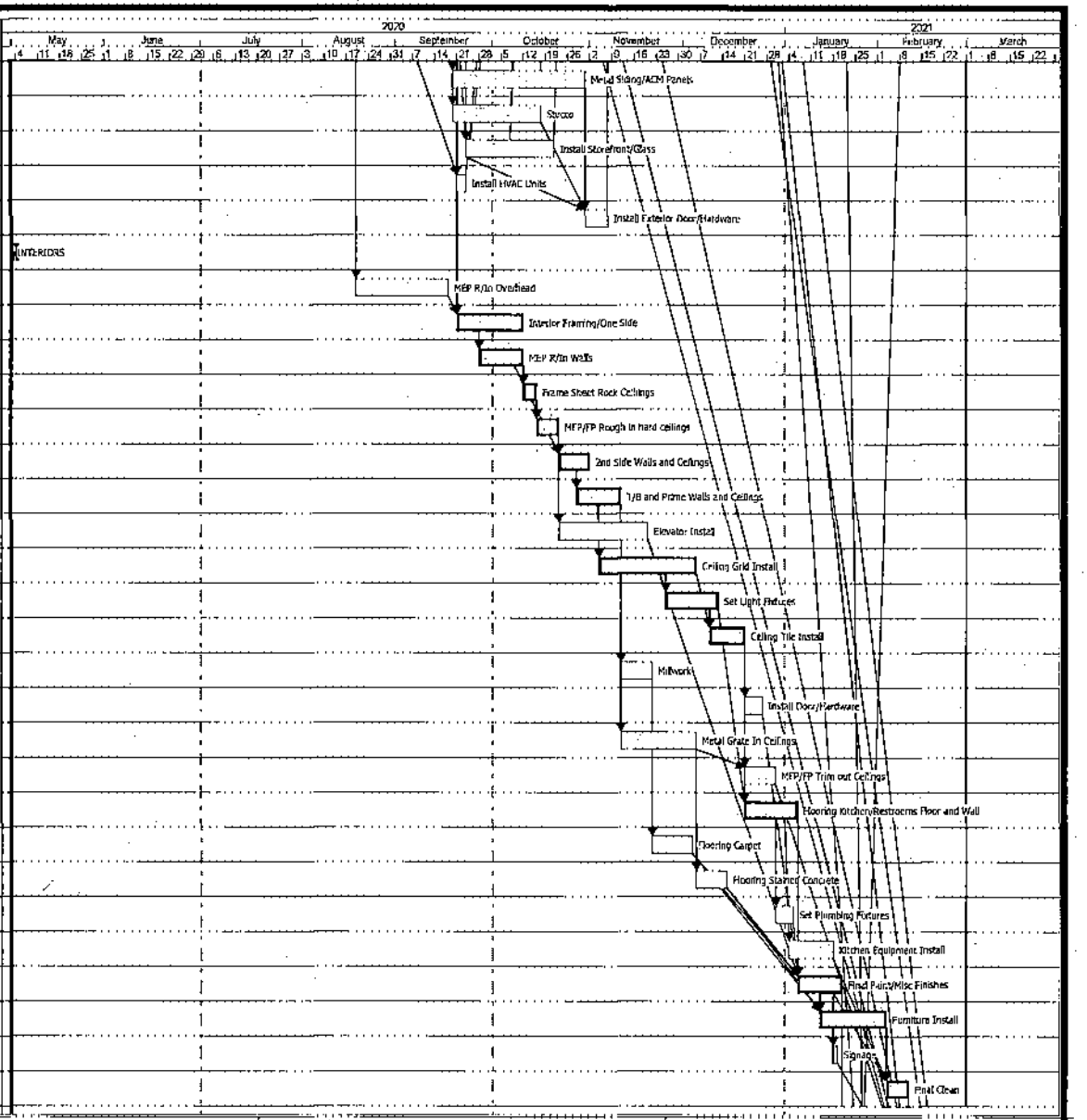
Page 2 of 4

Line	Name	Duration	Start	Finish
61	Metal Siding/ACM Panels	30d	9/18/2020	10/29/2020
62	Stucco	20d	9/18/2020	10/15/2020
63	Install Storefront/Glass	20d	9/23/2020	10/20/2020
64	Install HVAC Units	2d	9/21/2020	9/22/2020
65	Install Exterior Door/Hardware	5d	10/30/2020	11/5/2020
	INTERIORS		**5/1/2020**	**5/1/2020**
67	MEP R/In Overhead	20d	8/19/2020	9/16/2020
68	Interior Framing/One Side	15d	9/21/2020	10/9/2020
69	MEP R/In Walls	10d	9/28/2020	10/9/2020
70	Frame Sheet Rock Ceilings	3d	10/12/2020	10/14/2020
71	MEP/FP Rough in hard ceilings	5d	10/15/2020	10/21/2020
72	2nd Side Walls and Ceilings	7d	10/22/2020	10/30/2020
73	T/B and Prime Walls and Ceilings	10d	10/28/2020	11/10/2020
74	Elevator Install	20d	10/22/2020	11/18/2020
75	Ceiling Grid Install	20d	11/4/2020	12/3/2020
76	Set Light Fixtures	10d	11/25/2020	12/10/2020
77	Ceiling Tile Install	8d	12/9/2020	12/18/2020
78	Millwork	7d	11/11/2020	11/19/2020
79	Install Door/Hardware	4d	12/21/2020	12/24/2020
80	Metal Grate In Ceilings	15d	11/11/2020	12/3/2020
81	MEP/FP Trim out Ceilings	6d	12/21/2020	12/29/2020
82	Flooring Kitchen/Restrooms Floor and Wall	10d	12/21/2020	1/5/2021
83	Flooring Carpet	7d	11/20/2020	12/2/2020
84	Flooring Stained Concrete	7d	12/4/2020	12/14/2020
85	Set Plumbing Fixtures	3d	12/30/2020	1/4/2021
86	Kitchen Equipment Install	10d	1/4/2021	1/15/2021
87	Final Paint/Misc Finishes	10d	1/6/2021	1/19/2021
88	Furniture Install	15d	1/13/2021	2/2/2021
89	Signage	1d	1/18/2021	1/18/2021
90	Final Clean	5d	2/3/2021	2/9/2021



