

**CASTA DEL SOL GOLF COURSE
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

by and among

AGC REALTY, LLC

as Seller

AMERICAN GOLF CORPORATION

as Operator

and

CITY OF MISSION VIEJO,

as Buyer

Dated as of September [●], 2019

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions (“**Agreement**”) is made and entered into as of September [●], 2019 by and among AGC REALTY LLC, a Delaware limited liability company (“**Seller**”), AMERICAN GOLF CORPORATION, a California corporation (“**Operator**”), and CITY OF MISSION VIEJO, Orange County, California (“**Buyer**”). Seller, Operator and Buyer are sometimes referred to herein individually as a “**party**,” and collectively as the “**parties**.”

RECITALS

A. Seller owns certain real property, and the related business and operations presently carried on by Seller upon such real property, located in Mission Viejo, California, commonly known as “Casta Del Sol Golf Course”, and consisting of an approximately 108.57 acre, 18-hole public golf course with a large practice putting facility and other excess lands (the “**Golf Course**”). The land upon which the Golf Course is located is more particularly described in Exhibit “A” attached hereto (the “**Land**”). The Land is currently improved with an 18-hole golf course, clubhouse, maintenance building and other improvements described in Section 2.1(b).

B. The Golf Course is managed on behalf of Seller by Operator pursuant to a separate management agreement (the “**AGC Management Agreement**”). Upon Closing, Seller and Operator, at their sole cost and expense, will terminate the applicable AGC Management Agreement, and Operator or an affiliate thereof shall enter into a new management agreement with Buyer pursuant to Section 15.24.

C. Seller and Operator desire to sell the Property (as defined below) to Buyer, and Buyer desires to purchase the Property from Seller and Operator, all upon and subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

TERMS OF AGREEMENT

ARTICLE 1 - AGREEMENT TO SELL AND PURCHASE

Upon and subject to the terms and conditions contained in this Agreement, Seller and Operator agree to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller and Operator.

ARTICLE 2 - THE PROPERTY

2.1 Property. The property to be purchased and sold pursuant to this Agreement is the following property (collectively, the “**Property**”):

(a) Land. The Land as more particularly described in Exhibit “A” attached hereto.

(b) Buildings and Other Improvements. All existing buildings, structures and other improvements located upon the Land, including the following to the extent located upon or under the Land: the golf course, clubhouse, pro shop, dining facilities and all other improvements located on the Land (collectively, the “**Improvements**”).

(c) Water Rights. All right, title and interest of Seller and Operator in all water rights, riparian rights, appropriative rights, water allocations and water stock associated with irrigating the Golf Course, including all of Seller’s and Operator’s rights and interests under the Water Documents (collectively, the “**Water Rights**”).

(d) Appurtenances. All right, title and interest of Seller in all appurtenances, hereditaments, easements, reversionary rights, and all other rights, privileges, and entitlements belonging to or running with the Land (collectively, the “**Appurtenances**”). The Land, the Improvements, the Water Rights, and the Appurtenances are collectively referred to herein as the “**Real Property**.”

(e) Tangible Personal Property. All tangible personal property owned by Seller or Operator located on and used in the operation, maintenance, repair, or ownership of the Real Property and/or the Golf Course, including the following: (a) all fixtures, furniture, furnishings, machinery, equipment (including all office equipment), fixtures, trade fixtures, furniture, furnishings, computer equipment, telephone systems, tools, repair parts, goods, supplies, televisions, communications equipment, kitchen utensils, linen, glassware, china, appliances, gasoline and lubricants, fertilizer, seed, sand, chemicals, irrigation parts and supplies; (b) all office supplies, production supplies, spare parts, other miscellaneous supplies used in the Business and located at the Real Property; and (c) all food and beverage items and inventory, and all professional shop merchandise, goods and inventory and all advertising, marketing and promotional materials and all other printed or written materials used in connection with the Golf Course and located at the Real Property (“**Goods and Inventory**”), (the foregoing shall collectively be referred to herein as the “**Personal Property**”); provided that the Personal Property shall not include any Excluded Property.

(f) Intangible Personal Property. To the extent transferrable, all of Seller’s and Operator’s right, title, and interest in the intangible personal property appurtenant to the ownership, operation and use of Golf Course, the Real Property and/or the Personal Property, including Seller’s and Operator’s right, title and interest in the following: (a) all governmental permits, approvals, licenses, and certificates of occupancy; (b) all architectural and engineering drawings; (c) any proprietary rights Seller or Operator may have with respect to the use of the name “Casta Del Sol Golf Course” and any variations thereof, including course specific, standalone internet sites and domain names; (d) tradenames, trademarks, service marks, and logos with respect to the name “Casta Del Sol Golf Course”; (e) all product and service warranties and guaranties to the extent relating to the period after the Closing; (f) all phone numbers for Casta Del Sol Golf Course; and (g) all intangible property of or related to the Golf Course not otherwise specified above, including all goodwill (the foregoing shall collectively be referred to herein as the “**Intangible Personal Property**”); provided that the Intangible Personal Property shall not include any Excluded Property.

(g) Books and Records. Copies of all books and records pertaining to the Golf Course and/or the Property of any and every kind including without limitation those relating to (i) the operating history of the Golf Course (including without limitation financial and accounting records, historical real property tax bills and payments, records of water and other utility usage, and records regarding the usage of Roundup or other herbicides containing glyphosate), (ii) customers, members and/or, to the extent permitted under applicable law, employees, and/or (iii) sponsor and vendor relationships under the Assumed Contracts (collectively, the “**Books and Records**”). The Books and Records shall include, without limitation, lists (including customer lists, member lists, and related contact information), programs, inventory lists, sponsorships, correspondence, compact disks, compact disk lists, ledgers, files (including computer files), reports, plans, drawings and records of every kind, held or maintained by Seller or the Operator, disk or tape files, printouts, runs or other computer-prepared information pertaining to the Golf Course or the Property (including its customers, members, sponsors and, to the extent permitted under applicable law, employees). Books and Records shall not include any Excluded Property.

(h) Liquor License. If permitted under applicable law, subject to Section 11.10 below and to the extent transferrable, the alcoholic beverage license(s) issued to Operator for the sale of alcoholic beverages at the Golf Course (“**Liquor License**”).

2.2 Excluded Property. Notwithstanding anything contained in this Article 2, the Property to be transferred to Buyer hereunder specifically excludes the following property or property interests (“**Excluded Property**”):

(a) (i) the original Books and Records, (ii) the organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, equity transfer books, equity certificates, and other documents relating to the organization, maintenance and existence of Seller or Operator, and (iii) any Books and Records of Seller and Operator that also pertain to other properties owned or managed by Seller or Operator;

(b) all credit card machines and cash registers;

(c) Seller’s and Operator’s banking or financial institution accounts or any deposit or safety deposit boxes;

(d) Seller’s and Operator’s personnel files, compensation and payroll records and information, employee benefit plans and benefit arrangements and information;

(e) Operator’s policy manuals, business plans and information not exclusively related to the Golf Course or the Property, marketing plans and information not exclusively related to the Golf Course or the Property, customer lists which do not relate exclusively to the Golf Course, data bases that include data on other properties, and any of Seller’s or Operator’s other proprietary materials, systems or information;

(f) Operator’s “Point of Sale” and “Kronos” systems and related hardware and software, equipment and materials, including all tee time booking and software (it being understood and agreed that such services shall continue to be available to Buyer pursuant to the Management Agreement referred to in Section 15.24);

(g) all computer software (excluding any computer software related to the irrigation system located at the Golf Course) (it being understood and agreed that such services shall continue to be available to Buyer pursuant to the Management Agreement referred to in Section 15.24);

(h) all product and service warranties and guaranties to the extent relating to the period on or before the Closing (other than in the case of Personal Property being conveyed pursuant to Section 2.1(e) for which the applicable warranty or guaranty relates to performance or functionality after the Closing);

(i) all rights and benefits under the Contracts to the extent relating to the period on or before the Closing;

(j) all accounts and notes receivables (whether current or non-current) of Seller relating to or arising out of the Golf Course, including trade account receivables (including accounts receivable for any product shipped or service provided prior to but not invoiced as of, the Closing Date) outstanding as of the Closing Date, including without limitation: (1) delinquent or uncollected golf cart fees, handicap fees, driving range fees, golf club storage fees, locker fees and trail fees with respect to the Golf Course as of the Closing Date; (2) unpaid amounts with respect to tournaments, banquets and other functions held at the Golf Course prior to the Closing Date; (3) delinquent or uncollected membership dues, charges and/or fees (including, without limitation, initiation fees) existing as of the Closing Date (collectively, "Seller's Receivables"); and

(k) tradenames, trademarks, service marks, internet sites, domain names and logos related to American Golf or its affiliates, including but not limited to "American Golf," "American Golf Corporation," "American Golf Country Clubs," "American Golf Club," "American Golf Players Association," "NGP," "NGP Realty," "NGP Realty Sub," "NGP Realty Sub, L.P.," "AGC Realty, LLC," "NGP Realty Sub, G.P.," "National Golf Club," "The Platinum Club," "So Cal Golfers Club," "savesomegreen.com," "saywedo.com," "countryclubreceptions.com," "golfzing.com" and "The Player's Club".

2.3 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, except as otherwise expressly set forth in this Agreement, Buyer shall not assume or in any way become liable or responsible for any liabilities or obligations of Seller and/or Operator (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted) with respect to the Golf Course or the Property for periods prior to the Closing Date, including any liability for any real property or other taxes for such periods, regardless of whether disclosed to Buyer, and regardless of when or by whom asserted (collectively, the "**Excluded Liabilities**").

ARTICLE 3 - PURCHASE AND SALE PRICE

The total purchase and sale price for the Property is Thirteen Million Dollars (\$13,000,000) ("**Purchase Price**").

