AGENDA DESCRIPTION:

Approval of a Due Diligence and Ground Lease Agreement and Reimbursement Agreement with ES CenterCal LLC to lease the driving range portion of The Lakes Golf Course for the purpose of developing a Top Golf facility consisting of a driving range, restaurant, bar and lounge and event facilities. (Fiscal Impact: $425,000 annual ground lease with 10% increases compounded each five years)

RECOMMENDED COUNCIL ACTION:

1. Approve the Due Diligence and Ground Lease Agreement and direct the City Manager to enter into a Reimbursement Agreement that requires CenterCal to pay the costs associated with the various due diligence and land use entitlement costs;
2. Alternatively, discuss and take other possible action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Staff Report to City Council, dated August 21, 2012
2. Presentation made by the Golf Course Advisory Group to the City Council, dated June 18, 2013
3. Proposed Due Diligence and Ground Lease
4. Top Golf “Area of Understanding” document

FISCAL IMPACT: None

Amount Budgeted: N/A
Additional Appropriation: N/A
Account Number(s): N/A

ORIGINATED BY: Ted Shove, Economic Development Analyst

REVIEWED BY: Sam Lee, Director of Planning and Building Safety

APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:

In February of 2012, City Staff was approached by representative of Top Golf and CenterCal Development and introduced to the Top Golf concept and were asked if there was interest on the part of the City of El Segundo in considering a lease of the driving range portion of the Lakes Golf Course for this purpose. Staff asked these parties to develop concept plans and a real estate proposal for consideration by the City. In August of 2012, the City Council directed staff to begin negotiating a potential agreement with CenterCal Properties to allow the development of a Top Golf facility that would provide a computerized/electronic driving range (microchip equipped golf balls that are precisely tracked on a video screen for competitive or self-improvement purposes), restaurant, bar and lounge and event facility. Additionally, the City
Council directed staff to seek input from the public by presenting at various public forums regarding the potential agreement and development.

Staff presented and recorded public input at the following public meetings:

<table>
<thead>
<tr>
<th>Dates</th>
<th>Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 29, 2012</td>
<td>Golf Course Subcommittee</td>
</tr>
<tr>
<td>September 13, 2012</td>
<td>E.S. Chamber of Commerce</td>
</tr>
<tr>
<td>September 18, 2012</td>
<td>Golf Industry Stakeholders</td>
</tr>
<tr>
<td>September 19, 2012</td>
<td>Recreation and Park Commission</td>
</tr>
<tr>
<td>September 25, 2012</td>
<td>Kiwanis Club</td>
</tr>
<tr>
<td>October 3, 2012</td>
<td>Golf Course Subcommittee (second time)</td>
</tr>
<tr>
<td>October 4, 2012</td>
<td>Rotary</td>
</tr>
<tr>
<td>October 11, 2012</td>
<td>Planning Commission</td>
</tr>
<tr>
<td>October 11, 2012</td>
<td>Economic Development Advisory Council</td>
</tr>
<tr>
<td>November 8, 2012</td>
<td>E.S. Chamber of Commerce (second time)</td>
</tr>
<tr>
<td>December 5, 2012</td>
<td>Golf Course Subcommittee (third time)</td>
</tr>
<tr>
<td>December 19, 2012</td>
<td>Recreation and Park Commission</td>
</tr>
</tbody>
</table>

In addition, in May of 2013 Council formed a temporary Golf Course Advisory Group (GCAG) to research options for improvement of the financial and physical condition of “The Lakes” Golf Course and develop recommendations for City Council consideration. GCAG presented their findings and recommendations at the June 18, 2013 City Council meeting (see attached presentation).

**Proposed Lease Agreement**

The City staff and Centercal have been negotiating the deal points of the agreement and developing the language of the lease. It is important to note at the outset that no leasehold interest is being created if the Council approves the agreement. The due diligence and entitlement process will need to be completed before any leasehold interest is created. This process will take twelve to fourteen months and includes twelve conditions precedent that have to be satisfied. Many of these conditions include decisions to be made by the City Council including approval of conceptual design plans for the golf course and the driving range, a California Environmental Quality Act ("CEQA") analysis of the leasehold interest and the proposed uses for the property, and the land use entitlements that will be necessary to allow for the proposed uses under the agreement. Thus, the public will have multiple opportunities to review and participate in the conditions precedent that are necessary to be completed during the due diligence and entitlement process. There will also be related hearings before the Planning Commission.

While the agreement is between the City of El Segundo and CenterCal ES LLC, if the due diligence process is completed 30 West Pershing, a real estate investment trust, will be a Sublessee of Center Cal and that Top Golf LLC will be a sublessee of 30 West Pershing. The City is not a party to these agreements nor is it involved in negotiating these agreements. However, it has been the intent of the City that Top Golf would be the operator of the facility. A summary of the key provisions from the attached agreement are as follows:
Purpose (Section 1) – This agreement would allow the lease and potential development of a Top Golf facility on the driving range portion of The Lakes Golf Course by CenterCal ES LLC. Additionally, the lease would include the existing parking lot and a portion of the existing 9-hole golf Course. The agreement establishes a one-year period for the City of El Segundo and CenterCal to satisfy specific conditions (Conditions Precedent). Assuming the conditions precedent are satisfied during this 1-year period, the lease agreement will become fully effective and CenterCal may then move forward with the development.

Lease Term/Return of Facility Upon end of Term (Sections 2 and 26) – The initial term of the lease is for 20 years with six five-year options to extend after the initial term. Section 26 requires that the land and improvements will revert to the City at the end of the lease term and extensions.

Lease Amount and Escalation (Section 3) – CenterCal will pay the City a fixed rent of $425,000 per year for each of the first five years. This fixed rent will increase by 10% in year six and by ten percent at the end of each 5-year period thereafter.

Rent during construction (Section 3) – CenterCal will pay the City $18,000 per month during the first 10 months after the completion of due diligence. After this first 10-month period or upon the opening of the Top Golf facility (whichever occurs first) the Fixed Rent payment mentioned above shall apply.

Top Golf Facility (Section 4/Exhibit G) – The agreement limits the use of the property to a driving range and related clubhouse, restaurant, bar and event space, similar to the Top Golf facility located in Austin Texas.

Changes to the Lakes Golf Course (Sections 5.4 and 12/Exhibit D) – The proposed Top Golf facility has a larger footprint and a higher parking demand than the current driving range facility. In order to accommodate the proposed development and parking needs, the 9-hole portion of the course must be modified. Exhibit D of the agreement provides direction as to the redesign of the golf course and the minimum standards of development. The intent of this section is that the facilities and the level of play of the course shall be the same or better than the current facility. The clubhouse building and the size of the restaurant will be smaller than the current Lakes facility. Parking for the Lakes would be shared with the Top Golf facility and may include some spaces reserved for Lakes patrons. Section 12 requires CenterCal to fund and complete the improvements to the golf course and the driving range.

Conditions Precedent/Due Diligence Requirements (Subsection 5.4) – As mentioned above, this is a conditional agreement that calls for a 12-month due diligence and performance period during which the City and CenterCal are responsible for a number of actions. There are 12 conditions precedent that include such items as:
- Environmental testing/due diligence by CenterCal;
- Approval of the conceptual golf course and driving range improvements by the City;
- That subleases between CenterCal and 30 West Pershing, and between 30 West Pershing and Top Golf have been entered into and that the sublease between 30 West Pershing and Top Golf requires Top Golf to operate the facility for a minimum of seven years;
- Review and determination on all necessary planning/zoning applications and California Environmental Quality Act (CEQA) review by the City;
- Extension of the lease (license agreement) for the portion of the property owned by Southern California Edison; and,
- Confirmation from Chevron that the proposed use is consistent with their (Chevron’s) restrictions on this property.

Operational Conditions (Sections 11 and 12) – During the public outreach process, staff heard from current users that a number of operational considerations should be included in the agreement. This section requires that a portion of the facility be open for early morning (6:00 a.m.) users, discounts (10%) for El Segundo residents and seniors and military. The discounts would be cumulative (i.e. an El Segundo resident who is a senior would receive a 20% discount). The agreement requires the operator to make the facility available to youth groups and the operator (Top Golf) is in the process of finalizing a commitment to accommodate instructional groups (see attached “Areas of Understanding” document). While this commitment bears the name of the City of El Segundo it was negotiated by Top Golf and the golf professionals that provide instructional training at the Lakes. Section 11 also allows the City to temporarily operate the driving range facility if, during the term of the agreement, Top Golf or a subsequent operator vacates the facility. The intent of this provision is to allow the facility to remain for operation while 30 West Pershing seeks a longer-term tenant for the facility. Should, after the initial seven year term of the agreement, the facility become vacant (other than the City’s temporary operation) for more than two years, the agreement could be terminated and the facility would revert back to the City.

In order to seek to avoid closure of the golf course closure during construction, Section 12 requires the City and CenterCal to assess the ability to operate all or parts of the golf course during the construction period of both the golf course and the Top Golf facility and to operate to the golf course to the extent determined feasible.

Guarantees – The agreement includes financial guaranties from corporate parents of Center Cal and 30 West Pershing that they will complete construction of the golf course and the Top Golf facilities, the payment of rent through the time the construction is completed, and operation by Top Golf or another operator for seven years. If something unforeseen occurs, and the projects are cancelled, these parties are also providing guarantees that the golf course and driving range improvements will be completed or that the facilities will be returned to their original conditions. Finally, in order to insure that the golf course improvements are completed, Subsection 4.1 requires that the golf course be substantially complete and available for operations prior to Top Golf’s ability to operate their facility.

Project Benefits and Possible Schedule

In reviewing the proposal staff believes that there are a number of benefits to the City of El Segundo including:

- Increased Use of the Facilities – The proposed Top Golf facility will increase the number of hitting bays and potentially appeal to a broader range of users than the current, traditional driving range. It is also possible that the increased public awareness in the facility and increased interest in golf will increase the usage of the Lakes golf course.
- Job Creation and Employment – the current driving range facility currently employs the equivalent of 2-3 full-time persons. The proposed Top Golf facility is expected to create
approximately 300 temporary construction jobs as well as 100-120 full-time and 60-80 part-time jobs upon completion and operation.

- Amenity to the Business Community/Economic Development Tool – High technology and creative industry companies, like some that already exist in El Segundo and those that the City is attempting to attract, look for locations that provide amenities and recreation opportunities for their employees and clients. The proposed facility will provide a recreational, social and business gathering location for current and future businesses. This will be the first West Coast location for Top Golf and will generate a great deal of interest that will serve to further promote El Segundo’s business and visitor profile.

- Improvement of the Lakes Golf Course – It is the City’s desire that the condition and playability of the Lakes can be improved as part of this renovation but at a minimum the total playing distance of the course cannot be decreased. Additionally, it must maintain the same number of par 4 holes. The level of improvement is yet to be determined but it is hoped that the course can be lengthened to achieve a United States Golf Association (USGA) rating, that additional obstacles can be added, that some of the current water features can be more integrated into to the play of the course and that tee boxes can be leveled and lengthened. The estimated combined investment in the Lakes and the Top Golf facilities is in the range of $17 million to $22 million dollars.

- Financial Benefit to the City – The proposed facility will provide a financial benefit to the City and the Golf Enterprise Fund. This increased revenue is a result to the $425,000 ground lease, the increase in sales, business license, utility users and property taxes generated by the facility and it’s customers (estimated at approximately $55,000 to $75,000 per year), a reduction in the City’s expenses and improved financial performance of The Lakes golf course. Taking into account the loss of revenue from the current driving range operation with the factors mentioned above, the City anticipates an additional annual revenues of $200,000 to 300,000.

A very preliminary scenario for a project schedule could be as follows:

- **November, 2013** – City Council approval of the Due Diligence and Ground Lease Agreement
- **December, 2013 through December, 2014** – Due diligence, review and approval of golf course design and consideration of zoning/planning applications and CEQA document final plan review, building permits and construction contracts are entered into for the improvements to the golf course and driving range.
- **January, 2015 through October 2015** – Initiation and completion of the golf course and driving range improvements.

In this scenario, both facilities could be open for operation by November, 2015. It would be the City’s intent to expedite the process as well as have portions of the Lakes open during the construction period.

**Summary**

The proposed Agreement will start a one-year process to further evaluate the proposal and develop more detailed plans for both facilities. During this process, there will be additional opportunities for public involvement and input on the design and operations as well as the CEQA
and land use entitlement process. As discussed in the previous section of this report, if both parties decide to ultimately move forward with the project, it is felt that the new and revised facilities will benefit the City, the business community, users of the Lakes Golf Course and future employees and users of Top Golf.
AGENDA DESCRIPTION:

Consideration and possible action to direct staff to take steps necessary to seek input from various City Committees regarding a potential agreement with Centercal Properties, LLC for enhancing the driving range and dining facilities at The Lakes golf course which would be operated by Top Golf. The agreement would be negotiated by the City Manager and City Attorney and presented for review and potential approval by the City Council at a future date. (Fiscal Impact: To Be Determined)

RECOMMENDED COUNCIL ACTION:

1. Receive and file presentation;
2. Direct staff to seek input from the Golf Course Subcommittee, Recreation and Park Commission, and Economic Development Advisory Committee for regarding a potential agreement by and between the City of El Segundo and Centercal Properties, LLC.
3. Direct the City Manager and City Attorney to negotiate terms of a agreement with Centercal Properties, LLC for a new TopGolf facility to be located at The Lakes in place of the existing driving range
4. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. TopGolf Overview-Marketing Package

FISCAL IMPACT: N/A

Amount Budgeted: N/A
Additional Appropriation: N/A
Account Number(s): N/A

ORIGINATED BY: Ted Shove, Economic Development Analyst
REVIEWED BY: Sam Lee, Director of Planning and Building Safety
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:

City Council approved the 2012 Economic Development Strategy in September 2011. The ED Strategy has served as a guide to formalizing an economic development program which included hiring a dedicated staff member to execute the components described within it. One of the components described was to perform business attraction efforts, with an emphasis on new businesses that would boost future sales tax revenue to the City.
City staff began discussions in February 2012 with an El Segundo-based developer, Centercal Properties, LLC for a potential new recreation/entertainment venue (TopGolf) to be located within the City. Centercal Properties, LLC currently operates approximately 3 million square feet of development throughout 11 western states; with a reputation of building quality development. Centercal's successes are largely due to strong financial backing which comes primarily from the California State Teachers Retirement System (CalSTRS).

Representatives from Centercal went through an exhaustive site selection process that factored: resident and workforce populations; current and future real estate market (including availability of potential sites); complexion of regional business base; market share and positioning within the Los Angeles Metropolitan Area; and the financial condition of the existing golf course facility. Based upon these factors, the site that demonstrated the greatest mutual potential was the existing driving range portion of the El Segundo golf course also known as 'The Lakes'.

From a fiscal financial perspective, 'The Lakes' is not a profitable enterprise fund for the City. The facility has historically struggled to 'breakeven' and has been unable to contribute to its own existing debt to the City's general fund. Earlier this year, a wind event caused catastrophic damages to the poles and netting of the facility. A portion of the financial burden was placed on the City's general fund to make the emergency repairs necessary to reopen the facility.

**Proposed Project – TopGolf**

TopGolf is a revolutionary entertainment concept that utilizes state-of-the-art patented technology within the realm of the sport of golf. Their facilities provide an authentic experience in a social, non-intimidating environment for newcomers to seasoned golfers across all age groups. With energetic and upscale facilities that cater to families, corporate meetings and special events; TopGolf is a potential enhancement for the resident and business base of the community. TopGolf has successfully leveraged significant market share within the golfing community as demonstrated by its major investor, Callaway Golf. In addition, TopGolf is formalizing partnerships with the LPGA, PGA and The First Tee organizations.

Should the City Council direct staff to proceed, improvements would be required at the current facility to accommodate the new operation: TopGolf. These improvements would include some golf course layout alterations, increase parking area and enlarge the existing driving range. The cost of these improvements would be the sole responsibility of Centercal Properties, LLC. City staff would negotiate an agreement to minimize any risk of expense or liability by proceeding with this Project, and have Centercal Properties, LLC indemnify the City for all associated expenses and liabilities.

Centercal Properties, LLC has requested a long term ground lease from the City for an area sufficient in size to include the driving range portion of the site, drainage facilities and parking. Parking access would be granted to the City for public use over all areas constructed for parking to ensure parking is shared for both the proposed TopGolf facility and the golf course. The golf course would continue to be managed by the City operator.

The annual projected increase in revenue would result in two sources including: ground lease (to be negotiated) and tax revenues. Projected annual tax revenues would be approximately $70-
$80,000 per year to the City and would include: Sales Tax – approx. $50,000; Utility User Tax – approx. $15,000; and Business License Tax (assuming full tax credit utilized) – approx. $10,000.

As a result of this proposed project, there would be a net increase in jobs of 96-121 new full time equivalent positions. This potential job creation would diversify the City’s workforce; providing a greater diversity of employment opportunities for El Segundo’s resident base. TopGolf would create 100-125 new full time equivalent positions. However, four employees currently employed with the management company could be displaced. These employees could be relocated to other operations managed by the management company, hired by TopGolf or retrained and placed with another employer by the South Bay Workforce Investment Board.

TopGolf – Input From Other Communities

TopGolf has indicated that the impact of their operation on the communities that they serve includes: Increases in tax revenue; increases and diversification of workforce; increases in the amount of visitors from surrounding communities; and attract greater numbers of community residents to the facility.

City staff contacted one of the communities that TopGolf has operated in since 2006. Mr. Ross Klicker from the City of Wood Dale, IL stated, “TopGolf has been a tremendous benefit to our community. Since they draw from a regional customer base, we have actually seen new developments resulting from their existence. Our golf course sales have significantly improved and have become profitable due to the synergy of being next to TopGolf.”

El Segundo Police Department conducted a courtesy investigation with four local law enforcement agencies that have jurisdiction over the location of TopGolf facilities within: Wood Dale, IL; Allen, TX; Dallas, TX; and Alexandria, VA. The results of the investigation indicated no unusual problems or disturbances with a ‘good crowd’ observed.

Conclusion

Based upon market share and sales projections, TopGolf anticipates that a new location within the City of El Segundo would create a regional draw. This draw would provide for substantial direct and indirect sales tax revenue increases to the City while providing an enhanced amenity for the community. The direct revenue increases would result from an annual ground lease, sales tax, utility users tax and business license tax revenues. Indirectly, increases to sales for local businesses would result in additional sales tax and transient occupancy tax revenues to the City. These increases would have a direct correlation with the regional draw and capital influx from outside the community as well as the approximately net 96 – 121 full time equivalent new jobs resulting from TopGolf’s operation. TopGolf’s presence in place of the existing driving range is expected to result in ‘The Lakes’ becoming financially sustainable without continued financial assistance from the City’s General Fund.

For these reason, staff requests the City Council to direct staff to seek input from various commissions and to allow the City Manager and City Attorney to begin negotiating with Centercal Properties, LLC. Terms of the agreement will be brought back to Council for approval.

P:\Planning & Building Safety\CC Report\Template 2012.doc
TopGolf
REINVENTING
THE GAME
// TOPGOLF ALLEN SUNRISE
WHAT’S INCLUDED

1. WHAT IS TOPGOLF?
2. TOPGOLF TECHNOLOGY
3. COMPANY INFORMATION
4. TOPGOLF’S NEWEST LOCATION: ALLEN, TX (DALLAS)
5. TOPGOLF’S ECONOMIC IMPACT
6. GROWTH STRATEGY AND PLANS
7. WHAT PEOPLE ARE SAYING
WHAT IS TOPGOLF?

THE NEW DEFINITION OF GOLF ENTERTAINMENT.

• Authentic golf experience: Tour-quality TopFlite balls embedded with microchips that personalize and track each ball with immediate, real-time shot yardage and point feedback.

• A fun social experience: players compete against themselves or up to six other players.

• Patented technology: proprietary technology and new segmentation create a barrier to entry for competition.

• Year round facility: All 3 stories of bays are covered, all-weather, heated and cooled.
WHAT IS TOPGOLF?

FULL-SERVICE RESTAURANT AND CORPORATE EVENT FACILITIES.

• Restaurant-quality breakfast, lunch and dinner with an executive chef at each location

• Food and beverage service provided directly to TopGolf hitting bays

• 6,000 square feet of top-quality corporate event space with full A/V capabilities.

• 3,000 square foot outdoor roof terrace with working fire pits, cabanas, and outdoor games
TOPGOLF IS NOT JUST A DRIVING RANGE

TOPGOLF DALLAS “BEFORE” AND “AFTER”

BEFORE (2006)
• Hank Haney Golf Range @ Park Lane Ranch
• 50 Grass Stalls
• $310,000 in gross revenue in 2005
• 25,000 annual customer visits in 2005

AFTER (2008 onward)
• TopGolf Dallas
• 72 All Weather Bays
• $8.4 million in gross revenue (2011)
• 200,000 annual customer visits
TOPGOLF HAS MASS MARKET APPEAL

TOPGOLF IS A FUN CONCEPT THAT APPEALS TO PEOPLE OF ALL AGES AND SKILL LEVELS:

• Everyone plays at TopGolf: children, Moms, Dads, teenagers, young professionals, school groups, church groups, corporate groups – avid golfers, casual golfers, and non-golfers.

• Over 100,000 schoolchildren will visit our six TopGolf sites this year.

• Over 50% of all customers are under the age of 30.
• TopGolf helps eliminate the traditional entry barriers to Golf, which have been found to discourage new players, particularly youth, from learning the game. As such, TopGolf provides a unique and fun “access point” into the sport.

<table>
<thead>
<tr>
<th>Golf Participation Barrier:</th>
<th>TopGolf’s Twist:</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Golf is intimidating”</td>
<td>TopGolf provides a fun, non-intimidating way to learn how to swing a golf club for beginners of all skill levels</td>
</tr>
<tr>
<td>“Golf takes too much time”</td>
<td>TopGolf provides a game-like environment with instant results visually displayed on a flat screen. One Game (20 balls) takes 10 minutes.</td>
</tr>
<tr>
<td>“Golf is too expensive”</td>
<td>TopGolf is a fraction of the cost of playing 18 holes of golf (players can play for as little as $3.00)</td>
</tr>
<tr>
<td>“I don’t own golf equipment”</td>
<td>TopGolf provides <strong>free</strong> full sets of club rentals for all guests</td>
</tr>
</tbody>
</table>
TOPGOLF TECHNOLOGY

TOPGOLF IS A UNIQUE, FULLY-PATENT PROTECTED TECHNOLOGICAL “SPIN” ON THE GAME OF GOLF.

TOPGOLF BALLS

• Uses a proprietary and patented I.D. ball system.

• Each ball contains an embedded RFID chip (it doesn’t affect the weight or flight of the ball!) which is coded and assigned to an individual player.

• Ball coding combined with sensors in the outfield targets provide instant and precise yardage and location feedback.

TOPGOLF TARGETS

• Each outfield has 10 strategically placed targets with RFID readers.

• When a ball lands in any area in the target, the feedback is translated into points, allowing players to compete and hone their skills.
TopGolf’s I.D. Ball System is composed of 5 distinct international concept patents that protect each key aspect of the TopGolf experience. The patents are secured in the U.S. and every major global market.

<table>
<thead>
<tr>
<th>Patent Description</th>
<th>Function</th>
<th>Validation Date</th>
<th>Expiry Date</th>
<th>International Application #:</th>
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<tbody>
<tr>
<td>Coded Balls</td>
<td>Creation of coded balls</td>
<td>June 1999</td>
<td>June 2020</td>
<td>PCT/GB00/02461</td>
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<tr>
<td>I.D. Ball Reader</td>
<td>Method for reading each ball</td>
<td>November 2000</td>
<td>November 2021</td>
<td>PCT/GB01/05097</td>
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<tr>
<td>Ball Collection Arrangement</td>
<td>Capturing balls and feeding to a reader</td>
<td>November 2000</td>
<td>November 2021</td>
<td>PCT/GB01/05098</td>
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<td>I.D. Ball Tray</td>
<td>Identifying ball and player on the tee</td>
<td>June 2001</td>
<td>June 2022</td>
<td>PCT/GB02/02735</td>
</tr>
</tbody>
</table>
TOPGOLF TODAY

7 Operating Locations

- London (3 – Watford, Chigwell & Surrey)
- Washington, DC (1 – Alexandria, VA)
- Chicago (1 – Wood Dale)
- Dallas/Fort Worth (2 – Dallas & Allen)

Expansion

- 2012 openings in Austin and Houston; will develop 50+ locations in the U.S. over the next 6 years; total U.S. opportunity 100+ sites
- International growth estimated at 500+ sites in Asia (China, Japan, Korea), Europe (France, Germany) and Australia

Financing

- Raised $25 Million in equity in late 2010
- Future growth funded by construction loans, REIT financing, and cash flows
TOPGOLF’S KEY INVESTORS AND FINANCIAL PARTNERS

- Callaway Golf Company (NYSE: ELY)
- West River Capital
- Tom Dundon (CEO, Santander Commercial USA)
- Entertainment Properties Trust (NYSE: EPR) – REIT Financing Partner
- Bank of America (Credit Facility Provider)
Development Overview

- Opened on schedule in May 2011
- 94 bays; integrated bars, restaurant and meeting/event space; rooftop terrace
- TopGolf Allen operates on an upgraded technological platform and includes key design upgrades to the facility.
- Operated significantly above budget during opening summer months despite record breaking heat wave.
- Basic site design will be prototype for future sites.

Market Overview

- Allen is a prominent Dallas suburb, 23 miles north of the existing TopGolf Dallas Location (30-35 minutes away with no traffic, 50-60 minutes during peak hours).
- The site is a 13 acre parcel located within a 400 acre, mixed use, high traffic new development called the Village at Allen. The area is attracting over 1 million visitors per month, TopGolf Allen itself is attracting over 350,000
TOPGOLF IS A REGIONAL DRAW
(Allen attracted over 300,000 visits)

Each dot represents one (geocoded) customer between Allen’s opening in June of 2011 and February 2012.
TOPGOLF ALLEN AND FUTURE FACILITIES PROVIDE A MEASURABLE ECONOMIC IMPACT

<table>
<thead>
<tr>
<th>TopGolf 10 Year Direct Impact</th>
<th>Jobs Created</th>
<th>Local Impact ($)</th>
<th>State Impact ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15+ million construction project: Direct Tax Impact (including year 1 Direct Construction Taxes)</td>
<td>246</td>
<td>$8.2 Million</td>
<td>$12.1 Million</td>
</tr>
<tr>
<td>Annual Economic Output</td>
<td>144</td>
<td>$3.7 Million</td>
<td>$4.9 Million</td>
</tr>
<tr>
<td>10 Year Economic Output</td>
<td></td>
<td>$26 Million</td>
<td>$33 Million</td>
</tr>
<tr>
<td>Total Economic Output (10 years)</td>
<td></td>
<td>$37.9 Million</td>
<td>$50 Million</td>
</tr>
</tbody>
</table>

10 Year Total Fiscal Impact (Direct Sales Tax, Property Taxes, Business Tax, etc.) $21.6 Million
TOPGOLF COMMUNITY IMPACT

- **Local Charities and Events**
  - Donate thousands of dollars annually to local charities
  - Sponsor and host charity golf outings
  - Donated items to dozens of silent auctions to benefit scholarships and school improvements

- **Job Creation**
  - Each site creates over 104 full-time equivalent jobs with benefits, and over 250 employees during the summer
  - We offer internship opportunities for high school and college students in a variety of disciplines

- **Partnerships with Local Schools**
  - Offer elementary school outreach programs
  - Practice facilities for sports teams
TOPGOLF U.S. MARKET POTENTIAL

San Francisco Metro: 5
Los Angeles Metro: 8
Norfolk Metro: 2
DC Metro: 5
Philadelphia Metro: 4
New York Metro: 8
Phoenix Metro: 4
San Diego Metro: 4
Seattle Metro: 3
Denver Metro: 3
Dallas Metro: 5
Houston Metro: 4
Atlanta Metro: 4
Chicago Metro: 8
Indianapolis Metro: 2
St. Louis Metro: 2
Salt Lake Metro: 2
Minneapolis Metro: 3
Cincinnati Metro: 3
Norfolk Metro: 2
Norfolk Metro: 2
Tampa Metro: 3
Miami Metro: 3
Boston Metro: 4

1st Priority
2nd Priority
3rd Priority
Current Locations
TOPGOLF HAS ATTRACTED A SELECTION OF UNSOLICITED MEDIA COVERAGE.
A Driving Range Where Playing’s the Thing

By BILL REHMANNON

Top Golf, which operates four driving ranges in the United States and three in Canada, uses microchips embedded in balls to track players’ shots toward targets at various distances.

Have you ever stood quietly in a stall at the driving range and listened?

There is thrashing, grunting and foot stomping. Scattered between the thumps and thwacks will be soft, soothing whispers. Someone will, of course, be talking business on the cell phone. Someone else will be asking for advice, or giving it. Someone will be shouting the most tortured lamentations and swearing off golf forever.

And what of laughter? Do you hear laughter?

Sure, there is some, especially mocking snickers of disgust. But real laughs, the kind of good, warm, genuine kind laughter, rarely if ever.

Top Golf, which operates four driving ranges in the United States and three in Canada, offers a new kind of public golf. It is part reality show, part sports bar, with a dose of the big screen.

In an area with a large screen television, players can watch on-screen video analyzers, which give a blow-by-blow account of each shot, and they can check out their scores online.

