AGENDA
EL SEGUNDO CITY COUNCIL
COUNCIL CHAMBERS - 350 Main Street

The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of the City Council regarding any matter on this agenda that the City received after issuing the agenda packet are available for public inspection in the City Clerk’s office during normal business hours. Such Documents may also be posted on the City’s website at www.elsegundo.org and additional copies will be available at the City Council meeting.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the Public Communications portions of the Meeting. Additionally, the Public can comment on any Public Hearing item on the Agenda during the Public Hearing portion of such item. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

Members of the Public may place items on the Agenda by submitting a Written Request to the City Clerk or City Manager’s Office at least six days prior to the City Council Meeting (by 2:00 p.m. the prior Tuesday). The request must include a brief general description of the business to be transacted or discussed at the meeting. Playing of video tapes or use of visual aids may be permitted during meetings if they are submitted to the City Clerk two (2) working days prior to the meeting and they do not exceed five (5) minutes in length.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 524-2305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, SEPTEMBER 15, 2015 – 5:00 PM

5:00 P.M. SESSION

CALL TO ORDER

ROLL CALL

PUBLIC COMMUNICATION – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250.
SPECIAL ORDER OF BUSINESS:

CLOSED SESSION:

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators; as follows:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Gov’t Code §54956.9(d)(1): -3- matter

1. City of El Segundo vs. City of Los Angeles, et.al. LASC Case No. BS094279
2. Penuelas vs. City of El Segundo, LASC Case No. BC523072
3. O’Leary v. City of El Segundo WCB/EAMS Nos. ADJ8702179 and 918053

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(d)(2): -1- matter.


DISCUSSION OF PERSONNEL MATTERS (Gov’t Code §54957): -0- matter

APPOINTMENT OF PUBLIC EMPLOYEE (Gov’t. Code § 54957): -0- matter

PUBLIC EMPLOYMENT (Gov’t Code § 54957) -0- matter
CONFERENCE WITH CITY'S LABOR NEGOTIATOR (Gov't Code §54957.6): -8-matters

1. **Employee Organizations**: Police Management Association; Police Officers Association; Police Support Services Employees Association; Fire Fighters Association; Supervisory and Professional Employees Association; City Employees Association; Executive Management Group (Unrepresented Group); Management/Confidential Group (Unrepresented Group)

   Agency Designated Representative: Steve Filarsky and City Manager

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Gov't Code §54956.8): -0-matters
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COUNCIL CHAMBERS - 350 Main Street

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REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, SEPTEMBER 15, 2015 - 7:00 P.M.

7:00 P.M. SESSION

CALL TO ORDER

INVOCATION – Pastor John Svendsen, First Baptist Church

PLEDGE OF ALLEGIANCE – Council Member Dugan
PRESENTATIONS

a) Presentation – Congressman Ted Lieu
b) Commendation – Holly Socrates and committee – El Segundo Art Walk
c) Presentation - Investment Portfolio Report – Treasury Department

ROLL CALL

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CITY COUNCIL COMMENTS – (Related to Public Communications)

A. PROCEDURAL MOTIONS

Consideration of a motion to read all ordinances and resolutions on the Agenda by title only.
Recommendation – Approval.

B. SPECIAL ORDERS OF BUSINESS (PUBLIC HEARING)

1. Consideration and possible action to open public hearing regarding the presentation of the Fiscal Year 2015-2016 Preliminary Budget, including discussion and possible direction regarding all city revenues and expenditures.
(Fiscal Impact: Total Revenues of $122,693,100; Total Expenditures of $133,069,402; General Fund Revenues of $62,829,300, Expenditures of $64,033,500)
Recommendation – 1) Open Public Hearing; 2) Staff presentation of the 2015-2016 Preliminary Budget and Council direction to staff regarding all City revenues and expenditures (includes potential discussion and direction relating to all City Department revenues and expenditures); 3) Continue the Public Hearing to September 28, 2015; 4) Schedule the budget adoption for the September 28, 2015 meeting; 5) Alternatively, discuss and take other action related to this item.
C. UNFINISHED BUSINESS

2. [CONTINUED ITEM #C1 FROM SEPTEMBER 1, 2015 CITY COUNCIL MEETING] Rescission of Brown Act Commitment - In Accordance with Government Code Section 54960.2 (e), consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, not to hold further closed session meetings regarding real property negotiations with regard to ESCenterCal, LLC’s (“CenterCal”) proposal to enter into a Due Diligence and Ground Lease Agreement (“Agreement”) to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility.  
(Fiscal Impact: unknown – depends on whether legal proceedings are commenced.)
Recommendation – 1) Consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, to not hold further closed session meetings regarding real property negotiations with regard to CenterCal’s proposal to enter into an Agreement to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility; 2) Delay consideration of this item to a future date and give notice of such delay to Ms. Geist in accordance with Government Code Section 54960.2; 3) Alternatively, discuss and take other action related to this item.