3.1 Payment of Purchase Price.

(a) First Deposit. Within two (2) Business Days after the date of this Agreement, Buyer shall deposit into the Escrow the amount of Seven Hundred Thousand Dollars (\$700,000) in cash (“**First Deposit**”).

(b) Second Deposit. By not later than October 1, 2019, Buyer shall deposit into the Escrow the amount of Four Million Three Hundred Thousand Dollars (\$4,300,000) in cash (“**Second Deposit**”). The First Deposit, the Second Deposit and the Extension Deposit (as defined below) are sometimes referred to in this Agreement as the “Deposit”. Seller may, at its option, request the release and delivery of the First Deposit and the Second Deposit at any time on or after October 1, 2019, to an account designated by Seller as a pre-payment in respect of the Purchase Price that would otherwise be delivered to Seller on the Closing Date.

(c) Balance of Purchase Price. Buyer shall deposit the balance of the Purchase Price in the amount of Eight Million Dollars (\$8,000,000) (plus or minus the costs and prorations as provided in Sections 4.8 and 4.9) into the Escrow prior to the Closing in the form of cash. As used in this Agreement, the term “**cash**” means immediately available United States funds transferred by certified check or wire transfer.

3.2 Investment and Treatment of Deposit.

(a) Investment of Deposit. Immediately upon receipt of the First Deposit and the Second Deposit, Escrow Holder shall invest the same in federally insured money market accounts reasonably approved by Buyer and shall confirm in writing to Buyer and Seller that Escrow Holder has invested such Deposit. All interest on the First Deposit shall be added to, and constitute a part of, the Deposit for all purposes under this Agreement. All interest on the Second Deposit shall be added to, and constitutes part of, the Deposit for all purposes under this Agreement.

(b) Treatment of Deposit. Subject to the other provisions of this Section 3.3(b), the Deposit shall be applied to the Purchase Price. The Deposit shall be paid to Seller as liquidated damages upon cancellation of the Escrow by Seller following a Buyer Default. Pursuant to Article 14 below, the Deposit shall be returned to Buyer upon cancellation of the Escrow by Buyer (a) pursuant to Section 4.7(a) following a Seller Default, (b) following Buyer’s election to terminate this Agreement due to a condition to Buyer’s obligations under this Agreement as set forth in Section 12.1 not being satisfied prior to the Closing or (c) following the termination of this Agreement pursuant to Section 13.2, 13.3 or 13.4.

3.3 Leased Items. Buyer acknowledges the golf carts (“**Leased Carts**”) located at the Golf Course are leased to Operator by a third-party lessor (each, a “**Cart Lease Lessor**”) or subject to one or more golf cart financing agreements with Operator (collectively, the “**Cart Leases**” and each, a “**Cart Lease**”) and certain maintenance equipment (“**Leased Equipment**”) located at the Golf Course is leased to Operator by one or more third party lessors (“**Equipment Lessors**”) or subject to one or more equipment leases, master leases or financing agreements with Operator (collectively, “**Equipment Leases**”). Buyer shall, subject to the terms and conditions of this Section 3.4, assume Operator’s obligations under the Cart Leases and Equipment Leases at Closing pursuant to the Assignment and Assumption of Contracts and all costs associated with such

assumption shall be split and paid in equal parts by Buyer and Seller, and each Cart Lease Lessor and Equipment Lease Lessor shall release Operator from all obligations and liabilities arising from and after Closing, under the applicable Cart Lease and Equipment Lease, respectively. If any Cart Lease Lessor and/or Equipment Lease Lessor does not confirm in writing to Seller and Operator prior to Closing that such Cart Lease Lessor or Equipment Lease Lessor's agreement to permit Buyer to assume the applicable Cart Lease or Equipment Lease on the terms set forth above, then the AGC Management Agreement shall be amended to provide that Operator shall continue to be a party to the Equipment Leases and allow the Leased Carts and Leased Equipment to remain in use on the Golf Course and related Property, and the Closing shall proceed in accordance with the terms and provisions of this Agreement, and the applicable Leased Carts or Leased Equipment shall remain the responsibility of Operator as manager of the Golf Course pursuant to the AGC Management Agreement. The terms of this provision shall survive Closing and shall not be merged into the Deed or other closing documents.

ARTICLE 4 - ESCROW; CLOSING

4.1 Joint Instructions; Opening of Escrow. The purchase and sale of the Property shall be completed through an escrow (the "**Escrow**") at the office of Chicago Title Insurance Company, 26415 Carl Boyer Drive, Suite 255, Santa Clarita, CA 91350 ("**Escrow Holder**"). This Agreement shall constitute joint escrow instructions to Escrow Holder in connection with the Escrow. Within two (2) Business Days after the Date of Agreement, the parties shall open the Escrow with Escrow Holder by delivering a fully executed copy of this Agreement to Escrow Holder. Escrow shall be deemed to be opened on the date a copy of the fully executed Agreement is delivered to Escrow Holder ("**Escrow Opening Date**"). Escrow Holder shall immediately notify Seller and Buyer in writing of the Escrow Opening Date.

4.2 Additional Instructions. Seller, Operator and Buyer agree to execute such additional instructions not inconsistent with this Agreement as may be reasonably required by Escrow Holder.

4.3 Closing Date. The consummation of the transactions contemplated by this Agreement, including recordation of the Deed (the "**Closing**") shall occur on November 1, 2019; provided that, (i) Seller, Operator and City shall have the right to advance the date on which the Closing occurs by mutual written agreement, and (ii) City shall have the right to extend the date on which the Closing shall occur to December 2, 2019 so long as (A) City delivers a written notice of such extension to Seller, Operator and Escrow Holder by no later than October 18, 2019, and (B) on or before November 1, 2019, City deposits into the Escrow the amount of One Million Dollars (\$1,000,000) in cash (the "**Extension Deposit**"), as an additional deposit.

4.4 Seller's and Operator's Deliveries Prior to Closing. On or prior to the Closing Date, Seller and Operator shall deliver to Escrow Holder the following documents duly executed by Seller or Operator (as applicable) and acknowledged where appropriate, with respect to the Golf Courses:

- (a) a Grant Deed in the form of Exhibit "B" attached hereto ("**Deed**");

(b) two (2) original counterparts of a Bill of Sale and Assignment Agreement with respect to the transfer of the Personal Property and the Intangible Personal Property in the form of Exhibit “C” attached hereto (“**Bill of Sale and Assignment Agreement**”);

(c) two (2) original counterparts of an Assignment and Assumption of Contracts Agreement with respect to the Approved Contracts (and to the extent Buyer assumes the Cart Lease and/or Equipment Leases in accordance with clause (iii) set forth in Section 3.4, the Cart Lease and/or the Equipment Leases, as applicable) in the form of Exhibit “D” attached hereto (“**Assignment and Assumption of Contracts Agreement**”);

(d) two (2) original counterparts of an Assignment and Assumption of Water Documents with respect to the Golf Course in the form of Exhibit “E” attached hereto (“**Assignment of Water Documents Agreement**”);

(e) an affidavit of non-foreign status under the Internal Revenue Code duly executed by Seller;

(f) An executed California Form 593-C Real Estate Withholding Exemption Certificate or equivalent; and

(g) any other documents, certificates or instruments necessary to close the purchase and sale transaction contemplated by this Agreement.

4.5 Buyer’s Deliveries Prior to Closing. On or prior to the Closing Date, Buyer shall deliver to Escrow Holder the following documents duly executed by Buyer:

(a) two (2) original counterparts of the Bill of Sale and Assignment Agreement;

(b) two (2) original counterparts of the Assignment and Assumption of Contracts Agreement;

(c) two (2) original counterparts of the Assignment of Water Documents Agreement; and

(d) any other documents, certificates or instruments necessary to close the purchase and sale transaction contemplated by this Agreement.

4.6 Actions at Closing. On the Closing Date, Escrow Holder shall do the following:

(a) Cause the Deed (and such other documents as are customarily filed for record) to be recorded in the real estate records of the county in which the Land is located;

(b) Deliver to Buyer (i) a fully executed original (in counterparts, if applicable) of the Bill of Sale and Assignment Agreement, the Assignment and Assumption of Contracts Agreement, the Assignment of Water Documents Agreement, and the other documents required to be delivered by Seller and Operator to Escrow Holder pursuant to Section 4.4 (other than the Deed), (ii) the Title Policy, (iii) a final closing statement, and (iv) conformed copies of the recorded documents (including the Deed);

(c) Deliver to Seller (i) the Purchase Price and the Additional Payments (less any prorations and costs to be paid by Seller pursuant to Sections 4.8 and 4.9), (ii) fully executed originals (in counterparts) of the Bill of Sale and Assignment Agreement, the Assignment and Assumption of Contracts Agreement, and Assignment of Water Documents Agreement, (iii) a copy of the Title Policy, (iv) a final closing statement, and (v) conformed copies of the recorded documents (including the Deed).

4.7 Cancellation of Escrow.

(a) If the Closing does not occur at the time and in the manner provided in this Agreement due to the failure of Seller to comply with any of its obligations under this Agreement (“**Seller Default**”), Buyer shall have the right, as Buyer’s sole remedy, either (i) to cancel the Escrow by written notice to Seller and Escrow Holder, in which event Seller shall reimburse Buyer for Buyer’s out-of-pocket costs and expenses incurred in connection with this Agreement and the transaction contemplated hereby (including any financing of such transaction) in an amount not to exceed \$50,000.00, or (ii) to pursue an action for specific performance but only if Buyer properly files with a court of competent jurisdiction a complaint for specific performance within one hundred eighty (180) days after the scheduled Closing Date. Buyer specifically waives all other rights and remedies, including, without limitation, the right to damages. If Buyer elects to cancel the Escrow, then all title charges and costs of the Escrow shall be paid by Seller and Escrow Holder shall return to Buyer the Deposit.