The New York Times
“If I had TopGolf where I grew up, I would have won 5 US Opens.”
   -Larry Nelson, 1983 US Open Champion

“I hit the first shot of my life playing TopGolf a few weeks ago and now I’m addicted.”
   -TopGolf Customer, Washington Post Feature

“TopGolf is the holy grail of golf entertainment.”
   - TopGolf Customer, TopGolf Dallas Yelp website

“It’s incredibly addictive – I’ll be driving on the I-95 – all of a sudden – I’ll find myself on the Beltway heading to Kingstowne.”
   -TopGolf Customer, Washington Times Feature

“What I like best is that it fights golf’s staid, overly traditional stereotype. Everybody is welcome, and everybody can relate to it on their level, whatever that is.”
   -Steve di Costanzo, president of Golf Range magazine, New York Times feature
Objective

On May 14, 2013, the El Segundo City Council appointed the Golf Course Advisory Group (GCAG)

- The approved objective was to “... research options for improvement of the financial and physical condition of the Lakes Golf Course and develop recommendations for City Council Consideration.”
- The GCAG was directed to report back to Council on June 18, 2013

The GCAG was tasked to answer the following three questions:

1. Are there established private golf course operators that are interested in leasing the facility in its current (or improved form) that would be willing to do so without capital cost and undue risk to the City?
2. What level of revenue could the City expect to generate from such a lease arrangement?
3. What level of capital investment would a private golf course operator be willing to make towards a leased facility?
GCAG Members

Gene Krekorian – a principal of Pro Forma Advisors

Jorge Badel – Los Angeles County Golf Director

Craig Kessler – Director of Governmental Affairs for SCGA

Dave Atkinson – City Council Member

Bill Bue – Former Mayor, member of Golf Course Subcommittee

Bob Cummings – Director, Recreation and Parks
Method

- Seven professional golf course management companies were interviewed in a teleconference format
  - JC Resorts
  - O & J Golf Management
  - Billy Casper Golf
  - American Golf
  - Lane Donovan Golf Partners
  - Tom Frost Golf
  - Touchstone Golf

- Each company was provided with the following information prior to the interview:
  - A five year financial history report (excluding City fees)
  - A description of The Lakes facility
  - Current price and fee schedule
  - A fee increase process and history report
  - The Lakes at El Segundo Golf Course Manual
Method Cont’d

- Each Company was provided with the following minimum lease terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Minimum</th>
<th>Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td>20 years</td>
<td></td>
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<tr>
<td>Initial Capital Improvements</td>
<td>$500,000</td>
<td></td>
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<tr>
<td>Rent to be the greater of annual minimum rent or the sum of percentage of gross revenue rents.</td>
<td></td>
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<tr>
<td>Annual Minimum Rent:</td>
<td>$300,000</td>
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<tr>
<td>Percentage Rent:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Green Fees</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Driving Range</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Merchandise</td>
<td>5%</td>
<td></td>
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<tr>
<td>Food &amp; Beverage</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>Lessons/Miscellaneous</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>CIP Contribution:</td>
<td>5% of greens/range</td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>NNN</td>
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</tr>
</tbody>
</table>
Survey Questions

1. Are you familiar with the Lakes at El Segundo?
2. Do you operate similar facilities?
3. If yes, do you own, lease or manage?
4. Given the current and potential performance of The Lakes are the “minimum” lease terms reasonable in the current market?
5. If yes, can the rental percentages be significantly enhanced?
6. If not, which terms should be modified?
7. Are there opportunities to generate more revenue and net income?
8. Are there any constraints which, if removed, would improve the marketability of The Lakes under a lease agreement?
Survey Response Summary

1. Are you familiar with The Lakes?
   - All company representatives were familiar with The Lakes

2. Do you operate similar facilities?
   - The company representatives were collectively responsible for about 250 golf courses; many are similar

3. Do you lease or manage?
   - Most company representatives had experience with both lease and management agreements

4. Are minimum terms reasonable?
   - Yes
Survey Response Summary Cont’d

5. Can rental percentages be enhanced?
   Maybe –
   - Not right away if a big capital investment is expected up front
   - Not if fees are limited by politics
   - Not realistic that Lakes would do much better than a couple percentage points over minimum terms presented

6. Which terms should be modified?
   - Capital investment would have to be negotiated
   - Consider construction in-kind contribution instead of cash contribution
   - Consider some capital up front and more when/if option to extend is agreed upon
Survey Response Summary Cont’d

7. Are there opportunities to generate more revenue and income?
   Probably
   • Get rid of limited flight balls
   • Full liquor license
   • Enhance Food and Beverage to increase revenue
   • Minimize Food and beverage to reduce expenses
   • Drive banquet business up
   • Golf cart rentals
   • Shift risk from City to operator through a lease
   • Operator needs ability to adjust rates on the fly
   • Automate driving range
   • Reconsider discounts
   • Renovate clubhouse

Note: companies were not aware of fee increase and cost reduction effective May 1, 2013 (estimated $184,000)
Survey Response Summary Cont’d

8. Are there constraints which, if removed would improve the marketability of The Lakes under a lease agreement?
   - Operator needs to be able to freely adjust fees and discounts as market dictates

Other Comments
   - Consider impact of possessory tax related with lease (1.5%)
   - Large capital investment requirement may reduce the number of bidders
   - Being too aggressive on Cap/fees may result in insufficient bidders
   - Setting the minimum lease terms too high will reduce the number of bidders
   - City should not necessarily expect more money under a lease agreement as risk is shifted from City to Lessee
   - 5% CapEx is a good thing
   - Food & Beverage is not typically a substantial revenue driver at Golf Course
Conclusions and Recommendation

1. Are there established private golf course operators that are interested in leasing the facility in its current (or improved form) that would be willing to do so without capital cost and undue risk to the City?
   - Yes

2. What level of revenue could the City expect to generate from such a lease arrangement?
   - Reasonable expectation $300,000 - $500,000

3. What level of capital investment would a private golf course operator be willing to make towards a leased facility?
   - City could command as much as $500,000 depending on the terms of lease

Recommendation
- Receive and file the information provided in the report for future consideration.
DUE DILIGENCE AND GROUND LEASE AGREEMENT

Between

THE CITY OF EL SEGUNDO,
a General Law Municipal corporation
("Lessor")

And

ES CENTERCAL, LLC,
a Delaware limited liability company
(as "Lessee")

Dated ____, 201_
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Demise</td>
<td>2</td>
</tr>
<tr>
<td>2.</td>
<td>Lease Term</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Rent</td>
<td>3</td>
</tr>
<tr>
<td>4.</td>
<td>Use</td>
<td>4</td>
</tr>
<tr>
<td>5.</td>
<td>Due Diligence; Condition of Premises</td>
<td>5</td>
</tr>
<tr>
<td>6.</td>
<td>Liens</td>
<td>11</td>
</tr>
<tr>
<td>7.</td>
<td>Utilities, Taxes, and Other Charges</td>
<td>12</td>
</tr>
<tr>
<td>8.</td>
<td>Insurance</td>
<td>14</td>
</tr>
<tr>
<td>9.</td>
<td>Lessor's Right to Perform Lessee's Covenants</td>
<td>16</td>
</tr>
<tr>
<td>10.</td>
<td>Compliance with Legal Requirements</td>
<td>16</td>
</tr>
<tr>
<td>11.</td>
<td>Operation, Repairs and Maintenance</td>
<td>19</td>
</tr>
<tr>
<td>12.</td>
<td>Development of the Golf Course Premises; Premises Improvements</td>
<td>20</td>
</tr>
<tr>
<td>13.</td>
<td>Title to Improvements</td>
<td>22</td>
</tr>
<tr>
<td>14.</td>
<td>No Waste</td>
<td>22</td>
</tr>
<tr>
<td>15.</td>
<td>Inspection and Access</td>
<td>22</td>
</tr>
<tr>
<td>16.</td>
<td>Lessor's and Lessee's Exculpation and Indemnity</td>
<td>22</td>
</tr>
<tr>
<td>17.</td>
<td>Condemnation</td>
<td>24</td>
</tr>
<tr>
<td>18.</td>
<td>Assignment and Sublease</td>
<td>26</td>
</tr>
<tr>
<td>19.</td>
<td>Lessor Default; Remedies</td>
<td>28</td>
</tr>
<tr>
<td>20.</td>
<td>Lessee Default; Remedies</td>
<td>28</td>
</tr>
<tr>
<td>21.</td>
<td>No Abatement of Rent; Encroachments</td>
<td>30</td>
</tr>
<tr>
<td>22.</td>
<td>Leasehold Mortgages</td>
<td>31</td>
</tr>
<tr>
<td>23.</td>
<td>Lessor's Right to Encumber</td>
<td>33</td>
</tr>
<tr>
<td>24.</td>
<td>Nonmerger</td>
<td>34</td>
</tr>
<tr>
<td>25.</td>
<td>Quiet Enjoyment</td>
<td>34</td>
</tr>
<tr>
<td>26.</td>
<td>Surrender</td>
<td>34</td>
</tr>
<tr>
<td>27.</td>
<td>Invalidity of Particular Provisions</td>
<td>35</td>
</tr>
<tr>
<td>28.</td>
<td>No Representations</td>
<td>35</td>
</tr>
<tr>
<td>29.</td>
<td>Estoppel Certificate</td>
<td>35</td>
</tr>
<tr>
<td>30.</td>
<td>Force Majeure</td>
<td>35</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>31</td>
<td>Notices</td>
<td>35</td>
</tr>
<tr>
<td>32</td>
<td>Venue</td>
<td>38</td>
</tr>
<tr>
<td>33</td>
<td>Entire Agreement</td>
<td>38</td>
</tr>
<tr>
<td>34</td>
<td>Applicable Law</td>
<td>39</td>
</tr>
<tr>
<td>35</td>
<td>License Agreement</td>
<td>39</td>
</tr>
<tr>
<td>36</td>
<td>Late Charge</td>
<td>39</td>
</tr>
<tr>
<td>37</td>
<td>Nonwaiver</td>
<td>39</td>
</tr>
<tr>
<td>38</td>
<td>Brokerage</td>
<td>40</td>
</tr>
<tr>
<td>39</td>
<td>Miscellaneous Provisions</td>
<td>40</td>
</tr>
<tr>
<td>40</td>
<td>Covenants to Bind and Benefit Parties</td>
<td>40</td>
</tr>
<tr>
<td>41</td>
<td>Captions and Table of Contents</td>
<td>40</td>
</tr>
<tr>
<td>42</td>
<td>[Intentionally Omitted]</td>
<td>40</td>
</tr>
<tr>
<td>43</td>
<td>Hazardous Materials</td>
<td>41</td>
</tr>
<tr>
<td>44</td>
<td>Counterparts</td>
<td>41</td>
</tr>
<tr>
<td>45</td>
<td>Consent and Approval Rights</td>
<td>41</td>
</tr>
<tr>
<td>46</td>
<td>Prevailing Wages</td>
<td>41</td>
</tr>
<tr>
<td>47</td>
<td>Golf Course</td>
<td>41</td>
</tr>
</tbody>
</table>
DUE DILIGENCE AND GROUND LEASE AGREEMENT ("LEASE")

Date: ___________, 201_ (the "Commencement Date")

Lessor: THE CITY OF EL SEGUNDO, a general law City and municipal corporation ("Lessor").

Lessee: ES CENTERCAL, LLC, a Delaware limited liability company ("Lessee").

Guarantors: CenterCal, LLC, a Delaware limited liability company ("CenterCal Guarantor")

30 West Pershing, LLC, a Missouri limited liability company ("30 West Guarantor" or "30 West Pershing")

RECITALS

A. Whereas Lessor owns or is the Licensee of certain real property in the City of El Segundo, County of Los Angeles, State of California, more particularly described in Exhibit "A" (the "Property") attached hereto and by this reference incorporated herein and delineated on the Site Plan attached hereto as Exhibit "B" and by this reference incorporated herein. A portion of the Property consists of that certain real property in the City of El Segundo, County of Los Angeles, State of California, more particularly described in Exhibit "A-1" attached hereto and by this reference incorporated herein and delineated on the Site Plan (the "Premises"). Also attached hereto is a Site Plan for the golf course and related improvements (the "Golf Course"), more particularly described in Exhibit A-2, which makes up a portion of the Property but is not part of the Premises. A portion of the Property is subject to that certain License Agreement dated June 24, 1991, by and between Southern California Edison as "Licensor" and the Lessor as Licensee, a copy of which is attached hereto as Exhibit "C" attached hereto and by this reference incorporated herein (the "License Agreement"); and,

B. Whereas Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor for the purpose of operating a commercial driving range, full service restaurant, clubhouse, and event space and Lessee wishes to lease the Premises from Lessor, for such use; and,

C. Whereas Lessee shall be making certain improvements to the Golf Course ("Golf Course Improvements") and the Premises ("Premises Improvements") for the benefit of Lessor and Lessee as described on Exhibit "D" attached hereto and by this reference incorporated herein; and,

D. Now Therefore Lessor and Lessee enter into this Lease based on the terms and conditions hereinafter set forth.
TERMS

Section 1. Demise

Lessor and Lessee hereby enter into this Lease for purposes of allowing Lessee to perform due diligence on the Property; and to provide an opportunity for the parties to potentially satisfy the Conditions Precedent. Upon satisfaction of the Conditions Precedent Lessor shall lease the Premises to Lessee, and Lessee shall lease the Premises from Lessor, upon the terms and conditions set forth in this Lease.

Section 2. Lease Term

2.1 The “Basic Term” of this Lease shall begin when all of the Conditions Precedent have been satisfied and Lessee has notified Lessor that it desires to have this Lease become effective as provided in Section 5.4 hereof (“Premises Turnover Date”) and shall end on the twentieth (20th) anniversary of the Premises Turnover Date. The Basic Term shall also be referred to herein as the “Initial Term”. The parties agree to execute and record a memorandum of an addendum to this Lease setting forth the Premises Turnover Date. While the terms “Lease”, “Lessor” and “Lessee” are used throughout this agreement/Lease, the Lessee shall not be deemed to have a leasehold interest in the Premises until the Premises Turnover Date.

On the Premises Turnover Date, Lessor shall deliver to Lessee, in conformance with all applicable laws, and except as otherwise explicitly provided herein (including without limitation the Permitted Exceptions and the Parking License), exclusive possession and control of the Premises in its “AS IS” condition except it shall be free of any and all occupants, liens, encumbrances, and security interests except for non-delinquent real estate taxes, and the Permitted Exceptions (which includes the License Agreement and the Parking License).

2.2 Lessee shall have six (6) successive options to extend the term of this Lease, each for a separate additional period of five (5) years, from the date upon which such term would otherwise expire, provided that Lessee shall be entitled to exercise an option only if at the time of exercise Lessee is in compliance with all of the material terms of this Lease, including but not limited to all Rent payments being current and the Premises being open to the public and operating as a driving range with food/beverage service. However, to the extent Lessee has received a default notice from Lessor and is diligently curing a default in accordance with Section 20 hereof, this Lease shall not be extended until such time as the default is cured and then the term may be extended. If Lessee does not cure such default within the time periods set forth in Section 20 hereof then Lessee shall forfeit the extension rights set forth in this Section. Subject to the above limitations, unless Lessee gives Lessor at least six (6) months prior written notice of its intent not to exercise an option to extend this Lease, this Lease shall automatically be extended for an additional five (5) year term. Each such extension shall be upon and subject to the same terms, covenants and conditions as those herein specified except that Lessee may not again exercise any previously exercised option under this section.

2
The words “Lease Term, term of this lease”, “the term hereof”, or words of like import shall be deemed to refer to the Initial Term of this Lease provided for in Section 2.1 hereof together with any extension or renewal thereof which shall become effective pursuant to the provisions of this Lease or by reason of the exercise of an option or right granted hereunder.

Section 3. Rent

3.1 Lessee covenants and agrees to pay to Lessor, promptly when due, without notice or demand and without deduction or setoff of any amount whatsoever unless otherwise specifically provided in this Lease, the following amounts: (a) the amount of Eighteen Thousand and No/100 Dollars ($18,000.00) per month (“Initial Rent”) from the Premises Turnover Date until the “Fixed Rent Commencement Date” (as defined in Section 3.2), not to exceed One Hundred Eighty Thousand and No/100 Dollars ($180,000) in the aggregate, and (b) the amount of Thirty-Five Thousand Four Hundred Sixteen and 66/100 Dollars ($35,416.66) per month ($425,000 per year) as rent for the Premises from the Fixed Rent Commencement Date through the end of the Lease Term, except as increased as specified below (the “Fixed Rent”). In addition to the Fixed Rent Lessee shall pay its pro-rata share of the consideration payable under the License Agreement as and when required by the License Agreement based upon the land area of the Premises located within the area subject to the License relative to all of the land area of the Premises and the Golf Course located within the area subject to the License. The obligation of Lessee to pay Fixed Rent and other sums hereunder may be satisfied by any person or entity making payment of Fixed Rent or other sums to Lessor as hereinafter provided.

3.2 The first installment of Initial Rent shall be payable on the Premises Turnover Date in a pro-rata amount based upon the number of days remaining in the month. The first installment of Fixed Rent shall be payable from the earlier of the date that the Premises opens to the public for business or ten (10) months following the Premises Turnover Date, subject to force majeure as defined in Section 30 and delays caused by Lessor (the “Fixed Rent Commencement Date”). All Rent from and after the Fixed Rent Commencement Date shall be paid in advance, on the first day of each month. Upon termination of this Lease, Rent payable for less than a full month shall be paid in a pro-rata amount based on the number of days that the Lease was in effect for the month.

3.3 The Fixed Rent shall increase at the end of every five-year period during the term of this Lease commencing on the Fixed Rent Commencement Date by ten percent (10%). Thus, for example, beginning in the sixth year of the Lease Term the Fixed Rent shall be Thirty-Eight Thousand Nine Hundred Fifty Eight and 33/100 Dollars ($38,958.33) and beginning in the eleventh year of the Lease Term the Fixed Rent shall be Forty-Two Thousand Eight Hundred Fifty Eight and 16/100 Dollars ($42,854.16), and beginning in the sixteenth year of the Lease Term the Fixed Rent shall be Forty-Seven Thousand One Hundred Thirty Nine and 58/100 (47, 139.58), etc.

3.4 All amounts payable under Section 3.1 above, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the address of Lessor set forth in Section 31.1, or at such other place within the continental limits of the United States.
as Lessor shall from time to time designate by written notice to Lessee, in lawful money of the United States, which shall be legal tender in payment of all debts and dues at the time of payment.

3.5 It is intended that the Initial Rent, the Fixed Rent and any Additional Rent provided for in this Lease (together “Rent”) shall be an absolutely net return to Lessor throughout the Lease Term, free of any expense, charge, or other deduction whatsoever, including all claims, demands, or setoffs of any nature whatsoever, except as otherwise explicitly provided in this Lease.

3.6 Except as may be provided in this Lease, Lessee shall also pay without notice and without abatement, deduction, or setoff, as “Additional Rent,” all sums, impositions, costs, and other payments that Lessee in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, but subject to the terms and provisions of this Lease and all applicable laws, Lessor shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law or equity in the case of nonpayment of the Rent.

Section 4. Use

4.1 Notwithstanding any other provision of this Lease, Lessee may only use the Premises, and the Premises Improvements, for a driving range and related clubhouse with restaurant, bar, lounge, grill and event space, subject to the provisions of Section 4.2 (the “Permitted Use”). Lessee shall not be permitted to conduct any of the driving range or clubhouse operations on the Premises until the Golf Course Improvements described in Exhibit “D” are substantially completed (which for purposes hereof means that the Golf Course Improvements are completed subject to minor alterations or corrections, that is, “punch list” items and that the nine-hole course, clubhouse, pro-shop and bathrooms are capable of being open for business) as reasonably determined by Lessor. Lessor acknowledges and agrees that the operation of a TopGolf driving range, restaurant, bar, lounge, grill and event space, that is similar with regard to the current operations of that certain existing TopGolf facility located at 2700 Esperanza Crossing, Austin, Texas 78758 and is generally consistent with regard to its construction with those renderings and descriptions attached hereto as Exhibits “D” and “G” and by this reference incorporated herein (the “Prototype Facility”), including a driving range and related teaching facilities and both indoor and outdoor café / bar / grill facilities serving alcoholic beverages, and meeting and banquet facilities, also serving alcoholic beverages (referred to herein as a “TopGolf Facility”) is a Permitted Use under this Section 4.1.

4.2 Lessee shall not use or occupy, or permit or suffer all or any part of the Premises or any Premises Improvements to be used or occupied except as provided in Section 4.1 and Lessee’s use of the Premises is further restricted and cannot be used: (i) for any unlawful or illegal business, use, or purpose, or (ii) for any purpose or in any way that is in violation of a lawfully issued existing certificate of occupancy for the Premises, or of any “Legal Requirements” (as defined below), including but not limited to “Legal Requirements” respecting “Hazardous Substances” (as defined in Section 42). For the purposes of this Lease, the term “Legal Requirements” means all present and future laws, ordinances, orders, judgments, rules,
regulations, and requirements of all federal, state, regional, and municipal governments, departments, agencies, commissions, boards, and officers, foresee or unforeseen, ordinary as well as extraordinary, applicable to the Premises or to the use or manner of uses of the Premises or any Premises Improvements or the owners or users of any Premises Improvements.

4.3 Nothing contained in this Lease shall be deemed to be a gift or dedication of any portion of the Premises to the general public or for the general public or for any public purpose whatsoever, or an agreement to do so, it being the intention of Lessor and Lessee that this Lease shall be strictly limited to and for the purposes herein expressed and strictly for the benefit of Lessor and Lessee. Unless required otherwise by a governmental authority, Lessee shall take commercially reasonable actions to prevent the Premises from being used by any individual or entity, or the public, from and after the Premises Turnover Date, in such manner as might reasonably make possible a claim or claims of adverse usage, adverse possession, or prescription, or of implied dedication, of the Premises or any Premises Improvements or any portion thereof.

Section 5. Due Diligence; Condition of Premises

5.1 Unless earlier terminated pursuant to Section 5.5, Lessee shall have until twelve (12) months from the Commencement Date (such period, as the same may be extended hereunder, is referred to herein as the "Due Diligence Period") to complete its due diligence investigations of the Premises. During the Due Diligence Period, Lessee and Lessee's authorized representatives, during normal business hours, shall have the right to enter upon the Property for the purposes of conducting studies, inspections and investigations of the Property (without unreasonably interfering with the operations of the current facilities located on the Property) and analyzing all documents and matters pertaining to the Property as Lessee reasonably deems necessary or desirable in connection with its leasing of the Premises, including geotechnical, seismic, mechanical, engineering and environmental testing, and to satisfy itself in its sole and absolute discretion that the Property is suitable for the Golf Course Improvements and the Premises Improvements and Lessee's intended use of the Premises, including without limitation, zoning classifications, building regulations, governmental entitlements, land use entitlements permitting private recreational use at the Premises (including without limitation, a general plan amendment, specific plan designation, alcohol permits, and lot line adjustments), a determination under the California Environmental Quality Act ("CEQA") on all actions subject to CEQA (including without limitation the leasehold interest that may be granted to Lessee under this Lease), and all other legal matters applicable to the Premises (collectively, the "Required Project Entitlements"), all at Lessee's sole expense (collectively, the "Investigation"). Notwithstanding the foregoing, the Due Diligence Period may be extended by Lessee for an additional sixty (60) days in duration by Lessee providing written notice to Lessor before the end of the Due Diligence Period to secure the approvals it reasonably deems necessary for the operation of the Premises as contemplated by this Lease. If Lessor has not received a notice from Lessee that Lessee has elected to exercise a permitted extension of the Due Diligence Period, then it shall be presumed that Lessee intended not to extend the Due Diligence Period and the Due Diligence Period will be deemed to have expired and not been so extended. The Due Diligence Period shall not exceed 425 days except in the event that any person or entity that is not a party to this Lease nor a guarantor of this Lease challenges any of the Required Project
Entitlements, then the Due Diligence Period shall automatically be extended to end upon the thirtieth (30th) day following the final disposition of any such challenge (i.e. the entry of a non-appealable order of a court of competent jurisdiction dismissing such challenge, granting some or all of the relief sought by such person or entity, or settlement of the challenge), provided that Lessee is diligently defending and pursuing such challenge. Lessor and Lessee agree to reasonably cooperate during the Due Diligence Period, including but not limited to Lessor providing public information to Lessee in Lessee’s efforts to obtain approvals from other governmental agencies. Lessee agrees to make reasonable efforts to notify Lessor, a minimum of twenty-four (24) hours before each entry onto the Premises and/or contact with employees on the Premises.

5.2 Title Due Diligence. At the Premises Turnover Date, the real property comprising the Premises must be free from all easements, encumbrances, or restrictions other than those set forth on Exhibit “E”, which will be finalized and attached hereto within sixty (60) days from the Commencement Date (the “Permitted Exceptions”). Lessee at its option may procure an ALTA extended leasehold owner’s policy of title insurance from Chicago Title Insurance Company (the “Title Company” or “Escrowee”) which policy must be free and clear of any exceptions or objections other than the Permitted Exceptions (the “Title Policy”). The Lessor shall have no obligation to take any action to remove any exceptions or objections that the Title Company may place on the Title Policy. The cost of a standard leasehold title policy and/or the Title Policy shall be borne by Lessee.

Lessee shall use reasonable efforts to cause the Title Company to deliver to Lessee a Preliminary Report issued by the Title Company covering the Premises (the “Preliminary Report”), together with true and legible copies of all documents evidencing matters of record shown as exceptions to title thereon (“Underlying Documents”) as soon as practicable after the Commencement Date. The Preliminary Report and Underlying Documents shall hereinafter sometimes be collectively referred to as the “Title Documents”. Lessee shall have the right to object to any exceptions contained in the Preliminary Report in Lessee’s sole and absolute discretion by giving written notice to Lessor within fifteen (15) business days after Lessee has received the Title Documents. Lessee shall have the right to object to any matters revealed by the Survey (as defined below) by giving written notice to Lessor within fifteen (15) business days after Lessee has received the Survey. If Lessor disapproves of any matter affecting title or the Survey (the “Title Disapproval”), Lessor shall have the option until 5:00 p.m. on the day that is five (5) business days after delivery to Lessor of the Title Disapproval to elect in Lessor’s sole and absolute discretion by written notice to Lessee (“Lessor’s Title Response”) to (i) cure or remove such disapproved matter(s) on or before the Premises Turnover Date or (ii) not cure some or all of such disapproved matters, in which case Lessee may, by written notice to Lessor within five (5) business days after Lessor’s Title Response, elect to waive this contingency or terminate this Lease (in which event the parties shall have no further obligations to one another except with respect to the obligations that survive the termination of this Lease). Lessor’s failure to timely notify Lessee of its election aforesaid shall conclusively be deemed to be Lessors’ election not to cure any objection. If Lessee elects not to terminate this Lease as provided above, Lessee agrees that the matters expressly approved or waived by Lessee in writing shall be
attached to this Lease as Exhibit "E" as the "Permitted Exceptions"). Notwithstanding the above, Lessor shall have no obligation to take any action to remove any exceptions or objections that the Title Company may place on the Title Policy, whether or not Lessee disapproves such matters. Lessee’s approval of the Preliminary Report shall be without prejudice to Lessee’s right to disapprove the “Survey” (defined below) as provided above, or any supplementary reports issued by Title Company except those that arise after the Premises Turnover Date. The cost of a standard leasehold title policy and/or the Title Policy shall be borne by Lessee.

Within five (5) business days after the Commencement Date, Lessor shall provide Lessee with a copy of any existing ALTA survey of the Real Property in Lessor’s possession, if any (the “Existing Survey”). Lessee shall be responsible, as its sole cost and expense, for thereafter obtaining and paying for any update to the Existing Survey (“Survey”) to meet the requirements of Lessee or its lender for the Title Policy.

5.3 All Investigations shall be at the sole risk and expense of Lessee and Lessee shall defend, indemnify and hold Lessor and its employees, agents, officers and elected officials, (collectively the "Indemnified Parties") harmless for, from and against any and all claims, causes of action, demands, injuries, damages, costs, expenses (including reasonable attorneys’ fees) or liability (collectively, the "Liability") imposed upon, suffered by, incurred by or asserted against the Indemnified Parties as a result of or relating to the Investigations conducted by or on behalf of Lessee in connection with the Property, except for damages resulting from the negligence or willful misconduct of Lessor or those acting at its request or on its behalf or the discovery of Hazardous Substances (as defined in Section 42) on the Property that were not released on the Property by Lessee or its agents. However, if Lessee takes possession of the Premises then it shall be responsible for all Hazardous Substance (as defined in Section 42) clean-up costs that are required for purposes of completing the Premises Improvements on the Property. Lessee shall maintain and shall cause any person performing work or investigation on the Premises on behalf of Lessee to maintain a policy of comprehensive general liability insurance with premiums fully paid, issued by an insurance company reasonably acceptable to Lessee in an amount not less than $1,000,000.00 to insure the risks covered by the indemnity provided above, which policy shall name the Indemnified Parties as insureds. The insurance shall not act as a limit on Lessee’s Liability. This indemnity shall survive any termination or expiration of this Lease. Notwithstanding any other provision in this Lease, in the event that the Conditions Precedent are not satisfied and Lessee does not take possession of the Premises, then Lessee shall return the Golf Course and Premises to substantially their same condition as they existed prior to the Commencement Date.