3. Consideration and possible action to approve a Due Diligence and Ground Lease Agreement and Reimbursement Agreement with ES CenterCal LLC (“ES CenterCal”) to lease the driving range portion of The Lakes Golf Course for the purpose of developing the TopGolf facility consisting of a driving range, restaurant, bar and lounge and event facilities.  
(Fiscal Impact: See attached report from ProForma Advisors)
Recommendation – 1) Consideration and possible action to approve and authorize the Mayor to execute the Due Diligence and Ground Lease Agreement subject to ES CenterCal entering into a reimbursement agreement with the City (see item 2); 2) Consideration and possible action to authorize the City Manager to enter into a Reimbursement Agreement that requires ES CenterCal to pay the cost and fees associated with the various due diligence and land use entitlement costs; 3) Consideration and possible action to authorize the City Manager to execute a Professional Service Agreement for CEQA review services related to the Due Diligence and Ground Lease Agreement approved as form by the City Attorney in an amount not to exceed $257,500.00; 4) Alternatively, discuss and take other action related to this item.

D. REPORTS OF COMMITTEES, COMMISSIONS AND BOARDS
E. CONSENT AGENDA

All items listed are to be adopted by one motion without discussion and passed unanimously. If a call for discussion of an item is made, the item(s) will be considered individually under the next heading of business.

4. Warrant Numbers 3007523 through 3007693 on Register No. 23 in the total amount of $637,754.07 and Wire Transfers from 8/17/2015 through 8/30/2015 in the total amount of $893,555.80.

Recommendation – Approve Warrant Demand Register and authorize staff to release. Ratify Payroll and Employee Benefit checks; checks released early due to contracts or agreement; emergency disbursements and/or adjustments; and wire transfers.

5. Regular City Council Meeting Minutes of August 18, 2015, Special City Council Meeting Minutes of August 31, 2015 and Regular City Council Meeting Minutes of September 1, 2015.

Recommendation – Approval.

6. Consideration and possible action to receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code (“ESMC”) §§ 1-7-12 and 1-7A-4.

(Fiscal Impact: $50,000.00)

Recommendation – 1) Receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code (“ESMC”) §§ 1-7-12 and 1-7A-4 2) Alternatively, discuss and take other action related to this item.
7. Consideration and possible action to 1) receive and file this report regarding the City of El Segundo (City) entering into a license agreement with Warner Bros. Pictures – New Line Productions, Inc. (Warner Bros.) to film at City Hall, in accordance with El Segundo Municipal Code (“ESMC”) 4-11-4: ADDITIONAL AGREEMENTS section and as to form approved by the City Attorney; and 2) authorize filming and ancillary activities to commence beyond the municipal code’s ordinance of 10:00 p.m. on Thursday, October 8, 2015 until 4:00 a.m. on Friday, October 9, 2015 and 10:00 p.m. on Friday, October 9, 2015 until to 6:00 a.m. on Saturday, October 10, 2015.  
(Fiscal Impact: Approximate revenue of $82,736 plus personnel cost.)

Recommendation – 1) Receive and file report regarding the City entering into a license agreement with Warner Bros.; 2) Authorize filming and ancillary activities to commence beyond the municipal code’s ordinance of 10:00 p.m. on Thursday, October 8, 2015 until 4:00 a.m. on Friday, October 9, 2015 and 10:00 p.m. on Friday, October 9, 2015 until to 6:00 a.m. on Saturday, October 10, 2015; 2) Alternatively, discuss and take other action related to this item.

8. Consideration and possible action regarding a request from the El Segundo Kiwanis Club to operate a Beer Garden on public right of way at the 39th Annual Richmond Street Fair on Saturday, September 26, 2015 from 11:00 am – 5:00 pm.  
(Fiscal Impact: None)

Recommendation – 1) Approve the request from the El Segundo Kiwanis Club to operate a Beer Garden on public right of way at the 39th Annual Richmond Street Fair on Saturday, September 26, 2015 from 11:00 am – 5:00 pm, subject to compliance with all Alcohol Beverage Commission regulations and permits; 2) Alternatively, discuss and take other action related to this item.