(b) If the Closing does not occur at the time and in the manner provided in this Agreement due to the failure of Buyer to comply with any of its obligations under this Agreement (“**Buyer Default**”), then, without limiting any other rights or remedies Seller and/or Operator may have as a result thereof, Seller shall have the right to cancel the Escrow by written notice to Buyer and Escrow Holder. Upon such cancellation, all title charges and costs of the Escrow shall be paid by Buyer and the Deposit shall be paid to Seller in accordance with Article 14.

(c) Upon any cancellation of the Escrow, Escrow Holder shall return all instruments and documents deposited with Escrow Holder to the parties who deposited the same.

4.8 Fees and Closing Costs. The fees and costs incidental to the Closing shall be paid as follows:

(a) Seller or Operator shall pay: (i) all documentary transfer taxes payable in connection with recording the Deed; (ii) the cost of recording the Deed; (iii) the cost of the base portion and premium for the Title Policy attributable to standard ALTA coverage; (iv) 50% of the escrow fees and charges of Escrow Holder; and (v) 50% of any sales tax in connection with the transfer to Buyer of the Personal Property (provided that Buyer shall take such actions as Seller or Operator reasonably requests to avoid or minimize any such sales tax, including, without limitation, obtaining and providing to Seller and Operator a resale certificate).

(b) Buyer shall pay (i) the cost of any endorsements to or extended coverage under the Title Policy; (iii) the cost of any lender’s title insurance policy and endorsements thereto; and (iv) the remaining 50% of all costs set forth above of which Seller or Operator shall bear 50%.

(c) Buyer, Seller and Operator shall each pay their own legal fees and other incidental expenses incurred in connection with the transaction contemplated by this Agreement.

(d) All closing costs not otherwise specified in this Section 4.8 shall be paid by Buyer, Seller or Operator in the manner customary in the county in which the Land is located.

4.9 Prorations. Prorations between Seller and Buyer shall be made at the Closing as follows:

(a) All taxes and assessments on the Property for all prior years and all current year taxes and assessments that are due and payable on or before the Closing shall have been paid by Seller (or Operator) on or before the Closing, subject to proration with Buyer to be responsible for taxes and assessments relating to the period after the Closing. Accrued but not yet payable general real estate, personal property and ad valorem taxes and assessments for the current year only shall be prorated on the basis of the most recent available information, as adjusted by any known changes relating to the period during which the Closing occurs. All tax refunds relating to the period on or before the Closing, whether received before, on or after the Closing, shall belong to Seller, and if Buyer receives any such refund after the Closing, Buyer shall promptly remit the same to Seller.

(b) All charges for gas, electricity, water, telephone, sewer and other utilities shall be prorated on the basis of the most recent available information, as reasonably adjusted to account for known variances from usage that would not otherwise be reflected in such information.

(c) Any income or expense items under the Contracts (and to the extent Buyer assumes the Cart Lease and/or Equipment Leases in accordance with Section 3.4, the Cart Lease and/or the Equipment Leases, as applicable), shall be prorated as of the Closing Date; provided that notwithstanding any provision of this Agreement to the contrary, Seller's Receivables shall not be prorated.

(d) Buyer shall receive a credit to the Purchase Price in the amount of all prepaid dues applicable to the period after Closing, and deposits for tournaments, banquets, meetings, and other functions to take place after the Closing.

(e) Any other items of income or expense with respect to the Property shall be prorated as of the Closing Date. Without limiting the generality of the preceding sentence, (i) an amount equal to all accounts receivable collected by Seller or Operator prior to Closing that represent billings for goods and services to be rendered after the Closing Date shall be credited to Buyer at Closing; and (ii) pre-paid expenses which will benefit the Property on or after the Closing Date shall be borne by Buyer.

(f) For purposes of calculating prorations, Buyer shall be entitled to the income from the Property and responsible for the expenses of the Property, for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the month which shall have elapsed as of the day of the Closing and based upon a three hundred sixty five (365) day year. The amount of such prorations shall be subject to adjustment in cash after Closing outside of Escrow, as and when more complete and accurate information becomes available. Seller and Buyer agree to cooperate and use their best efforts to make such adjustments

not later than sixty five (65) days after the Closing Date (which cooperation may include permitting reasonable inspections of Seller's or Buyer's books and records). Except as set forth in this Section 4.9 or elsewhere in this Agreement, all items of income and expense for the period prior to the Closing Date will be for the account of Operator, and all items of income and expense for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting.

(g) At least three (3) Business Days prior to the Closing Date, Seller shall deliver to Buyer a tentative statement of prorations (the "**Statement of Prorations**") setting forth a preliminary determination of all items to be prorated pursuant to this Section 4.9 and supported by all detail reasonably necessary to make such determination. Prior to the Closing, Buyer and Seller shall agree on the Statement of Prorations.

4.10 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. It is agreed that Escrow Holder is an eligible person under Section 16045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 15.2, and the identifying information regarding the real estate transferred is the legal description for the Property set forth on Exhibit A. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Closing occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-5 as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

ARTICLE 5 - TITLE

5.1 Title Commitment. Within five (5) Business Days after the Date of Agreement, Escrow Holder shall furnish to Buyer a current preliminary title report or commitment ("**PTR**") prepared by Chicago Title Insurance Company ("**Title Company**") covering the Land, together with copies of all documents shown as exceptions in the PTR.

5.2 Title Insurance. At the Closing, Buyer shall receive an owner's policy of title insurance covering the Land ("**Title Policy**") issued by the Title Company. The Title Policy shall be in the amount of the Purchase Price and shall insure fee title to be vested in Buyer free and clear of all liens, assessments, taxes, indebtedness, and other encumbrances except non-delinquent taxes

and assessments and the exceptions approved or deemed approved by Buyer pursuant to Article 7 of this Agreement.

ARTICLE 6 - DELIVERY OF DOCUMENTS BY SELLER

Within five (5) Business Days after the Escrow Opening Date, Seller shall provide copies of the following documents to Buyer or shall make copies of such documents available to Buyer at an office of Seller or Operator, or at the Golf Course:

6.1 A copy of financial statements for the Golf Course for two (2) complete years prior to the Closing and, to the extent available, the current year.

6.2 A copy of the most recent phase I and/or phase II environmental assessment reports, if any, in Seller's or Operator's possession covering the Golf Course.

6.3 A copy of the bills issued for the most recent year for all real estate taxes and assessments and personal property taxes, to the extent relating to the Golf Course.

6.4 A copy of all certificates of occupancy, licenses, permits and approvals with respect to the Golf Course or the Property, to the extent in Seller's or Operator's possession (the "**Governmental Approvals**").

6.5 A copy of all contracts and agreements pertaining to the ownership, operation, management, maintenance, and use of the Golf Course and/or the Property that will survive the Closing or for which consent is required in order to consummate the transactions contemplated hereby (collectively, the "**Contracts**"), including the following: (i) all leases, rental, concession and equipment agreements; (ii) a list of all tournaments, banquets, meetings, and other functions to be held at the Golf Course and a copy of the form agreements used for such functions; and (iii) all maintenance, repair, service, pest control, janitorial, landscaping, and supply contracts.

6.6 A list of all members, and originals or copies of the membership agreements, applications, bylaws, rules and regulations and other Contracts with respect to memberships (collectively, "**Membership Documents**").

6.7 A copy of the Liquor License.

6.8 An itemized inventory of the Personal Property.

6.9 A copy of the most recent existing ALTA survey ("**Existing Survey**") of the Golf Course, if any, that is in Seller's or Operator's possession.

6.10 A copy of all documents, agreements and permits in Seller's or Operator's possession relating to the supply of water to the Golf Course (collectively, the "**Water Documents**").

6.11 Copies of Seller's and/or Operator's insurance policies covering the Golf Course or the Property, and copies of all insurance claims made, in each case for the three years prior to the date of this Agreement.

6.12 Copies of all other environmental reports, surveys, maps, tests, plans, studies and engineering and other reports pertaining to the physical condition of the Property and its improvement and development, and all notices or correspondence from governmental agencies pertaining to the Property, which are in Seller's or Operator's possession.

6.13 Seller and Operator shall use commercially reasonable efforts to obtain an executed estoppel certificate from the tenant under each lease affecting the Real Property. If Seller is unable to provide a tenant estoppel certificate for any such lease, then, upon written request from Buyer, Seller shall provide an estoppel certificate executed by Seller for such lease.

ARTICLE 7 - CONTRACTS

7.1 **Assumption of Approved Contracts.** The Contracts are collectively referred to herein as the "**Approved Contracts.**" As of the Closing Date, Buyer shall assume the Approved Contracts. The Approved Contracts shall include, without limitation, all Membership Documents relating to memberships sold prior to the Closing, and all contracts for tournaments, banquets and other functions scheduled to take place at the Golf Course after the Closing. As of the Closing Date, Buyer shall assume the Approved Contracts.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES OF SELLER AND OPERATOR; SURVIVAL

8.1 **Representations and Warranties of Seller and Operator.** Seller and Operator each make the following representations and warranties to Buyer:

(a) **Capacity.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in California. Operator is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Seller and Operator each have the requisite right, power, legal capacity, and authority to enter into this Agreement and to fully perform each and their respective obligations under this Agreement.

(b) **Due Authorization.** All of the documents to be executed by Seller or Operator which are to be delivered to Buyer or Escrow Holder will be duly authorized, executed and delivered by Seller or Operator, and will be the legal, valid and binding obligations of Seller or Operator enforceable against Seller or Operator in accordance with their respective terms, and subject to obtaining third party consents required under the Contracts and Water Documents, will not violate any provisions of any agreement to which Seller or Operator is a party or to which Seller or Operator is subject.