5.4 The following shall be conditions precedent to the Premises Turnover Date and commencement of the Basic Term hereunder (items (i) through (xii) shall be collectively referred to as the “Conditions Precedent”): (i) (A) Lessee filed an application within ninety (90) days of the Commencement Date for the Required Project Entitlements which Required Project Entitlements Lessor or City Council may in its sole and absolute discretion either approve or disapprove and (B) prior to the end of the Due Diligence Period, Lessee has obtained such Required Project Entitlements; (ii) Lessee has prepared and the City has approved final building plans for the Golf Course Improvements and the Premises Improvements (collectively, the
“Plans and Specifications”), which Plans and Specifications for the Golf Course Improvements shall be approved by Lessor if they are consistent in all material respects with the description of the Golf Course Improvements described on Exhibit “D”, and for the Premises Improvements that shall be approved by the City if they are consistent in all material respects with the Prototype Facility and all applicable zoning and building and safety laws and regulations; (iii) Lessee has entered into construction contracts consistent with this Lease, for the completion of the Golf Course Improvements on Exhibit “D” hereto, and 30 West Pershing and/or TopGolf have entered into construction contracts consistent with this Lease, for the completion of the Premises Improvements as described and depicted on Exhibit “B-1” hereto but such shall not relieve Lessee as being obligated for completing such improvements, (iv) Lessee has entered into a sublease of the Premises with 30 West Pershing and 30 West Pershing has entered into a sublease with TopGolf USA El Segundo, LLC, a Delaware limited liability company (“TopGolf”) that requires TopGolf to operate the Premises for at least seven (7) years in accordance with the Continuous Operation Requirement (the “Operating Period”); (v) Lessee has delivered within ten (10) business days following the expiration of the Due Diligence Period written notice to Lessor that it desires to have this Lease become effective (“Due Diligence Acceptance Notice”); (vi) Lessor and Lessee have obtained within sixty (60) days from the Commencement Date an extension to the License in a form acceptable to the Lessor and Lessee in their respective sole and absolute discretion; (vii) Lessee has received written confirmation from Chevron USA, Inc., a Pennsylvania corporation (“Chevron”), within thirty (30) days from the Commencement Date approving of the Premises Improvements and use of the Premises as contemplated by this Lease in a recordable form acceptable to Lessee in its sole and absolute discretion (provided that, Lessee may, in its sole discretion, grant one or more extensions of the foregoing thirty day period during which this Condition Precedent may be satisfied by delivery of written notice to Lessor setting forth the time period of any such extension(s) but in no event shall the initial thirty (30) day period and any extension thereto exceed the initial twelve month portion of the Due Diligence Period set forth in Section 5.1, plus, if applicable, the sixty day (60) day extension period); (viii) Lessor has in its sole and absolute discretion determined within sixty (60) days from the Commencement Date that the CenterCal Guarantor has sufficient financial strength to guarantee the construction of the Golf Course Improvements and the 30 West Guarantor has sufficient financial strength to guarantee construction of the Premises Improvements and the operation of the Premises during the Operating Period and to Guarantee Rent payments through completion of the Golf Course Improvements and the Premises Improvements as expressly required by this Lease and as set forth in the 30 West Pershing Guarantee. In the event that despite Lessor’s efforts as set forth above, the financial review of the CenterCal Guarantor and the 30 West Guarantor cannot be completed within such 60 day period, Lessor shall notify Lessee and the 60 day period shall be automatically extended for an additional 30 days; (ix) (A) the 30 West Guarantor shall have executed the Guaranty in the form attached hereto as Exhibit H and delivered such to the Lessor, and (B) the CenterCal Guarantor shall have executed the Guaranty in the form attached hereto as Exhibit H and delivered such to Lessor (Delivery of these Guaranties shall also constitute performance of Condition Precedent item (iv); and neither the 30 West Guarantor nor the CenterCal shall have withdrawn such Guarantees within five (5) business days as set forth in Section 5.5 of this Lease; (x) Lessee shall have entered into an irrevocable license with the Lessor that grants the Lessor ingress and egress to and from the
parking lot located on the Premises and the right to use seventy (70) parking spaces on the parking lot on the Premises and provides that up to thirty (30) of such seventy (70) parking spaces will be marked with appropriate signage to indicate that they are to be used exclusively by the patrons of the Golf Course during the Golf Course’s hours of operation as provided in 
Exhibit “D” (“Parking License”); (xi) Lessor and Lessee have entered into an Access Agreement granting Lessee the right to have access to the Golf Course to construct the Golf Course Improvements; and (xii) Lessor and Lessee shall have agreed upon the Land Value (as defined in Section 17.2.1.1 hereof) in their respective sole and absolute discretion within 180 days from the Commencement Date. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that in connection with obtaining the Required Project Entitlements Lessee will obtain a parking study from a third party consultant. In the event that such parking study reveals that the parking requirements for the Golf Course and the Premises require an adjustment of the total number of parking spaces needed for the Golf Course or that providing Lessor with thirty (30) exclusive parking spaces during the Golf Course’s hours of operation as described in clause (x) hereof is incompatible with the Permitted Use and Lessor’s use of the Golf Course, then prior to the end of the Due Diligence Period, the parties shall work together to modify the Parking License (and the number of parking spaces and exclusive parking spaces granted thereunder) in such a manner so as to be compatible with the Permitted Use and the Lessor’s operation of the Golf Course.

5.5 Items (vi), (vii) and (viii) of Section 5.4 shall be collectively referred to as the “Preliminary Conditions Precedent.” If, on or before the expiration of the time periods set forth for any of the Preliminary Conditions Precedent Lessee shall determine in its sole and absolute discretion that any of the Preliminary Conditions Precedent will not be satisfied, then Lessee may notify Lessor of such determination at any time before or within ten (10) days after the expiration of such applicable time period that it has elected to terminate this Lease. With respect to the Preliminary Conditions Precedent set forth in items (vi) and (viii) above, if, on or before the expiration of the time periods set forth in items (vi) and (viii) above Lessor shall determine in its sole and absolute discretion that items (vi) and (viii) will not be satisfied within the applicable time period, then Lessor may notify Lessee of such determination at any time before or within ten (10) days after the expiration of such applicable time period that it has elected to terminate this Lease. Additionally, if Lessee does not file its application for the Required Project Entitlements within the time period set forth in 5.4 (i)(A), then unless the parties agree to extend the time period in writing, this Lease shall terminate except those provisions that expressly survive a termination of this Lease. If this Lease is not so terminated by either Lessee or Lessor, then Lessee shall continue with its Investigation and shall have the right to terminate this Lease as set forth herein, including without limitation, the Conditions Precedent, and Lessor shall have also have the right to terminate this Lease by notice to Lessee if the Conditions Precedent are not satisfied within the Due Diligence Period; Lessee may terminate this Lease for any reason at any time in its sole and absolute discretion during the Due Diligence Period by notifying Lessor of such determination (the “Due Diligence Termination Notice”), whereupon any termination by Lessor or Lessee this Lease and the obligations of the parties hereunder shall terminate (and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease). Each
party hereto agrees to diligently pursue the satisfaction of all Conditions Precedent within the time frames set forth herein. In the event that Lessee determines to proceed with the leasing of the Premises and all of the Conditions Precedent are satisfied and thereby waive its right to terminate this Lease as provided in this Section 5.5, then Lessee shall notify Lessor of such determination in writing on or before 5:00 p.m. (Pacific time) on the date that the Due Diligence Period shall expire (the “Due Diligence Acceptance Notice”). If the Lessee delivers the Due Diligence Acceptance Notice and neither the 30 West Guarantor or the CenterCal Guarantor have withdrawn their Guarantees by providing written notice of such within five (5) business days of the Due Diligence Acceptance Notice then the Guarantees shall be deemed to be in full force and effect and the 30 West Guarantor and the CenterCal Guarantor shall have waived any rights, if any, to claim that their respective Guarantees are not in full force and effect. If either Guarantor has given written notice of the withdrawal of their Guaranty then this Lease shall be deemed terminated and the parties shall have no further obligations under this Lease except those that expressly survive the termination of this Lease. The Due Diligence Acceptance Notice shall be deemed to be a confirmation from Lessee that the parties have entered into the sub-leases of the Premises further described in clause (iv) of Section 5.4 hereof. In the event that Lessee shall fail to deliver either the Due Diligence Termination Notice or the Due Diligence Acceptance Notice to Lessor on or before 5:00 p.m. (Pacific time) on the date that is the tenth business day following the expiration of the Due Diligence Period then this Lease shall expire and the obligations of the parties hereunder shall terminate (and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease). In addition to the foregoing, if, on or before the expiration of the Due Diligence Period the Conditions Precedent have not been satisfied or the City does not approve of the Required Project Entitlements, then this Lease and the obligations of the parties hereunder shall terminate and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease. It is expressly understood that the City is not committing to issuance of the Required Project Entitlements, including the CEQA determination or that the Conditions Precedent shall otherwise be satisfied by executing this Lease as such are subject to a separate discretionary land use entitlement processes, including public hearings, and/or are outside of the City’s control and/or are, as applicable, subject to the approval of the City.

Within five (5) business days of the delivery by Lessee to Lessor of the Acceptance Notice, so long as neither the 30 West Guarantor nor the CenterCal Guarantor have provided written notice that it has withdrawn its Guarantee Lessor and Lessee shall each execute a memorandum evidencing this Lease that may be recorded by Lessee at Lessee’s sole cost and expense and in the form of Exhibit “F.” If, for any reason at any time during the Term of this Lease the legal description of the Premises changes, Lessor and Lessee agree to execute and record a new Memorandum of Lease, modifying the original Memorandum to reflect such new legal description. Notwithstanding the foregoing sentence, the parties are under no obligation to modify the legal description of the Premises. In the event this Lease is terminated pursuant to the terms hereof the parties agree, upon written request of either party, to execute and record evidence of such termination of the above Memorandum.
5.6 Notwithstanding anything in this Lease to the contrary, Lessee shall have no right to terminate this Lease and 30 West Guarantor and Centercal Guarantor shall have no right to terminate or diminish their obligations under their respective guarantees following the Premises Turnover Date through the time that the Golf Course Improvements and the Premises Improvements are completed and a certificate of occupancy has been issued for the Golf Course and the Premises, except for termination due to a material default of this Lease by Lessor that Lessor has not remedied after being notified of the default and afforded the opportunity to cure it as provided in Section 19. Notwithstanding the foregoing, if, during construction of the Golf Course Improvements or the Premises Improvements, Lessee discovers that due to the discovery of Hazardous Substances (as defined in Section 42) on or under the Golf Course or Premises after the Turnover Date which: (i) could not have not been reasonably discovered by Lessee as part of its investigation of the Premises and Golf Course; or (ii) were not caused by Lessee, its agents, contractors, employees, tenants, occupants or invitees or otherwise resulting from Lessee’s use of the Premises; and Lessee is not able to construct its contemplated Premises Improvements in accordance with desired or approved plans, site plans and the Required Project Entitlements, Lessee shall be obligated to return the Golf Course and Premises to the same or better condition, including all improvements that existed thereon, they were in prior to the Premises Turnover Date and terminate this Lease and the parties shall have no further rights or obligations under this Lease except as expressly set forth herein.

5.7 Upon any termination of this Lease pursuant to this Section 5, and provided that Lessor is not in default of any material provision hereunder, Lessee shall deliver to Lessor, within ten (10) days of such termination and without any representation or warranty whatsoever as to the truth, accuracy or completeness of such information and Lessor shall rely on such information at Lessor’s sole risk and expense, originals or copies of all studies, reports, maps, documents and other material obtained by Lessee from third parties as part of Lessee’s Investigation that are in Lessee’s possession and that Lessee is not expressly prohibited from providing to Lessor.

5.8 All those provisions of this Section 5 whose full performance are not accomplished prior to any termination of this Lease shall survive such termination to allow such performance within a reasonable time. However, this provision shall not extend the Due Diligence Period, provide additional time for satisfying the Conditions Precedent or in any way result in a leasehold or other possessory interest to be created in the Lessee or any other party with respect to the Premises or the Property.

Section 6. Liens

6.1 Except as otherwise specifically provided in this Lease, Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Lessor, or on any interest of Lessor in the Property.

6.2 Lessee shall not suffer or permit any liens to attach to the interest of Lessor or the interest of Lessee in all or any part of the Property by reason of any work, labor, services, or
materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or anyone occupying or holding an interest in all or any part of any the Golf Course Improvements on the Property or the Premises Improvements on the Premises through or under Lessee; provided, that if any such lien shall at any time be filed against the Property, Lessee shall cause the same to be discharged of record within sixty (60) days after the date of filing the same by either payment, deposit, or bond. Lessee may, however, postpone its obligation to discharge a lien arising out of work done by or for Lessee if Lessee provides Lessor or any prospective purchaser of Lessor’s fee interest with title insurance that insures Lessor’s title and either: (i) omits the lien, or (ii) insures against collection of the debt underlying the lien, and Lessee shall not be in default of its obligations under this Section 6.2 during any such period of postponement, provided such title insurance is provided within the aforesaid sixty (60) day period, at Lessee’s expense.

6.3 Subject to Section 12, unless otherwise set forth to the contrary herein, nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Property or to any Golf Course Improvements or Premises Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor’s interest in the Property or against Lessor’s interest, if any, in the Golf Course Improvements or Premises Improvements. Lessee is not intended to be an agent of Lessor for the construction of any Golf Course Improvements or Premises Improvements on the Property. Lessor shall have the right to post and keep posted at all reasonable times on the Property and on any Golf Course Improvements or Premises Improvements, any notices that Lessor shall be required to post for the protection of Lessor, the Property, and of the Golf Course Improvements or Premises Improvements from any such lien. The foregoing shall not be construed to diminish or vitiate any rights of Lessee in this Lease to construct, alter, or add to any Golf Course Improvements or Premises Improvements in accordance with the terms of this Lease.

Section 7. Utilities, Taxes, and Other Charges

7.1 Lessee shall pay or cause to be paid all charges for water, gas, electricity, garbage, telephone, sanitary sewer, storm water, drainage, and any and all other services used by Lessee in or upon the Premises or any Premises Improvements.

7.2 Subject to Section 7.7, Lessee shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general or special, unforeseen
or foreseen, or similar or dissimilar to any of the foregoing which, at any time during the Lease Term following the Premises Turnover Date, shall be or become due and payable and which:

7.2.1 Shall be levied, assessed, or imposed against the Premises or any Premises Improvements or any interest of Lessor or Lessee under this Lease; or

7.2.2 Shall be or become liens against the Premises or any Premises Improvements or any interest of Lessor or Lessee under this Lease unless caused by or on behalf of Lessor; or

7.2.3 Shall be levied, assessed, or imposed on or against Lessor by reason of any actual or asserted engagement by Lessee, or by Lessor at the direction of, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or any Premises Improvements; or

7.2.4 Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or any Premises Improvements under or by virtue of any present or future Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Lessor shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called "Tax" or "Taxes").

7.3 If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest. With respect to any assessments for public improvements or any similar assessments, Lessee may request amortization of such assessments over the longest period permitted by governmental authority so long as such does not exceed the Basic Term or any extension thereof exercised by Lessee. Lessee shall be obligated to pay off any unpaid balance of any such installment payment plan upon the termination of this Lease.

7.4 Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Lease Term and a part of which is not within the Lease Term, shall be apportioned and adjusted between Lessor and Lessee so that Lessee shall pay only the portions that correspond with the portion of such fiscal periods included within such period. Any such adjustments shall be resolved, as applicable, at the Premises Turnover Date and the expiration of the Lease Term.

7.5 Lessee covenants to furnish to Lessor, within thirty (30) days after the last date when any Tax must be paid by Lessee as provided in this section, official receipts, if such
receipts are then available to Lessee, of the appropriate taxing authority, or other proof reasonably satisfactory to Lessor, evidencing payment.

7.6 Lessee shall have the right at Lessee’s expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Lessee may defer payment of such contested Tax on condition, however, that if such contested Tax is not paid beforehand and if such legal proceedings shall not operate to prevent the enforcement of the collection of the Tax so contested and shall not prevent the sale of the Premises or any Premises Improvements to satisfy the same, then before instituting any such proceedings, Lessee shall furnish to Lessor a surety company bond, cash deposit, or other security reasonably satisfactory to Lessor as security for the payment of such Tax, in an amount sufficient to pay such Tax, together with all interest and penalties in connection with such Tax and all charges that might be assessed against the Premises or any Premises Improvements in the legal proceedings. On termination of such legal proceedings, the security originally deposited shall be applied to the payment, removal, and discharge of the Tax and the interest and penalties in connection with the Tax and the charges and costs accruing in such legal proceedings and the balance, if any, shall be paid to Lessee. If such security shall be insufficient for this purpose, Lessee shall forthwith pay over to Lessor an amount sufficient, together with the security originally deposited, to pay the same. Lessee shall not be entitled to interest on any money deposited pursuant to this section.

7.7 Any contest as to the validity or amount of any real or personal property tax, or assessed valuation on which such tax was computed or based, whether before or after payment, may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, and Lessee covenants to indemnify and save Lessor harmless from any such costs or expenses. Lessee shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Lessee.

7.8 Lessee shall be responsible and shall pay or cause to be paid all costs directly or indirectly related to Lessee’s development and use of the Premises and Premises Improvements constructed thereon.

7.9 The parties shall use reasonable efforts to see that all communications from governmental authorities respecting Taxes are sent directly by such authorities to Lessee. The certificate, advice, receipt, or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Tax or nonpayment of such Tax, shall be prima facie evidence that such Tax is due and unpaid or has been paid at the time of the making or issuance of such certificate, advice, receipt, or bill.

Section 8. Insurance

Lessee, at its expense, shall maintain at all times during the Lease Term commercial general liability insurance in respect of the Premises and use of the Premises with Lessor as additional insured, with three million dollars ($3,000,000.00) in “Constant Dollars” (as defined
below) minimum combined single-limit coverage, or its equivalent. Such insurance shall include contractual liability coverage in such amount for Lessee’s indemnification and other obligations contained herein. Such insurance policy shall be written as a primary policy and shall not be contributing with or be in excess of the coverage that either Lessor or Lessee may carry and shall be issued in the name of Lessee, with Indemnified Parties as being included in the insurance policy definition of who is an additional insured, and shall be primary to any insurance available to Lessor. Lessee shall also maintain during the Basic Term, at no expense to Lessor, fire and extended coverage insurance sufficient to replace all Premises Improvements notwithstanding the amounts set forth below. Such policies of insurance shall be issued by good, responsible companies that are reasonably acceptable to Lessor and qualified to do business in the state of California. An insurance certificate or certificates evidencing such insurance shall be delivered to Lessor prior to the Commencement Date (evidencing coverage in the amount of One Million Dollars ($1,000,000) covering the Due Diligence Period), and thereafter prior to the Premises Turnover Date (evidencing coverage in the amount of three million dollars ($3,000,000)), and renewal policies shall be delivered to Lessor within ten (10) days before the expiration of the term of each such policy or policies. As often as any such policy or policies shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give Lessor thirty (30) days’ written notice in advance of any cancellation, non-renewal substantial change of coverage, or the effective date of any reduction in amount of insurance.

During the term of this Lease, Lessor shall maintain, or cause to be maintained, in full force and effect, on and with respect to the Golf Course, either proof of self-insurance, or insurance through a joint powers authority, reasonably acceptable to Lessee in the amounts and with additional insured requirements set forth in this paragraph or policies of: (i) commercial general liability insurance, written on an “occurrence” policy form, with bodily injury and property damage coverage arising out of or relating to Lessor’s ownership, business operations, use or occupancy of the Golf Course, which shall name Lessee, Lessee’s first mortgagee, 30 West Pershing and 30 West Pershing’s first mortgagee and TopGolf as additional insureds as their respective interests may appear, and (ii) first party property insurance written on a “special form” policy covering loss or damage to the improvements on the Golf Course for not less than the amount of the full replacement value of such improvements. The limits of the commercial general liability policy shall be at least Two Million Dollars ($2,000,000) per person, with a combined single limit of not less than Three Million Dollars ($3,000,000.00) on a “per occurrence” basis (bodily injury and property damage), or in such higher amounts and with such additional coverages as Lessor may be required pursuant to agreement with any mortgage lender of Lessor or pursuant to any other contractual agreement relating to the Golf Course or any part thereof to which Lessor is a party. At Lessee’s request, Lessor shall furnish appropriate certificates of such insurance to Lessee.

The insurance required of Lessee and Lessor by this provision or otherwise in this Lease shall not limit such party’s liability under any indemnity provision set forth in this Lease or any other liability that such party may have under this Lease.
“Constant Dollars” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this Lease, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year of the Commencement Date; the “Current Index Number” shall be the level of the Index for the year immediately preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Lessor and Lessee shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

Section 9. Lessor’s Right to Perform Lessee’s Covenants

9.1 If Lessee at any time fails to pay any Tax in accordance with the provisions of this Lease or fails to make any other payment (other than Rent) or perform any other material act on its part to be made or performed (in each instance, to the extent applicable, within the applicable notice and cure periods provided in this Lease), then Lessor may (but shall be under no obligation to):

9.1.1 Obtain the same on Lessee’s behalf, and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor’s right to take such action as may be permissible under this Lease as a result of such default, and after Lessee’s failure to obtain any required liability insurance or evidence thereof, procure such insurance and Lessee shall pay to Lessor the actual costs and expenses thereof as applicable to that period of time between the expiration of such notice and the date upon which Lessee provides such certificate or evidence of liability insurance to Lessee as required hereinafore, and any actual costs incurred by Lessor in obtaining or terminating its procured insurance; and/or

9.1.2 After ten (10) days prior written notice to Lessee which specifies what action is required, perform the same on Lessee’s behalf, make any other payment or perform any other act on Lessee’s part to be made or performed as provided in this Lease.

9.2 All sums so paid by Lessor and all actual costs and expenses incurred by Lessor, in connection with the performance of any such act, shall constitute Additional Rent payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand.

Section 10. Compliance with Legal Requirements
10.1 Throughout the Lease Term Lessee shall promptly comply with all Legal Requirements (as defined in Section 4.2). To the extent that there is any change in Legal Requirements such that the Permitted Use is no longer a lawful use of the Premises, Lessee may terminate this Lease upon delivery of written notice to Lessor. Lessee shall pay all costs of compliance with Legal Requirements.

10.2 Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Legal Requirement subject to the following:

10.2.1 If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Premises and without subjecting Lessor to any liability, civil or criminal, for failure to comply, Lessee may delay compliance until the final determination of such proceeding; or

10.2.2 If any lien, charge, or civil liability would be incurred by reason of any such delay, Lessee nevertheless may contest the matter and delay compliance, provided that such delay would not subject Lessor to criminal or civil liability or fine, and Lessee prosecutes the contest with due diligence.

10.3 Lessor shall execute and deliver any appropriate papers, as determined in the Lessor’s sole discretion, that may be necessary, proper or desirable to permit Lessee to contest the validity or application of any Legal Requirement, provided all the requirements of this section have been satisfied by Lessee.

10.4 Each party shall promptly provide the other party, in the manner provided in Section 31 below, copies of all material correspondence or other documents sent to or received from governmental agencies or other persons: (i) relating to Lessee’s development of the Premises; and/or (ii) that may materially adversely affect the fair market value of the Premises.

10.5 Lessor represents and warrants to Lessee, that as of the Commencement Date and as of the Premises Turnover Date:

10.5.1 Lessor shall not during the Lease Term initiate any action that would create any encumbrances except for taxes, assessments and fees imposed pursuant to California Constitution Articles XII C and D (or other applicable laws), that would adversely affect Lessee’s use, operation or occupancy of the Premises.

10.5.2 All persons and entities supplying labor, materials, and equipment to the Premises have been paid, there are no claims of liens and there are no service contracts applicable to the Premises.
10.5.3 To the best of Lessor's knowledge there is no action in the nature of litigation, claim, investigation or other proceeding pending or to Lessor's best knowledge, threatened against or affecting the Premises, the use thereof, or Lessor, or if there is, then Lessor shall promptly disclose such matter to Lessee.

10.5.4 Lessor has not committed nor obligated itself in any manner whatsoever to sell or lease the Premises to any person other than Lessee. Without limiting the generality of the foregoing, no right of first refusal regarding the Premises exists. Lessor will not, prior to the Premises Turnover Date, offer to or enter into any backup or contingent option or other agreement to sell or lease the Premises to any other person.

10.5.5 Except for ____________, which, however, will be unconditionally and irrevocably terminated prior to the Premises Turnover Date there are no existing leases, tenancies, rental agreements or entitlements or use agreements, or unrecorded restrictive covenants affecting all or any portion of the Premises except for the Permitted Exceptions.

10.5.6 Lessor is not a foreign person, nonresident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

10.5.7 Lessor has made no untrue statements or representations in connection with this Lease.

10.5.8 Lessor has to the best of its knowledge provided or made available to Lessee all information in Lessor's possession that Lessee has requested, and Lessor to the best of its knowledge has provided or made available to Lessee any public information or knowledge actually obtained by Lessor of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial condition, financial or otherwise, which would prevent, limit or impede the use of the Premises as contemplated by this Lease.

10.5.9 All documents delivered or made available to Lessee by or on behalf of Lessor are to the best or Lessor's knowledge true and correct copies of the documents in Lessor's possession.

10.5.10 Prior to the Premises Turnover Date, and except as otherwise provided in this Lease, Lessor has: (i) performed all of its obligations under any lien indebtedness, and (ii) except as expressly permitted by this Lease, not allowed any lien to attach to the Premises or any portion thereof which is not discharged at the Premises Turnover Date, nor granted, created, modified or permitted the creation of, any easement, right-of-way, encumbrance, restriction or covenant affecting the Premises or any part thereof.

10.5.11 To Lessor's actual knowledge, except as may be contained in the written materials delivered or made available to Lessee during the Due Diligence Period, Lessor is not aware of the existence of Hazardous Substances (as defined in Section 42), at the Property. For
purposes of this Section 10.5.11, the phrase “actual knowledge” shall mean the present, actual knowledge of the City Manager (“Lessor’s Designated Representative”) with no duty of investigation, inquiry or inspection. In no event shall Lessee be entitled to assert any cause of action against Lessor’s Designated Representative, nor shall such individual have any personal liability whatsoever for any matter under or related to this Lease. Lessor represents and warrants that Lessor’s Designated Representative is the City Manager and the person on behalf of Lessor most knowledgeable about the matters which are the subject of this Section.

Section 11. Operation, Repairs and Maintenance

11.1 Lessee shall maintain and repair or cause to be maintained and repaired the Premises and any Premises Improvements Lessee constructs on the Premises, and off the Premises but in conjunction with the development of the Premises and that Lessee is required by Legal Requirements to maintain, as necessary to keep them in first-class order, condition, and repair throughout the entire Lease Term after the Premises Turnover Date, at no cost to Lessor, provided that during the periods that TopGolf is operating the Premises, this condition shall be satisfied by keeping the Premises in a condition substantially comparable to other facilities currently being operated by TopGolf. Lessor and Lessee agree that wherever in this Lease an obligation is imposed on Lessee, Lessee, without being released from any of its obligations under this Lease or requiring that the City pursue any party other than Lessee for performance of such obligations, shall have the right to delegate responsibility for performing such obligations and will delegate such responsibility for performing such obligations to TopGolf or to any other occupant of the entire Premises approved by Lessor under Section 18 of this Lease (an “Operator”) and performance of such obligation by TopGolf or the Operator in accordance with the terms of this Lease shall be deemed performance by Lessee.

11.2 During the Lease term (i) Lessee shall operate or cause to be operated the ground level (or other suitable portion) of the Premises Improvements as a driving range open for business seven days a week from at least 6:00 a.m. until at least 9:00 p.m., other than on any Specified Holidays and (ii) the remainder of the Premises Improvements, such that the same are open for business seven days a week from at least 8:00 a.m. until at least 9:00 p.m., other than on any Specified Holidays (“Continuous Operation Requirement”). The only exception to these requirements shall be during periods of damage or destruction, condemnation, or when Lessee is conducting alterations, routine repairs, maintenance and upgrades to the facilities and in such cases Lessee shall work diligently to minimize the number of hours and/or days that the driving range and/or restaurant are not open during the Continuous Operation Requirement. For purposes hereof, “Specified Holidays” means collectively, the following holidays: New Year’s Day, President’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Notwithstanding anything to the contrary contained or implied in this Lease, in the event that at any time after the expiration of the Operating Period the Lessee provides written notice that the Premises will not be operated by Top Golf or another Operator for the Permitted Use (a “Non-Operation Notice”), then Lessee shall not be deemed to be in default so long as (i) it is paying Rent and any other sums owing the Lessor hereunder in a timely manner, and (ii) Lessee either terminates this Lease as provided below or reopens the Premises for business to the public, in either event within two (2) years after any Non-Operation Notice (provided that any
replacement Operator of the driving range is approved by Lessor pursuant to Section 18 hereof. Following receipt of the Non-Operation Notice, Lessor may notify Lessee that Lessor has elected to operate the driving range or cause the driving range to be operated on an interim basis during the period that the Premises is not open for business to the public, then Lessor shall then operate the driving range or cause the driving range to be operated during the time period set forth in Lessor’s notice in accordance with the standards of operation set forth in this Lease until such time as Lessee finds a new Operator for the Premises. In the event that Lessor elects to operate the driving range as set forth above, Lessor shall operate the driving range pursuant to a month to month sublease in form and content reasonably acceptable to Lessor, Lessee and 30 West Pershing, which shall provide, among other things, for (i) the reduction of the Fixed Rent in an amount equal to the monthly net revenues that Lessor derives from its operation of the Premises (i.e. the aggregate gross revenues received by Lessor in connection with the operation of the driving range minus all reasonable third party out of pocket costs incurred by Lessor in connection with the operation of the driving range, as evidenced by monthly income and expense reports and other reasonable back-up information reasonably requested by Lessee and/or 30 West Pershing delivered to Lessee and 30 West Pershing by Lessor along with the monthly rental payments), and (ii) the right of termination by Lessee or Lessor of the sublease upon thirty business days’ prior written notice upon Lessee identifying an Operator that will sublease the Premises and operate the same for the Permitted Use.

Following the expiration of the Operating Period, including during the two year period following delivery of the Non-Operation Notice, the Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor and shall be obligated to pay Rent and all other sums due through the date of the termination of this Lease and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease.

11.3 Lessee shall make driving bays available for youth sports and provide a ten percent (10%) discount for residents of the City of El Segundo that have City of El Segundo Parks and Recreation Identification Cards. This discount will be in addition to all other discounts offered by Lessee such as senior citizen and military personnel discounts.

11.4 Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Lease Term, including but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Lessor shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to the Premises during the Lease Term.

11.5 Lessor assigns to Lessee such rights, if any, as Lessor may have against any parties causing damage during the Lease Term to any Premises Improvements on the Premises, to sue for and recover amounts expended by Lessee as a result of such damage.