9. Consideration and possible action regarding a thirty (30) day provisional appointment extension for the position of Interim Deputy City Clerk II in the City Clerk’s office.  
(Fiscal Impact: None)

Recommendation – 1) Approve the thirty (30) day provisional appointment extension for the position of Interim Deputy City Clerk II; 2) Alternatively, discuss and take other action related to this item.
10. Consideration and possible action regarding approval of 1) a revised Class Specification for the classification of Revenue Manager (formerly Business Services Manager), and 2) examination plans for Revenue Manager, Purchasing Agent, and License Permit Specialist I/II and 3) adoption of a Resolution establishing the new classification title and salary for Revenue Manager.
(Fiscal Impact: None)
Recommendation – 1) Approve the proposed Class Specifications for Revenue Manager; 2) Approve the proposed examinations plans; 3) Adopt the Resolution establishing the salary and class title for Revenue Manager: 4) Alternatively, discuss and take other action related to this item.

11. Consideration and possible action to authorize the City Manager, or designee, to record the Notice of Completion accepting completion of work for forty-two (42) homes related to Project RSI 14-18 (the City’s Residential Sound Insulation Program’s Group 61)
(Fiscal Impact: Final Contract Amount $797,676.82)
Recommendation – 1) Authorize the City Clerk to file the City Manager’s, or designee’s, Notice of Completion in the County Recorder’s Office; 2) Authorize the City Manager, or designee, to close out Project No. RSI 14-18; 3) Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAWA; 4) Alternatively, discuss and take other action related to this item.

12. Consideration and possible action to authorize the City Manager, or designee, to record the Notice of Completion accepting completion of work for twenty-four (24) homes related to Project RSI 14-23 (the City’s Residential Sound Insulation Program’s Group 65)
(Fiscal Impact: Final Contract Amount $786,461.08)
Recommendation – 1) Authorize the City Clerk to file the City Manager’s, or designee’s, Notice of Completion in the County Recorder’s Office; 2) Authorize the City Manager, or designee, to close out Project No. RSI 14-23; 3) Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAWA; 4) Alternatively, discuss and take other action related to this item.
13. Consideration and possible action regarding adoption of a Resolution authorizing the City Manager, or designee, to accept the Work of Projects 14-12 (the City's Residential Sound Insulation Program's Group 56), 14-14 (the City's Residential Sound Insulation Program's Group 58), 14-25 (the City's Residential Sound Insulation Program's Group 67) and 14-26 (the City's Residential Sound Insulation Program's Group 68) as complete, and determine the appropriate liquidated damages to be assessed, after staff has determined that remaining tasks have been completed by the respective contractors
(Fiscal Impact: Final Contract Amount of: $885,290, $649,488.02, $939,885.44 and $455,397.84 respectively, less any liquidated damages determined to be appropriate)

Recommendation – 1) Adopt a resolution delegating authority to the City Manager to accept Work as complete, determine liquidated damages and record notices of completion for Residential Sound Insulation (RSI) Projects 14-12 (Group 56), 14-14 (Group 58), 14-25 (Group 67) and 14-26 (Group 68); 2) Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAW; 3) Alternatively, discuss and take other action related to this item.

F. NEW BUSINESS

G. REPORTS – CITY MANAGER

H. REPORTS – CITY ATTORNEY

I. REPORTS – CITY CLERK

J. REPORTS – CITY TREASURER

K. REPORTS – CITY COUNCIL MEMBERS

Council Member Fellhauer –

Council Member Atkinson –
Council Member Dugan -  

Mayor Pro Tem Jacobson –  

Mayor Fuentes –  

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MEMORIALS –  

CLOSED SESSION  

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REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)  

ADJOURNMENT  

POSTED:  

DATE: 9.9.15  

TIME: 4:45 PM  

NAME: [Signature]
Presentation
Congressman Ted Lieu
Commendation

Holly Socrates and committee

El Segundo Art Walk
AGENDA DESCRIPTION:

Presentation of Investment Portfolio Report
(Fiscal Impact: None)

RECOMMENDED COUNCIL ACTION:

1. Receive and File
2. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:


FISCAL IMPACT: $ None

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

PREPARED BY: Dino Marsocci, Deputy City Treasurer II
REVIEWED BY: Crista Binder, Treasurer
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND & DISCUSSION:

The Treasury Department presents the June, 2015 Investment Portfolio Report which provides a status of Treasury Investment activities and related economic indicators.

This report will be created and submitted to Council on a quarterly basis. The report will also be posted to the City’s web site under the Treasury Department.
Date: September 15, 2015

From: Office of the City Treasurer

To: El Segundo City Council

RE: Investment Portfolio Report – As of June 30, 2015

Introduction:

This report will serve as a summary for the City of El Segundo’s Treasury Department investment reporting, compliance, investment environment and future plans; as well as subsidiary schedules which will support the Portfolio Summary and provide additional analysis of our investments.