(c) **Seller Not a "Foreign Person".** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

(d) **Marketable Title to Personal Property.** Seller and/or Operator shall convey to Buyer good and marketable title to the Personal Property, free and clear of any liens.

(e) **Contracts.** Seller or Operator has delivered, or will pursuant to Article 6 deliver or make available, to Buyer true, complete, and correct copies of all Contracts. To Seller's

and Operator's knowledge, the Contracts are in full force and effect, without default by any party thereto.

(f) Absence of Claims and Actions. To Seller's and Operator's knowledge, there are no pending or threatened lawsuits or proceedings involving the Golf Course or Seller's or Operator's rights with respect to the Golf Course.

(g) Absence of Condemnation Proceedings. To Seller's and Operator's knowledge, there is no pending eminent domain or condemnation proceeding affecting the Golf Course or any portion thereof.

(h) Labor Matters. Except as disclosed in writing to Buyer, Operator has no collective bargaining agreement affecting the Golf Course. To Seller's and Operator's knowledge, there have been no demands for collective bargaining by any union or labor organization or other organization of Operator's employees. To the knowledge of Seller and Operator, there is no outstanding, written employment-related complaint, grievance, investigation, inquiry or obligation relating to an alleged violation or breach by Seller or Operator (or any of their employees, officers, directors or equity holders) of any law, regulation or contract respecting the Golf Course. Seller and/or Operator shall make all severance or similar payments to the extent arising under any employment contracts or severance agreements with any employees of Seller or Operator working at the Golf Course or the Property that come due as a result of the Closing. Within the past three years, with respect to the Golf Course, neither Seller nor Operator have implemented any plant closing or layoff of employees that could implicate the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar foreign, state or local law, regulation or ordinance (collectively, the "WARN Act"). Neither Seller nor Operator maintains or contributes to any employee benefit plan for the benefit of Seller's or Operator's employees at the Golf Course, or under which Seller or Operator has any liability or potential liability to any employee or former employee

(i) This Agreement Not in Conflict. To Seller's and Operator's knowledge, subject to the obtaining third party consents required under the Contracts and Water Documents, neither this Agreement nor the consummation of the transactions contemplated by this Agreement will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Seller, Operator or the Golf Course is bound.

(j) Financial Condition. Neither Seller nor Operator have: (a) filed any voluntary petition in bankruptcy (liquidation or reorganization) or suffered the filing of any involuntary petition by its creditors; (b) made a general assignment for the benefit of creditors; (c) suffered the appointment of a receiver or trustee to take possession of all or substantially all of its assets; or (d) suffered the attachment or other judicial seizure of all or substantially all of its assets.

(k) Taxes.

(i) To Seller's and Operator's knowledge, Seller and Operator have, in respect of the Golf Course and the Property, filed all tax returns required to be filed, and all such tax returns were accurate and complete in all respects, and all taxes owed by Seller or Operator (whether or not shown on any tax return) have been paid.

(ii) Seller does not have any obligation for taxes pursuant to any Contract that Buyer is assuming as a result of the transactions contemplated by this Agreement. No governmental audits or other proceedings are ongoing or, to Seller's and Operator's knowledge, threatened with respect to any taxes relating to the Golf Course or the Property for which Buyer could have liability whether under this Agreement or under applicable laws.

(iii) To Seller's and Operator's knowledge, Seller has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, or any independent contractor, creditor, stockholder, or other third party engaged by Seller or Operator with respect to the Golf Course or the Property, and all Forms W-2 and 1099 (or any other applicable form) required with respect thereto have been properly completed and timely filed.

(l) Environmental Matters. Seller and Operator, with respect to the Golf Course and the Real Property, has not, within five years prior to the Closing Date, received any written notice from any governmental agency regarding any actual or alleged violation of any environmental laws.

8.2 Knowledge of Seller or Operator. The term "**knowledge of Seller**" or similar phrase as used in this Agreement shall be limited to the actual knowledge, without investigation or inquiry, of Jim Hinckley (President and CEO). The term "**knowledge of Operator**" or similar phrase as used herein shall be limited to the actual knowledge, without investigation or inquiry, of the General Manager and Superintendent of the Property.

8.3 Warranties Survive Closing. The representations and warranties made in this Agreement by Seller and/or Operator shall not merge into any instrument or conveyance delivered at the Closing; provided, however, that any action, suit or proceeding with respect to the truth, accuracy or completeness of such representations and warranties shall be commenced and served, if at all, on or before the date which is one (1) year after the Closing Date and, if not commenced and served on or before such date, such representations and warranties shall lapse and thereafter shall be void and of no force or effect.

8.4 Limitation on Claims. Notwithstanding any provision of this Agreement to the contrary, neither Seller nor Operator shall have any liability with respect to any of the foregoing representations and warranties if, prior to the Closing, Buyer receives actual written or documentary notice of information (from whatever source, including, without limitation, as a result of Buyer's investigations and inspections of the Golf Course, or written notice by Seller, Operator or their agents or employees) that contradicts any of the foregoing representations and warranties, or renders any of the foregoing representations and warranties untrue or incorrect, and Buyer with said knowledge nevertheless consummates the transaction contemplated by this Agreement. Seller and Operator, together, shall not be liable under this Article 8, under Article 11 or under Sections 15.1(a) or 15.1(b), unless and until the total of all claims for indemnity or damages with respect thereto exceeds Fifty Thousand Dollars (\$50,000.00) (the "**Deductible**"), and then Seller and/or Operator (as applicable) shall be liable for all such claims in excess of the Deductible up to a maximum cumulative amount for both Seller and Operator equal to Seven Hundred Fifty Thousand Dollars (\$750,000.00). In no event shall any Seller or Operator be liable to any Buyer for indirect, special, consequential (including lost profits) or punitive damages arising out of or in connection with this Agreement.

**ARTICLE 9 - REPRESENTATIONS AND WARRANTIES
OF BUYER; SURVIVAL**

9.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller:

(a) Capacity of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. Buyer has the requisite right, power, legal capacity, and authority to enter into this Agreement and to fully perform each and all of its obligations under this Agreement.

(b) Due Authorization. All of the documents to be executed by Buyer which are to be delivered to Seller and/or Operator or Escrow Holder will be duly authorized, executed and delivered by Buyer, and will be the legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, and will not violate any provisions of any agreement to which Buyer is a party or to which Buyer is subject.

9.2 Warranties Survive Closing. The representations and warranties made in this Agreement by Buyer shall not merge into any instrument or conveyance delivered at the Closing; provided, however, that any action, suit or proceeding with respect to the truth, accuracy or completeness of such representations and warranties shall be commenced and served, if at all, on or before the date which is one (1) year after the Closing Date and, if not commenced and served on or before such date, such representations and warranties shall lapse and thereafter shall be void and of no force or effect.

ARTICLE 10 - DISCLAIMER; AS-IS CONVEYANCE; DISCHARGE

10.1 Disclaimer. Except for the express provisions of this Agreement, Seller and Operator disclaim and shall not be liable for any and all verbal and/or written statements, conversations, representations and information, if any, made or given by Seller, Operator or any of their respective agents, employees, attorneys or representatives, or the successors and assigns of each of the preceding, or any other person to Buyer, to any agent or employee of Buyer or to any other person with respect to any aspect or feature of the Golf Course (including, without limitation, any information related to the Golf Course's value, condition, or compliance with laws, the status of permits or approvals, or the existence of any Hazardous Materials on the Golf Course). All such statements, conversations, representations and information, if any, are merged into and superseded by this Agreement, and Buyer agrees that Buyer shall not be entitled to rely upon any such statements, conversations, representations or information. As used herein, the term "**Hazardous Materials**" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws, rules or regulations.

10.2 As Is Conveyance. Buyer agrees that, upon the Closing, Buyer shall conclusively be deemed to have accepted the Property in its then existing condition, "AS IS, WHERE IS AND WITH ALL FAULTS" without representation or warranty of any kind or nature whatsoever except as expressly set forth in this Agreement, and with all faults and problems of any kind and/or nature

whatsoever that may then exist, whether the same are of a legal nature, a physical nature, or otherwise. Buyer further acknowledges that such existing conditions, faults, and problems include or may include (by way of illustration only, and without in any way limiting the generality of the foregoing) the following: (a) any possibility that the construction and/or use of the Property may not be in accordance with applicable statutes, ordinances, rules, regulations, building codes, zoning restrictions, master plan restrictions, or administrative or judicial orders or holdings, whether or not appearing in the public records or in material supplied to Buyer by Seller or Operator, if any, or otherwise; (b) any possibility that construction defects may exist in the Property; and (c) any possibility that the Property is contaminated with Hazardous Materials. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that Buyer is purchasing the Property based solely on Buyer's own evaluation of the Property's past and future financial performance, that Seller and Operator own and operate the Property as one of many golf courses that Seller and Operator own and operate, and that Seller and Operator obtain certain benefits as a result of owning and operating many golf courses that Buyer may or may not be able to obtain.

10.3 Discharge. Buyer, on behalf of itself and its agents, heirs, successors and assigns, waives, releases, acquits and forever discharges Seller, Operator and their respective affiliates, and its and their respective owners, officers, directors, partners, employees, agents and representatives of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer or any of Buyer's heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Property. The provisions of this Section 10.3 shall not, however, release Seller or Operator from their respective obligations under this Agreement. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City's Initials

ARTICLE 11 - COVENANTS

11.1 Insurance to Remain in Force Through Closing. The insurance policies maintained by Seller or Operator covering the Golf Course which are in existence as of the Date of Agreement, or substantially equivalent coverage, shall remain continuously in force through the Closing Date.