Section 12. Development of the Golf Course Premises; Premises Improvements
12.1 Promptly following the Premises Turnover Date, Lessee shall at no cost or expense to Lessor modify and demolish, as necessary, and improve (or cause to be modified and demolished, as necessary, and improved) the Golf Course and Premises in accordance with the Golf Course Improvements and Premises Improvements as set forth in this Lease, and diligently prosecute the same to completion, provided that the Golf Course Improvements and Premises Improvements shall be substantially in accordance with the Plans and Specifications approved by Lessor as provided in this Lease, all applicable laws, building regulations, and other applicable restrictions on the use of the Premises, and further provided that Lessee shall be responsible for obtaining, at no cost or expense to Lessor, all governing and regulatory agency approvals and permits that may be required in connection with such Golf Course and Premises Improvements. Notwithstanding the foregoing, in the event that 30 West Pershing defaults in its construction obligations under its sublease with Lessee after the expiration of any applicable notice and cure periods set forth in this Lease, which would also constitute a default by Lessee, Lessee shall have the right in its sole and absolute discretion to either: (a) complete the Premises Improvements as provided above, or (b) terminate this Lease and return the Golf Course and Premises to the same or better condition as they were in on the Premises Turnover Date. Lessee shall not be relieved of any obligation to pay Rent or any other payment in the event of any such default by 30 West Pershing or any other default hereunder by Lessee unless and until this Lease is terminated as set forth above in (b) and the Lessor is in possession of the Golf Course and the Premises and both have been returned to the same or better condition as they existed prior to the Premises Turnover Date. No action by Lessee to complete the Premises Improvements shall alter or diminish the 30West Pershing Guarantee. All improvements to the Golf Course and the Premises shall be completed within ten (10) months of the Premises Turnover Date, subject to events of force majeure and delays caused by Lessor.

12.2 Lessor and Lessee shall meet and attempt to agree on a plan, including but not limited to addressing any and all construction, operational and liability issues, that would result in keeping the Golf Course, or portions thereof, open for business during the construction of the Golf Course Improvements and the Premises Improvements, and Lessee shall be entitled to retain fifty percent (50%) of any net revenue resulting from the Golf Course operations for the period commencing on the Premises Turnover Date and ending on the Fixed Rent Commencement Date or until the Golf Course Improvements are completed and the Golf Course is capable of being operated in accordance with Section 4.1 of this Lease before the expiration of such ten month period. Notwithstanding the foregoing Lessee shall retain in its sole and absolute discretion the absolute and unconditional right to shut down the Golf Course operations or portions thereof at any time during the period commencing on the Premises Turnover Date and ending on the Fixed Rent Commencement Date. Within ninety (90) days after the Commencement Date, Lessee shall deliver to Lessor the conceptual Golf Course Improvement Plans and Specifications for Lessor’s approval as provided in Section 5.4 of this Lease.

12.3 Lessor shall review and approve the Plans and Specifications, such approval not to be unreasonably withheld, conditioned or delayed, and/or provide Lessee with its comments within thirty (30) days after Landlord’s receipt of the Plans and Specifications. If disapproved Lessee shall make all necessary revisions within ten (10) days after Lessee’s receipt thereof. This
procedure will be repeated until Lessor ultimately approves the conceptual Plans and Specifications or until this Lease is terminated in accordance with Section 5.4 and/or 5.5 hereof. Notwithstanding the foregoing, the conceptual Plans and Specifications for the Premises Improvements shall be approved if they are consistent in all material respects with the Prototype Facility and all applicable zoning and building and safety laws and regulations, and the conceptual Plans and Specifications for the Golf Course Improvements shall be approved if they are consistent in all material respects with Exhibit “D” and all applicable zoning and building and safety laws and regulations.

Section 13. Title to Premises Improvements

Title to any Premises Improvements and any modifications, additions, restorations, repairs and replacements thereof hereafter placed or constructed by or through Lessee shall be and remain in Lessee until the expiration or termination of the Lease Term. On such expiration or sooner termination, title to any Premises Improvements shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost or charge to Lessor in accordance with Section 26.2 hereof; provided, however, that no lien rights created or allowed by Lessee or any assignee or sublessee shall extend beyond the Lease Term. During the Lease Term, Lessee shall be entitled, for all taxation purposes, to claim cost recovery deductions and the like on any Premises Improvements.

Section 14. No Waste

Lessee shall not intentionally commit any material waste on or to the Premises.

Section 15. Inspection and Access

Lessor shall have the right to enter on the Premises and any Premises Improvements at all reasonable times during usual business hours upon not less than three (3) business days’ notice for the purpose of preventing the creation of any prescriptive rights to any third person, allowing inspection by mortgagees, and, within one hundred eighty (180) days of the expiration of the Lease Term, Lessor shall have the right to enter the Premises for the purpose of showing the Premises to prospective lessees or purchasers. Notwithstanding anything to the contrary herein, any access given to Lessor to enter the Premises for the purposes explicitly stated above shall be subject to Lessee’s reasonable security rules and regulations. Lessee reserves the right to accompany Lessor at all times during any entry by Lessor. Lessor shall use commercially reasonable efforts to minimize any interference with the day to day operations of the Premises in exercising any of its rights under this Section 15. In the event any subtenant has the right to abate rent, as a result of Lessor’s activities under this Section 15, then Lessee shall be entitled to an abatement of Fixed Rent to the extent of such subtenant rent abatement, less any rent loss insurance proceeds received by Lessee, provided that Lessee has given Lessor prior written notice of the terms of such subtenant abatement rights.
Section 16. Lessor's and Lessee's Exculpation and Indemnity

16.1 After the Premises Turnover Date, Lessee is and shall be in exclusive control of the Premises and of any Premises Improvements, and except as otherwise provided herein, Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or any Premises Improvements or any injury or damage to the Premises or any Premises Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, flooding, earthquake, storm, act of God, terrorist act, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of any Premises Improvements, or from steam, gas, electricity, water, or rain, that may leak into, or issue or flow from any part of the Premises or any Premises Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of any Premises Improvements or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on any Premises Improvements, including defects in construction of any Premises Improvements, latent or otherwise. Notwithstanding the foregoing, Lessor shall indemnify, defend and hold harmless Lessee from and against all claims and all costs, expenses, and liabilities incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of: (i) any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, as shall occur on or about the Premises prior to the Premises Turnover Date, except to the extent such is caused by the negligent or wrongful acts of the Lessee, (ii) any failure on the part of Lessor to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with, or (iii) any negligent act of Lessor or the agents, contractors, servants, or employees of Lessor. In case any action or proceeding is brought against Lessee by reason of any claims covered in this Section 16.1, Lessor on written notice from Lessee shall, at Lessor's expense, resist or defend such action or proceeding by counsel approved by Lessee in writing, which approval shall not be unreasonably withheld, conditioned or delayed.

16.2 To the extent not caused by the negligence or willful misconduct of Lessor or its official, officers, agents, employees or contractors, Lessee shall indemnify, defend and hold Lessor harmless for, from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees, that may be imposed on or incurred by or asserted against Lessor by reason of or in any way related to any of the following occurrences following the Premises Turnover Date:

16.2.1 Any work done in, on, or about all or any part of the Property by or on behalf of Lessee, 30 West Pershing or TopGolf or any Premises Improvements related to the use, occupancy or development of the Property by or on behalf of Lessee, 30 West Pershing or TopGolf;

16.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or any Premises Improvements;
16.2.3 Any negligence or willful misconduct on the part of Lessee or any of its agents, contractors, servants, employees, sublessees, licensees, or invitees;

16.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or any Premises Improvements; or

16.2.5 Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

16.3 [Intentionally Omitted]

16.4 In case any action or proceeding is brought against Lessor by reason of any claims covered in Section 16.2, Lessee on written notice from Lessor shall, at Lessee’s expense, resist or defend such action or proceeding by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld, conditioned or delayed.

16.5 If Lessor or Lessee asserts any claim against the other party by reason of the other party’s ownership interest, the party asserting the claim shall have no claim against the other party’s officers, directors, employees or agents.

16.6 The provisions of this Section 16 shall survive any termination of this Lease.

Section 17. Condemnation

17.1.1

17.1 If all the Premises and Premises Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or any Premises Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable for operation of a commercial driving range and restaurant, in Lessee’s reasonable judgment, to permit the restoration of any Premises Improvements following such taking or condemnation or for Lessee’s use of the Premises, then this Lease and the Lease Term, at Lessee’s option, shall cease and terminate as of the date on which the condemning authority takes possession or title (any taking or condemnation of the land described in this section being called a “Total Taking”), and the Fixed Rent and Additional Rent shall be apportioned and paid to the date of such Total Taking.

17.2 If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows:

17.2.1 The total award or awards for the Total Taking shall be apportioned and paid to Lessee and Lessor in Proportionate Shares. For purposes hereof, the “Proportionate Shares” of Lessee and Lessor shall be expressed as a percentage of the whole and shall be calculated as of the date of the Total Taking, as follows: (i) Lessor’s Proportionate Share shall equal the percentage obtained by dividing the Land Value by the Aggregate Sum, and (ii)
Lessee's Proportionate Share shall equal the percentage obtained by dividing the Amortized Improvements Cost by the Aggregate Sum. In the event that the Golf Course is condemned then as between Lessor and Lessee (and the CenterCal Guarantor and the 30 West Guarantor) any condemnation award with respect to the Golf Course or Golf Course Improvements shall be exclusively awarded to the City.

17.2.1.1 The term “Land Value” shall mean the fair market value of the land and the driving range improvements currently located thereon (prior to any development activity of Lessee or its sublessees or assigns) as determined as of the date of this Lease and without regard to this Lease, but encumbered by the License Agreement as the same may be amended pursuant to Section 5.4, the use restriction on the Premises imposed by Chevron in that certain Corporation Grant Deed form Chevron to Lessor, dated May 16, 1988 and recorded in the Official Records of Los Angeles County, California on May 24, 1988 as Instrument No. 88 826097 and any other liens or encumbrances existing as of the date of this Lease not including this Lease. Lessor and Lessee will work in good faith to agree upon the Land Value within 180 days from the Commencement Date. Each of Lessee and Lessor may, at its sole cost and expense, retain one or more appraisers or other valuation consultants to perform appraisals or other analyses of the Land Value and assist with the determination of the Land Value hereunder. Following the agreement of Lessor and Lessee with regard to the Land Value, such Land Value shall remain fixed and shall not be subject to adjustment hereunder.

17.2.1.2 The term “Amortized Improvements Cost” shall mean at a given point in time the then unamortized cost of the Premises Improvements (i.e. the aggregate cost of the Premises Improvements as amortized using 40 year straight line depreciation commencing on the date that rent commences under the Sublease with 30 West Pershing through the date of the Total Taking hereunder).

17.2.1.3 The term “Aggregate Sum” shall mean, at any given point in time, the sum of the Land Value and the Amortized Improvements Cost.

17.3 If, during the Lease Term, there is a taking or condemnation of the Premises or any Premises Improvements that is not a Total Taking and not a temporary taking of the kind described below, or if there is a change in the grade of the streets or avenues on which the Premises abuts, this Lease and the Lease Term shall not cease or terminate, but shall remain in full force and effect with respect to the portion of the Premises and of any Premises Improvements not taken or condemned (any taking or condemnation or change of grade of the kind described in this section being referred to as a “Partial Taking”), and in such event:

17.3.1 The total award or awards for the taking shall be apportioned and paid to Lessee and Lessor in Proportionate Shares (as calculated as of the date of the Partial Taking).

17.3.2 Following any such taking or condemnation, Rent shall be equitably abated based on the portion of the Premises taken.
17.4 In the event of a taking of all or a part of the Premises or any Premises Improvements for temporary use, this Lease shall continue without change, as between Lessor and Lessee, and Lessee shall be entitled to the entire award made for such use; provided that Lessee shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste, or injury to the Premises or any Premises Improvements throughout the balance of the then-current Lease Term. The amount of damages so recovered shall belong to Lessee.

17.5 In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a Taking mentioned in this Section 17, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the dispute.

Section 18. Assignment and Sublease

18.1 Lessee shall have the right, to assign this Lease or any interest therein, and shall further have the right to sublease or sublet all or any portion or portions of the Premises or any interest therein, with the Lessor’s consent which may be withheld in the Lessor’s reasonable discretion based upon the financial strength of the proposed assignee or subtenant and its experience in operating commercial driving ranges and restaurants. Any such assignment or subletting by Lessee shall also be subject to all the following provisions:

18.1.1 Lessee shall not then be in default under this Lease beyond the expiration of any applicable notice and cure period;

18.1.2 The assignee of Lessee shall expressly assume in writing all of Lessee’s obligations hereunder from and after the effective date of any such assignment;

18.1.3 Any sublease shall be subject to the terms and provisions of this Lease with respect to such subtenant’s or occupant’s use and occupancy of the premises in question and shall not work to alter any term or condition of this Lease;

18.1.4 Except as provided hereinbelow, no such subleasing or assignment shall relieve Lessee from liability for payment of Rent herein provided or from the obligations to observe and be bound by the terms, conditions, and covenants of this Lease. No transfer of corporate shares of Lessee, if Lessee is a corporation, unless such transfer of shares will result in a change in the present voting control of the Lessee by the person or persons owning a majority of said corporate shares on the date of this Lease, shall constitute an assignment and be subject to the conditions of this Section 18.2. Notwithstanding the foregoing, after completion of the Golf Course Improvements and the Premises Improvements and payment of all Rent owing as of the effective date of the assignment, Lessee shall be released from any and all further liabilities under this Lease from and after the effective date of an assignment of this Lease to either: (i) an assignee entity, that is not a so called “special purpose entity,” which has a net current worth and net tangible assets at the time of the assignment, determined according to generally accepted accounting principles consistently applied, of not less than Ten Million Dollars ($10,000,000.00)
in Constant Dollars as defined in Section 8, or (ii) an approved assignee entity (as provided above), that is a so called “special purpose entity,” which is able to demonstrate to Lessor’s reasonable satisfaction the prospective financial ability and fiscal resources (which may include, but shall not be limited to, the cash flow from the business operations conducted or to be conducted on the Premises) to fulfill the monetary obligations of Lessee under this Lease; so long as the assignee also has significant experience in operating a commercial driving range and restaurant. Lessee’s release from liability pursuant to subsection (ii) of this Section 18.2.4 (i) shall be effective only if Lessee provides Lessor within thirty (30) days of request therefor a copy of the assignment and reasonable evidence of the assignee’s qualifications hereunder (and Lessor shall have sixty (60) days thereafter to review such evidence and render a reasonable determination in writing to the Lessee); and

18.1.5 Provided that Lessee, within sixty (60) days following final execution of any sublease or other occupancy agreement for the Premises, provides Lessor with a copy of such sublease or occupancy agreement certified by Lessee to be a true and correct copy thereof, and further provided that Lessee does not thereafter amend such sublease or occupancy agreement without providing to Lessor a similar certification within sixty (60) days following final execution thereof along with a copy of the sublease or occupancy agreement as amended as well as such other and further documentation that is reasonable and necessary to adequately review the financial strength and experience of the proposed sublessee, Lessor shall have sixty (60) days to provide written notice to Lessor of its approval or rejection of such sublease or other occupancy agreement. If Lessor approves of such subtenant or other occupancy agreement, within sixty (60) days following Lessee’s written request therefor, Lessor shall execute such other documents or instruments as may be reasonably requested by any subtenant or occupant of the Premises affirming and evidencing Lessor’s recognition of the sublease or occupancy agreement in question as provided hereinabove so long as: (i) the term of the sublease, inclusive of renewal options, shall not exceed the Lease Term, (ii) the subtenant’s permitted use is not in violation of Section 4 hereof, and (iii) the subtenant certifies that the sublease is subject to the terms and provisions of this Lease with respect to such subtenant’s or occupant’s use and occupancy of the premises in question.

Notwithstanding the foregoing, Lessor hereby approves the sublease of the Premises to 30 West Pershing and the sublease of the Premises from 30 West Pershing to TopGolf so long as such subleases do not alter the terms or conditions of this Lease. Lessor also agrees that in the event that Lessor terminates this Lease as a result of any Event of Default by Lessee, it shall deliver written notice to 30 West Pershing and Top Golf of such termination and shall provide 30 West Pershing and Top Golf with thirty (30) days in which to agree as between themselves as to whether one or both of them will enter into a lease of the Premises on the identical rental and other terms and conditions as this Lease (and Lessor shall afford them the opportunity to enter into such lease during such thirty (30) day period); provided that (i) in connection with its execution and delivery of such lease, 30 West Pershing and/or Top Golf pays Lessor any unpaid Rent owing by Lessee to Lessor under this Lease (as determined without regard to any acceleration of or addition to any such Rents pursuant to Section 20.2.4 hereof) and cures any existing defaults that are capable of being cured by a person or entity other than the Lessee, and
(ii) in the event that Lessee disputes any such termination of this Lease, and Lessor and/or Lessee bring legal action to determine its rights hereunder, 30 West Pershing (and Operator) shall have the right to continue to occupy the Premises during the pendency of such legal action (provided they continue to pay Rent and other sums to Lessor as they become due hereunder, as determined without regard to any acceleration or addition to Rents pursuant to Section 20.2.4 hereof) and Lessor shall provide 30 West Pershing or TopGolf, as applicable, the right to enter into the new lease as described above during the thirty (30) day period after a court of competent jurisdiction determines that this Lease has terminated or Lessee agrees or otherwise concedes that this Lease has terminated.

18.2 If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 USC § 101, et seq. (the “Bankruptcy Code”), any and all monies or other consideration payable or otherwise to be delivered to Lessor shall (subject to the Bankruptcy Code) be and remain the exclusive property of Lessor and shall not constitute property of Lessee within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Lessor’s property under the preceding sentence not paid or delivered to Lessor shall be held in trust for the benefit of Lessor and be promptly paid or delivered to Lessor. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Lessor an instrument confirming such assumption.

18.3 The exercise of any right or other action under this Section 18 shall not diminish or alter the obligations of 30 West Guarantor or CenterCal Guarantor under their respective guaranties.

Section 19. Lessor Default; Remedies

19.1 If Lessor, whether by action or inaction, is in default of any of its obligations under this Lease and such default continues and is not remedied within thirty (30) days after Lessee has given Lessor written notice of the same (or, in the case of a default that can be cured but not within such period of thirty (30) days, if Lessor has not: (i) commenced curing such default within such thirty (30) day period, (ii) notified Lessee within such thirty (30) day period of Lessor’s intention to cure the default, and (iii) continuously and diligently completed the cure of the default), except as otherwise expressly set forth in this Lease Lessee shall be entitled to pursue any right or remedy available to Lessee under this Lease, at law or in equity, including, without limitation: (a) the right to specific performance, and (b) the right to cure such default and deduct the cost of curing such default from the Rent payable under this Lease.

19.2 No failure by Lessee to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessor, and no breach by Lessor, shall be waived, altered, or modified, except by a written instrument executed by Lessee. No
waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

19.3 Each right and remedy provided for in this Lease in favor of Lessee shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 20. Lessee Default; Remedies

20.1 The occurrence of any one or more of the following shall constitute a breach of this Lease by Lessee and an “Event of Default”:

20.1.1 If Lessee defaults in the payment of Rent or any other payment due and payable by Lessee or the provision of insurance, and such default continues for ten (10) days after Lessor has given Lessee a written notice specifying the same; or

20.1.2 If Lessee, whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent or the provision of insurance by Lessee) and such default continues and is not remedied within thirty (30) days after Lessor has given Lessee a written notice specifying the same, or, in the case of a default that can be cured but not within a period of thirty (30) days, if Lessee has not: (i) commenced curing such default within such thirty (30) day period, (ii) notified Lessor of Lessee’s intention to cure the default, and (iii) continuously and diligently completed the cure of the default, not to exceed five (5) months with respect to a failure to comply with the Continuous Operation Requirement. For purposes of this provision, except for the Continuous Operation Requirement, the filing of and diligent prosecution of successful litigation by Lessee against any sublessee to effect such cure (including any such litigation to gain possession of the Premises from 30 West Pershing or its successor) shall constitute commencement of and continuous and diligent completion of cure of default so long as Rent is paid when due hereunder.

20.2 On the occurrence of an Event of Default and subject to Lessor’s obligations as provided under this Lease and under California law to mitigate Lessor’s damages, Lessor shall be entitled to pursue any right or remedy available to Lessor under this Lease, at law or in equity, including, without limitation: (a) the right to specific performance, and (b) any one or more of the remedies set forth in this section or any other remedy specifically set forth in this Lease.
20.2.1 Subject to Section 20.2.3, Lessor or Lessor’s agents and employees may immediately, or at any time thereafter, reenter the Premises either by summary eviction proceedings or by any available action or proceeding at law or equity, without being liable to indictment, prosecution, or damages (except for any damages caused by their negligence or willful misconduct), and may repossess the same, and may remove any person from the Premises, to the end that Lessor may have, hold, and enjoy the Premises.

20.2.2 Lessor may relet the whole or any part of the Premises from time to time, either in the name of Lessor or otherwise, to such lessees, for such terms ending before, on, or after the termination of the Lease

20.2.3 Whether or not Lessor retakes possession or relets the Premises, Lessor has the right to recover its damages, including, without limitation, all lost rentals, all reasonable costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises for reletting, and all reasonable costs incurred by Lessor in reletting the Premises.

20.2.4 To the extent permitted under California law: (i) Lessor may sue periodically for damages as they accrue without barring a later action for further damages; and (ii) Lessor may, in one action, recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rent reserved in this Lease for the balance of the Lease Term after the time of award, and the fair rental value of the Premises for the same period, discounted at the time of award at a reasonable rate not to exceed twelve percent (12%) per annum. To avoid a multiplicity of actions, Lessor may obtain a decree of specific performance requiring Lessee to pay the damages stated in Sections 20.2.3 and 20.2.4 as they accrue.

20.2.5 Termination of this Lease shall not constitute a waiver of Lessor’s other remedies nor an election of remedies.

20.3 No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no acceptance of part or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified, except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

20.4 Each right and remedy provided for in this Lease in favor of Lessor shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or

Error! Unknown document property name.
remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 21. No Abatement of Rent; Encroachments

21.1 Except as otherwise specifically provided in this Lease, no abatement, refund, diminution, or reduction of Rent or other compensation shall be claimed by or allowed to Lessee, or any person claiming under it.

21.2 Unless directly or indirectly caused by or on behalf of Lessor, if any adjoining building or structure encroaches on the Premises, no claim, demand, or objection of any kind shall be made by Lessee against Lessor by reason of such encroachments and no claim for abatement of Rent due under this Lease shall be made by reason of such encroachments or acts of, or in connection with, removal of the encroachments. The rights, liabilities, and obligations of the parties shall be the same as if there were no encroachments. In any related legal proceedings, the Premises may properly and without prejudice be described according to the description previously used without reference to any such encroachments. Lessor agrees to fully cooperate at Lessee’s expense with Lessee in any proceedings sought by Lessee to remove such encroachments.

Section 22. Leasehold Mortgages

22.1 Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor’s consent, to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Premises Improvements and any subleases, under one or more leasehold mortgages or pursuant to a sale-leaseback financing arrangement to one or more “Lending Institutions” (as defined in Section 22.2), and/or under one or more purchase-money leasehold mortgages, and to assign this Lease and any subleases as collateral security for such leasehold mortgages or pursuant to the sale-leaseback financing arrangement, on the condition that all rights acquired under such leasehold mortgages or pursuant to the sale-leaseback financing arrangement shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Premises Improvements, except as expressly provided otherwise in this Lease.

22.2 Any mortgage or sale-leaseback financing arrangement made pursuant to this section is referred to as a “Permitted Leasehold Mortgage,” and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a “Permitted Leasehold Mortgagee.” The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is
referred to as the “First Leasehold Mortgage,” and the holder of or secured party under the First Leasehold Mortgage is referred to as the “First Leasehold Mortgagee.” For the purposes of any rights created under this section, any so-called wraparound lender shall be considered a First Leasehold Mortgagee. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the “First Leasehold Mortgage.” A Permitted Leasehold Mortgage includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the lender may require. The words “Lending Institution,” as used in this Lease, mean any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation or partnership making a loan on the security of Lessee’s interest in this Lease or all or any part of the Premises Improvements.

22.3 If a Permitted Leasehold Mortgagee sends to Lessor written notice specifying the name and address of the Permitted Leasehold Mortgagee, then provided this Lease is still in effect and as long as such Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Permitted Leasehold Mortgage and of any other Permitted Leasehold Mortgages):

22.3.1 There shall be no amendment, or modification, except those explicitly contemplated by this Lease, of this Lease without in each case the prior consent in writing of the Permitted Leasehold Mortgagee and the Subtenant under the Sublease described in Section 5.4(iv). Nor shall any merger result from the acquisition by, or devolution on, any one entity of the fee and the leasehold estates in the Premises.

22.3.2 Lessor shall, upon delivering Lessee any notice, whether of default or any other matter, simultaneously deliver a copy of such notice to the Permitted Leasehold Mortgagee, and no such notice to Lessee shall be deemed delivered unless a copy is so delivered to the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

22.3.3 In the event of any default by Lessee under this Lease, each Permitted Leasehold Mortgagee shall have the same concurrent period as Lessee has to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of for such default, and Lessor shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Lessee. Each notice of monetary default given by Lessor will state the amounts of whatever Rent or other payments are then claimed to be in default. Nothing herein shall require any Permitted Leasehold Mortgagee to cure any Event of Default. No such cure shall constitute an assumption of any liability by such Permitted Leasehold Mortgagee (unless the Permitted Leasehold Mortgagee assumes this Lease or enters into a new lease with Lessor in their respective sole discretion) unless a liability arises directly from a negligent or wrongful act of the Permitted Leasehold Mortgagee and in such a case the Permitted Leasehold Mortgagee shall have the obligation to defend and indemnify the Lessor consistent with the Lessee’s obligation to defend and indemnify Lessor, nor prejudice the right
of such Permitted Leasehold Mortgagee and/or Lessee to later contest or continue to contest the validity of the claim of the Event of Default.

22.3.4 Lessor agrees that the name of the Permitted Leasehold Mortgagee may be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee.

22.3.5 Except as otherwise explicitly provided in this Lease, no liability for the payment of Rent or the performance of any of Lessee’s covenants and agreements shall attach to or be imposed on the Permitted Leasehold Mortgagee (other than any obligations expressly assumed by the Permitted Leasehold Mortgagee), all such liability (other than any obligations expressly assumed by the Permitted Leasehold Mortgagee) being expressly waived by Lessor.

22.3.6 Lessor, within thirty (30) days after a request in writing by Lessee or any Permitted Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, that this Lease is in full force and effect and unamended, or if there are any amendments, such statement will specify the amendments, and that there are no defaults by Lessee that are known to Lessor, or if there are any known defaults, such statement shall specify the defaults Lessor claims exist.

22.3.7 Intentionally Omitted

22.3.8 Intentionally Omitted

Lessor, on request, shall execute, acknowledge, and deliver to each Permitted Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagee, agreeing to all the provisions of this section. Lessor shall attest to any Permitted Leasehold Mortgagee or any other person who becomes Lessee by, through, or under a Permitted Leasehold Mortgage, to the extent such is consistent with Section 18.1.5 and as long as (i) all Rent and other monetary payments due under this Lease have been made; and (ii) the Permitted Leasehold Mortgage has sufficient net worth, subject to the reasonable approval of the Lessor, to operate the driving range and restaurant on the Premises.

22.3.9 Lessor shall at no time be required to subordinate its interest in the Premises to the lien of any leasehold mortgage, including any Permitted Leasehold Mortgage, nor to mortgage its fee simple interest in the Premises as collateral or additional security for any leasehold mortgage, including any Permitted Leasehold Mortgage.

22.3.10 If following completion of the Golf Course Improvements and the Premises Improvements Lessee is declared bankrupt or insolvent and this Lease is thereafter lawfully canceled or rejected Lessor shall to the extent permitted by law promptly execute a new lease with 30 West Pershing (or TopGolf, if 30 West Pershing is then bankrupt or insolvent) under the identical terms and conditions as this Lease provided (i) all Rent and other monetary payments due under this Lease have been made; (ii) all defaults that are capable of being cured
by a person or entity other than the Lessee have been cured, and (ii) the replacement lessee or a guarantor of its obligations hereunder has a net worth of at least $10,000,000.00 and $20,000,000 respectively.

22.3.11 If Lessor declares bankruptcy and Lessor’s bankruptcy trustee rejects this Lease when there is a Permitted Leasehold Mortgagee, Lessee’s right to elect to terminate this Lease or to retain its rights pursuant to 11 USC § 365(h)(1) shall be exercised by the Permitted Leasehold Mortgagee.

22.3.12 No filing of bankruptcy by Lessee, a sublessee, assignee, or Permitted Leasehold Mortgagee or any other party, other than Lessor, under, subject to or otherwise having rights or obligations under or through this Lease, shall relieve the CenterCal Guarantor or the 30 West Guarantor of their respective obligations.

Section 23. Lessor’s Right to Encumber

Lessor, during the Lease Term, may encumber or mortgage its fee simple interest in the Premises so long as Lessee has reasonably consented, which consent shall be promptly granted if each of the following conditions have been satisfied: (i) Lessee has received thirty (30) days prior written notice of any such encumbrance, (ii) the holder of any such encumbrance executes with Lessee a mutually agreeable nondisturbance and attornment agreement, and (iii) at no time shall the aggregate amount of all such encumbrances of Lessor’s fee simple interest in the Premises exceed a seventy percent (70%) loan to value ratio (using the land value only without Premises Improvements). Except as explicitly provided above, Lessor covenants and agrees that Lessor shall not permit any liens to attach to the Premises that are created by, through or under Lessor. If any such liens do attach to the Premises, Lessor shall immediately pay off such liens; provided that if any such liens are not paid off by Lessor within thirty (30) days of the date that Lessor receives written notice from Lessee that such liens are recorded against the Premises and a demand that they be removed, Lessee may, at its option, pay off such liens and deduct the payment from Fixed Rent.

Section 24. Nonmerger

There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur, unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Lease, or in the leasehold estate created by this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

Section 25. Quiet Enjoyment
Lessee, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease Term without hindrance or molestation by anyone claiming by, through, or under Lessor as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

Section 26. Surrender

26.1 Except as otherwise provided, Lessee, on the last day of the Lease Term or upon any earlier termination, shall surrender and deliver up the Premises and any Premises Improvements to the possession and use of Lessor, free and clear of all liens and encumbrances other than those, if any, existing on the Premises Turnover Date or created or consented to in writing by Lessor that Lessor expressly agreed would remain following termination of this Lease, without any payment or allowance whatsoever by Lessor on account of any Premises Improvements on the Premises, and in a broom clean as-is condition and with the Premises in its then condition being capable of being operated as a driving range generally consistent with the operation of the driving range in existence as of the Premises Turnover Date (a "Driving Range"). Subject to the preceding and Lessee’s other obligations under this Lease:

26.2 When furnished by or at the expense of Lessee, fixtures, and equipment may be removed by Lessee at or before this Lease terminates. For purposes hereof, Lessee’s fixtures and equipment include the outfield target equipment, golf balls, any proprietary technology in the golf ball dispensers and touch screens, and other proprietary or related technology equipment. Notwithstanding the foregoing, Lessee shall ensure that the Premises are capable of being operated as a Driving Range on the last day of the Lease Term or upon any earlier termination and Rent shall be due and payable until Driving Range is operational.