Investment Summary:

The investments as of June 30, 2015 are as follows:

<table>
<thead>
<tr>
<th>Security Type</th>
<th>Cost</th>
<th>Market value</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>15,766,451.50</td>
<td>15,753,147.45</td>
<td>20.11%</td>
</tr>
<tr>
<td>Corp. Bonds</td>
<td>3,801,142.77</td>
<td>3,770,547.50</td>
<td>4.81%</td>
</tr>
<tr>
<td>CD's</td>
<td>8,318,000.00</td>
<td>8,342,962.50</td>
<td>10.65%</td>
</tr>
<tr>
<td>Union Bank Trust</td>
<td>27,885,594.27</td>
<td>27,866,657.45</td>
<td>35.57%</td>
</tr>
<tr>
<td>LAIF Immediate</td>
<td>$11,012,335.65</td>
<td>$11,012,335.65</td>
<td>14.05%</td>
</tr>
<tr>
<td>LAIF - LAWA</td>
<td>$18,909,868.08</td>
<td>$18,909,868.08</td>
<td>24.13%</td>
</tr>
<tr>
<td>LAIF Subtotal</td>
<td>$29,922,203.73</td>
<td>$29,922,203.73</td>
<td>38.19%</td>
</tr>
<tr>
<td>Total Invested</td>
<td>57,807,798.00</td>
<td>57,788,861.18</td>
<td>73.75%</td>
</tr>
<tr>
<td>Trust Acct. Cash</td>
<td>250,423.81</td>
<td>250,423.81</td>
<td>0.32%</td>
</tr>
<tr>
<td>Chase Bank - Cash</td>
<td>$20,313,948.37</td>
<td>20,313,948.37</td>
<td>25.93%</td>
</tr>
<tr>
<td>Total Portfolio</td>
<td>78,372,170.18</td>
<td>78,353,233.36</td>
<td>100.00%</td>
</tr>
</tbody>
</table>
The portfolio Breakdown by Short Term (< 1 year) and Long Term is:

<table>
<thead>
<tr>
<th></th>
<th>Short Term</th>
<th>Long Term</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portfolio Value (Market)</td>
<td>$33,519,152</td>
<td>$24,520,133</td>
<td>$58,039,285</td>
</tr>
<tr>
<td>Effective Yield</td>
<td>0.346%</td>
<td>1.090%</td>
<td>0.661%</td>
</tr>
<tr>
<td>Average Wtd. Maturity</td>
<td>15.00 Days</td>
<td>2.45 Years</td>
<td>1.06 Years</td>
</tr>
<tr>
<td>Benchmark Yield</td>
<td>0.02%</td>
<td>1.01%</td>
<td>0.28%</td>
</tr>
</tbody>
</table>

* Benchmark value is the Interpolated Treasury Yield to the Portfolio's Avg. Weighted Maturity

**Compliance:**

It is the intention of the City Treasurer’s office to ensure that our investments are in compliance with the maturity time limits and percentage allocation limits with all of our investments. The City is currently in compliance as demonstrated below:

**Partial List of Allowable Investment Instruments for Local Agencies**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Maximum Maturity</th>
<th>Maximum Specified % of Portfolio</th>
<th>Minimum Quality Requirements</th>
<th>City of El Segundo Investments</th>
<th>In Compliance Y/N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Agency Bonds</td>
<td>5 years</td>
<td>None</td>
<td>None</td>
<td>0.00%</td>
<td>Y</td>
</tr>
<tr>
<td>U. S Treasury Obligations</td>
<td>5 years</td>
<td>None</td>
<td>None</td>
<td>0.00%</td>
<td>Y</td>
</tr>
<tr>
<td>US Agency Obligations</td>
<td>5 years</td>
<td>None</td>
<td>None</td>
<td>20.11%</td>
<td>Y</td>
</tr>
<tr>
<td>Negotiable Certificates of Deposit</td>
<td>5 years</td>
<td>30%</td>
<td>None</td>
<td>10.65%</td>
<td>Y</td>
</tr>
<tr>
<td>Medium Term Notes</td>
<td>5 years</td>
<td>30%</td>
<td>&quot;A&quot; Rating</td>
<td>4.81%</td>
<td>Y</td>
</tr>
<tr>
<td>Local Agency Investment Fund (LAIF)</td>
<td>N/A</td>
<td>None</td>
<td>None</td>
<td>38.2%</td>
<td>Y</td>
</tr>
</tbody>
</table>

**Investment Environment:**

The current investment environment for the types of investments we are allowed to purchase remains one of very low returns, and uncertainty about future rate increases. Since security and liquidity are more important than rate of return in our policy, we are limited to very low risk investments which therefore have a lower interest rate. The Federal Reserve is looking to possibly raise rates in September of 2015, but the lower than desired inflation and erratic international markets are giving pause to that possible increase. While some economists believe that now is the time for an increase, others believe the increase will be pushed back to March 2016. While short-term rates have not changed very much from March 31st to June 30th, the long-term rates have increased to slightly above the March rates. This is the first quarter this year where the long-term rates have increased from the prior quarter.
The graphs and charts below show some of the key interest rates on items we invest in. As rates are expected to rise over the next few years, we want to time our investments to take advantage of the increases as they occur.