11.2 Buyer's Insurance. Buyer shall obtain or cause its consultants to obtain, at Buyer's sole cost and expense prior to commencement of any investigative activities on the Property, a policy of commercial general liability insurance covering any and all liability of Buyer, Seller and Operator with respect to or arising out of any of Buyer's investigative activities. Each such policy of insurance shall be an occurrence policy and shall have liability limits of not less

than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance policy shall name Seller and Operator as additional insureds.

11.3 Maintenance and Operation of Property. Prior to the Closing, Operator shall maintain and repair the Golf Course and the Property in a manner sufficient to prevent any material diminution of its present condition (subject to reasonable wear and tear and damage from condemnation and casualty), and shall maintain substantially the same services and Goods and Inventory as are maintained on the date hereof, subject to adjustments for seasonality.

11.4 Payment of Bills. Operator has paid or will pay all bills and invoices for labor, goods, material and services relating to the Golf Course, utility charges, and employee salary and all other accrued benefits and entitlements relating to the period prior to the Closing Date.

11.5 Employees. Operator shall terminate or transfer the employment of all of the employees of Golf Course as of the Closing Date, and shall assume full responsibility for all employee compensation (including, without limitation, any bonuses or other employee incentives based on sales) and other employment benefits due and owing, and/or accrued, as of the Closing Date. In order to promote an orderly transfer of the Golf Course, Buyer agrees that it will offer employment to substantially all employees at the Golf Course on substantially the same terms as such employees are employed as of the date hereof, provided that the foregoing shall not require Buyer to offer employment to any employee who does not meet standards established by Buyer in its reasonable discretion. Buyer, Seller and Operator acknowledge that, to the best of their understanding, the transaction contemplated by this Agreement does not create any liability under the WARN Act.

11.6 Possession. Seller and Operator shall deliver the right to possession of the Property to Buyer on the Closing Date.

11.7 Buyer's Delivery of Documents. If this Agreement terminates for any reason other than a default by Seller or Operator, then, at Seller's request, Buyer shall, within five (5) days after Seller's written request therefor, deliver to Seller, at no charge, copies of all non-proprietary inspection reports, surveys, engineering studies and other similar items prepared by or for Buyer that pertain to the Property. The provisions of this Section 11.7 shall survive any termination of this Agreement.

11.8 Survival of Covenants. The liability of Seller and Operator for a breach of any of the covenants contained in this Agreement (including, without limitation, the covenants set forth in Sections 15.1(a) and 15.1(b)) to be performed by Seller and/or Operator after the Closing shall survive the Closing for a period of one (1) year and shall not be merged into any instrument of conveyance delivered at the Closing; provided, however, that any action, suit or proceeding with respect to the breach of a covenant shall be commenced and served, if at all, on or before the date which is eighteen (18) months after the Closing Date and, if not commenced and served on or before such date, such covenants shall lapse and thereafter shall be void and of no force or effect.

11.9 Transfer of Liquor License. Commencing upon the Date of Agreement and continuing until the date which is six (6) months after the Closing Date, Buyer and Seller shall, at the sole cost and expense of Seller, use their commercially reasonable efforts to obtain all governmental approvals necessary to transfer the Liquor License to Buyer as soon as reasonably

possible, but in any event not sooner than the Closing Date. Seller and Buyer shall follow all legal procedures and processes necessary or advisable to accomplish the transfer of the Liquor License to Buyer, including the establishment of one or more escrows to accomplish the same. Notwithstanding the foregoing, to the extent the Liquor License is not transferrable, in lieu of its obligations under the preceding two sentences, Seller shall, at no cost or risk of liability to Seller, execute such documents (including, without limitation, terminating Buyer's existing Liquor License) as Buyer reasonably requests in order for Buyer to obtain a new liquor license which permits Buyer to serve alcoholic beverages at the Golf Course. If such transfer does not occur prior to the Closing Date, or if Buyer has not obtained such new liquor license by the Closing Date, then, during the period commencing on the Closing Date and continuing until the date which is six (6) months after the Closing Date, at Buyer's request, Seller shall continue to operate the liquor service business at the Golf Course under arrangements reasonably satisfactory to Seller and Buyer with the overall intent that Buyer receive the economic benefit and bear the economic burden of such liquor service business.

ARTICLE 12 - CONDITIONS PRECEDENT TO CLOSE THIS TRANSACTION

12.1 Buyer's Conditions. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction or waiver in writing of the following conditions precedent for Buyer's benefit:

(a) The transactions contemplated under this Agreement to be effected on the Closing Date shall not have been restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction, and no proceeding shall have been instituted and be pending in which any creditor of Seller or Operator or any other person seeks to restrain such transactions or otherwise to attach any of the Property, provided that any such proceeding or action contemplated by this Section 12.1(a) shall not be deemed to include any proceeding or action brought by, through or under Buyer.

(b) Seller and Operator shall have materially performed their covenants and materially complied with their obligations hereunder.

(c) Seller shall have delivered to Escrow Holder or Buyer (as applicable) all of the items required to be delivered to Buyer as provided for in Section 4.4 hereof.

(d) All of the representations and warranties of Seller and Operator contained in this Agreement shall be true and correct in all material respects as of the scheduled Closing Date; provided, however, that such representations and warranties shall be deemed to be revised as of the Closing Date to reflect all matters disclosed to Buyer in the documents and information made available to Buyer in writing pursuant to this Agreement.

(e) On the Closing Date, Seller and Operator shall not have filed a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing hereinafter collectively called "**Applicable Bankruptcy Law**"), nor shall an involuntary petition for relief have been filed against Seller or Operator under any Applicable Bankruptcy Law and not been dismissed.

(f) Seller and Operator shall have fulfilled all notice and consent requirements under its financing contracts as are necessary to consummate the Closing in compliance with the provisions of such agreements.

(g) Title Company has committed to issue the Title Policy.

If any one of the above conditions is not satisfied, Buyer shall provide notice thereof to Seller within five (5) Business Days after Buyer becomes aware of the same, and if Seller is unable to cause such condition to be satisfied within five (5) Business Days thereafter, then, within ten (10) days after the expiration of the five (5) Business Day period described in the preceding clause, Buyer shall (i) waive such condition in writing, in which case this Agreement shall continue in full force and effect, and Buyer shall have no further rights or remedies in connection with such condition or the facts or circumstances which caused such condition to be not satisfied, (ii) terminate this Agreement by written notice thereof to Seller, Operator and Escrow Holder (in which case the Deposit, less all title and escrow cancellation fees, shall be returned by Escrow Holder to Buyer, and the parties shall have no further rights or obligations to one another under this Agreement, except as set forth in Sections 11.8, 15.3 and 15.13), or (iii) in the event the unsatisfied condition is the condition set forth in Section 12.1(b), exercise Buyer's remedies under Section 4.7(a). Buyer's failure to timely notify Seller, Operator and Escrow Holder of its election pursuant to the preceding sentence shall be deemed Buyer's election of the option set forth in clause (i) of the preceding sentence. Notwithstanding the foregoing, in the event that Seller is unable to obtain the consent of any third party to a contract necessary to cause the condition set forth in paragraph (e) of Section 12.1 to be satisfied, the period of time available to Seller in the first sentence of this paragraph to cause such condition to be satisfied shall be extended so long as Seller is exercising commercially reasonable efforts to obtain such consent.

12.2 Seller's and Operator's Conditions. Seller's and Operator's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction or waiver in writing of the following conditions precedent for Seller's and Operator's benefit:

(a) Buyer shall have delivered the entire Purchase Price and Additional Payments, and otherwise shall have materially performed its covenants and materially complied with its obligations hereunder.

(b) All of the representation and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the scheduled Closing Date.

(c) On the Closing Date, Buyer shall not have filed a petition for relief under Applicable Bankruptcy Law, nor shall an involuntary petition for relief have been filed against Buyer under any Applicable Bankruptcy Law and not been dismissed.

If any one of the above conditions is not satisfied, Seller and Operator shall provide notice thereof to Buyer, and if Buyer is unable to cause such condition to be satisfied within five (5) Business Days, then Seller and Operator may (i) waive such condition in writing, (ii) terminate this Agreement by written notice thereof to Buyer (in which case, subject to clause (iii) below, the parties shall have no further rights or obligations to one another under this Agreement, except as set forth in Sections 11.8, 15.3 and 15.13), and/or (iii) exercise Seller's and Operator's remedies under Section 4.7(b).

ARTICLE 13 - DAMAGE AND DESTRUCTION; CONDEMNATION

13.1 Casualty. If, prior to the Closing Date, all or part of the Property is damaged by fire or by any other cause whatsoever, Seller shall promptly give Buyer written notice of such damage. If the cost of repairing such damage is less than One Hundred Thousand Dollars (\$100,000.00), then Buyer shall have the right at Closing to receive, to the extent such sums have not been expended on repair work, (1) all insurance proceeds payable as a result of such loss, less Seller's costs and expenses incurred in connection with settling such loss and other than claims and proceeds for rent loss insurance for periods prior to the Closing Date, or (2) an assignment of Seller's rights to such insurance proceeds without recourse, and this Agreement shall continue in full force and Seller shall have no obligation to repair such damage. If the cost of repairing damage from such casualty is greater One Hundred Thousand Dollars (\$100,000.00), then Buyer shall have the right, for a period of twenty (20) days from the date of notice of the amount of damage caused by the casualty, to terminate this Agreement by giving written notice of termination to Seller within such period. Upon such termination, the parties hereto shall be released of any further liability hereunder except for provisions which survive a termination and except that (i) Buyer shall be entitled to a return of the Deposit. If Buyer fails to notify Seller within such period of Buyer's intention to terminate this Agreement, then Buyer shall proceed to Closing and, to the extent such sums have not been expended on repair work, all insurance proceeds, less Seller's costs and expenses incurred in connection with settling such loss and other than claims and proceeds for rent loss insurance for periods prior to the Closing Date, received by Seller as a result of such casualty loss, shall be paid to Buyer at Closing. If such proceeds have not yet been received by Seller, then Seller's rights to such proceeds shall be assigned to Buyer at Closing without recourse and Seller shall have no obligation to repair such damage.