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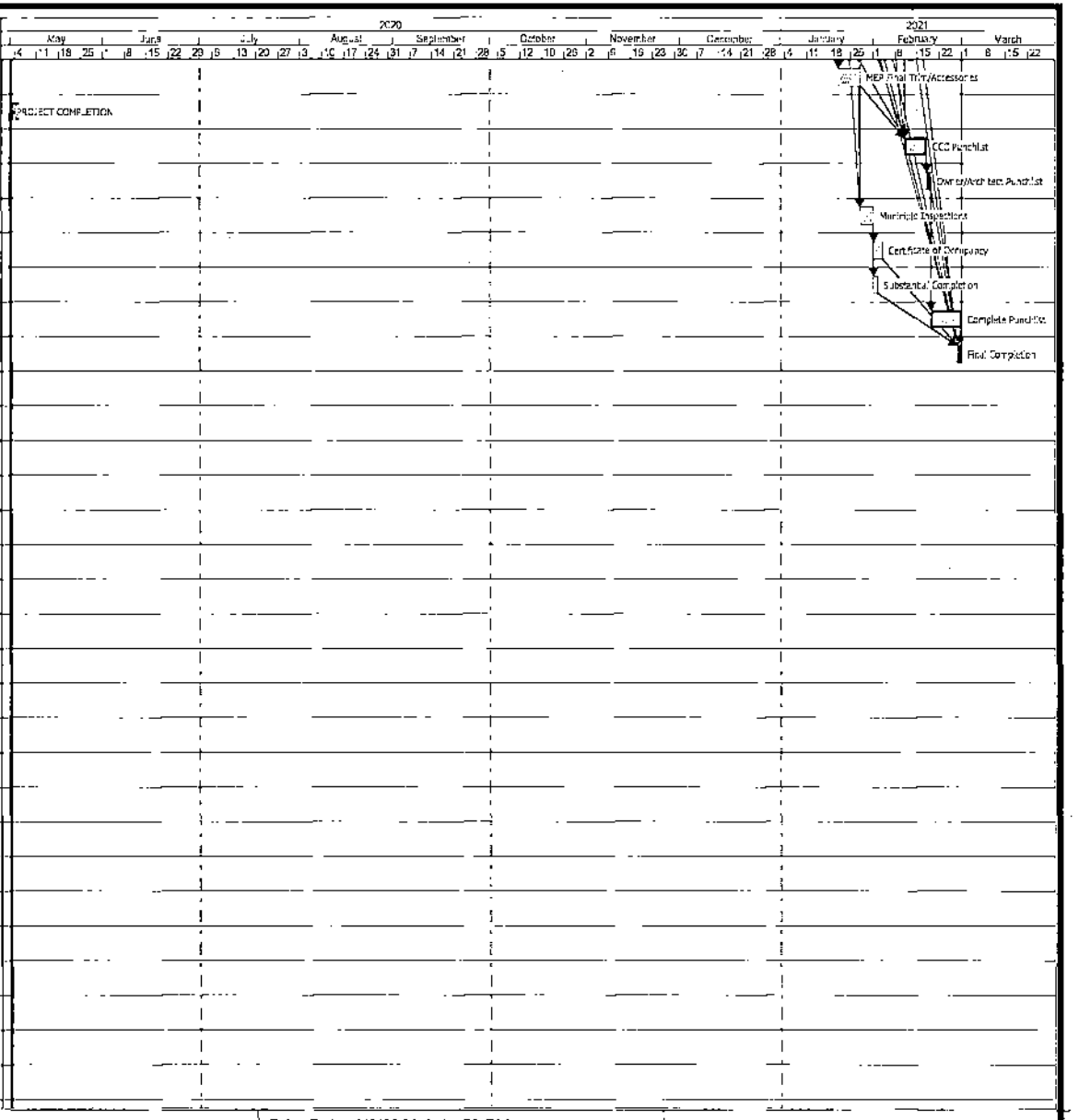
View: Bar Chart View

Filter: None

Page 3 of 4

Line	Name	Duration	Start	Finish
91	MEP Final Trim/Accessories	5d	1/20/2021	1/25/2021
	PROJECT COMPLETION		**5/1/2020**	**5/1/2020**
93	CCC Punchlist	5d	2/10/2021	2/16/2021
94	Owner/Architect Punchlist	1d	2/17/2021	2/17/2021
95	Municiple Inspections	3d	1/27/2021	1/29/2021
96	Certificate of Occupancy	2d	2/1/2021	2/2/2021
97	Substantial Completion	1d	2/1/2021	2/1/2021
98	Complete Punchlist	7d	2/18/2021	2/25/2021
99	Final Completion	1d	2/26/2021	2/26/2021



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Page 4 of 4