**US Treasury Bonds Yield Curve as of 6/30/15**

![Graph showing yield curve for US Treasury Bonds as of 6/30/15 with dates 6/30/2015 and 3/31/2015 indicated.]

**Composite Bond Rates (as of 6/30/15)**

<table>
<thead>
<tr>
<th>US Treasury Bonds</th>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3 Month</td>
<td>0.01</td>
<td>0.01</td>
<td>(0.01)</td>
<td>(0.01)</td>
</tr>
<tr>
<td></td>
<td>6 Month</td>
<td>0.11</td>
<td>0.09</td>
<td>0.04</td>
<td>0.06</td>
</tr>
<tr>
<td></td>
<td>2 Year</td>
<td>0.64</td>
<td>0.62</td>
<td>0.67</td>
<td>0.60</td>
</tr>
<tr>
<td></td>
<td>3 Year</td>
<td>1.00</td>
<td>0.97</td>
<td>1.06</td>
<td>0.92</td>
</tr>
<tr>
<td></td>
<td>5 Year</td>
<td>1.64</td>
<td>1.61</td>
<td>1.69</td>
<td>1.48</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Municipal Bonds</th>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2yr AA</td>
<td>0.83</td>
<td>0.84</td>
<td>0.85</td>
<td>0.64</td>
</tr>
<tr>
<td></td>
<td>2yr AAA</td>
<td>0.81</td>
<td>0.84</td>
<td>0.87</td>
<td>0.76</td>
</tr>
<tr>
<td></td>
<td>2yr A</td>
<td>1.25</td>
<td>1.20</td>
<td>1.05</td>
<td>1.22</td>
</tr>
<tr>
<td></td>
<td>5yr AAA</td>
<td>1.43</td>
<td>1.41</td>
<td>1.46</td>
<td>1.47</td>
</tr>
<tr>
<td></td>
<td>5yr AA</td>
<td>1.46</td>
<td>1.47</td>
<td>1.52</td>
<td>1.58</td>
</tr>
<tr>
<td></td>
<td>5yr A</td>
<td>1.67</td>
<td>1.67</td>
<td>1.68</td>
<td>1.73</td>
</tr>
</tbody>
</table>
Cash Flow Analysis:

The chart below shows the historical cash flow for the last 12 months. We can see that the majority of our funds are received in the second quarter of the fiscal year, January thru March, primarily due to Business License Renewals and the annual Chevron Payment. We also receive Sales and UUT taxes during the first few months of the year as well.

Our investments will be purchased with the liquidity relative to our cash flow needs.

This chart shows the net change in Cash as related to the Cash Flow Analysis above. Some of the larger disbursements occur in the third and fourth quarters of the fiscal year. During Q-3, March to June, we have
a significant payment to CalPERS for our Other Post-Employment Benefits, and in Q-4, July-September, a payment to ICRMA for our citywide insurance premiums, and a large infrastructure payment for roadwork which was completed several years ago.

**Rolling 12 Month Net Change in Cash**

**Additional Economic Indicators:**

*Economic Projections from September Meeting*

The Economic Indicators presented below are key items that the Federal Reserve will look at in deciding whether or not to change interest rates going forward.

The GDP, or Gross Domestic Product, represents the market value of all goods and services produced by the economy during the period measured, including personal consumption, government purchases, private inventories, paid-in construction costs and the foreign trade balance (exports are added, imports are subtracted). This is a key indicator the Federal Reserve will look at when deciding on interest rate changes. The target level for GDP is in the 2.5% to 3.5% range.

The Unemployment Rate shows the percentage of the labor force that is unemployed but seeking work. The target level for Unemployment is around 5.6%.

The PCE Inflation is the Personal Consumption Expenditures rate of inflation. This index is essentially a measure of goods and services targeted toward individuals and consumed by individuals. The long term
inflation target is around 2% per year. Core PCE Inflation excludes items such as food and energy due to the nature of their potential price swings.