13.2 Condemnation. In the event the Property or any material portion thereof is taken by eminent domain or any condemnation proceedings relating to a material portion of the Property are commenced prior to the Closing, then Buyer may, within the earlier of thirty (30) days after receipt of notice of the condemnation, or the Closing Date, elect in writing either (i) to proceed with the transaction, in which case Buyer shall receive an assignment of any condemnation award payable to Seller or Operator, or (ii) to terminate this Agreement upon written notice to Seller and Escrow Holder, in which case neither party shall have any further rights or obligations under this Agreement (except as otherwise provided in Sections 11.8, 15.3 and 15.13), the Deposit shall be immediately returned to Buyer.

ARTICLE 14 - LIQUIDATED DAMAGES

BUYER, SELLER AND OPERATOR ACKNOWLEDGE AND AGREE THAT IN THE EVENT BUYER DEFAULTS UNDER THIS AGREEMENT, SELLER AND OPERATOR WILL SUFFER DAMAGES IN AN AMOUNT WHICH WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN. BUYER, SELLER AND OPERATOR, AFTER DUE NEGOTIATION, ACKNOWLEDGE AND AGREE THAT THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL SUSTAIN IN THE EVENT OF SUCH A DEFAULT BY BUYER. BUYER, SELLER AND OPERATOR AGREE THAT SELLER AND OPERATOR MAY, IN THE EVENT OF A BUYER DEFAULT, TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO BUYER AND ESCROW HOLDER, CANCEL THE ESCROW, AND ESCROW HOLDER SHALL PAY TO SELLER THE DEPOSIT (INCLUDING ALL INTEREST THEREON) AS

LIQUIDATED DAMAGES. FOLLOWING TERMINATION OF THIS AGREEMENT, CANCELLATION OF THE ESCROW, AND THE PAYMENT OF THE DEPOSIT TO SELLER PURSUANT TO THIS ARTICLE 14, EXCEPT FOR BUYER'S OBLIGATIONS UNDER SECTIONS 11.8, 15.3 AND 15.13, ALL OF THE RIGHTS AND OBLIGATIONS OF BUYER, SELLER AND OPERATOR UNDER THIS AGREEMENT SHALL BE TERMINATED. BUYER, SELLER AND OPERATOR ACKNOWLEDGE THAT EACH OF THEM HAS READ AND UNDERSTANDS THE TERMS AND PROVISIONS OF THIS ARTICLE 14, AND BY THEIR INITIALS IMMEDIATELY BELOW BUYER AND SELLER AGREE TO BE BOUND BY THESE TERMS AND PROVISIONS.

ARTICLE 15 - MISCELLANEOUS

15.1 Indemnity.

(a) Seller's Indemnity of Buyer. Subject to the occurrence of the Closing, Seller shall indemnify, protect, defend and hold harmless Buyer and its owners, officers, directors, partners, employees and agents from and against (i) all claims, demands, lawsuits, actions, proceedings, liabilities, damages, costs, losses, and expenses, including, without limitation, reasonable attorneys' fees, court costs and litigation expenses (collectively "**Claims**") and related losses and damages (collectively, "**Losses**") relating to Seller's breach of a representation, warranty or covenant hereunder, and/or (ii) lawsuits, actions or proceedings brought by a third party against Buyer to the extent such Claims are relating to the ownership of the Property during, and such Losses are in respect of, the period Seller owned the Property (but excluding lawsuits, actions or proceedings relating to any physical aspect of the Property, or to the Contracts, the Cart Lease or the Equipment Leases), and not resulting from any act or omission of Buyer or any agent, employee, representative or contractor of Buyer, and/or (iii) lawsuits, actions or proceedings brought by anyone arising out of his or her employment by Seller on or in connection with the Golf Course or the Property prior to Closing, except as otherwise set forth in this Agreement.

(b) Operator's Indemnity of Buyer. Subject to the occurrence of the Closing, Operator shall indemnify, protect, defend and hold harmless Buyer and its owners, officers, directors, partners, employees and agents from and against (i) all Claims relating to Operator's breach of a representation, warranty or covenant hereunder, and/or (ii) lawsuits, actions or proceedings brought by a third party against Buyer to the extent such Claims are relating to the operation of the Property during, and such Losses are in respect of, the period Operator operated the Property (but excluding lawsuits, actions or proceedings relating to any physical aspect of the Property, or to the Contracts, the Cart Lease or the Equipment Leases), and not resulting from any act or omission of Buyer or any agent, employee, representative or contractor of Buyer, and/or (iii) lawsuits, actions or proceedings brought by anyone arising out of his or her employment by Operator on or in connection with the Golf Course or the Property prior to Closing, except as otherwise set forth in this Agreement.

(c) Buyer's Indemnity of Seller/Operator. Subject to the occurrence of the Closing, Buyer shall indemnify, protect, defend and hold harmless Seller and Operator and their respective affiliates, owners, officers, directors, partners, employees and agents from and against all Claims relating to (i) Buyer's breach of a representation, warranty or covenant hereunder, (ii) lawsuits, actions or proceedings brought by a third party against Seller or Operator to the extent

relating to the ownership or operation of the Property during the period after the Closing (but excluding Claims and Losses covered by Sections 15(b) and (c) set forth above), and not resulting from any act or omission of Seller or Operator, or any agent, employee, representative or contractor of Seller or Operator in connection with their actions under the management agreement contemplated by Section 15.24 of this Agreement.

15.2 Addresses for Notices. All notices, demands, requests or replies (collectively, the “Notices”) provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (c) by prepaid deposit with an overnight express delivery service; or (d) by means of electronic facsimile transmission (“fax”). Notices shall be effective upon actual receipt, or refusal of delivery.

For purpose of Notices, the address of Buyer is:

City of Mission Viejo
[]
Mission Viejo, CA []
Telephone: []
Fax No.: []
Attention: []

with a copy to:

Lozano Smith
200 Civic Center
Mission Viejo, CA 92691
Telephone: (213) 929-1066
Fax No.: (213) 929-1077
Attention: William P. Curley III

For purpose of Notices, the address of Seller and Operator is:

c/o Drive Shack Inc.
218 West 18th Street, 3rd Floor
New York, NY 10011
Attention:
David Hammarley
e-mail: dhammarley@driveshack.com

and

c/o Drive Shack Inc.
218 West 18th Street, 3rd Floor
New York, NY 10011
Attention:
Nick Foley
General Counsel
e-mail: nfoley@driveshack.com

15.3 Confidentiality. Seller, Operator and Buyer shall keep confidential the material economic terms of this Agreement, except as to their employees, consultants, attorneys, accountants, and other agents that may be involved in conducting the due diligence related to the transactions contemplated by this Agreement, or as may be required by any applicable law (including without limitation the Brown Act (California Government Code Section 54950 et seq.) in the event this Agreement is assigned by Buyer to a governmental entity). The provisions of the preceding sentence shall survive any termination of this Agreement. Upon the Closing, Seller, Operator and Buyer shall be permitted to make public announcements and disclosures regarding the terms of the transaction. Subject to the foregoing sentence, the Mutual Confidential Information Agreement between the parties shall remain in full force and effect.

15.4 Other Documents. Seller, Operator and Buyer agree that they will, at any time and from time to time after the Closing, upon the request of the other party, execute, acknowledge, and deliver all such further deeds, assignments, transfers, advances, and other documents as may be reasonably required for the effective transfer of all of the Property as provided herein.

15.5 Amendments In Writing. No amendment or modification of this Agreement shall be valid unless the amendment or modification is in writing and signed by all parties.

15.6 Entire Agreement. This Agreement represents the entire agreement between the parties and incorporates all prior agreements and understandings. All exhibits and schedules to which reference is made and which are attached are a part of this Agreement and shall be understood to be incorporated in this Agreement. No previous agreement or understanding, verbal or written, of the parties or any of their agents shall be binding or enforceable, unless specifically incorporated in this Agreement.

15.7 No Presumption Regarding Drafter. Seller, Operator and Buyer acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between Seller, Operator and Buyer, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would not be appropriate to deem either Seller, Operator or Buyer to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

15.8 Time of the Essence. Time is of the essence of this Agreement (including, without limitation, as to the Closing Date). The parties understand that the time for performance of each obligation under this Agreement has been the subject of negotiation by the parties.

15.9 Enforceability of Any Provision. If any agreement, condition, obligation, covenant, warranty or other provision of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate or render unenforceable any other agreement, condition, obligation, covenant, warranty, or other provision of this Agreement.

15.10 Counterparts. This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed, each counterpart shall be considered as an original and all counterparts shall be considered as one agreement.

15.11 Effect of Titles. The title of the various articles and sections of this Agreement are solely for the purpose of convenience and shall not be relied upon in construing any provision of this Agreement.

15.12 Brokers' Commissions. Seller and Operator represent and warrant to Buyer that they have not engaged or dealt with any broker, finder, or agent in connection with this Agreement or the transactions contemplated hereby, other than Cushman & Wakefield ("**Seller's Broker**"), to which Seller shall pay a brokerage commission at Closing pursuant to a separate written agreement. Buyer and Seller each represents and warrants to the other that it has not engaged or dealt with any broker, finder, or agent in connection with this Agreement or the transactions contemplated hereby. Buyer shall indemnify, defend and hold harmless Seller and Operator from and against any and all claims, liabilities, losses, costs, damages, expenses, and attorneys' fees in connection with any claim or demand by a person or entity other than Seller's Broker for any broker's, finder's, or other commission or fee in connection with this Agreement arising out of any act or omission of Buyer. Seller and Operator shall indemnify, defend and hold harmless Buyer from and against any and all claims, liabilities, losses, costs, damages, expenses, and attorneys' fees in connection with any claim or demand by a person or entity for any broker's, finder's, or other commission or fee in connection with this Agreement arising out of any act or omission of Seller or Operator.