26.3 Any personal property of Lessee that shall remain on the Premises after the termination of this Lease and the removal of Lessee from the Premises may, at the option of Lessor, be deemed to have been abandoned by Lessee, and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such personal property shall be removed by Lessee at Lessee’s sole cost and expense. If this Lease terminates early for any reason other than the default of Lessee, then, anything to the contrary notwithstanding, Lessee shall have ninety (90) days thereafter to remove its personal property and Lessee shall be responsible for paying all Rent and other costs required hereunder until the Premises are delivered to the Lessor.

26.4 Lessor shall not be responsible for any loss or damage occurring to any property owned by Lessee unless such loss or damage is caused by Lessor’s negligence or willful misconduct, or that of its agents, employees or contractors.

26.5 If, with the written consent of Lessor, Lessee fails to vacate the Premises after the expiration of the Lease Term, or any earlier termination hereof, Lessee shall become a tenant from month to month upon the terms of this Lease; provided, however, that Rent shall be adjusted beginning on the first day after the expiration or earlier termination to be one hundred ten percent (110%) of the Rent then in effect under this Lease.
26.6 Notwithstanding anything contained herein to the contrary, Lessee shall be liable to Lessor for any and all actual and direct damages caused by its failure to vacate the Premises after the expiration or any earlier termination of this Lease hereof, but not including incidental and consequential damages to Lessor. Lessee shall pay such damages within thirty (30) days of demand. Lessee shall not be subject to the preceding liability to the extent that Lessor has elected to allow Lessee to continue as a month-to-month tenant beyond the expiration or earlier termination of this Lease.

26.7 The provisions of this Section 26 shall survive any termination of this Lease.

Section 27. Invalidity of Particular Provisions

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

Section 28. No Representations

Lessee acknowledges that it has examined the Premises and that no representations as to the condition of the Premises or as to any other matters have been made by Lessor or any agent or person acting for Lessor except as expressly provided in this Lease.

Section 29. Estoppel Certificate

Either party, within twenty (20) days after a request from time to time made by the other party and without charge, shall give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating: (i) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (ii) that Lessee is not in default in the payment of Rent to Lessor, or if in default, stating such default; (iii) that as far as the maker of the certificate knows, neither party is in default in the performance or observance of any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating such default; (iv) that as far as the maker (if Lessor) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Lessee to terminate this Lease, or if such event has occurred, stating such event; (v) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (vi) the dates to which Rent have been paid; and (vii) any other matters that may be reasonably requested by the requesting party. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or encumbrancer of the interest of Lessee hereunder. A party’s failure to deliver such statement within such time shall be conclusive upon such party: (a) that this Lease is in full force and effect without modification, except as may be represented by the party requesting the certificate, and (b) that there are no uncured defaults in such requesting party’s performance.
Section 30. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease (excluding Rent or other monetary obligations) is delayed, or prevented in whole or in part by any acts of God, fire or other casualty, floods, storms or other natural disasters, explosions, accidents, epidemics, war, civil disorders, labor strikes, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, third-party legal challenges, actions taken by governmental agencies that could not have been reasonably anticipated by and timely resolved by a party, or by any other cause not reasonably within the party’s control, whether or not specifically mentioned (“Force Majeure”), the party’s obligation to perform shall be delayed for a time period equivalent to the Force Majeure (excluding any monetary obligation).

Section 31. Notices

31.1 Any notice required or permitted by the terms of this Lease shall be in writing and shall be deemed given: (i) when delivered personally to an officer or other authorized representative of the party to be notified, or (ii) after deposit in the United States mail as certified mail, postage prepaid, return-receipt requested, or sent by reputable overnight courier, and addressed as follows:

If to Lessor: The City of El Segundo
350 Main Street
El Segundo, CA 90245-4635
Attention: City Clerk

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

The City of El Segundo
350 Main Street
El Segundo, CA 90245-4635
Attention: City Manager

If to Lessee
And/or Guarantors: ES CenterCal, LLC,
1600 East Franklin Street
El Segundo, CA 90245
Attention: Jean Paul Wardy

CenterCal, LLC,
1600 East Franklin Street
El Segundo, CA 90245
Attention: Fred W. Bruning

30 West Pershing, LLC
37
909 Walnut, Suite 200
Kansas City, Missouri 64106
Phone: (816) 472-1700
Fax: (816) 472-5794
Attn: Asset Management

30 West Pershing, LLC
909 Walnut, Suite 200
Kansas City, Missouri 64106
Phone: (816) 472-1700
Fax: (816) 472-5794
Attn: General Counsel

TopGolf USA Inc.
1717 McKinney Avenue
8th Floor
Dallas, Texas 75202
Fax: (866) 577-4612
Attn: Randall P. Starr, Vice President Development

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

Griffin Fletcher & Herndon, LLP
6857 Amber Lane
Carlsbad, CA 92009
Attention: Edward Krasnove, Esq.

White Goss Bowers March Schulte & Weisenfels,
a Professional Corporation
4510 Bellevue, Suite 300
Kansas City, Missouri 64111
Attn: Fred W. Crouch, Esq.

Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Fax: (214) 756-8582
Attn: Donald A. Hammett, Jr.

orsuch other addresses as may be designated by either party by written notice to the other. Notwithstanding anything in this section to the contrary, any notice sent or mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this section, shall not be deemed ineffective if actual delivery cannot be
made due to a change of address of the person or party to which the notice is directed or if such notice is rejected by such party.

Section 32. Venue

32.1 The venue for any claim, controversy, or dispute between the parties arising out of or relating to this Lease, or to the interpretation or breach thereof, shall be the Los Angeles Superior Court. The parties may, but are not required to, engage in mediation prior to the initiation of any litigation.

Section 33. Entire Agreement

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lessee and Lessor that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease. This Agreement was negotiated by and jointly drafted by the parties and the language contained herein shall not be construed against either party hereto based upon any presumption or evidence that particular language was drafted by one of the parties hereto. All Exhibits referenced in the Lease and attached hereto are incorporated into and are considered a part of this Lease.

Section 34. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the state of California.

Section 35. License Agreement

Lessor represents and warrants to Tenant that as of the date of this Lease, there are no uncured defaults under the License Agreement and, to Lessor's knowledge, no events have occurred, which with the giving of notice or the passage of time could become a default under the License Agreement.

Lessor and Lessee agree not to take any action that would result in the termination of the License Agreement or to modify the License Agreement without both parties written consent. Lessor and Lessee agree to perform all of their respective obligations under the License Agreement in a timely manner so as not to cause the termination of the License Agreement. If Lessor or Lessee receives a notice of default from Licensor, then the party receiving the notice shall promptly give notice of the default to other party, which notice shall include a copy of any such notice of default that is so given or received.

In the event of a default by Lessor or Lessee under the License Agreement, both parties shall have the right, but not the obligation, to cure the default of the other party by giving notice
thereof to the other party, and any reasonable costs incurred by non-defaulting party in curing such default shall be borne by the defaulting party.

Section 36. Late Charge

Lessee acknowledges that late payment by Lessee to Lessor of any Rent or other payments due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Lessor. Accordingly, if any Rent payment is not received by Lessor within ten (10) days after receipt by Lessee of notice from Lessor that such Fixed Rent is past due, Lessee shall pay to Lessor a late charge equal to four percent (4%) of the unpaid Fixed Rent (the "Late Charge"). The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Lessor by reason of the late payment by Lessee. Acceptance of any Late Charge by Lessor shall, in no event, constitute a waiver of Lessee’s default with respect to the overdue amount in question, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

Section 37. Nonwaiver

No provision of this Lease shall be deemed to have been waived by Lessor or Lessee, unless such waiver is in writing signed by Lessor or Lessee, as applicable. Waiver of a breach of any term or condition of this Lease shall not be deemed a waiver of any subsequent breach. Acceptance of any Rent or other payments shall not be deemed a waiver of such breach.

Section 38. Brokerage

Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other. Lessor represents and warrants to Lessee, and Lessee represents and warrants to Lessor, that no other broker or finder has been engaged by it, respectively, in connection with this Lease. In the event of any claims for additional brokers' or finders' fees or commissions in connection with the negotiation, execution, or consummation of this Lease, then Lessee shall indemnify, hold harmless, and defend Lessor from and against such claims if they shall be based on any statement or representation or agreement by Lessee, and Lessor shall indemnify, hold harmless, and defend Lessee if such claims shall be based on any statement, representation, or agreement made by Lessor.


39.1 Lessee shall have the right in its sole and absolute discretion to obtain, at its cost, a lot line adjustment approval, as part of the Required Project Entitlements process which comprise the Conditions Precedent, to reconfigure the lots currently comprising the Premises to a reconfiguration reasonably agreed upon with Lessor. As part of or separate from this process,
Lessor and Lessee shall reasonably cooperate with each other in their efforts to subdivide the Premises.

39.2 Except as expressly set forth in this Lease, Lessee shall have the right to choose the name of the project in its sole and absolute discretion.

Section 40. Covenants to Bind and Benefit Parties

Subject to the limitations set forth in Section 18, the covenants and agreements contained in this Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

Section 41. Captions and Table of Contents

41.1 The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

41.2 The table of contents preceding this Lease but under the same cover is for the purpose of convenience and reference only, and is not to be deemed or construed in any way as part of this Lease, nor as supplemental or amendatory.

Section 42. Hazardous Materials

The term “Hazardous Substances” shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law. The term “Environmental Laws” shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time. The term “Release” shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

Section 43. [Intentionally Omitted]

Section 44. Counterparts

This Lease may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Lease.

Section 45. Consent and Approval Rights
Except as otherwise expressly set forth in this Lease or provided by law, references in this Lease to “consent,” “approval,” “acceptable,” and “satisfactory” shall not be interpreted as justifying arbitrary rejection but shall imply a good faith, reasonable application of judgment taking into consideration customary leasing practice and commercial custom.

Section 46. Prevailing Wages

Lessee shall pay prevailing wages as defined by the California Labor Code and applicable regulations for all the Golf Course Improvements and the Premises Improvements and other work performed on the Property. Lessee shall provide to Lessor all records required by state law, including but not limited to the California Labor Code and applicable regulations, to prove that prevailing wages are being paid, including without limitation maintaining and providing weekly certified payroll records to the Lessor evidencing that Lessee paid prevailing wage for all of the Premises Improvements and Golf Course Improvements and other work performed on the Property.

Section 47. Golf Course

Lessor shall maintain the appearance of the Golf Course in accordance with the same standards that it is maintained as of the execution of this Lease. In the event that the use of the Golf Course changes the Lessor shall maintain the appearance of the property that comprises the Golf course in a clean and aesthetically reasonable manner. The Lessee’s sole remedy for a breach of this Section shall be specific performance. In addition, in the event that all or any portion of the Golf Course is used for business of a sexually oriented nature, such as a strip club or adult novelty store, then in such event Fixed Rent shall be reduced by fifty percent (50%) for as long as such use continues on the Golf Course.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK
IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized representatives.

**Lessor:**

THE CITY OF EL SEGUNDO, a Chartered City and Municipal corporation

By: ________________________________
Name: ______________________________

**Lessee:**

ES CENTERCAL, LLC,
a Delaware limited liability company

By: CENTERCAL, LLC,
a Delaware limited liability company

By: CENTERCAL ASSOCIATES, LLC,
a Delaware limited liability company

By ________________________________
Print Name ________________________________
Print Title: Its Manager

Exhibit “A” – Legal Description
Exhibit “A-1” – The Premises
Exhibit “A-2” – The Golf Course
Exhibit “B” – Site Plan
Exhibit “B-1” – Preliminary Site Plan
Exhibit “C” – License Agreement
Exhibit “D” – Golf Course and Premises Improvements
Exhibit “E” – Permitted Exceptions
Exhibit “F” – Form of Memorandum of Lease

Exhibit “G” – Prototype Facility

Exhibit “H” – Form of Guaranties
Exhibit "A"
Legal Description

PARCEL 1: (4138-014-913)

PARCEL A:

PARCEL 1, IN THE CITY OF EL SEGUNDO, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 17749, FILED IN BOOK 207 PAGES 56 TO 60 INCISIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND DESCRIBED IN GRANT DEEDRecorded March 12, 1999 AS INSTRUMENT No. 1999-411887, OF OFFICIAL RECORDS.

ALSO EXCEPTING AND RESERVING TO CHEVRON U.S.A. INC., A PENNSYLVANIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, ALL OIL, GAS AND OTHER HYDROCARBONS, NON-HYDROCARBON GASSES OR GASEOUS SUBSTANCES, ALL OTHER MINERALS OF WHATSOEVER NATURE, WITHOUT REGARD TO SIMILARITY TO THE ABOVE-MENTIONED SUBSTANCES, AND ALL SUBSTANCES THAT MAY BE PRODUCED THERewith FROM THE PROPERTY, BY DEEDRecorded May 24, 1988 AS INSTRUMENT No. 88-826097, OF OFFICIAL RECORDS.

PARCEL B:

A PARCEL OF LAND BEING A PORTION OF PARCELS 7 AND 8 OF PARCEL MAP NO. 17750 IN THE CITY OF EL SEGUNDO, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 207, PAGES 64 TO 66 INCLUSIVE, OF PARCEL MAP RECORDS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTH WEST CORNER OF SAID LOT 7; THENCE SOUTH 09° 46' 55" EAST ALONG THE WESTERNLY LINE OF SAID LOT 7 A DISTANCE OF 134.51 FEET; THENCE,NORTH 63° 57' 01" EAST A DISTANCE OF 202.06 FEET; THENCE, SOUTH 26° 06' 20" EAST A DISTANCE OF 1.00 FEET; THENCE, NORTH 63° 53'40" EAST A DISTANCE OF 607.71 FEET TO A POINT IN THE NORTH LINE OF SAID LOT 8, SAID POINT BEARS SOUTH 73° 28' 25" EAST A DISTANCE OF 27.04 FEET FROM THE MOST NORTH EAST CORNER OF SAID LOT 8; THENCE, SOUTH 73° 28' 25" WEST ALONG THE NORTHERLY LINE OF SAID LOTS 7 AND 8 A DISTANCE OF 782.89 FEET BACK TO THE POINT OF BEGINNING.

EXCEPT ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES, AND ALL OTHER MINERALS WHETHER SIMILAR TO THOSE HEREINABOVE SPECIFIED OR NOT, DEPOSITED OR CONTAINED IN, OR THAT MAY BE PRODUCED FROM THOSE FORMATIONS, ZONES OR HORIZONS LYING BELOW FIVE HUNDRED (500') FEET FROM THE SURFACE OF THE ABOVE DESCRIBED REAL PROPERTY, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHTS AND PRIVILEGES TO INJECT INTO ANY FORMATION, ZONE OR HORIZON LYING BELOW FIVE HUNDRED FEET (500') FROM THE SURFACE OF SAID REAL
PROPERTY, EITHER WET OR DRY GAS, REGARDLESS OF WHERE THE SAME IS PRODUCED, TO STORE THE SAME THEREIN, AND TO REMOVE OR WITHDRAW THE SAME THEREFROM AT ANY TIME, OR FROM TIME TO TIME, PROVIDED THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE ANY RIGHT OF ENTRY, AND SHALL NOT ENTER OR UPON ANY PART OF THE SURFACE OF SAID REAL PROPERTY OR IN, UPON OR THROUGH ANY PORTION OF THE SUBSURFACE OF SAID REAL PROPERTY WHICH LIES WITHIN FIVE HUNDRED (500') FEET VERTICALLY FROM THE SURFACE OF SAID REAL PROPERTY; BUT SAID GRANTOR, ITS SUCCESSOR AND ASSIGNS SHALL HAVE THE RIGHT, IN CONNECTION WITH THE FOREGOING RESERVATION AND EXCEPTING, TO PRODUCE, EXTRACT AND REMOVE SUCH OIL, GAS, ASPHALTUM AND OTHER HYDROCARBON SUBSTANCES, AND OTHER MINERALS DEPOSITED OR CONTAINED IN OR THAT MAY BE PRODUCED FROM FORMATIONS, ZONES OR HORIZONS LYING BELOW FIVE HUNDRED (500') FEET FROM THE SURFACE OF SAID REAL PROPERTY, BY MEANS OF WHIP-STOCK, SLANT OR DIRECTIONAL DRILLING OR ANY OTHER METHOD OF PRODUCTION OR EXTRACTION CONDUCTED FROM, ON OR UPON ANY OTHER REAL PROPERTY THAN THAT HEREBINABOVE DESCRIBED, AS RESERVED IN DEED RECORDED DECEMBER 1, 1947 AS INSTRUMENT NO. 534, OF OFFICIAL RECORDS.

ALSO EXCEPT ALL OIL, GAS AND OTHER HYDROCARBONS, NON-HYDROCARBON GASSES OR GASEOUS SUBSTANCES, ALL OTHER MINERALS OR WHATSOEVER NATURE, WITHOUT REGARD TO SIMILARITY TO THE ABOVE MENTIONED SUBSTANCES, AND ALL SUBSTANCES THAT MAY BE PRODUCED THEREWITH FROM THE PROPERTY, AS RESERVED IN DEED RECORDED MAY 24, 1988 AS INSTRUMENT NO. 88-825876, OF OFFICIAL RECORDS.

ALSO EXCEPT ALL GEOTHERMAL RESOURCES, EMBRACING INDIGENOUS STEAM, HOT WATER AND HOT SPRINGS, STEAM AND OTHER GASSES, HOT WATER AND HOT BRINES RESULTING FROM WATER, GAS OR OTHER FLUIDS ARTIFICIALLY INTRODUCED INTO SUBSTANCES FORMATIONS HEAT OR OTHER ASSOCIATED ENERGY FOUND BENEATH THE SURFACE OF THE EARTH, AND BYPRODUCTS OF ANY OF THE FOREGOING SUCH AS MINERALS (EXCLUSIVE OF OIL OR HYDROCARBON GAS THAT CAN BE SEPARATELY PRODUCED) WHICH ARE FOUND IN SOLUTION OR ASSOCIATION WITH OR DERIVED FROM ANY OF THE FOREGOING, AS RESERVED IN DEED RECORDED MAY 24, 1988 AS INSTRUMENT NO. 88-825876, OF OFFICIAL RECORDS.

ALSO EXCEPT THE SOLE AND EXCLUSIVE RIGHT FROM TIME TO TIME TO BORE, DRILL AND MAINTAIN WELLS AND OTHER WORKS INTO OR THROUGH SAID PROPERTY AND THE ADJOINING STREETS, ROADS AND HIGHWAYS BELOW A DEPTH OF 500 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR AND PRODUCING ENERGY RESOURCES, TO PRODUCE, INJECT, STORE AND REMOVE FROM AND THROUGH SUCH WELLS OR WORKS, OIL, GAS, WATER AND OTHER SUBSTANCES OF WHATSOEVER NATURE, INCLUDING THE RIGHT TO PERFORM BELOW SAID DEPTH ANY AND ALL OPERATIONS DEEMED NECESSARY OR CONVENIENT FOR THE EXERCISE OF SUCH RIGHTS.

THE RIGHTS HEREBINABOVE EXCEPTED AND RESERVED TO GRANTOR DO NOT INCLUDE AND DO NOT EXCEPT OR RESERVE ANY RIGHT TO USE THE SURFACE OF THE PROPERTY OF THE FIRST 500 FEET BELOW THE SURFACE OF THE PROPERTY OR TO CONDUCT ANY OPERATIONS THEREON OR THEREIN UNLESS HEREAFTER SPECIFICALLY EXCEPTED AND RESERVED, ALL RIGHTS AND INTERESTS IN THE SURFACE OF THE PROPERTY ARE
HEREBY CONVEYED TO GRANTEE AS PROVIDED IN DEED RECORDED MAY 24, 1988 AS INSTRUMENT NO. 88-825876, OF OFFICIAL RECORDS.

PARCEL 2: (4138-014-910)

BEING A PORTION OF PARCEL NO. 6 OF PARCEL MAP NO. 17750, IN THE CITY OF EL SEGUNDO, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 207, PAGES 64 THRU 66, INCLUSIVE, OF PARCEL MAPS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL NO. 6; THENCE NORTH 89° 56’ 00” EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL NO. 6, A DISTANCE OF 45.20 FEET; THENCE SOUTH 00° 04’ 00” EAST, ALONG A LINE THAT IS 45.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, AND PARALLEL WITH, THE TANGENT PORTION OF THE WESTERLY LINE OF SAID PARCEL NO. 6, A DISTANCE OF 530.00 FEET; THENCE NORTH 89° 56’ 33” EAST A DISTANCE OF 135.00 FEET; THENCE SOUTH 00° 03’ 27” EAST A DISTANCE OF 60.00 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL NO. 6; THENCE SOUTH 89° 56’ 33” WEST, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 140.00 FEET TO THE BEGINNING OF A 40.00 FOOT TANGENT CURVE, CONCAVE TO THE NORTHEAST; THENCE NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89° 59’ 27” AN ARC DISTANCE OF 62.83 FEET; THENCE NORTH 00° 04’ 00” WEST, ALONG THE WESTERLY LINE OF SAID PARCEL NO. 6, A DISTANCE OF 531.36 FEET, TO THE BEGINNING OF A 860.00 FOOT TANGENT CURVE, CONCAVE TO THE WEST; THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01° 14’ 31” AN ARC DISTANCE OF 18.64 FEET TO THE POINT OF BEGINNING.

END OF LEGAL DESCRIPTION
EL SEGUNDO GOLF COURSE
EL SEGUNDO, CALIFORNIA

THIS EXHIBIT TO BE FINALIZED PRIOR TO EXECUTION OR CONDITION PRECEDENT TO BE ADDED REQUIRING THAT IT BE PREPARED WITH NINETY DAYS AND ATTACHED HERETO
THIS AGREEMENT, made as of this 24th day of JUNE, 1991, between SOUTHERN CALIFORNIA EDISON COMPANY, a corporation organized under the laws of the State of California, hereinafter called "Licensor", and the CITY OF EL SEGUNDO, a Municipal Corporation, hereinafter called "Licensee";

WITNESSETH: That Licensor, for and in consideration of the faithful performance by Licensee of the terms, covenants and agreements hereinafter set forth to be kept and performed by Licensee, does hereby give to Licensee a license to use that certain real property hereinafter described and referred to as "licensed property," solely for the purpose hereinafter specified, upon and subject to the terms, reservations, covenants and conditions hereinafter set forth.

The licensed property hereinabove referred to is located in the City of El Segundo, County of Los Angeles, State of California, and being the parcel delineated on the print attached hereto and made a part hereof, marked Exhibit "A".
This license shall be subject to those covenants, conditions, restrictions, reservations, exceptions, and rights and easements, all as set forth on Exhibit B, which is attached hereto and hereby made a part hereof and shall also be subject to, but not necessarily limited to, the following rights of way and easements which licensor hereby specifically reserves to itself:

Easements and rights of way to construct, operate, use, maintain, inspect, repair, renew, replace, reconstruct, enlarge, alter, add to, improve, relocate and remove, at any time and from time to time, electric lines, consisting of one or more lines of metal towers, poles and other structures, wires, cables, including ground wires and communication circuits, both overhead and underground, with necessary and convenient foundations, conduits, pullboxes, guy wires and anchors, insulators and crossarms placed on said structures, and other fixtures, appliances and appurtenances connected therewith, necessary or convenient for the construction, operation, regulation, control,
grounding and maintenance of electric lines and communication circuits, for the purpose of transmitting, distributing, regulating and controlling electric energy to be used for light, heat, power, communication, and other purposes, together with the easement and right of way for roads, ingress, egress and other convenient purposes needed or desired at any time and from time to time by Grantee, and the right to clear and to keep clear said easements and rights of way and the real property affected thereby, free from explosives, buildings, structures, equipment, combustible materials and any and all other obstructions of any kind, including, but not in any way in limitation of the generality of the foregoing, swimming pools, lighting standards, protective netting, and appurtenances, fences (other than farm, grazing or pasture fences), and the parking of automobiles, trucks or other mechanical equipment, for protection from fire and other hazards and from interference with ingress and egress and with the unobstructed use of said easements and rights of way and
every part thereof, and for any and all purposes herein mentioned.

The foregoing license is also made subject to the following terms and conditions, all of which Licensee hereby agrees to comply with and perform.

(1) **Use:** Licensee agrees to use the licensed property only for tees, greens fairways, and sandtraps for a Municipal Golf Course.

(2) **Term:** Unless otherwise terminated as provided herein, this license shall be for a term of Thirty (30) years commencing on the date T-Y Nursery vacates the license and allows Licensee to take possession, and ending thirty years from that date.

(3) **Consideration:** Licensee agrees to pay to Licensor the sum of One Thousand Five Hundred Dollars ($1,500) per acre upon the execution and delivery of this license, and thereafter the same amount on the anniversary date of its taking possession in each year for the first three years of this license.
(4) Escalation: In the fourth year of this license, licensee shall pay the sum of Three Thousand Dollars ($3,000) per acre (or a total annual payment of $10,800).

In the fifth year of this license and for four years thereafter licensee shall pay Six Thousand Dollars ($6,000) per acre per year (or a total annual payment of $21,600).

In the tenth year of this license and every five years thereafter the annual rent shall be subject to upward adjustment which reflects any cumulative percentage increase for the five years preceding the adjustment in the consumers price index for Los Angeles/Long Beach, all urban consumers, which is published in the monthly labor review of the U.S. Department of Labor Bureau of Labor Statistics. However, in no case shall the rent be reduced by said adjustment.

(5) Notices: All notices which are required to be given by either party hereto to the other, shall be deemed to have been duly given when made in writing and deposited in the United States mail, first class, postage prepaid, addressed as follows:
To Licensor:  Southern California Edison Company
Regional Manager
Land Services Division
Real Properties and Administrative Services
P. O. Box 410
Long Beach, California 90801

To Licensee:  City Manager
City of El Segundo
350 Main Street
El Segundo, CA 90245

Each Party hereto agrees to promptly notify the other of any address change.

(6) Liability Insurance: Licensee agrees to insure its liabilities and/or require its construction contractor or franchisee to insure such liabilities, which may arise from its activities hereunder, by the purchase of a liability insurance policy with a Combined Single Limit of not less than One Million Dollars ($1,000,000.00) and shall include Licensor as an additional insured. Licensee agrees to provide evidence of such insurance upon request.
(7) **Height Limitations:** Licensee agrees that at all times during the term of this license and equipment used by it or its agents, employees or contractors on and adjacent to the licensed property shall be used and operated so as to at all times maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors located on said licensed property.

Licensee also agrees that all trees or plants located on the licensed property shall be maintained by Licensee, and Licensee shall trim or, if requested by Licensor, shall remove any tree or other planting which exceeds fifteen (15) feet in height.

(8) **Maintenance By Licensor:** In addition to the rights of way and easements heretofore reserved, Licensor specifically reserves for itself, its successors and assigns, the right to periodically wash Licensor’s electrical insulators. Licensee shall notify Licensor of any special event it has planned which would be interfered with by such washing operations and Licensor shall use its best efforts to avoid interfering with such event.

(9) **Licensee’s Improvements:** Licensee must submit complete improvement plans for the licensed property, including grading plans, identifying all existing and
proposed improvements. Licensee shall obtain Licensor’s written approval of said plans, including any subsequent modification thereof, prior to making any use of the property. Said approval shall not be unreasonably withheld by Licensor. Licensor shall not be called upon or required, at any time, to make any improvements, alterations, changes or additions of any nature whatsoever to the licensed property. Licensee shall give Licensor 15 days notice of its intention to commence construction prior to entering upon the licensed property to commence construction.

(10) Access and Clearances: Licensee shall provide Licensor with adequate access to all of Licensor’s facilities and at no time is there to be any interference with the free movement of Licensor’s equipment and materials. Licensee shall construct and maintain an access road immediately parallel to the eastern boundary of the property which shall run the full length of the licensed property. Said road shall be fifteen (15) feet in width and provide access to adjacent property of Licensor at the southern and northern borders of the licensed property. Said road together with applicable driveway aprons and curb depressions shall be capable of supporting a gross load of forty (40) tons on a three-axle vehicle, and shall be maintained by Licensee, at Licensee’s expense, so as to be
passable at all times, and shall be kept clear of any planting or other obstructions at all times so as to provide ready access to Licensor's facilities. In connection with the use of said licensed property Licensee shall maintain the following clearances from the transmission line towers at all times;

a. A 25-foot-radius around all tower legs capable of supporting a gross load of forty (40) tons on a three axle vehicle.
b. A 10-foot-radius around all steel poles.
c. A 10-foot-radius around all wood poles.

(11) Dust Control: Licensee shall also provide adequate controls for dust, odors and noise and take appropriate steps necessary to prevent dust contamination of Licensor's facilities located on, near or adjacent to the licensed property. Licensee also agrees to take preventive action to eliminate such dust, odors, noise or any other nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances.

(12) Pesticides and Herbicides: Licensee agrees that any pesticide or herbicide applications on the licensed
property shall be made in accordance with all federal, state, county and local laws. Licensee further agrees to dispose of any pesticides, herbicides or any other toxic substances which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This will include, but not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

(13) Hazardous Waste: Licensee shall not engage in, or permit any other party to engage in, any activity on the premises that violates any federal, state county or local law, rules or regulations pertaining to hazardous, toxic or infectious materials and/or waste. Licensee shall indemnify and hold Licensor, its directors, harmless from any and all claims, loss, damage, actions, causes of action, expenses and/or liability arising from leaks of, spills of, and/or contamination by or from hazardous materials and/or wastes as defined by applicable laws or regulations, which are attributable solely to the actions of, or failure to act by, Licensee.

(14) Underground Facilities: Licensee shall construct no underground facilities other than irrigation and drainage pipelines and electrical and telephone lines.
All underground facilities installed on the right of way shall have a minimum cover of three feet and shall be capable of withstanding a gross land of 40 tons on a 3-axle vehicle.