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>Longer run</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in real GDP</td>
<td>1.8 to 2.0</td>
<td>2.4 to 2.7</td>
<td>2.1 to 2.5</td>
<td>2.0 to 2.3</td>
</tr>
<tr>
<td>March projection</td>
<td>2.3 to 2.7</td>
<td>2.3 to 2.7</td>
<td>2.0 to 2.4</td>
<td>2.0 to 2.3</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>5.2 to 5.3</td>
<td>4.9 to 5.1</td>
<td>4.9 to 5.1</td>
<td>5.0 to 5.2</td>
</tr>
<tr>
<td>March projection</td>
<td>5.0 to 5.2</td>
<td>4.9 to 5.1</td>
<td>4.8 to 5.1</td>
<td>5.0 to 5.2</td>
</tr>
<tr>
<td>PCE inflation</td>
<td>0.6 to 0.8</td>
<td>1.6 to 1.9</td>
<td>1.9 to 2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>March projection</td>
<td>0.6 to 0.8</td>
<td>1.7 to 1.9</td>
<td>1.9 to 2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Core PCE inflation</td>
<td>1.3 to 1.4</td>
<td>1.6 to 1.9</td>
<td>1.9 to 2.0</td>
<td></td>
</tr>
<tr>
<td>March projection</td>
<td>1.3 to 1.4</td>
<td>1.5 to 1.9</td>
<td>1.8 to 2.0</td>
<td></td>
</tr>
</tbody>
</table>

**Unemployment**

![Unemployment Graph](image)

**Source:** [http://data.bls.gov/cgi-bin/surveymost?bls](http://data.bls.gov/cgi-bin/surveymost?bls)
Inflation:

**Inflation Rates by Month**

![Graph showing inflation rates by month for 2014 and 2015.]

**Average Inflation Rates by Year**

![Graph showing average inflation rates by year from 1999 to 2015.]

Investment Strategy:

It is the City and City Treasurer’s policy to invest funds in accordance with the Investment Policy and to meet all legal requirements regarding the safeguarding of funds.

As a part of the City’s migration to a new banking structure, we have maintained a cash balance in order to offset our bank fees, and are now looking at our cash flow needs in order to determine which investments will maximize return while providing the proper level of liquidity.

The Liquidity Schedule provides an overview of when our current investments are due to mature. We will plan our future investments to coordinate with these maturities in order to ensure a liquidity balance to our portfolio. The Investments by Security Type schedule provides an additional breakdown of how our funds are presently allocated.

The Portfolio Summary for the month is included as an attachment to this report.
Additional Notes:

The City has funds of $208,707.24 which belong to the El Segundo Senior Citizens Housing Development Corporation and are a part of our LAIF balance. There are also LAWA RSI (Los Angeles World Airports Residential Sound Insulation) funds of $18,909,868.08 included in the City’s LAIF balances. The applicable interest for these accounts is accrued monthly and posted quarterly in the same manner as the regular City LAIF interest posting.
<table>
<thead>
<tr>
<th>Item</th>
<th>Availability</th>
<th>Market Value</th>
<th>Cumulative Balances</th>
<th>Cumulative Assets</th>
<th>Cumulative Assets % of Total</th>
<th>Cumulative % of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash in Bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chase</td>
<td>Immediate</td>
<td>$20,313,948.37</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Union Bank - Trust Account</td>
<td>Immediate</td>
<td>$250,423.81</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.I.F. (State of California)</td>
<td>LAIF Immediate</td>
<td>$11,012,335.65</td>
<td>$31,576,707.83</td>
<td>40.30%</td>
<td>14.05%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cash Immediate</td>
<td>$31,576,707.83</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.I.F. - LAWA (Restricted)</td>
<td>LAIF Immediate</td>
<td>$18,909,868.08</td>
<td>$50,486,575.91</td>
<td>64.43%</td>
<td>24.13%</td>
<td></td>
</tr>
<tr>
<td>Portfolio Investments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 30 Days</td>
<td>$849,418.24</td>
<td>$51,335,994.15</td>
<td>65.52%</td>
<td>1.08%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>31 to 90 Days</td>
<td>$248,215.76</td>
<td>$51,584,209.91</td>
<td>65.84%</td>
<td>0.32%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>91 to 180 Days</td>
<td>$1,247,540.01</td>
<td>$52,831,749.92</td>
<td>67.43%</td>
<td>1.59%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>181 to 365 Days</td>
<td>$1,001,350.00</td>
<td>$53,833,099.92</td>
<td>68.71%</td>
<td>1.28%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 to 2 Years</td>
<td>$6,875,800.02</td>
<td>$60,708,899.94</td>
<td>77.48%</td>
<td>8.78%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 to 3 Years</td>
<td>$12,152,360.92</td>
<td>$72,861,260.86</td>
<td>92.99%</td>
<td>15.51%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 to 4 Years</td>
<td>$4,501,045.00</td>
<td>$77,362,305.86</td>
<td>98.74%</td>
<td>5.74%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 to 5 Years</td>
<td>$990,927.50</td>
<td>$88,353,233.36</td>
<td>100.00%</td>
<td>1.26%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal</td>
<td>$46,776,525.53</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Grand Total</td>
<td>$78,353,233.36</td>
<td></td>
<td></td>
<td></td>
<td>100.00%</td>
</tr>
</tbody>
</table>