15.13 Attorneys' Fees. In the event of a dispute in connection with this Agreement involving the non-performance by a party of its obligations, the prevailing party shall be entitled to reasonable attorneys' fees and all other expenses reasonably incurred in connection with such dispute, whether or not litigation is commenced, in addition to all other relief to which the party is entitled. If the successful party recovers judgment in any legal action or proceeding, the attorneys' fees and all other expenses of litigation shall be included in and made part of any such judgment. The provisions of this Section 15.13 shall survive any termination of this Agreement.

15.14 Applicable Law. The laws of the State of California shall be applied in interpreting and enforcing this Agreement.

15.15 Assignment by Buyer; Successors and Assigns. Buyer shall have the right to assign Buyer's rights and to delegate Buyer's obligations under this Agreement to any entity in which Buyer or an affiliate or principal of Buyer owns an interest, or to a governmental entity, provided that: (i) Buyer shall give written notice of such assignment to Seller and Operator at least fifteen (15) Days prior to the Closing; and (ii) Buyer shall not be released from liability under this Agreement. Except as provided in the preceding sentence, Buyer shall not have the right to assign this Agreement without Seller's and Operator's prior written consent. Subject to the preceding

two sentences, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15.16 Exhibits and Schedules. All attached exhibits and schedules are incorporated in this Agreement by this reference.

15.17 No Third Party Beneficiaries. This Agreement is for the benefit of Seller, Operator and Buyer only, and is not for the benefit of any other person or entity. Without limiting the generality of the preceding sentence, the parties agree that there are no third party beneficiaries of this Agreement.

15.18 References. Unless otherwise expressly provided herein to the contrary, all references herein to sections and articles are to sections and articles contained in this Agreement.

15.19 Business Days. The term “**Business Day**” means a day that is not a Saturday, Sunday or legal holiday observed by one or more of the following: (i) the State of California; and (ii) the United States of America.

15.20 Date of Agreement. The “**Date of Agreement**” is the latest of the dates indicated below next to a party’s signature block. If a signatory fails to complete the date, that date will be disregarded for purposes of determining the Date of Agreement.

15.21 No Joint and Several Liability Operator shall be liable hereunder solely for its representations, warranties, covenants and other obligations, and Seller shall be liable hereunder solely for its representations, warranties, covenants and other obligations. Without in any way limiting the generality of the foregoing, (i) Operator shall in no way be liable for any breach or inaccuracy by Seller of any of Seller’s representations, warranties or covenants hereunder, and (ii) Seller shall in no way be liable for any breach or inaccuracy by Operator of any of Operator’s representations, warranties or covenants hereunder.

15.22 Cooperation with Exchange. Buyer and Seller each agree to reasonably cooperate with the other by executing such documents or taking such action as may be reasonably required in connection with any tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, provided that (i) the transaction contemplated by this Agreement shall not be conditioned upon completion of such exchange; (ii) neither Seller nor Buyer shall be required to acquire any property in connection with the exchange of the other and shall not be required to take title to any real property in connection with the exchange of the other; (iii) any inconsistency between the provisions of any documents executed in connection with any proposed exchange and the provisions of this Agreement shall be governed by this Agreement, provided that the foregoing shall not affect the assumption by an exchange accommodator of the obligations of any party to this Agreement; (iv) neither Seller nor Buyer shall incur any liability or cost by reason of the exchange of the other and each of Seller and Buyer shall indemnify, defend and hold the other harmless from and against any and all obligations or liabilities or losses incurred by such other party solely relating to the exchange of Seller or Buyer, as the case may be; (v) in no event shall the Closing Date be delayed by reason of any exchange; and (vi) any and all representations, warranties, agreements and covenants made by Seller and Buyer respectively pursuant to this Agreement shall continue to be the obligation of Seller or Buyer, as the case may be, regardless of the use of any intermediary in connection with the proposed tax free exchange.

15.23 Jury Trial Waiver. BUYER, SELLER AND OPERATOR EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THE PROPERTY OR THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT.

15.24 Ongoing Management Relationship. It is hereby understood and agreed that the Operator will continue to manage the Golf Course upon terms to be mutually agreed by Operator and Buyer pursuant to a management agreement to be entered into on or prior to the Closing, the Operator to prepare the first draft thereof promptly following the execution of this Agreement. The management agreement will provide that Operator will manage the Property after the close of Escrow for an initial three (3) year term, terminable by Buyer upon sixty (60) days' notice to Operator, which shall continue thereafter on a month-to-month basis, terminable by either party upon thirty (30) days' notice to the other. The management agreement will include a fixed fee of three percent (3%) of the total annual revenue generated by the Property to the Operator in its capacity as manager.

15.25 Independent Contract Consideration. The Independent Contract Consideration shall mean a portion of the Deposit in the amount of \$200 (the "Independent Contract Consideration"), which has been bargained for as consideration for Seller's execution and delivery of this Agreement and Buyer's right to inspect the Property pursuant to this Agreement. Notwithstanding any provision herein to the contrary, upon termination of the Agreement for any reason, the Independent Contract Consideration shall be paid to Seller and deducted from the Deposit, and upon Closing the Independent Contract Consideration shall be paid to Seller but shall not be credited against the Purchase Price. The Independent Contract Consideration is in addition to and independent of, any other consideration or payment provided for in this Agreement and is non-refundable in all events.

15.26 Natural Hazard Disclosure. Buyer and Seller acknowledge that Seller may be required under California law to disclose if the Real Property lies within the following natural hazard areas or zones: (a) a special flood hazard area designated by the Federal Emergency Management Agency (California Civil Code Section 1102.17); (b) an area of potential flooding (California Government Code Section 8589.4); (c) a very high fire hazard severity zone (California Government Code Section 51183.5); (d) a wild land area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4136); (e) an earthquake fault zone (Public Resources Code Section 2621.9); or (f) a seismic hazard zone (Public Resources Code Section 2694). The Title Company shall be engaged (which, in such capacity, is referred to herein as the "Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill Seller's disclosure obligations, if and to the extent such obligations exist, with respect to the natural hazards referred to in California Civil Code Section 1102.6c(a) and to report the result of the Natural Hazard Expert's examination to Buyer and Seller in writing. Seller has instructed the Title Company to deliver to Buyer Natural Hazard Expert's examination report prior to the Close of Escrow. The written reports prepared by the Natural Hazard Expert regarding the results of the Natural Hazard Expert's full examination fully and completely discharges Seller from Seller's disclosure obligations referred to herein, if and to the extent any such obligations exist, and, for

the purpose of this Agreement, the provisions of Civil Code Section 1102.4 regarding non-liability of Seller for errors or omissions not within Seller's personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of the Natural Hazard Expert's expertise with respect to the examination and written report regarding the natural hazards referred to above.

15.27 Seller Prohibited Persons and Transactions. Neither Seller nor Operator nor any of their affiliates, nor any of their respective partners or members, and none of their respective officers or directors is, nor prior to Closing or the earlier termination of this Agreement, will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Blocked Persons List) or under any U.S. statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action, and prior to Closing or the earlier termination of this Agreement will not engage in any dealings or transactions with or be otherwise associated with such persons or entities.

15.28 Buyer Prohibited Persons and Transactions. Neither Buyer nor any of its affiliates, nor any of their respective members, and none of their respective officers or directors is, nor prior to Closing or the earlier termination of this Agreement, will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Blocked Persons List) or under any U.S. statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action, and prior to Closing or the earlier termination of this Agreement will not engage in any dealings or transactions with or be otherwise associated with such persons or entities.

15.29 Buyer Prohibited Persons and Transactions. Neither Buyer nor any of its affiliates, nor any of their respective members, and none of their respective officers or directors is, nor prior to Closing or the earlier termination of this Agreement, will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Blocked Persons List) or under any U.S. statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action, and prior to Closing or the earlier termination of this Agreement will not engage in any dealings or transactions with or be otherwise associated with such persons or entities.

15.30 ARBITRATION OF DISPUTES. ANY CLAIM OR CONTROVERSY OF WHATEVER NATURE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DOCUMENTS AND INSTRUMENTS ENTERED INTO BY SELLER AND/OR OPERATOR WITH OR IN FAVOR OF BUYER IN CONNECTION WITH THIS AGREEMENT SHALL BE DECIDED BY FINAL AND BINDING ARBITRATION TO BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS"), ORANGE COUNTY, CALIFORNIA OFFICE, IN ACCORDANCE WITH THEIR RULES OF PRACTICE AND PROCEDURES THEN IN EXISTENCE. THE PARTIES SHALL BE ENTITLED TO ALL

RIGHTS OF DISCOVERY AS PROVIDED BY CALIFORNIA LAW. THE ARBITRATOR SHALL BE EMPOWERED TO GRANT PROVISIONAL REMEDIES (INCLUDING, BUT NOT LIMITED TO, TEMPORARY RESTRAINING ORDERS) AND ANY AND ALL EQUITABLE RELIEF TO WHICH THE PARTIES MAY BE ENTITLED TO IN LAW OR IN EQUITY INCLUDING, WITHOUT LIMITATION, INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE YOUR DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION HEREOF DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHT TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

Seller’s Initials

Operator’s Initials

Buyer’s Initials

THE PROVISIONS OF THIS SECTION 15.29 SHALL SURVIVE THE CLOSING AND ANY TERMINATION OF THIS AGREEMENT.”