(15) **Parkways and Landscaping:** Licensee agrees to keep parkway and sidewalk areas adjacent to said licensed property, if any, free of weeds and trash. Licensee further agrees to maintain said parkways and to provide landscaping in a manner that is compatible with the adjoining properties and in a manner satisfactory to Licensor.

(16) **Fencing:** Licensee may install fencing on said licensed property, provided Licensee obtains the prior written approval of Licensor therefor. In the event Licensee installs fencing, double drive gates sixteen (16) feet in width shall be provided at each end of the access road required in Section 10 herein and shall be designed to accommodate Licensor’s locks. Any metallic fencing shall be effectively grounded by Licensee. Licensee agrees to maintain said fencing at Licensee’s sole cost and expense. Notwithstanding the above, Licensee shall not install, operate or maintain or cause to permit to be installed, operated or maintained any electrically charged fence on the licensed property.

-11-
(17) Signs: Licensee agrees not to allow the construction or placement of any sign, signboard or other form of outdoor advertising on said licensed property without prior written approval of Licensor. In the event of a violation of this provision by Licensee or any one claiming under Licensee, Licensor shall have the right to enter upon said licensed property and to remove and dispose of any such sign, signboard or other outdoor advertising to charge the cost and expense of any such removal and disposal to Licensee who agrees to pay the same on demand.

(18) Authority: This license is given pursuant to the authority of and upon and subject to the conditions prescribed by General Order No. 69-C of the Public Utilities Commission of the State of California dated and effective July 10, 1985, which General Order No. 69-C, by this reference, is hereby incorporated herein and made a part hereof.

(19) Indemnification: Licensee hereby agrees to hold harmless and indemnify Licensor, its officers, agents and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of action, expense and/or liability arising from or growing out of loss
or damage to property, or injury to or death of persons, including employees of Licensor resulting in any manner whatsoever, directly or indirectly, by reason of this license or the use or occupancy of said licensed property by Licensee or any person claiming under Licensee.

(20) **Utilities:** Licensee agrees to pay all charges and assessments for or in connection with water, electric current or other utilities which may be furnished to or used upon said licensed property by Licensee during the continuance of this license. It is further agreed that in the event Licensee shall fail to pay the above-mentioned charges when due, Licensor shall have the right to pay the same and charge the amount thereof to Licensee, who agrees to pay the same on demand, together with interest at the maximum rate allowed by law, from the date of expenditure by Licensor.

(21) **Sub-License:** Licensor understands that it is Licensee's intent to franchise the operation of the municipal golf course for which the licensed property is to be used to an experienced golf course operator. Any such franchise shall be deemed to be a sub-license, subject to all the terms and conditions of this License, and Licensee shall make this License a part of any such franchise agreement. Licensor shall have the right to reasonably
object to said sub-licensing based upon evidence of the unreliability or fiscal incapacity of the proposed golf course operator but shall not otherwise have any right to object. It is specifically understood and agreed that in the event of such a sub-license, that the original Licensee, to wit the City of El Segundo, shall remain responsible for all of the terms and conditions of this license and that in event of a violation, breach or failure to perform, that Licensor may, at its option, enforce this License or otherwise pursue its legal remedies against either said original Licensee or sub-licensee.

(22) Taxes, Assessments and Liens: Licensee agrees to pay, when due, all taxes and assessments which may be levied upon any crops or personal property which Licensee caused to be grown, placed or maintained upon the said licensed property, and agrees to keep said licensed property free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use or occupancy of said licensed property by Licensee or any person claiming under Licensee. It is further agreed that in the event Licensee shall fail to pay the above-mentioned taxes, assessments, or liens when due, Licensor shall have the right to pay the same and charge the amount thereof to Licensee, who agrees to pay the same on demand, together
with interest at the maximum allowed by law, from the date of expenditure by Licensor.

(23) **Governing Law:** Licensee agrees that in the exercise of its rights under this license, Licensee shall comply with all applicable federal, state, county and local laws, and regulations in connection with its use of the licensed property.

The existence, validity, construction, operation and effect of this license and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

(24) **Holding Over:** It is further agreed that if Licensee shall retain possession of said licensed property beyond the term hereof, or any renewal or extension hereof, without the consent, express or implied, of Licensor, such holding over may be terminated by Licensor at any time by giving to Licensee thirty (30) days' prior notice in writing for that purpose, and shall be subject to all of the terms, covenants and conditions of this license, and Licensee shall pay for such license during any such holding over, at the last prevailing rate specified in paragraph 3, "Consideration" hereof.
(25) **Termination for Breach:** In the event Licensee breaches or otherwise fails to perform any of the terms hereof, this License shall be subject to termination at the option of Licensor by Licensor giving Licensee 60 days notice of its intention to terminate by reason of such breach or failure to perform. Should Licensee fail to cure such breach or perform within said 60 day period of time this License shall be deemed terminated.

In the event of such termination, or when this license expires by its express term, Licensee agrees, if so requested in writing by Licensor, to remove at that time all of its personal property from the licensed property and to restore the ground to as near its original condition and appearance as possible at its sole expense and risk. No such termination hereof shall release Licensee from any liability or obligation (whether of indemnity or otherwise), which may have attached or accrued previous to or which may be accruing at the time of, or by reason of such termination or expiration.

Upon the termination of this license, Licensee agrees to peaceably quit and surrender the licensed property to Licensor in good order and condition. Any and all
property of whatever kind or character remaining upon the licensed property upon the reversion of the Licensor's interest in the licensed property shall be and become the personal property of Licensor, unless otherwise agreed in writing by Licensor, but this shall not prevent Licensor from requiring Licensee to remove, at Licensee's expense and risk, any and all such property remaining upon the licensed property.

Notwithstanding the foregoing, should Licensee's activities on the licensed property interfere with or endanger Licensor's use of the licensed property or in any way create a nuisance or danger to the public or violate the terms of this license, then Licensor shall be entitled to terminate the license.

(26) Abandonment: In the event the use of said licensed property shall be abandoned by Licensee or said licensed property shall not be used by Licensee for a period of Ninety (90) days, then at the option of Licensor, the license hereby granted shall be deemed terminated without further notice. Upon such termination, Licensee agrees to comply with the conditions as specified in paragraph 26, "Termination' hereof.
(27) **Attorneys' Fees:** If any action, proceeding, arbitration or other dispute arising out of or relating to this license is commenced, the prevailing party shall be entitled to receive, in addition, to any other relief that may be granted, the reasonable attorney's fees, costs and expenses incurred by the prevailing party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate as of the day and year herein first above written.

SOUTHERN CALIFORNIA EDISON COMPANY

"Licensor" By

Real Properties & Administrative Services

CITY OF EL SEGUNDO

"Licensee" By

Mayor

ATTEST:

City Clerk
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE
PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES,
IN FAVOR OF: SHELL OIL COMPANY, INCORPORATED, A CORPORATION
(NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT)
FOR: PIPE LINES
RECORDED: AUGUST 6, 1941 IN BOOK 18534 PAGE 320, OFFICIAL RECORDS
AFFECTS: A STRIP OF LAND 10 FEET IN WIDTH, A CENTER LINE OF WHICH STRIP
IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS SOUTH 47 DEGREES 30 MINUTES 42 SECONDS EAST 30.00 FEET FROM MOST WESTERLY CORNER OF LOT 8 AS SHOWN ON MAPS OF PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD., FILED IN BOOK 3 PAGE 1 OF MAPS; THENCE NORTH 09 DEGREES 00 MINUTES 06 SECONDS WEST 33.77 FEET TO POINT IN NORTHERLY LINE OF LOT 8, WHICH BEARS NORTH 89 DEGREES 59 MINUTES 54 SECONDS EAST 36.87 FEET FROM MOST WESTERLY CORNER OF LOT 8.

ALSO BEGINNING AT POINT WHICH BEARS SOUTH 89 DEGREES 59 MINUTES 54 SECONDS WEST 97.12 FEET FROM MOST EASTERN CORNER OF LOT 9, AS SHOWN ON MAPS; THENCE NORTH 0 DEGREES 00 MINUTES 06 SECONDS WEST 82.18 FEET; THENCE NORTH 47 DEGREES 30 MINUTES 42 SECONDS WEST PARALLEL WITH AND 5.0 FEET AT RIGHT ANGLES FROM NORTHEASTERLY LINE OF LOTS 9 AND 10, 222.20 FEET TO POINT IN WESTERLY LINE OF LOT 10, WHICH LIES SOUTH 0 DEGREES 03 MINUTES 13 SECONDS WEST 6.77 FEET FROM MOST NORTHERLY CORNER OF LOT 10.

ALSO BEGINNING AT A POINT IN EASTERN LINE OF LOT 11 SHOWN ON MAP, WHICH LIES 5.0 FEET SOUTHWESTERLY FROM AND AT RIGHT ANGLES TO SOUTHEASTERLY PROLONGATION OF NORTHEASTERLY LINE OF LOT 11; THENCE NORTHEASTERLY PARALLEL WITH AND 5.0 FEET AT RIGHT ANGLES FROM VARIOUS COURSES COMPRISING NORTHEASTERLY BOUNDARY OF LOT 11 TO POINT IN WESTERLY LINE THEREOF, ALSO BEGINNING AT POINT IN SOUTHERLY LINE OF LOT 12, SHOWN ON MAPS, WHICH LIES 5.0 FEET SOUTHWESTERLY FROM AND AT RIGHT ANGLES TO SOUTHEASTERLY PROLONGATION OF MOST SOUTHERLY COURSE OF NORTHEASTERLY BOUNDARY OF LOT 12; THENCE NORTHEASTERLY DIRECTLY PARALLEL WITH AND 5.0 FEET AT RIGHT ANGLES FROM VARIOUS COURSES AND 5.0 FEET MEASURED RADIALY FROM VARIOUS CURVES COMPRISING NORTHEASTERLY BOUNDARY OF SAID LOT 12 TO POINT IN NORTHERLY LINE THEREOF.

ALSO BEGINNING AT POINT ON SOUTHERLY LINE OF LOT 13, SHOWN ON MAPS; WHICH LIES NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST 16.01 FEET FROM MOST EASTERLY CORNER OF LOT 13; THENCE NORTH 41 DEGREES 42 MINUTES 29 SECONDS WEST 36.39 FEET; THENCE NORTH 14 DEGREES 28 DEGREES 04 MINUTES WEST 86.44 FEET; THENCE NORTH 26 DEGREES 54 MINUTES 21 SECONDS WEST PARALLEL WITH AND 5.0 FEET AT RIGHT ANGLES FROM NORTHEASTERLY LINE OF LOT 13, 84.85 FEET TO POINT ON WESTERLY LINE OF LOT 13, WHICH BEARS SOUTH 0 DEGREES 02 MINUTES 49 SECONDS EAST 11.07 FEET FROM MOST NORTHERLY CORNER THEREOF.
7. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, IN FAVOR OF: CITY OF EL SEGUNDO, A MUNICIPAL CORPORATION (NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT) FOR: PUBLIC ROAD AND HIGHWAY PURPOSES
RECORDED: FEBRUARY 26, 1953 IN BOOK 41067 PAGE 370, OFFICIAL RECORDS AFFECTS: THAT PORTION OF LOT 12 AS PER MAP NO. 8 OF THE PROPERTY OF THE SOUTHERN CALIFORNIA EDISON COMPANY, LTD.; RECORDED IN BOOK 3 PAGE 5 OF MAPS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 12; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 12 TO THE EAST LINE OF SEPULEDVA BLVD., AS ESTABLISHED BY FINAL DEGREE OF CONDEMNATION ENTERED ON DECEMBER 4, 1934 IN CASE NO. 357580 SUPERIOR COURT, LOS ANGELES COUNTY, AS RECORDED IN BOOK 13174 PAGE 92, OFFICIAL RECORDS; THENCE SOUTHERLY ALONG SAID EAST LINE TO THE NORTHEASTERLY LINE OF THAT CERTAIN RIGHT OF WAY 80 FEET WIDE, DESCRIBED IN DEED TO THE PACIFIC RAILWAY ELECTRIC RAILWAY COMPANY, RECORDED MAY 27, 1919 IN BOOK 5750 PAGE 43 OF DEEDS; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO A POINT WHICH IS 10.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM SAID EAST LINE OF SEPULEDVA BLVD.; THENCE NORTHEASTERLY IN A DIRECT LINE TO A POINT WHICH IS LOCATED 30.0 FEET SOUTHERLY; MEASURED AT RIGHT ANGLES, FROM SAID NORTH LINE OF LOT 12 AND 30.0 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM SAID EAST LINE OF SEPULEDVA BLVD., THENCE EASTERY PARALLEL WITH SAID NORTH LINE, TO THE NORTHEASTERLY LINE OF SAID LOT 12; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED NORTHEASTERLY LINE TO THE POINT OF BEGINNING.

THAT PORTION OF LOT 13, COUNTY OF LOS ANGELES, AS PER MAP RECORDED 8, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 13 TO THE EAST LINE OF SEPULEDVA BLVD., AS ESTABLISHED BY SAID DEGREE OF CONDEMNATION; THENCE NORTHERLY ALONG SAID EAST LINE TO ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF SAID LOT 13; THENCE SOUTHEASTERLY TO A POINT WHICH IS LOCATED 131.0 FEET NORTHERLY MEASURED AT RIGHT ANGLES, FROM SAID SOUTH LINE OF LOT 13 AND 10.0 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM SAID EAST LINE OF SEPULEDVA BLVD., THENCE SOUTHERLY PARALLEL WITH SAID EAST LINE, 81.0 FEET TO A POINT; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT WHICH IS LOCATED 30.0 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM SAID EAST LINE AND 30.0 FEET NORTHERLY, MEASURED AT RIGHT ANGLES, FROM SAID SOUTH LINE; THENCE EASTERY, PARALLEL WITH SAID SOUTH LINE, TO SAID NORTHEASTERLY LINE OF LOT 13; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE TO THE POINT OF BEGINNING.

8. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, IN FAVOR OF: STATE OF CALIFORNIA (NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT) FOR: PUBLIC HIGHWAY
RECORDED: OCTOBER 7, 1971 AS INSTRUMENT NO. 317
AFFECTS: DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF SEPULVEDA BOULEVARD, AS ESTABLISHED BY FINAL DEGREE OF CONDEMNATION ENTERED ON DECEMBER 4, 1934 IN CASE NO. 357580, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR SAID COUNTY, AS RECORDED IN BOOK 13174, PAGE 92 OF OFFICIAL RECORDS, IN SAID OFFICE, WITH THE SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO JOHN RAMANO AND ANTHONY BRENT, RECORDED IN BOOK D-4017, PAGE 234 OF OFFICIAL RECORDS, IN SAID OFFICE; THENCE NORTH 4 DEGREES 13 MINUTES 15 SECONDS WEST, 225.58 FEET TO THE SOUTHEASTERLY LINE OF PARCEL "B" DESCRIBED IN DEED TO THE CITY OF EL SEGUNDO, RECORDED IN BOOK 56432, PAGES 339 THROUGH 348, INCLUSIVE, OF OFFICIAL RECORDS IN SAID OFFICE, AND THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHEASTERLY LINE, SOUTH 68 DEGREES 24 MINUTES 34 SECONDS WEST, 1.87 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 12; THENCE ALONG SAID SOUTHWESTERLY LINE, SOUTH 23 DEGREES 53 MINUTES 13 SECONDS EAST, 4.32 FEET TO THE INTERSECTION OF SAID SOUTHWESTERLY LINE WITH THAT CERTAIN COURSE HEREBEFONE DESCRIBED AS NORTH 0 DEGREES 04 MINUTES 00 SECONDS WEST, 225.58 FEET", SAID POINT BEING SOUTH 0 DEGREES 04 MINUTES 00 SECONDS EAST, 4.64 FEET, MEASURED ALONG SAID COURSE, FROM THE NORTHERLY TERMINUS OF SAID COURSE; THENCE ALONG SAID COURSE, NORTH 0 DEGREES 04 MINUTES 00 SECONDS WEST, 4.64 FEET TO THE POINT OF BEGINNING.

9. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, IN FAVOR OF: CITY OF EL SEGUNDO (NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT) FOR: SLOPE
RECORDED: OCTOBER 10, 1972 AS INSTRUMENT NO. 4419
AFFECTS: THAT PORTION OF LOT 12, AS SHOWN ON MAP NO. 8 OF PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD, RECORDED IN BOOK 3, PAGE 5 OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE LAND DESCRIBED AND DESIGNATED AS PARCEL "B" IN THE ROAD EASEMENT FROM SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, TO THE CITY OF EL SEGUNDO, DATED JANUARY 29, 1957 AND RECORDED JANUARY 27, 1958 IN BOOK 56432, PAGE 339 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID RECORDER; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B, SOUTH 68 DEGREES 24 MINUTES 34 SECONDS WEST 62 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 57 SECONDS EAST, 67.74 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT 12, SAID POINT BEING SOUTH 23 DEGREES 47 MINUTES 54 SECONDS EAST 25.00 FEET, MEASURED ALONG SAID EASTERLY LINE, FROM THE POINT OF BEGINNING; THENCE NORTH 23 DEGREES 47 MINUTES 54 SECONDS WEST, 25.00 FEET TO THE POINT OF BEGINNING.
10. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE
PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES,
IN FAVOR OF : CITY OF EL SEGUNDO, A MUNICIPAL CORPORATION
(NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT)
FOR : SEWER AND STORM DRAIN
RECORDED : NOVEMBER 25, 1980 AS INSTRUMENT NO. 80-1192121
AFFECTS : DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 12 AS SHOWN ON A MAP ENTITLED "PROPERTY OF SOUTHERN
CALIFORNIA EDISON COMPANY, LTD. MAP NO. 8" RECORDED IN BOOK 3, PAGES 1 TO 7,
INCLUSIVE, OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 2 INCH IRON PIPE WITH BRASS CAP SET AT A POINT IN THE
NORTHEASTERLY BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE
SOUTHWESTERLY BOUNDARY OF THE 143.84 ACRE PARCEL OF LAND SHOWN ON A MAP FILED
IN BOOK 89, PAGES 25 AND 26 OF RECORDS OF SURVEYS IN THE OFFICE OF SAID COUNTY
RECORDER, SAID POINT BEING DISTANT NORTH 75 DEGREES 13 MINUTES 23 SECONDS
WEST, 33.31 FEET FROM THE SOUTHWESTERLY TERMINUS OF THAT PARTICULAR COURSE
SHOWN AS SOUTH 75 DEGREES 13 MINUTES 23 SECONDS EAST, 737.86 FEET" ON SAID
MAP; THENCE SOUTH 46 DEGREES 09 MINUTES 45 SECONDS WEST, 193.34 FEET TO THE
POINT OF INTERSECTION OF THE NORTHEASTERLY PROLATION OF THE NORTHWESTERLY
LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN A DEED TO PACIFIC ELECTRIC
LAND COMPANY, RECORDED JULY 7, 1914, IN BOOK 5839, PAGE 185 OF DEEDS, IN THE
OFFICE OF SAID COUNTY RECORDER, WITH THE NORTHEASTERLY BOUNDARY OF THAT
CERTAIN 80 FOOT WIDE STRIP OF LAND DESCRIBED IN A DEED TO PACIFIC ELECTRIC
RAILWAY COMPANY, RECORDED MAY 27, 1913, IN BOOK 5750, PAGE 43 OF DEEDS IN THE
OFFICE OF SAID COUNTY RECORDER, SAID POINT ALSO BEING IN THE SOUTHWESTERLY
BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE NORTHEASTERLY BOUNDARY
OF SAID LOT 12, SAID POINT ALSO BEING IN THE WESTERLY PROLATION OF A
NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 914.93 FEET, AS SHOWN
IN THE SOUTHERLY LINE OF SAID 143.84 ACRE PARCEL OF LAND, A RADIAL OF SAID
CURVE FROM SAID POINT BEARS NORTH 1 DEGREES 00 MINUTES 23 SECONDS WEST; THENCE
WESTERLY 84.20 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 5 DEGREES 16
MINUTES 22 SECONDS; THENCE NORTH 46 DEGREES 09 MINUTES 45 SECONDS EAST, 215.77
FEET TO SAID NORTHEASTERLY LINE OF LOT 12; THENCE ALONG SAID NORTHEASTERLY
LINE, SOUTH 75 DEGREES 13 MINUTES 23 SECONDS EAST 70.28 FEET TO THE POINT OF
BEGINNING.

11. COVENANTS, CONDITIONS AND RESTRICTIONS IN THE ABOVE RECORDED
INSTRUMENT.

RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION OR NATIONAL ORIGIN
ARE DELETED.

12. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE
PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES,
IN FAVOR OF : SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION
(NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT)
FOR : GAS PIPE LINES
RECORDED: DECEMBER 17, 1980 AS INSTRUMENT NO. 80-126825
AFFECTS: DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 10 FEET WIDE, LYING WITHIN THAT PORTION OF LOT 12, AS SHOWN ON A MAP ENTITLED "PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD., MAP NO. 8", RECORDED IN BOOK 3, PAGES 1 TO 7, INCLUSIVE, OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE CENTERLINE OF SAID STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE SOUTHWESTERN BOUNDARY OF THE 143.84 ACRE PARCEL OF LAND SHOWN ON A MAP FILED IN BOOK 89, PAGES 25 AND 26 OF RECORD OF SURVEYS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID POINT BEING DISTANT NORTH 75 DEGREES 13 MINUTES 23 SECONDS WEST, 33.31 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT PARTICULAR COURSE SHOWN AS "SOUTH 75 DEGREES 13 MINUTES 23 SECONDS EAST, 737.68 FEET" AS SHOWN ON SAID RECORD OF SURVEY MAP; THENCE SOUTH 46 DEGREES 09 MINUTES 45 SECONDS WEST, 193.34 FEET TO THE POINT OF INTERSECTION OF THE NORTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO PACIFIC ELECTRIC LAND COMPANY, RECORDED JULY 7, 1914, IN BOOK 5839, PAGE 185 OF DEEDS, IN THE OFFICE OF SAID COUNTY RECORDER, WITH THE NORTHEASTERLY BOUNDARY OF THAT CERTAIN 80 FOOT WIDE STRIP OF LAND DESCRIBED IN A DEED TO PACIFIC ELECTRIC RAILWAY COMPANY, RECORDED MAY 27, 1913, IN BOOK 5750, PAGE 43 OF DEEDS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID POINT ALSO BEING IN THE SOUTHWESTERN BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE WESTERNLY PROLONGATION OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 914.93 FEET, AS SHOWN IN THE SOUTHERLY LINE OF SAID 143.84 ACRE PARCEL OF LAND, A RADIAL OF SAID CURVE FROM SAID POINT BEARS NORTH 1 DEGREES 00 MINUTES 23 SECONDS WEST; THENCE WESTERLY 77.46 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 4 DEGREES 51 MINUTES 03 SECONDS TO A POINT ON A LINE PARALLEL WITH AND 55.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE COURSE HEREBEFORE DESCRIBED AS "SOUTH 46 DEGREES 09 MINUTES 45 SECONDS WEST, 193.34 FEET" AND ITS SOUTHWESTERLY PROLONGATION, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG SAID PARALLEL LINE, NORTH 46 DEGREES 09 MINUTES 45 SECONDS EAST, 214.30 FEET TO A POINT IN THE NORTHEASTERLY BOUNDARY OF SAID LOT 12.

THE SIDELINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE IN THE NORTHEASTERLY AND SOUTHWESTERLY BOUNDARIES OF SAID LOT 12.

13. COVENANTS, CONDITIONS AND RESTRICTIONS IN THE ABOVE RECORDED INSTRUMENT.

RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION OR NATIONAL ORIGIN ARE DELETED.

14. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREBEFORE, AND INCIDENTAL PURPOSES,
IN FAVOR OF: CITY OF EL SEGUNDO, A MUNICIPAL CORPORATION
(NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT)
FOR: ROAD PURPOSE
RECORDED: MAY 4, 1981 AS INSTRUMENT NO. 81-445502
AFFECTS: DESCRIBED AS FOLLOWS:

8514095 PAGE 09
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

THAT PORTION OF LOT 12 AS SHOWN ON A MAP ENTITLED "PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD., MAP NO. 8" RECORDED IN BOOK 3, PAGES 1 TO 7, INCLUSIVE, OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

PARCEL 1:

A STRIP OF LAND 115.00 FEET WIDE LYING 60.00 FEET NORTHWESTERLY AND 55.00 FEET SOUTHEASTERLY MEASURED AT RIGHT ANGLES, RESPECTIVELY, FROM THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHEASTERLY TERMINUS OF THAT PARTICULAR COURSE SHOWN AS "SOUTH 44 DEGREES 21 MINUTES 07 SECONDS EAST, 1393.78 FEET" ALONG THE NORTHEASTERLY LINE OF SAID LOT 12, SAID COURSE ALSO SHOWN ON A MAP FILED IN BOOK 89, PAGES 25 AND 26 OF RECORDS OF SURVEY IN THE OFFICE OF SAID COUNTY RECORDER; THENCE NORTH 44 DEGREES 21 MINUTES 07 SECONDS WEST, 125.00 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 45 DEGREES 38 MINUTES 53 SECONDS WEST, 119.55 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 12.

THE SIDELINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE IN SAID SOUTHWESTERLY LINE.

PARCEL 2:

THAT PORTION OF LOT 12 AS SHOWN ON A MAP ENTITLED "PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD., MAP NO. 8" RECORDED IN BOOK 3, PAGES 1 TO 7, INCLUSIVE, OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF THE ABOVE DESCRIBED PARCEL 1; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 45 DEGREES 38 MINUTES 53 SECONDS WEST, 58.00 FEET TO A POINT OF CUSP WITH A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 75.00 FEET AND FROM WHICH POINT A RADIAL BEARS NORTH 44 DEGREES 21 MINUTES 07 SECONDS WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 50 DEGREES 38 MINUTES 56 SECONDS A DISTANCE OF 66.30 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 12; THENCE SOUTH 44 DEGREES 21 MINUTES 07 SECONDS EAST, 27.44 FEET, MORE OR LESS, ALONG SAID NORTHEASTERLY LINE TO THE POINT OF BEGINNING.

PARCEL 3:

THAT PORTION OF LOT 12 AS SHOWN ON A MAP ENTITLED "PROPERTY OF SOUTHERN CALIFORNIA EDISON COMPANY, LTD. MAP NO. 8" RECORDED IN BOOK 3, PAGES 1 TO 7, INCLUSIVE, OF OFFICIAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY CORNER OF THE ABOVE DESCRIBED PARCEL 1; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, SOUTH 45 DEGREES 36 MINUTES 53 SECONDS WEST, 51.01 FEET TO A POINT OF CUSP WITH A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 100.00 FEET AND FROM WHICH POINT A RADIAL BEARS SOUTH 44 DEGREES 21 MINUTES 07 SECONDS EAST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30 8DGS 40 MINUTES 20 SECONDS A DISTANCE OF 53.53 FEET, TO THE NORTHEASTERLY LINE OF SAID LOT 12; THENCE NORTH 44 DEGREES 21 MINUTES 07 SECONDS WEST, 13.99 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.
15. COVENANTS, CONDITIONS AND RESTRICTIONS IN THE ABOVE RECORDED INSTRUMENT.

RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION OR NATIONAL ORIGIN ARE DELETED.
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

GUARANTEE NO. : 8514095
TITLE OFFICER : A. WILLIAMS
FEE : $400.00
REFERENCE : CITY OF EL SEGUNDO GOLF COURSE
EFFECTIVE DATE: JULY 28, 1988

ASSURED :

BURK, WILLIAM & SORENSEN

LIABILITY: $25,000.00

NATURE OF ACTION: TO CONDEMN

THE NECESSARY PARTIES DEFENDANT IN AN ACTION TO
CONDEMN
ARE AS HEREFIN STATED.

TITLE TO THE ESTATE OR INTEREST REFERRED TO HEREFIN, AT THE DATE
HEREOF, IS VESTED IN:

SOUTHERN CALIFORNIA EDISON COMPANY, LTD.

THE ESTATE OR INTEREST IN THE LAND HEREAFTER DESCRIBED OR
REFERRED TO COVERED BY THIS GUARANTEE IS A FEE.

EXCEPTIONS:

1. ANY TAXES, BONDS OR ASSESSMENTS WILL BE REPORTED LATER.

2. THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE
PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE
AND TAXATION CODE OF THE STATE OF CALIFORNIA.

3. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE
PURPOSES STATED HEREFIN, AND INCIDENTAL PURPOSES,
IN FAVOR OF: COUNTY OF LOS ANGELES
(NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT)
FOR: PUBLIC ROAD AND HIGHWAY
RECORDED: DECEMBER 9, 1913 IN BOOK 5670, PAGE 48 OF DEEDS
AFFECTS: THE NORTHERLY 20 FEET

EXHIBIT "B"
4. AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, IN FAVOR OF: STATE OF CALIFORNIA (NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT) FOR: PIPE LINES, PUBLIC UTILITIES, SPUR TRACKS AND GAS PIPES, RECORDED: IN BOOK 9840 PAGE 33, OFFICIAL RECORDS AFFECTS: STREETS, ROADS AND ALLEYS

5. THE INTEREST OF SOUTHERN CALIFORNIA EDISON COMPANY IS SUBJECT TO:

A MORTGAGE OR DEED OF TRUST DATED AS OF OCTOBER 1, 1923, EXECUTED BY SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION TO HARRIS TRUST AND SAVINGS BANK, AN ILLINOIS CORPORATION, AND PACIFIC-SOUTHWEST TRUST AND SAVINGS BANK, WHICH HAS BEEN SUCCEEDED BY SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, A CORPORATION, TRUSTEE, TO SECURE AN INDEBTEDNESS EVIDENCED BY BONDS, AND ANY OTHER AMOUNTS, PAYABLE UNDER THE TERMS THEREOF, RECORDED NOVEMBER 15, 1923, IN BOOK 2963 PAGE 1 OF OFFICIAL RECORDS AND RE-RECORDED SEPTEMBER 16, 1935, IN BOOK 13715 PAGE 1 OF OFFICIAL RECORDS.