**Investment Portfolio Subtotal**: $58,039,284.99

**Investments by Maturity Date**
City of El Segundo
Investment Advisory Committee
Investments by Security Type
As of: June 30, 2015

<table>
<thead>
<tr>
<th>Item</th>
<th>Availability</th>
<th>Market Value</th>
<th>Cumulative Balances</th>
<th>% of Total</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash in Bank</td>
<td>Immediate</td>
<td>$20,313,948.37</td>
<td>$20,564,372.18</td>
<td>26.25%</td>
<td>26.25%</td>
</tr>
<tr>
<td>Chase</td>
<td>Immediate</td>
<td>$250,423.81</td>
<td></td>
<td></td>
<td></td>
</tr>
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</tr>
<tr>
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<td>Immediate</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>$50,486,575.91</td>
<td>64.43%</td>
<td>24.13%</td>
</tr>
<tr>
<td>Portfolio Investments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gov't Obligations</td>
<td>CD's</td>
<td>$8,342,962.50</td>
<td>$58,829,538.41</td>
<td>75.08%</td>
<td>10.65%</td>
</tr>
<tr>
<td>Bonds</td>
<td></td>
<td>$3,770,547.50</td>
<td>$74,582,685.86</td>
<td>95.19%</td>
<td>20.11%</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td>$46,776,525.53</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>$78,353,233.36</td>
<td></td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Investments by Security Type

- Cash Immediate
- LAIF Immediate
- LAIF - LAWA
- CD's
- Gov't Obligations
- Bonds

Investment Portfolio subtotal: $58,039,284.99
AGENDA DESCRIPTION:
Consideration and possible action to open public hearing regarding the presentation of the Fiscal Year 2015-2016 Preliminary Budget, including discussion and possible direction regarding all city revenues and expenditures. (Fiscal Impact: Total Revenues of $122,693,100; Total Expenditures of $133,069,402; General Fund Revenues of $62,829,300, Expenditures of $64,033,500)

RECOMMENDED COUNCIL ACTION:
(1) Open Public Hearing.
(2) Staff presentation of the 2015-2016 Preliminary Budget and Council direction to staff regarding all City revenues and expenditures (includes potential discussion and direction relating to all City Department revenues and expenditures).
(3) Continue the Public Hearing to September 28, 2015;
(4) Schedule the budget adoption for the September 28, 2015 meeting;
(5) Alternatively discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:
1. FY2015-2016 Preliminary Department Budget

FISCAL IMPACT: Total Revenues of $122,693,100; Total Expenditures of $133,069,402;
General Fund Revenues of $62,829,300, Expenditures of $64,033,500

Amount Budgeted: $
Additional Appropriation:
Account Number(s):

ORIGINATED BY: Misty V. Cheng, Interim Director of Finance
REVIEWED BY: Misty V. Cheng, Interim Director of Finance
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:

FY 2015-2016 Budget

The City started the budget process by holding a Strategic Planning Session on August 3, 2015. During this session, staff presented assumptions and estimates that would be used to develop the FY 2015-2016 Operating Budget, and identified additional critical items for funding consideration. Based on decisions at this planning session, an additional Strategic Planning Session was held on August 31, 2015. At this meeting, Council prioritized critical needs and identified items to be included in the FY 2015-2016 Preliminary Budget. On September 15th 2015, staff will present the FY 2015-2016 Preliminary budget for revenues and expenditures,
along with the assumptions and additional positions and items as approved by Council from prior meetings.

Summary of Assumptions used to prepare FY 2015-2016 General Fund Budget:

General Fund Revenues
General Fund projected revenues for FY2014-2015 are expected to be very close to what was originally adopted for fiscal year 2014-2015, with the projected year end $21,000 more than the adopted budget. The FY 2015-16 revenues are projected to be $2,165,336 or 3% higher than the yearend estimate for fiscal year 2014-2015. The price of natural gas, which impacts three of the City’s core tax revenues, dropped 35% in July 2015 compared to the same period last year. Property tax revenues are expected to increase by $343,000 due to an all-time high in property values. Sales tax revenues are expected to increase by $1.9 million due increased consumer spending and the opening of The Point and Elevon shopping centers. Transient Occupancy Tax revenues are expected to increase by $650,000 due to a four new/remodeled hotels coming into the City.