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

SELLER:

Dated: September __, 2019

AGC REALTY, LLC,
a Delaware limited liability company

By: _____
Name: James M. Hinckley
Position: President

OPERATOR:

Dated: September __, 2019

AMERICAN GOLF CORPORATION,
a California corporation

By: _____
Name: James M. Hinckley
Position: President

BUYER:

Dated: September __, 2019

CITY OF MISSION VIEJO,
Orange County, California

By: _____
Name: _____
Position: _____

Exhibit A

Exhibit A
Property Description
[Attached]

Exhibit B

Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

APN: _____

Above Space for Recorder's Use Only

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES THAT DOCUMENTARY TRANSFER TAX IS \$ _____;
 computed on full value of property conveyed, or
 computed on full value less value of liens or encumbrances remaining at time of sale.
 unincorporated area City of Mission Viejo AND

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

AGC REALTY, LLC, a Delaware limited liability company

hereby **GRANTS** to

City of Mission Viejo, Orange County, California,

the real property in the City of Mission Viejo, County Orange County, State of California, as more particularly described in the Legal Description attached hereto as **Exhibit "A"** and incorporated herein by reference.

This Grant Deed is made and given **SUBJECT TO:**

- (a) Nondelinquent taxes and assessments shown on the assessor's tax rolls as of the date hereof; and
- (b) All other covenants, conditions, restrictions, reservations, rights, rights of way, easements, encumbrances, liens and other matters of record, and all matters which would be disclosed by an accurate survey.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of _____, 2019.

AGC REALTY, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____(Seal)

Exhibit A
Legal Description

Exhibit C

Bill of Sale and Assignment Agreement

I. Identification and Parties. This **Bill of Sale and Assignment Agreement** (this “**Bill of Sale**”) is made and entered into effective as of _____, 2019, by and between (i) AGC REALTY, LLC, a Delaware limited liability company, and AMERICAN GOLF CORPORATION, a California corporation (together, “**Seller**”), in favor of (ii) CITY OF MISSION VIEJO, Orange County, California (“**Buyer**”).

II. Recitals.

2.1 Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated as of September [●], 2019 (the “**Agreement**”). All capitalized terms used but not defined in this Bill of Sale shall have the meanings ascribed to such terms in the Agreement.

2.2 Under the Agreement, among other things, Seller agreed to sell to Buyer, and Buyer agreed to purchase from Seller, the Golf Course, including the Personal Property and the Intangible Personal Property.

2.3 The Agreement contemplates the execution and delivery of this Bill of Sale.

In order to consummate the transaction contemplated by the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller desires to execute this Bill of Sale in favor of Buyer.

III. Bill of Sale and Assignment Agreement.

3.1 Seller assigns, sells, transfers, conveys and delivers to Buyer (i) Seller’s right, title and interest in the Personal Property, which Personal Property includes, without limitation, the personal property located at the Golf Course and described on Exhibit A attached hereto and incorporated herein by this reference, free and clear of liens and encumbrances, (ii) the Commercial Information, and (iii) to the extent transferable, Seller’s right, title and interest in any Intangible Personal Property.

3.2 Buyer hereby accepts the assignment, sale, transfer, conveyance and delivery set forth in Section 3.1 above.

3.3 Except as otherwise expressly set forth in Article 8 of the Agreement, Seller’s right, title and interest in and to the Personal Property and the Intangible Personal Property is assigned hereunder without representation or warranty of any kind or nature whatsoever, whether statutory, express or implied. Without in any way limiting the generality of the preceding sentence, Section 10.2 of the Agreement is hereby incorporated herein by this reference as though set forth in full herein.

IV. Miscellaneous.

4.1 Entire Agreement. This Bill of Sale and the Agreement are the entire agreement between the parties hereto with respect to the subject matter hereof, and incorporate all prior agreements and understandings of the parties hereto.

4.2 Amendments in Writing. No amendment or modification of this Bill of Sale shall be valid unless the amendment or modification is in writing and signed by Seller and Buyer.

4.3 Counterparts. This Bill of Sale may be executed electronically and in one or more duplicate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, Seller has executed this Bill of Sale to be effective as of the date first set forth above.

“SELLER”

AGC REALTY, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

AMERICAN GOLF CORPORATION,
a California corporation

By: _____

Name:

Title:

“BUYER”

CITY OF MISSION VIEJO, Orange County,
California

By: _____

Name:

Title:

Exhibit A to Bill of Sale

Certain Enumerated Personal Property

[attached hereto]

Exhibit D

Assignment and Assumption of Contracts Agreement

1. Identification and Parties. This Assignment and Assumption of Contracts (“**Assignment**”) is made and entered into effective as of _____, 2019, by and between (i) AGC REALTY, LLC, a Delaware limited liability company, and AMERICAN GOLF CORPORATION, a California corporation (together “**Assignor**”), and (ii) CITY OF MISSION VIEJO, ORANGE COUNTY, CALIFORNIA (“**Assignee**”).

2. Recitals.

2.1 Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of September [●], 2019 (the “**Agreement**”). All capitalized terms used but not defined in this Assignment shall have the meanings ascribed to such terms in the Agreement.

2.2 The Agreement requires the execution and delivery of this Assignment in order to convey to Assignee all of Assignor’s right, title and interest in and to the Approved Contracts, as listed on Exhibit A attached hereto (collectively, the “**Contracts**”).

In order to consummate the transaction contemplated by the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee desire to execute this Assignment.

3. Assignment and Assumption.

3.1 Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in, to and under the Contracts.

3.2 Assignee hereby accepts the assignment set forth in Section 3.1, and assumes and agrees to perform all obligations, duties, undertakings and liabilities of Assignor under the Contracts.

3.3 Except as otherwise expressly set forth in Article 8 of the Agreement, Assignor’s right, title and interest under the Contracts are assigned hereunder without representation or warranty of any kind or nature whatsoever, whether statutory, express or implied. Without in any way limiting the generality of the preceding sentence, Section 10.2 of the Agreement is hereby incorporated herein by this reference as though set forth in full herein.

4. Miscellaneous.

4.1 Entire Agreement. This Assignment and the Agreement are the entire agreement between the parties hereto with respect to the subject matter hereof, and incorporate all prior agreements and understandings of the parties hereto.

4.2 Amendments in Writing. No amendment or modification of this Assignment shall be valid unless the amendment or modification is in writing and signed by Assignor and Assignee.

4.3 Counterparts. This Assignment may be executed electronically and in one or more duplicate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

4.4 Indemnity. Assignee shall indemnify, protect, defend and hold harmless Assignor and their owners, officers, directors, partners, employees and agents from and against all claims, demands, lawsuits, actions, proceedings, liabilities, damages, costs, losses and expenses first arising under the Contracts on or after the date hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have entered into this Assignment to be effective as of the date first set forth above.

“ASSIGNOR”

AGC REALTY, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

AMERICAN GOLF CORPORATION,
a California corporation

By: _____

Name:

Title:

“ASSIGNEE”

CITY OF MISSION VEIJO, Orange County,
California

By: _____

Name:

Title:

Exhibit A to Assignment of Contracts

List of Approved Contracts

(Casta Del Sol Golf Course)

[attached]

Exhibit E

Assignment and Assumption of Water Documents

1. Identification and Parties. This Assignment and Assumption of Water Documents (“**Assignment**”) is made and entered into effective as of _____, 2019, by and between (i) AGC REALTY, LLC, a Delaware limited liability company, and AMERICAN GOLF CORPORATION, a California corporation (together “**Assignor**”), and (ii) CITY OF MISSION VIEJO, ORANGE COUNTY, CALIFORNIA, a [●] limited liability company (“**Assignee**”).

2. Recitals.

2.1 Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of September [●], 2019 (the “**Agreement**”). All capitalized terms used but not defined in this Assignment shall have the meanings ascribed to such terms in the Agreement.

2.2 The Agreement requires the execution and delivery of this Assignment in order to convey to Assignee all of Assignor’s right, title and interest in and to the Water Documents, which the Water Documents are listed on Exhibit A attached hereto and incorporated herein by this reference.

In order to consummate the transaction contemplated by the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee desire to execute this Assignment.

3. Assignment and Assumption.

3.1 Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in, to and under the Water Documents.

3.2 Assignee hereby accepts the assignment set forth in Section 3.1, and assumes and agrees to perform all obligations, duties, undertakings and liabilities of Assignor under the Water Documents arising after the date hereof.

3.3 Except as otherwise expressly set forth in Article 8 of the Agreement, Assignor’s right, title and interest under the Water Documents are assigned hereunder without representation or warranty of any kind or nature whatsoever, whether statutory, express or implied. Without in any way limiting the generality of the preceding sentence, Section 10.2 of the Agreement is hereby incorporated herein by this reference as though set forth in full herein.

4. Miscellaneous.

4.1 Entire Agreement. This Assignment and the Agreement are the entire agreement between the parties hereto with respect to the subject matter hereof, and incorporate all prior agreements and understandings of the parties hereto.

4.2 Amendments in Writing. No amendment or modification of this Assignment shall be valid unless the amendment or modification is in writing and signed by Assignor and Assignee.

4.3 Counterparts. This Assignment may be executed electronically and in one or more duplicate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have entered into this Assignment to be effective as of the date first set forth above.

“ASSIGNOR”

AGC REALTY, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

AMERICAN GOLF CORPORATION,
a California corporation

By: _____
Name:
Title:

“ASSIGNEE”

CITY OF MISSION VEIJO, Orange County,
California

By: _____
Name:
Title:

Exhibit A to Assignment of Water Documents

Water Documents

(Casta Del Sol Golf Course)

[attached hereto]