A CERTIFICATE OF RE-RECORDATION OF SAID MORTGAGE OR DEED OF TRUST AND OF SUPPLEMENTAL INDENTURES, A., B., C., AND D., HEREAFTER SHOWN WAS RECORDED SEPTEMBER 13, 1939, IN BOOK 16891 PAGE 150 OF OFFICIAL RECORDS.

THE FOLLOWING INDENTURES SUPPLEMENTAL THERETO ARE FOUND OF RECORD:

A. DATED MARCH 1, 1927, RECORDED APRIL 25, 1927, IN BOOK 6634 PAGE 235 OF OFFICIAL RECORDS, AND RE-RECORDED SEPTEMBER 16, 1935 IN BOOK 13681 PAGE 78 OF OFFICIAL RECORDS.

B. DATED APRIL 25, 1935, RECORDED APRIL 29, 1935, IN BOOK 13333 PAGE 352 OF OFFICIAL RECORDS.

C. DATED JUNE 24, 1935, RECORDED JULY 1, 1935, IN BOOK 13416 PAGE 386 OF OFFICIAL RECORDS.

D. DATED SEPTEMBER 1, 1935, RECORDED SEPTEMBER 27, 1935, IN BOOK 13730 PAGE 15 OF OFFICIAL RECORDS.

E. DATED AUGUST 15, 1939, RECORDED AUGUST 18, 1939, 8B 16833 PAGE 164 OF OFFICIAL RECORDS.

F. DATED AUGUST 21, 1939, RECORDED AUGUST 24, 1939, IN BOOK 16889 PAGE 146 OF OFFICIAL RECORDS.

G. DATED SEPTEMBER 1, 1940, RECORDED OCTOBER 15, 1940, IN BOOK 17933 PAGE 1 OF OFFICIAL RECORDS.

CERTIFICATE OF RE-RECORDATION OF SAID MORTGAGE OR DEED OF TRUST AND OF THE SUPPLEMENTAL INDENTURES ABOVE ENUMERATED WERE RECORDED AUGUST 16, 1943, IN BOOK 20215 PAGE 143 OF OFFICIAL RECORDS, AND MAY 12, 1947, IN BOOK 24610 PAGE 1 OF OFFICIAL RECORDS.

H. DATED JANUARY 15, 1948, RECORDED JANUARY 21, 1948, IN BOOK 25876 PAGE 356, OFFICIAL RECORDS.
I. DATED AUGUST 15, 1948, RECORDED AUGUST 18, 1948 IN BOOK 26958 PAGE 1 OF OFFICIAL RECORDS.

J. DATED FEBRUARY 15, 1951, RECORDED FEBRUARY 21, 1951, IN BOOK 35626 PAGE 2 OF OFFICIAL RECORDS.

K. DATED AUGUST 15, 1951, RECORDED AUGUST 29, 1951, IN BOOK 37100 PAGE 327 OF OFFICIAL RECORDS.

L. DATED AUGUST 15, 1953, RECORDED AUGUST 26, 1953, IN BOOK 42557 PAGE 1 OF OFFICIAL RECORDS.

M. DATED AUGUST 15, 1954, RECORDED AUGUST 18, 1954, IN BOOK 45342 PAGE 1 OF OFFICIAL RECORDS.

N. DATED AUGUST 15, 1956, RECORDED APRIL 17, 1956 IN BOOK 50909 PAGE 68 OF OFFICIAL RECORDS.

O. DATED FEBRUARY 15, 1957, RECORDED FEBRUARY 19, 1957, IN BOOK 53689 PAGE 8 OF OFFICIAL RECORDS.

P. DATED JULY 1, 1957, RECORDED JULY 1, 1957, IN BOOK 54935 PAGE 94 OF OFFICIAL RECORDS.

Q. DATED AUGUST 15, 1957, RECORDED AUGUST 27, 1957, 8555451 PAGE 116 OF OFFICIAL RECORDS.

R. DATED AUGUST 15, 1958, RECORDED AUGUST 25, 1958, IN BOOK D-196 PAGE 105 OF OFFICIAL RECORDS.

S. DATED JANUARY 15, 1960, RECORDED JANUARY 26, 1960, IN BOOK T-1117 PAGE 165 OF OFFICIAL RECORDS.

T. DATED AUGUST 15, 1960, RECORDED AUGUST 23, 1960, IN BOOK D-953 PAGE 252 OF OFFICIAL RECORDS.

U. DATED APRIL 1, 1961, RECORDED APRIL 4, 1961, IN BOOK 5-1741 PAGE 231 OF OFFICIAL RECORDS.

V. DATED MAY 1, 1962, RECORDED MAY 1, 1962, IN BOOK S-1126 PAGE 237 OF OFFICIAL RECORDS.

W. DATED OCTOBER 15, 1962, RECORDED OCTOBER 30, 1962, IN BOOK T-2673 PAGE 873, OFFICIAL RECORDS.

X. DATED MAY 15, 1963, RECORDED MAY 22, 1963, IN BOOK T-3030 PAGE 470 OF OFFICIAL RECORDS.


BB. DATED FEBRUARY 1, 1965, RECORDED FEBRUARY 9, 1965, IN BOOK D-2793 PAGE 418 OF OFFICIAL RECORDS, INSTRUMENT NO. 3447.

CC. DATED FEBRUARY 1, 1965, RECORDED FEBRUARY 9, 1965, IN BOOK D-2793 PAGE
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

445 OF OFFICIAL RECORDS, INSTRUMENT NO. 3448.

DD. DATED MAY 1, 1966, RECORDED MAY 11, 1966, IN BOOK D-3301 PAGE 219 OF OFFICIAL RECORDS, INSTRUMENT NO. 2669.


GG. DATED MAY 1, 1967, RECORDED MAY 10, 1967, IN BOOK D-5340 PAGE 706 OF OFFICIAL RECORDS, INSTRUMENT NO. 2267.


JJ. DATED AUGUST 1, 1968, RECORDED AUGUST 21, 1968, IN BOOK R-3047 PAGE 651 OF OFFICIAL RECORDS, INSTRUMENT NO. 2161.


MM. DATED OCTOBER 1, 1969, RECORDED OCTOBER 21, 1969 IN BOOK D-4532 PAGE 5 OF OFFICIAL RECORDS, INSTRUMENT NO. 1826.

NN. DATED OCTOBER 1, 1969, RECORDED OCTOBER 21, 1969 IN BOOK D-4532 PAGE 19 OF OFFICIAL RECORDS, INSTRUMENT NO. 1827.


SS. DATED AUGUST 15, 1972, RECORDED AUGUST 16, 1972 IN BOOK D-5569 PAGE 726, OFFICIAL RECORDS INSTRUMENT NO. 2643.


UU. RECORDED FEBRUARY 1, 1974 IN BOOK D668 PAGE 403 OFFICIAL RECORDS.

VV. RECORDED JULY 1, 1974 RECORDED IN BOOK D6350 PAGE 122 OFFICIAL RECORDS.
Exhibit D
GOLF COURSE AND PREMISES IMPROVEMENTS

GOLF COURSE IMPROVEMENTS

Lessee and a Task Force appointed by the City Council shall work together and reasonably cooperate for purposes of preparing a preliminary and conceptual design of the following golf course and clubhouse improvements to be presented to the City Council for approval consistent with the Lease provisions. The final design shall be consistent with the conceptual design. During the course of design and ultimate construction, a “standard of quality” shall be maintained throughout the newly constructed facility as mutually agreed upon by both parties. The use of the word “Quality” in this agreement is intended to mean that the building, building materials and furnishings shall convey design interest and coordination, craftsmanship and use of durable and visually attractive finishes and materials. With respect to the design of the improvements to the course itself, “Quality” is intended to mean that, in consultation with an approved golf course architect, the safety rating of the facility shall be maintained or improved, that the level of difficulty in playing the course shall be maintained or improved. In both the case of the buildings and the course improvements, the City’s intent is that they shall be of the same, or better quality than what currently exist. This exhibit contains photos of the existing facility as examples of the current level of quality. The facility is intended to be in “turn-key” condition at the time of completion meaning that the Lessee shall provide a facility that is furnished and ready for operations.

- Construction of new pro shop at approximately 2,500 square feet interior usable/lease able area. Detailed below are some of the key building improvements anticipated:
  - Facility Generally – Facility shall include a security camera system that provides surveillance of the interior and exterior of the facility to the satisfaction of the ESPD.
  - Limited Golf Shop Area/ Starter Desk – The newly constructed structure shall contain a segregated area for a pro-shop and starter/check-in desk as one combined unit. Generally, this facility will be equipped with sufficient desk space to facilitate placement of a computer, phone and cash register with desk space providing glass surfaces such that display shelving is readily accessible by employees and for display of soft goods as a part of pro-shop operations. This facility will include internet and phone cabling along with standard electrical outlets installed as provided for in the latest version of the California Building and Electrical Code. Shelving will be installed along the walls of the facility in sufficient footage to provide for display of basic retail items consistent with a golf pro-shop. Behind the main desk area, a small room accessible by a standard door shall provide sufficient space for storage of basic retail goods.
  - Restrooms – separate male and female restrooms, fully ADA compliant to specifications that are current as of construction year. Restrooms shall
contain the amount of fixture units consistent with city code and capacity of the facility and be consistent with the existing clubhouse (including installation of soap dispensers, hand drying devices and trash enclosures). Restrooms shall be accessed solely from the interior of the newly constructed facility.

- **Management Office** – within the described (structure) a separate office for management operations shall be included. This office shall include a door and wall safe as required by current permitting policy.

- **Café/Bar with seating area** – The facility shall be sufficiently constructed to include wiring for sound and wi-fi capabilities. Additionally, televisions of sufficient size (55”) shall be included and mounted on the interior and potentially on the exterior patio areas. Exterior television equipment shall be constructed with exterior placement/waterproof integrity. Indoor snack bar portion of facility shall consist of sufficient square footage to maintain and operate a small commercial kitchen with equipment such as commercial grade reach-in freezer and cooling units, a three compartment sink, mop closet, griddle (with grill), microwave and fryer. New facility shall also contain sufficient space for and include an ice making machine and soft drink dispenser (typically vendor provided). All equipment shall be included and will be further outlined through the collaborative efforts with the Taskforce during the design process. A bar with sufficient beer taps and spacing for refrigeration of the same number of kegs (minimum 5). Dining area should be able to accommodate 20-30 guests and in accordance with established LA County Health Department guidelines.

- **To the extent practical, all equipment that is in good repair at the existing facility, not past its useful life shall be utilized and installed at the new facility.**

- **Outdoor patio space with seating area** – Outdoor space shall include hard floor surfaces (i.e. concrete or other approved material) and maintain position directly adjacent to the snack bar entry. Generally this will be at least 750 square feet with some or all the area covered. The Covered outdoor area shall be of sufficient size to accommodate adequate seating for 15-20. The balance of outdoor dining area (which may not be covered) shall accommodate seating for at least an additional 20-35 This area shall also be equipped with appropriate space heaters, lighting and outdoor furniture/seating.

➢ Construction of a practice putting green and practice chipping/bunker area with the one contiguous putting green surface area being no less than 4,500 square feet with the intent being that the area shall be the maximum allowable by the physical constraints of the site. Prior to construction, the existing putting green surface area shall be given sole and exclusive priority to the golf course putting
green. Any remainder putting green may be utilized as a putting green within the TopGolf site.

- Screening poles and safety netting will be installed to ensure the safety of golfers, the public, automobiles, and surrounding properties and rights of way per golf course architect recommendations

- Golf course modifications:
  - Upon completion of construction, the golf course with described improvements shall maintain or increase in degree of difficulty compared to its current condition. The approved Golf Course Architect shall provide an assessment of difficulty of the course before and after; Lessee will maintain and or improve the difficulty of the golf course.
  - The overall final design of the golf course after modifications shall maintain a safety rating consistent or safer than existing conditions. For the purposes of determining golf course safety, the Minimum Safety Envelope (MSE) shall be utilized as adopted by the United Stated Golf Association such that all factors applicable from the Dean vs. McStain (Colorado) case shall be applied in the calculations of structures and roadways to any physically altered portions of the course. In the event that during the design process, more stringent safety measures are implemented in California, the mutually agreed upon Golf Course Architect shall determine the best practice for this type of facility.

  - The course shall have a minimum of two Par 4 holes. While no specific definition has been established in yardage for distinguishing a range for a Par 4 hole, effective length as defined by the USGA in conjunction with consultation by a golf course architect shall prevail. In general, a Par 4 is considered to maintain yardage with a range of 230-270 yards. In developing yardage, the Lessee and City will maintain an objective approach while providing flexibility.
  - Construction of new hole 3 green and bunkers and tee box.
  - Reset both par 4 tee boxes to accommodate new modifications.
  - Where possible, the existing tee boxes shall be leveled and lengthened. Lessee shall make every effort (within the project scope and budget) in consultation with an approved golf course architect (approved mutually by the Lessee and City), to expand tee boxes. The intention of this effort is to increase yardage from tee boxes to holes to achieve the minimum USGA standard of 1,500 (or current minimum) yardage for a nine hole course to establish a Course Rating and Course Slope. In no instance shall the course modifications result in the total yardage of the course to be shortened or lessened from its current and existing state of play. The total current yardage of play for the existing nine-hole course is approximately 1,340 yards from the white tee line (Men's). The City will be responsible
for any costs, not including design or construction costs, for certifying the Course Rating and Slope per USGA guidelines.
  o Lessee to add bunkers and/or sand traps to the north side of hole number 8 with the intention of increasing speed of play. Placement, sizing and number of bunkers and/or sand traps will be based upon approved golf course architect recommendations.
  o When possible, Lessee shall utilize existing and available poles and netting not otherwise repurposed by TopGolf project.
  o Hole three will be redesigned in such a fashion to maintain a minimum Par 3 and play over the existing northern body of water feature.

PREMISES IMPROVEMENTS

• Prior to disposal of the existing Pro Shop and Restaurant roof surfaces, further direction shall be given to the disposal or repurposing of the copper roof. Direction may come from the assigned Taskforce or directly from the City Council in a timely manner.
• Construction of the Top Golf Driving Range and Facility approximately 40,000 SF of indoor area and 20,000 SF of outdoor hitting bays which shall be substantially similar to the Top Golf Prototype Facility defined in the Lease with regard to construction materials, quality, type and size and facilities. Attached are pictures of the Prototype Facility.
• Replacement/relocation of the existing net poles with the Top Golf required poles, which will adhere to all building and safety codes, SCE safety standards and other applicable safety standards. Any/all poles not specifically used in the construction of the TopGolf facility shall be repurposed, to the extent possible, for the golf course modifications.
• Expansion of the existing parking which shall extend over the area where hole number one is currently located on the golf course and provide adequate parking per city code. During the design process, the City shall determine the number and location of parking spaces that will be reserved (during the hours of operation of the Lakes) for patrons of the Lakes golf course, consistent with Section 5.4 of this Lease and subject to the terms and conditions of the approved Required Project Entitlements (as defined in the Lease). Should parking conflicts arise after the commencement of joint use of the parking facility, the City and the Lessee shall mutually cooperate and work together to implement parking control measures to further reserve parking spaces by use of patrons of the Lakes.
Photos of Existing Clubhouse at "The Lakes" Facility
To be Finalized in Accordance with Section 5.2 of the Lease
EXHIBIT "F"

FORM OF MEMORANDUM OF LEASE

THIS EXHIBIT TO BE PREPARED PRIOR TO EXECUTION OR CONDITION PRECEDENT TO BE ADDED REQUIRING THAT IT BE PREPARED WITH NINETY DAYS AND ATTACHED HERETO.
CONSTRUCTION GUARANTEE AGREEMENT

THIS CONSTRUCTION GUARANTEE AGREEMENT (this "Guaranty") is executed and delivered as of the ___________, 2013, by CenterCal, L.L.C, a Delaware limited liability company ("CenterCal" or "Guarantor"), whose address is 1600 East Franklin Street, El Segundo, CA 90245 for the benefit of the City of El Segundo (referred to herein as "City" or "Lessor").

A. Pursuant to that certain Due Diligence and Ground Lease Agreement entered into on or about ___________, 2013 (the "Contract") by and between ES Centercal, LLC, a Delaware limited liability company (referred to herein as the "Company" or "Lessee") and the City, and subject to the terms and conditions set forth in the Contract, as may be amended in writing from time to time, the Company has agreed (i) to complete, or cause to be completed, certain improvements to the Golf Course and the Premises as described in the Contract, or return the Premises to the same or better condition as it existed prior to the Commencement Date and to (ii) lease the Premises, subject to the Conditions Precedent set forth in the Contract, and operate a driving range and other facilities on the Premises and pay Rent to City as well as perform other obligations under the Contract.

B. As a condition precedent to the City's agreeing to enter in the Contract, CenterCal is required to deliver two fully and properly executed originals of this Guaranty to the City.

C. Capitalized Terms used herein and not otherwise defined shall have the respective meanings given such terms in the Contract.

NOW THEREFORE, in consideration of the Contract, and for other good and valuable considerations the receipt and sufficiency of which are hereby irrevocably acknowledged by the Guarantor, the Guarantor agrees as follows:

1. THE GUARANTY.

   (a) Upon satisfaction of all Conditions Precedent in the Contract and the occurrence of the Premises Turnover Date in the Contract, Guarantor hereby guarantees all of the obligations of the Company (or any assignee of Company) under the Contract with regard to (i) the completion of the Golf Course Improvements or the return of the Premises to the same or better condition as the Premises existed prior to the Commencement Date ("Golf Course Construction Obligations") and full payment of all costs and expenses of every kind whatsoever associated with such completion of the Golf Course Construction Obligations including all loss, cost, damage, liability, claim or expense the City may suffer by reason of mechanic's liens or similar claims or by reason of the Company's or Guarantor's failure to complete the Golf Course Construction Obligations ("Golf Course Project Costs"); (ii) all costs, expenses, damages, losses and other amount for which the City may become liable as a consequence of or in connection with the Company's or Guarantor's completion of or failure to complete the Golf Course Construction Obligations and/or, when so obligated, to cause the Premises to be are returned to the City to the same or better condition as the Premises existed as of the Premises Turnover Date pursuant to the terms and conditions of the Contract; and (iii) if
the City exercises its right under this Guaranty to take over construction of the Golf Course Improvements, to reimburse City for all costs and expenses incurred by City in taking over construction of the Golf Course Improvements and completing construction of the Golf Course Improvements.

(b) Notwithstanding any other provision in the Contract or this Guaranty, recognizing that the Company, 30 West Pershing, and CenterCal and Top Golf all have various contractual obligations that they have entered into by and between themselves to which the City is not a party and that the City has limited rights or no rights to enforce, in the event that (i) 30 West Pershing does enter into the Sublease, (ii) executes and delivers this Guaranty to the Lessor, and (iii) the Company delivers to the Lessor the Due Diligence Acceptance Notice as provided for in the Contract, then unless CenterCal within five (5) business days of issuance of the Notice of Acceptance provides written notice to the Lessor that it has withdrawn this Guaranty, Guarantor is deemed to have waived any rights it might have under the Contract or this Guaranty, or in law or equity, that the Guarantor's obligations under this Guaranty have in any way been altered or diminished. Receipt of the Due Diligence Acceptance Notice by Lessor shall be deemed notice to Lessor that 30 West Pershing and Company have entered into the Sublease.

(c) Guarantor covenants and agrees to cooperate with the Company and/or CenterCal Guarantor to coordinate construction scheduling, access and all other matters related to the performance by Guarantor of its Golf Course Construction Obligations and payment of the Golf Course Project Costs and performance of its other obligations under this Guaranty. Guarantor waives the right to claim any defense to performance of any of its obligations hereunder based on a claim that the Company has failed to perform under the Contract or any other agreement nor may Guarantor claim a failure to perform by the Company under the Contract or any other agreement as a defense to a default by Guarantor under this Guaranty. Guarantor waives the right to claim any defense to performance of any of its obligations under this Guaranty based on a claim that 30 West Pershing has failed to perform under that certain Construction and Operating Period Guarantee Agreement from 30 West Pershing for the benefit of the City or any other agreement nor may Guarantor claim a default by 30 West Pershing under its Construction and Operating Period Guarantee Agreement in favor of the City or any other agreement as a defense to a default by Guarantor under the Guaranty. Guarantor covenants and agrees that no assignment of the Company's interest as Lessee under the Contract or any other assignment or sublease permitted by the Contract shall release Guarantor from any of its obligations hereunder. Guarantor covenants and agrees that no assignment of its interest as sublessee under the Sublease shall release Guarantor from any of its obligations hereunder.

2. GOLF COURSE IMPROVEMENTS BY GUARANTOR AND THE CITY'S OPTION TO COMPLETE THE PROJECT.

At the City's election as to the timing of making a demand (following the expiration of any applicable notice and cure period), if the Golf Course Improvements have not been completed within ten (10) months of the Premises Turnover Date (subject to force majeure as defined in Section 30 of the Contract or delays caused by the City), or if there are material delays

{32215 / 66600; 497504.5}
with construction of the Golf Course Improvements such that the City has a good faith, reasonable belief that the Golf Course Improvements will not be completed within such period except for delays caused by force majeure as defined in Section 30 of the Contract or except for delays caused by the City, then the City shall make written demand on Guarantor to so complete the same and to honor all of the obligations set forth in Section 1 of this Guaranty. If the Guarantor, within ten (10) days of receiving the following written demand by City:

"THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 3 OF THE GUARANTY, AND IF GUARANTOR FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF GUARANTOR HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) DAY PERIOD AND IS DILIGENTLY PROSECUTING THE SAME TO COMPLETION, THEN CITY MAY EXERCISE SELF HELP RIGHTS UNDER SECTION 3 OF THIS GUARANTY."

fails diligently to commence and/or continue performance thereof to completion as required under the Contract, the City in its sole and absolute discretion, at any time thereafter, shall have the right to complete the Golf Course Improvements or return the Premises to the same or better condition as such existed prior to the Premises Turnover Date, either before, during or after the pursuing of any other remedy of the City against the Company and/or the Guarantor, and expend such sums as the City in its sole and absolute discretion deems proper in order to complete the Golf Course Improvements pursuant to the requirements of the Contract.

In such event, the Guarantor shall fully and promptly reimburse and repay the City for all costs and expenses incurred by the City and such shall not relieve Guarantor from performing any or all of its additional obligations set forth in Section 1 of this Guaranty. Any amounts payable by the Guarantor shall be payable on demand, with such amounts bearing interest from and after the date incurred by the City until paid as provided in Section 3 hereof.

3. INTEREST ON UNPERFORMED OBLIGATIONS.

The Guarantor agrees to pay to the City interest at the interest rate of 5% per annum on the amounts advanced by the City pursuant to Section 2. Such interest shall be payable for the period commencing with each such advance by the City.

4. REPRESENTATIONS AND WARRANTIES.

The Guarantor makes the following representations and warranties to the City to the best of Guarantor's knowledge and the Guarantor acknowledges that the City intends to enter into the Contract in reliance thereon:

(a) The Guarantor is not in default under any agreement to which it is a party, the effect of which will materially impair performance by the Guarantor of its obligations pursuant to and as contemplated by the terms of this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof (i) will violate any presently existing provision of law or any presently existing regulation, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality applicable to Guarantor; or (ii) will conflict or will be

{32215 / 66600; 497504.5}
inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under (with an effect that will materially impair performance by the Guarantor of its obligations pursuant to and as contemplated by the terms of this Guaranty) any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of the Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which the Guarantor is a party or by which any of the property of the Guarantor may be subject to, in the event of any such conflict, the required consent or waiver of the other party or parties thereto has been validly granted, is in full force and effect and is valid and sufficient therefor;

(b) There are no actions, suits or proceedings pending or threatened against the Guarantor before any court or any governmental, administrative, regulatory, adjudicatory or arbitral body or agency of any kind that will (if adversely determined) materially adversely affect performance by such Guarantor of its obligations pursuant to and as contemplated by the terms and provisions of this Guaranty;

(c) CenterCal is a duly organized, validly existing limited liability company under the laws of the State of Delaware and is in good standing in the State of California, and has requisite authority to execute, deliver and perform its obligations under this Guaranty pursuant to the terms and provisions of this Guaranty and has executed and delivered this Guaranty pursuant to proper authority duly granted;

(d) The Guarantor is deriving a material financial benefit from the entering into of the Contract by the Company, and the City has given sufficient consideration to the Guarantor by entering into the Contract; and

(e) Each obligation under this Guaranty is legal, valid, binding and enforceable against the Guarantor in accordance with its terms, subject at all times to matters of bankruptcy and insolvency and other laws affecting the enforcement of creditors' rights.

5. COVENANTS.

The Guarantor agrees and covenants that:

(a) No payment or performance by the Guarantor under any provision of this Guaranty shall entitle the Guarantor, by subrogation to the rights of the City or otherwise, to any payment from or rights in any applicable bonds, title insurance certifications, commitments or indemnities or other security held by or for the benefit of the City in connection with the Golf Course Improvements, until all of the Golf Course Construction Obligations have been discharged in full; provided nothing herein shall constitute a waiver of the right of subrogation of the Guarantor after discharge in full of such obligations;

(b) The liability of the Guarantor shall in no way be affected, diminished or released by any of the following: (i) any extension of time or forbearance that may be
granted by the City to the Company or to the Guarantor; (ii) any waiver by the City under the Contract; (iii) any change or modification in the Contract (subject to the provisions of (c) below); (iv) the acceptance by the City of additional security or any increase, substitution or changes therein; (v) the release by the City of any security or any withdrawal thereof or decrease therein; (vi) the failure or election by the City to pursue or not to pursue any remedies it may have against the Guarantor or against the Company or any of the general partners of the Company under the Contract; (vii) any failure by the Company to provide Guarantor or any other party written or other notice as may be required under the Contract; or (viii) the exercise of any extension of time or other option for performance or assignment of obligations specifically set forth in the Contract.

(c) The City may at any time enter into agreements with the Company, or its successor or assigns, to amend and modify the Contract, but such amendments or modifications shall not be binding on Guarantor without Guarantor's consent thereto if such materially affect to Guarantor's detriment its obligations or liabilities under this Guaranty;

(d) Nothing contained herein or otherwise shall prevent the City from pursuing concurrently or successively all rights and remedies available to the City pursuant to any document or agreement or in law or in equity and against any persons, firms or entities whatsoever (and particularly, but not by way of limitation, the City may exercise any other rights available to it under the Contract or any other agreement or security instrument), and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of the Guarantor’s obligations hereunder, it being the purpose and intent of the Guarantor that, subject to the terms and provisions of this Guaranty, its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances whatsoever;

(e) The liability of the Guarantor hereunder or any remedy for the enforcement thereof shall in no way be affected by (i) the release or discharge of the Company, or any general partner of the Company, in any creditors', receivership, bankruptcy or other proceedings, (ii) the impairment, limitation or modification of the liabilities of the Company or any general partner of the Company under the Contract or of any remedy for the enforcement thereof, or of the estate of the Company or any such general partner in bankruptcy, resulting from the operation of any present or future provision of the federal bankruptcy act or other statute or from the decision in any court, (iii) the rejection or disaffirmance of the Contract in any such proceedings, (iv) cessation from any cause whatsoever of the liability of the Company or any such general partner to the City, or (v) any defense, current or future, of the Guarantor to any action, suit or proceeding at law or otherwise, that may be instituted on this Guaranty other than one based upon nonfulfillment by the City of a material obligation to be performed by the City pursuant to this Guaranty or the Contract.

6. WAIVERS.

The Guarantor hereby expressly irrevocably waives:
(a) Notice of acceptance of this Guaranty by the City, and any and all notice and demands of every kind that may be required to be given by any statute, rule or law except any specifically required by this Guaranty or the Lessor under the Contract;

(b) Any defense arising by reason of any incapacity, lack of authority, death or disability of any other person or entity (except the City) or from the failure of the City to file or enforce a claim against any person or entity in any administrative, bankruptcy or other proceeding;

(c) Any obligation the City might otherwise have to disclose to the Guarantor any facts the City now or hereafter may know or have reasonably available to it regarding the Company or its financial condition, whether or not the City has a reasonable opportunity to communicate such facts or has reason to believe that any such facts are unknown to the Guarantor or materially increase the risk to the Guarantor beyond the risk the Guarantor intended to assume hereunder. Guarantor shall be fully responsible for keeping informed of the financial condition of the Company and of all other circumstances bearing upon the risks of nonpayment or nonperformance of the Company under the Contract;

(d) Any defense based on an election of remedies by the City, whether or not such election may affect in any way the recourse, subrogation or other rights of the Guarantor against the Company or any of its partners in connection with the Golf Course Construction Obligations;

(e) All diligence in collection or protection of or realization upon or enforcement of the Golf Course Construction Obligations, any other obligation hereunder, or any security for or guaranty of any of the foregoing, and any and all formalities that otherwise might be legally required to charge the Guarantor with liability; and

(f) Any lien, security interest or charge on the Golf Course Property, the equipment and personal property located thereon, all rights therein and thereto, the revenue and income to be realized therefrom, or on any proceeds or products of any thereof, which the Guarantor may have or obtain as a result of the City's enforcement of this Guaranty.

(g) With respect to those matters set forth in Sections 1(b) and (c), 5, 6, 7 and 9 of this Guaranty, Guarantor waives any and all laws or regulations (including without limitation California Civil Code Sections 2787 and 2855, and Code of Civil Procedure Sections 580a, 580b, 580d and/or 726, regardless of whether such are applicable or not to this Guaranty) that would (i) in any respect or manner diminish or eliminate the obligations of the Guarantor hereunder regardless of whether the terms of such laws or regulations have been specifically referenced herein or the substance of such laws or regulations have been set forth herein or addressed by this Guaranty; or (ii) provide some procedural defense to Guarantor with regard to any action or proceeding the City may institute to enforce its rights under this Guaranty.
7. **EFFECT OF THE CITY’S DELAY OR ACTION.**

No delay on the part of the City in the exercise of any right or remedy under this Guaranty or the Contract shall operate as a waiver thereof, and no single or partial exercise by the City of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action by the City permitted hereunder shall in any way affect or impair the rights of the City and the obligations of the Guarantor under this Guaranty, provided, however, that the Guarantor shall be entitled to enforce, and the City shall be bound by, the obligations of the City under the Contract so long as the Guarantor shall perform its obligations, or cause its obligations to be performed, hereunder.

8. **CONTINUING GUARANTY.**

This Guaranty shall in all respects be a continuing, absolute, irrevocable and unconditional guaranty, and shall remain in full force and effect and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantor, and shall inure to the benefit of the respective successors and assigns of the City. All references herein to the Company, its general partners or the Guarantor shall be deemed to include the respective successors and assigns of same, as the case may be. Any proposed assignment of the Guarantor’s obligations hereunder to a substitute guarantor shall be subject to the City’s approval which may be withheld in the City’s sole and absolute discretion.

9. **CERTAIN PERMITTED ACTIONS OF THE CITY.**

The City may from time to time, in its sole discretion and without notice to the Guarantor, take any of the following actions without in any way affecting the obligations of the Guarantor: (a) obtain the primary or secondary obligation of any additional obligor or obligors with respect to any of the Golf Course Construction Obligations; (b) enforce this Guaranty against the Guarantor, whether or not the City shall have (1) proceeded against the Company or any of the other guarantors or sureties or any other party primarily or secondarily obligated or (2) resorted to or exhausted any other remedy or any other security or collateral; and (c) enforce any other rights under the Contract.

10. **TIME OF ESSENCE.**

Time is of the essence of this Guaranty.

11. **NO MODIFICATION WITHOUT WRITING.**

This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing signed by the parties hereto. This Guaranty, and the Company’s obligations set for the in Contract represent the entire understanding between the City and the Guarantor and no other prior written or oral understanding shall be of any force or effect.

12. **NOTICES.**
All notices required or permitted pursuant to this Guaranty shall be in writing and shall be deemed given when (a) personally delivered to an officer or other authorized representative of the party to be notified or (b) after deposit in the United States mail as certified mail, postage prepaid, return receipt requested or (c) sent by reputable overnight courier and addressed as follows:

(or to such other address as a party may specify by notice given to the other party pursuant to this provision):

If to the Guarantor:

CenterCal, LLC,
1600 East Franklin Street
El Segundo, CA 90245
Attention.: Fred W. Bruning

ES CenterCal, LLC,
1600 East Franklin Street
El Segundo, CA 90245
Attention.: Jean Paul Wardy

Griffin Fletcher & Herndon, LLP
6857 Amber Lane
Carlsbad, CA 92009
Attention.: Edward Krasnove, Esq.

If to the City:

City of El Segundo
Attn: City Clerk
350 Main Street
City of El Segundo, CA 90245

Notwithstanding anything in this section to the contrary, any notice sent or mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to the Guaranty, shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or if such notice is rejected by such party.

13. GOVERNING LAW.

This Guaranty shall be construed in accordance with and governed by the laws of the State of California and any suit, action or other legal proceeding relating to this Guaranty may be brought only in the Los Angeles Superior Court. The Guarantor irrevocably consents to the service of process of the aforementioned court in any such action or proceeding by the mailing of
copies thereof by certified or registered mail, postage prepaid, return receipt requested to the Guarantor at its address set forth in SECTION 12 hereof, as such address may be changed from time to time in accordance with such SECTION 12. Nothing herein shall affect the right of the City to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Guarantor in any other jurisdiction in which the Guarantor may be subject to suit.

14. INDEPENDENT OBLIGATIONS.

The obligations of the Guarantor hereunder are independent of the obligations of the Company. In the event of any default hereunder, the City may institute a separate action against the Guarantor with or without joining or instituting a separate action against the Company.

15. CUMULATIVE.

All rights and remedies of the City and all obligations of the Guarantor under this Guaranty are cumulative. In addition, the City shall have all rights and remedies available to it at law or equity for the enforcement of this Guaranty. To the extent there are obligations that explicitly apply to Guarantor and are forth in the Contract that are not contained in this Guaranty, Guarantor covenants and agrees to honor such obligations as part of this Guaranty. To the extent there are inconsistencies between the Contract and this Guaranty, the provision that provides the greatest level of protection to the City shall govern.

16. SEVERABILITY.

Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

17. LEGAL TENDER OF UNITED STATES.

All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

18. NO MERGER OR ALTERATION

In the event the Guarantor acquire some real or personal property interest through the Contract or otherwise with regard to the Premises, such shall not alter or impair the City's rights or the Guarantor's obligations under this Guaranty.

IN WITNESS HEREOF, the Guarantor has duly executed this Guaranty as of date first written above.
CENTERCAL, LLC,
a Delaware limited liability company

By: CENTERCAL ASSOCIATES, LLC,
a Delaware limited liability company

By __________________________
Print Name __________________________
Print Title: Its Manager

City of El Segundo

______________________________
Bill Fisher, Mayor

Approved As to Form:

______________________________
Mark D. Hensley, City Attorney

Attest:

______________________________
Tracy Weaver, City Clerk
CONSTRUCTION AND OPERATING PERIOD GUARANTEE AGREEMENT

THIS CONSTRUCTION AND OPERATING PERIOD GUARANTEE AGREEMENT (this "Guaranty") is executed and delivered as of the ________________, 2013, by 30 West Pershing, LLC, a Missouri limited liability company ("30 West Pershing" or "Guarantor"), whose address is 909 Walnut, Suite 200, Kansas City, MO 64106 for the benefit of the City of El Segundo (referred to herein as "City" or "Lessor").

A. Pursuant to that certain Due Diligence and Ground Lease Agreement entered into on or about ________________, 2013 (the "Contract") by and between ES Centercal, LLC, a Delaware limited liability company (referred to herein as the "Company" or "Lessee") and the City, and subject to the terms and conditions set forth in the Contract, as may be amended in writing from time to time, the Company has agreed (i) to complete, or cause to be completed, certain improvements to the Golf Course and the Premises as described in the Contract, or return the Premises to the same or better condition as it existed prior to the Commencement Date and to (ii) lease the Premises, subject to the Conditions Precedent set forth in the Contract, and operate a driving range and other facilities on the Premises and pay Rent to City as well as perform other obligations under the Contract.

B. 30 West Pershing is contemplated as being a sublessee of the Company and it is one of the Conditions Precedent under the Contract that 30 West Pershing become the sublessee under a Ground Sublease with Company covering the Premises (the "Sublease").

C. As a condition precedent to the City’s agreeing to enter in the Contract, 30 West Pershing is required to deliver two fully and properly executed originals of this Guaranty to the City.

D. Capitalized Terms used herein and not otherwise defined shall have the respective meanings given such terms in the Contract.

NOW THEREFORE, in consideration of the Contract, and for other good and valuable considerations the receipt and sufficiency of which are hereby irrevocably acknowledged by the Guarantor, the Guarantor agrees as follows:

1. THE GUARANTY.

(a) Upon satisfaction of all Conditions Precedent in the Contract and the occurrence of the Premises Turnover Date in the Contract, Guarantor hereby guarantees all of the obligations of the Company (or any assignee of Company) under the Contract with regard to (i) the completion of the Premises Improvements or the return of the Premises to the same or better condition as the Premises existed prior to the Commencement Date ("Premises Construction Obligations") and full payment of all costs and expenses of every kind whatsoever associated with such completion of the Premises Construction Obligations including all loss, cost, damage, liability, claim or expense the City may suffer by reason of mechanic’s liens or similar claims or by reason of the Company’s or Guarantor’s failure to complete the Premises Construction Obligations
("Premises Project Costs"); (ii) payment of Rent in accordance with the Contract through either (a) the date the Premises Improvements are completed and the Premises are open to the public in accordance with the Contract or (b) the Premises and Golf Course are returned to the same or better condition as the such existed as of the Premises Turnover Date and possession of the Premises and has been delivered to the City in accordance with the Contract; (iii) all costs, expenses, damages, losses and other amount for which the City may become liable as a consequence of or in connection with the Company's or Guarantor's completion of or failure to complete the Premises Construction Obligations and/or, when so obligated, to cause the Premises to be returned to the City to the same or better condition as the Premises existed as of the Premises Turnover Date pursuant to the terms and conditions of the Contract, and (v) the operation of the Premises by Top Golf or other permitted Operator under the Contract for the Operating Period as defined in the Contract; and (iv) if the City exercises its right under this Guaranty to take over construction of the Premises Improvements, to reimburse City for all costs and expenses incurred by City in taking over construction of the Premises Improvements and completing construction of the Premises Improvements.

(b) Notwithstanding any other provision in the Contract or this Guaranty, recognizing that the Company, 30 West Pershing, and Centercal Guarantor and Top Golf all have various contractual obligations that they have entered into by and between themselves to which the City is not a party and that the City has limited rights or no rights to enforce, in the event that (i) 30 West Pershing does enter into the Sublease, (ii) executes and delivers this Guaranty to the Lessor, and (iii) the Company delivers to the Lessor the Due Diligence Acceptance Notice as provided for in the Contract, then unless 30 West Pershing within five (5) business days of issuance of the Notice of Acceptance provides written notice to the Lessor that it has withdrawn this Guaranty, Guarantor is deemed to have waived any rights it might have under the Contract or this Guaranty, or in law or equity, that the Guarantor's obligations under this Guaranty have in any way been altered or diminished. Receipt of the Due Diligence Acceptance Notice by Lessor shall be deemed notice to Lessor that 30 West Pershing and Company have entered into the Sublease.

(c) Guarantor covenants and agrees to cooperate with the Company and/or Centercal Guarantor to coordinate construction scheduling, access and all other matters related to the performance by Guarantor of its Premises Construction Obligations and payment of the Premises Project Costs and performance of its other obligations under this Guaranty. Guarantor waives the right to claim any defense to performance of any of its obligations under this Guaranty based on a claim that the Company has failed to perform under the Contract or any other agreement nor may Guarantor claim a failure to perform by the Company under the Contract or any other agreement as a defense to a default by Guarantor under this Guaranty. Guarantor waives the right to claim any defense to performance of any of its obligations under this Guaranty based on a claim that Centercal Centercal Guarantor has failed to perform under that certain Construction Guarantee Agreement from the Centercal Guarantor for the benefit of the City or any other agreement nor may Guarantor claim a default by the Centercal Guarantor under its Construction Guarantee Agreement in favor of the City or any other agreement as a defense to a default by Guarantor under the Guaranty. Guarantor covenants and agrees
that no assignment of the Company’s interest as Lessee under the Contract or any other assignment or sublease permitted by the Contract shall release Guarantor from any of its obligations hereunder. Guarantor covenants and agrees that no assignment of its interest as sublessee under the Sublease shall release Guarantor from any of its obligations hereunder.

2. **PREMISES IMPROVEMENTS BY GUARANTOR AND THE CITY’S OPTION TO COMPLETE THE PROJECT.**

At the City's election as to the timing of making a demand (following the expiration of any applicable notice and cure period), if the Premises Improvements have not been completed within ten (10) months of the Premises Turnover Date (subject to force majeure as defined in Section 30 of the Contract or delays caused by the City), or if there are material delays with construction of the Premises Improvements such that the City has a good faith, reasonable belief that the Premises Improvements will not be completed within such period except for delays caused by force majeure as defined in Section 30 of the Contract or except for delays caused by the City, then the City shall make written demand on Guarantor to so complete the same and to honor all of the obligations set forth in Section 1 of this Guaranty. If the Guarantor, within ten (10) days of receiving the following written demand by City:

"THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 3 OF THE GUARANTY, AND IF GUARANTOR FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF GUARANTOR HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) DAY PERIOD AND IS DILIGENTLY PROSECUTING THE SAME TO COMPLETION, THEN CITY MAY EXERCISE SELF HELP RIGHTS UNDER SECTION 3 OF THIS GUARANTY."

fails diligently to commence and/or continue performance thereof to completion as required under the Contract, the City in its sole and absolute discretion, at any time thereafter, shall have the right to complete the Premises Improvements or return the Premises to the same or better condition as such existed prior to the Premises Turnover Date, either before, during or after the pursuing of any other remedy of the City against the Company and/or the Guarantor, and expend such sums as the City in its sole and absolute discretion deems proper in order to complete the Premises Improvements pursuant to the requirements of the Contract.

In such event, the Guarantor shall fully and promptly reimburse and repay the City for all costs and expenses incurred by the City and such shall not relieve Guarantor from performing any or all of its additional obligations set forth in Section 1 of this Guaranty, including the payment of Rent. Any amounts payable by the Guarantor shall be payable on demand, with such amounts bearing interest from and after the date incurred by the City until paid as provided in Section 3 hereof.

3. **INTEREST ON UNPERFORMED OBLIGATIONS.**
The Guarantor agrees to pay to the City interest at the interest rate of 5% per annum on
the amounts advanced by the City pursuant to Section 2. Such interest shall be payable for the
period commencing with each such advance by the City.

4. REPRESENTATIONS AND WARRANTIES.

The Guarantor makes the following representations and warranties to the City to the best
of Guarantor’s knowledge and the Guarantor acknowledges that the City intends to enter into the
Contract in reliance thereon:

(a) The Guarantor is not in default under any agreement to which it is a party,
the effect of which will materially impair performance by the Guarantor of its obligations
pursuant to and as contemplated by the terms of this Guaranty. Neither the execution and
delivery of this Guaranty nor compliance with the terms and provisions hereof (i) will
violate any presently existing provision of law or any presently existing regulation, order,
writ, injunction or decree of any court or governmental department, commission, board,
bureau, agency or instrumentality applicable to Guarantor; or (ii) will conflict or will be
inconsistent with, or will result in any breach of, any of the terms, covenants, conditions
or provisions of, or constitute a default under (with an effect that will materially impair
performance by the Guarantor of its obligations pursuant to and as contemplated by the
terms of this Guaranty) any indenture, mortgage, deed of trust, instrument, document,
agreement or contract of any kind that creates, represents, evidences or provides for any
lien, charge or encumbrance upon any of the property or assets of the Guarantor, or any
other indenture, mortgage, deed of trust, instrument, document, agreement or contract of
any kind to which the Guarantor is a party or by which any of the property of the
Guarantor may be subject to, in the event of any such conflict, the required consent or
waiver of the other party or parties thereto has been validly granted, is in full force and
effect and is valid and sufficient therefor;

(b) There are no actions, suits or proceedings pending or threatened against
the Guarantor before any court or any governmental, administrative, regulatory,
judiciatory or arbitral body or agency of any kind that will (if adversely
determined) materially adversely affect performance by such Guarantor of its obligations
pursuant to and as contemplated by the terms and provisions of this Guaranty;

(c) 30 West Pershing is a duly organized, validly existing limited liability
company under the laws of the State of Missouri and is in good standing in the States of
Missouri and California, and has requisite authority to execute, deliver and perform its
obligations under this Guaranty pursuant to the terms and provisions of this Guaranty and
has executed and delivered this Guaranty pursuant to proper authority duly granted; 30
West Pershing is a wholly owned subsidiary of EPR Properties, a Maryland real estate
trust;

(d) The Guarantor is deriving a material financial benefit from the entering
into of the Contract by the Company, and the City has given sufficient consideration to
the Guarantor by entering into the Contract; and
(e) Each obligation under this Guaranty is legal, valid, binding and enforceable against the Guarantor in accordance with its terms, subject at all times to matters of bankruptcy and insolvency and other laws affecting the enforcement of creditors' rights.

5. COVENANTS.

The Guarantor agrees and covenants that:

(a) No payment or performance by the Guarantor under any provision of this Guaranty shall entitle the Guarantor, by subrogation to the rights of the City or otherwise, to any payment from or rights in any applicable bonds, title insurance certifications, commitments or indemnities or other security held by or for the benefit of the City in connection with the Premises Improvements, until all of the Premises Construction Obligations have been discharged in full; provided nothing herein shall constitute a waiver of the right of subrogation of the Guarantor after discharge in full of such obligations;

(b) The liability of the Guarantor shall in no way be affected, diminished or released by any of the following: (i) any extension of time for forbearance that may be granted by the City to the Company or to the Guarantor; (ii) any waiver by the City under the Contract; (iii) any change or modification in the Contract (subject to the provisions of (e) below); (iv) the acceptance by the City of additional security or any increase, substitution or changes therein; (v) the release by the City of any security or any withdrawal thereof or decrease therein; (vi) the failure or election by the City to pursue or not to pursue any remedies it may have against the Guarantor or against the Company or any of the general partners of the Company under the Contract; (vii) any failure by the Company to provide Guarantor or any other party written or other notice as may be required under the Contract; or (viii) the exercise of any extension of time or other option for performance or assignment of obligations specifically set forth in the Contract.

(c) The City may at any time enter into agreements with the Company, or its successor or assigns, to amend and modify the Contract, but such amendments or modifications shall not be binding on Guarantor without Guarantor's consent thereto if such materially affect to Guarantor's detriment its obligations or liabilities under this Guaranty;

(d) Nothing contained herein or otherwise shall prevent the City from pursuing concurrently or successively all rights and remedies available to the City pursuant to any document or agreement or in law or in equity and against any persons, firms or entities whatsoever (and particularly, but not by way of limitation, the City may exercise any other rights available to it under the Contract or any other agreement or security instrument), and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of the Guarantor's obligations hereunder, it being the purpose and intent of the Guarantor that, subject to the terms and provisions of this Guaranty, its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances whatsoever;
(c) The liability of the Guarantor hereunder or any remedy for the enforcement thereof shall in no way be affected by (i) the release or discharge of the Company, or any general partner of the Company, in any creditors', receivership, bankruptcy or other proceedings, (ii) the impairment, limitation or modification of the liabilities of the Company or any general partner of the Company under the Contract or of any remedy for the enforcement thereof, or of the estate of the Company or any such general partner in bankruptcy, resulting from the operation of any present or future provision of the federal bankruptcy act or other statute or from the decision in any court, (iii) the rejection or disaffirmance of the Contract in any such proceedings, (iv) cessation from any cause whatsoever of the liability of the Company or any such general partner to the City, or (v) any defense, current or future, of the Guarantor to any action, suit or proceeding at law or otherwise, that may be instituted on this Guaranty other than one based upon nonfulfillment by the City of a material obligation to be performed by the City pursuant to this Guaranty or the Contract.

6. WAIVERS.

The Guarantor hereby expressly irrevocably waives:

(a) Notice of acceptance of this Guaranty by the City, and any and all notice and demands of every kind that may be required to be given by any statute, rule or law except any specifically required by this Guaranty or the Lessor under the Contract;

(b) Any defense arising by reason of any incapacity, lack of authority, death or disability of any other person or entity (except the City) or from the failure of the City to file or enforce a claim against any person or entity in any administrative, bankruptcy or other proceeding;

(c) Any obligation the City might otherwise have to disclose to the Guarantor any facts the City now or hereafter may know or have reasonably available to it regarding the Company or its financial condition, whether or not the City has a reasonable opportunity to communicate such facts or has reason to believe that any such facts are unknown to the Guarantor or materially increase the risk to the Guarantor beyond the risk the Guarantor intended to assume hereunder. Guarantor shall be fully responsible for keeping informed of the financial condition of the Company and of all other circumstances bearing upon the risks of nonpayment or nonperformance of the Company under the Contract;

(d) Any defense based on an election of remedies by the City, whether or not such election may affect in any way the recourse, subrogation or other rights of the Guarantor against the Company or any of its partners in connection with the Premises Construction Obligations;

(e) All diligence in collection or protection of or realization upon or enforcement of the Premises Construction Obligations, any other obligation hereunder, or any security for or guaranty of any of the foregoing, and any and all formalities that otherwise might be legally required to charge the Guarantor with liability; and
(f) Any lien, security interest or charge on the Golf Course Property, the equipment and personal property located thereon, all rights therein and thereto, the revenue and income to be realized therefrom, or on any proceeds or products of any thereof, which the Guarantor may have or obtain as a result of the City's enforcement of this Guaranty.

(g) With respect to those matters set forth in Sections 1(b) and (c), 5, 6, 7 and 9 of this Guaranty, Guarantor waives any and all laws or regulations (including without limitation California Civil Code Sections 2787 and 2855, and Code of Civil Procedure Sections 580a, 580b, 580d and/or 726, regardless of whether such are applicable or not to this Guaranty) that would (i) in any respect or manner diminish or eliminate the obligations of the Guarantor hereunder regardless of whether the terms of such laws or regulations have been specifically referenced herein or the substance of such laws or regulations have been set forth herein or addressed by this Guaranty; or (ii) provide some procedural defense to Guarantor with regard to any action or proceeding the City may institute to enforce its rights under this Guaranty.

7. EFFECT OF THE CITY'S DELAY OR ACTION.

No delay on the part of the City in the exercise of any right or remedy under this Guaranty or the Contract shall operate as a waiver thereof, and no single or partial exercise by the City of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action by the City permitted hereunder shall in any way affect or impair the rights of the City and the obligations of the Guarantor under this Guaranty, provided, however, that the Guarantor shall be entitled to enforce, and the City shall be bound by, the obligations of the City under the Contract so long as the Guarantor shall perform its obligations, or cause its obligations to be performed, hereunder.

8. CONTINUING GUARANTY.

This Guaranty shall in all respects be a continuing, absolute, irrevocable and unconditional guaranty, and shall remain in full force and effect and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantor, and shall inure to the benefit of the respective successors and assigns of the City. All references herein to the Company, its general partners or the Guarantor shall be deemed to include the respective successors and assigns of same, as the case may be. Any proposed assignment of the Guarantor’s obligations hereunder to a substitute guarantor shall be subject to the City’s approval which may be withheld in the City’s sole and absolute discretion.

9. CERTAIN PERMITTED ACTIONS OF THE CITY.

The City may from time to time, in its sole discretion and without notice to the Guarantor, take any of the following actions without in any way affecting the obligations of the Guarantor: (a) obtain the primary or secondary obligation of any additional obligor or obligors with respect to any of the Premises Construction Obligations; (b) enforce this Guaranty against the Guarantor, whether or not the City shall have (1) proceeded against the Company or any of the other guarantors or sureties or any other party primarily or secondarily obligated or (2)
resorted to or exhausted any other remedy or any other security or collateral; and (c) enforce any other rights under the Contract.

10. **TIME OF ESSENCE.**

Time is of the essence of this Guaranty.

11. **NO MODIFICATION WITHOUT WRITING,**

This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing signed by the parties hereto. This Guaranty, and the Company's obligations set forth in the Contract represent the entire understanding between the City and the Guarantor and no other prior written or oral understanding shall be of any force or effect.

12. **NOTICES.**

All notices required or permitted pursuant to this Guaranty shall be in writing and shall be deemed given when (a) personally delivered to an officer or other authorized representative of the party to be notified or (b) after deposit in the United States mail as certified mail, postage prepaid, return receipt requested or (c) sent by reputable overnight courier and addressed as follows:

(or to such other address as a party may specify by notice given to the other party pursuant to this provision):

If to the Guarantor:

30 West Pershing, LLC
909 Walnut, Suite 200
Kansas City, MO 64106
Attention: General Counsel

White Goss Bowers March Schulte & Weisenfels,
a Professional Corporation
4510 Bellevue Avenue, Suite 300
Kansas City, Missouri 64111-3538
Attention: Fred W. Crouch, Esq.
Fax: (816) 753-9201

Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Attn: Donald A. Hammett, Jr.
Fax: (214) 756-8582
TopGolf El Segundo USA, LLC.
Attn: Randall P. Starr, Vice President Development
9400 N. Central Expressway, Ste. 1616
Dallas, Texas 75231
Fax: (630) 354-6801

If to the City:

City of El Segundo
Attn: City Clerk
350 Main Street
City of El Segundo, CA 90245

Notwithstanding anything in this section to the contrary, any notice sent or mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to the Guaranty, shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or if such notice is rejected by such party.

13. GOVERNING LAW.

This Guaranty shall be construed in accordance with and governed by the laws of the State of California and any suit, action or other legal proceeding relating to this Guaranty may be brought only in the Los Angeles Superior Court. The Guarantor irrevocably consents to the service of process of the aforementioned court in any such action or proceeding by the mailing of copies thereof by certified or registered mail, postage prepaid, return receipt requested to the Guarantor at its address set forth in SECTION 12 hereof, as such address may be changed from time to time in accordance with such SECTION 12. Nothing herein shall affect the right of the City to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Guarantor in any other jurisdiction in which the Guarantor may be subject to suit.

14. INDEPENDENT OBLIGATIONS.

The obligations of the Guarantor hereunder are independent of the obligations of the Company. In the event of any default hereunder, the City may institute a separate action against the Guarantor with or without joining or instituting a separate action against the Company.

15. CUMULATIVE.

All rights and remedies of the City and all obligations of the Guarantor under this Guaranty are cumulative. In addition, the City shall have all rights and remedies available to it at law or equity for the enforcement of this Guaranty. To the extent there are obligations that explicitly apply to Guarantor and are forth in the Contract that are not contained in this Guaranty, Guarantor covenants and agrees to honor such obligations as part of this Guaranty. To the extent there are inconsistencies between the Contract and this Guaranty, the provision that provides the greatest level of protection to the City shall govern.

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16. SEVERABILITY.

Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

17. LEGAL TENDER OF UNITED STATES.

All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

18. NO MERGER OR ALTERATION

In the event the Guarantor acquire some real or personal property interest through the Contract or otherwise with regard to the Premises, such shall not alter or impair the City's rights or the Guarantor's obligations under this Guaranty.

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty as of date first written above.

30 West Pershing, LLC,
a Missouri limited liability company

By: __________________________

Name: _________________________

Its: _____________________________

City of El Segundo

Bill Fisher, Mayor

Approved As to Form:

Mark D. Hensley, City Attorney

Attest:
Tracy Weaver, City Clerk
AREAS OF UNDERSTANDING BETWEEN TOPGOLF AND CITY OF EL SEGUNDO

As part of TopGolf’s ongoing commitment to the golf community and the instructional programs that make the Lakes a special place, we would like the following shared principles to serve as a guidepost for TopGolf and the community through the development phase of this project. TopGolf supports the following principles conditioned only by commonly held notions of reasonableness and normative business practice:

1. TopGolf will, within the scope of its own development, work with the city to design a TopGolf facility capable of accommodating an executive golf course that at minimum maintains the integrity/scope of the current course’s footprint, including the possibility of redesigning/re-routing the course to qualify for the USGA Course/Slope Rating necessary to host a Type I golf club and the possibility of creating a 2nd practice putting green for use by golf course exclusive patrons. [Note: The responsibility for any redesign and the subsequent management of the remainder golf course are the sole province of the City of El Segundo and thus within the city’s sole discretion.]

2. The continuing capacity of early morning golfers to hit balls before playing the golf course at specific rates to be determined with TopGolf. Players will show their greens fees receipt and will have the ability to hit “warm-up balls” from the ground level of the TopGolf driving range. Business hours, albeit on a basis limited to the specific purpose, capable of accommodating those “warm-up balls” for players teeing off from 6:00 to 9:00 AM. Food & Beverage service will be provided during normal TopGolf facility operating hours. TopGolf commits to offering golf price discounts for El Segundo residents (10%), as well as seniors and active military personnel (20%). People who fall into both of these categories will receive a cumulative discount of 30%. These discounts will apply for the sale of 20-minute increments of time. In addition, TopGolf commits to providing in El Segundo the same monthly access card for avid/core normative golfers that it provides at its golf centric facilities in Northern Virginia and suburban Chicago.

3. TopGolf will promote and accommodate the exemplary junior programs that have won so many awards and gained the accolades of the Southern California golf community.

   a. Specifically, in the interest of preserving the outstanding learning environment that makes The Lakes so valuable to the community, TopGolf commits to making the best faith effort with all such programs, including but certainly not limited to Josh Alpert’s “Good Swings Happen,” to incorporate all associated camps, programs and lessons into an El Segundo TopGolf facility in a manner allowing those programs the best opportunity to continue their growth trajectory. These efforts will include engaging existing Lakes Golf Pros in discussions to continue their teaching at the facility, either as full-time employees or as independent contractors, within constraints of the TopGolf business model, and they will
include a good faith consideration of including some measure of a short game practice element to replace the existing one that has proven central to the success of the Lakes’ player development/teaching/junior programs. The efforts will also include collaboration and consultation with the aforementioned throughout the facility’s development process.

b. Specifically, in the interest of continuing to serve the needs of those local junior high and high school golf teams that currently use the Lakes as their primary practice site, TopGolf commits to providing access to members of those teams at no charge when they are practicing as part of a formalized pre-scheduled team exercise, and TopGolf commits to providing a protocol whereby members of such teams are able to practice outside of such formalized pre-scheduled team exercises at rates commensurate with local market rates for normative golf practice, conditioned only by the recognition that such practice will necessarily be restricted to that portion of the TopGolf facility reserved for the purpose.

4. TopGolf, as part of its business model, will look to employ full time Class A PGA Golf Professionals as well as provide space for teaching on a contract basis. TopGolf’s priority and preference would be the retention of the Class A PGA Golf Professionals that currently teach at The Lakes facility in various relationship capacities respective to the individual professional;

5. To make real the TopGolf narrative of introducing the game of golf to a wider audience by including a good faith obligation to work with the PGA of America, PGA of Southern California, and the SCGA on allowing those traditional golf organizations the access and cooperation necessary to actually make that happen [No cost to TopGolf – all costs, burdens, etc., to be borne by the organizations]; and

6. The establishment of a temporary citizens oversight body with ADVISORY authority only to meet regularly with Central/TopGolf project management and the city’s representatives for the purposes of monitoring progress, creating the communication portals conducive of ACCURATE, fact-based exchanges of information, and ensuring to the greatest extent feasible that the City Council’s vision for the completed project is fulfilled while not adversely affecting TopGolf’s basic business model. TopGolf will have the ability to approve/select a minimum of 33% of the members of the advisory committee. The advisory body will have neither official oversight nor official involvement regarding the construction development process, including but not limited to receipt of development and building permits as well as occupancy certificates to open for business. The advisory body’s role and existence will be completed when the project is completed and TopGolf opens for business, although to the extent the Body proves its utility as an effective conduit of communication among operator, city and community, TopGolf understands that the City Council per its discretion may want to make certain appropriate post construction modifications thereto and continue post construction in a purely advisory role, i.e., replete with the same admonitions re “official oversight” and/or “official involvement.”