Listed below is a summary of the revenue assumptions as compared to yearend estimates:

- Business License Tax – $263,900 net increase over yearend estimates. The business license tax rates will be adjusted by a 2.4% increase due to annual 10 year rolling average CPI;
- Property Tax – $78,950 or 1.1% increase over yearend estimates primarily due to the home values in the City being at an all-time high;
- Transient Occupancy Tax (TOT) – $909,400 increase due to four new/remodeled hotels expected to be completed and operating during FY 2015-2016.
- Sales Tax – $1.9 million or 17.4% increase from 2015 estimated yearend. This increase is primarily due improved consumer spending, the opening of The Point and Elevon shopping centers, and the City receiving 100% of its share of the sales tax revenues instead of 75% due to the expiration of the Sales Tax Triple Flip program;
- Charges for Services – $157,350 or 3.4% increase from yearend estimates. It is relatively flat, with a slight increase in planning and building safety fees and paramedic transport fees;
- Interest on Investments – ($37,600) or 22.7% decrease from yearend estimates primarily due to low Federal Reserve Rate;
- Utility Users’ Tax – $307,000 or 3.7% decrease from yearend estimates; this category includes cogenerated electric, electric, gas, telephone, and water utility users’ tax. The decrease is primarily due to a decrease in gas utility users’ tax because the price of natural gas dropped 35% ;
- All other revenues remain flat or have very little growth compared to yearend estimates.
Below is a summary of General Fund Revenues for FY 2015-2016:

**Table 1 – Fiscal Year 2015-2016 General Fund Revenues:**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business License</td>
<td>$10,082,800</td>
<td>$10,965,901</td>
<td>$11,118,000</td>
<td>$10,854,100</td>
<td>$11,167,300</td>
</tr>
<tr>
<td>Sales &amp; Use Tax</td>
<td>6,939,296</td>
<td>8,290,913</td>
<td>7,942,500</td>
<td>8,074,400</td>
<td>10,691,700</td>
</tr>
<tr>
<td>Sales Tax in Lieu</td>
<td>2,651,923</td>
<td>2,006,796</td>
<td>2,758,000</td>
<td>2,907,652</td>
<td>2,209,300</td>
</tr>
<tr>
<td>Property Tax</td>
<td>6,332,163</td>
<td>6,758,032</td>
<td>6,356,600</td>
<td>6,621,400</td>
<td>6,700,350</td>
</tr>
<tr>
<td>Transient Occupancy (TOT)</td>
<td>5,156,080</td>
<td>5,964,403</td>
<td>5,459,200</td>
<td>5,200,000</td>
<td>6,109,400</td>
</tr>
<tr>
<td>Charges for Services</td>
<td>4,700,952</td>
<td>4,876,433</td>
<td>4,720,500</td>
<td>4,619,400</td>
<td>4,776,750</td>
</tr>
<tr>
<td>Electric Utility Tax</td>
<td>3,203,205</td>
<td>3,098,923</td>
<td>3,050,000</td>
<td>3,250,000</td>
<td>3,250,000</td>
</tr>
<tr>
<td>Franchise Tax</td>
<td>2,328,235</td>
<td>3,098,408</td>
<td>3,075,000</td>
<td>3,671,300</td>
<td>2,450,000</td>
</tr>
<tr>
<td>Cogeneration Electric</td>
<td>1,234,854</td>
<td>1,583,047</td>
<td>1,690,000</td>
<td>1,230,000</td>
<td>1,290,000</td>
</tr>
<tr>
<td>License &amp; Permits</td>
<td>1,541,224</td>
<td>1,759,602</td>
<td>1,720,000</td>
<td>1,829,500</td>
<td>1,671,400</td>
</tr>
<tr>
<td>Gas Utility Tax</td>
<td>1,765,855</td>
<td>3,215,199</td>
<td>3,000,000</td>
<td>2,800,000</td>
<td>2,400,000</td>
</tr>
<tr>
<td>Interest on Investments/Rentals</td>
<td>151,803</td>
<td>549,688</td>
<td>267,000</td>
<td>542,800</td>
<td>533,200</td>
</tr>
<tr>
<td>Other Revenues</td>
<td>9,921,329</td>
<td>10,483,531</td>
<td>9,085,900</td>
<td>9,060,412</td>
<td>9,529,900</td>
</tr>
</tbody>
</table>

**Total General Fund Revenues**

| Net of Transfers            |
|-----------------------------|-----------------------|-----------------------|-----------------------------|--------------------------------|---------------------------------------------|
| Transfers In                | 4,541,111             | 200,000               | 400,000                     | 0                              | 50,000                                      |
| Total General Fund Revenues | $60,550,830           | $62,850,876           | $60,642,700                 | $60,663,964                    | $62,829,300                                 |

**General Fund Expenditures**

Fiscal Year 2015-2016 General Fund budgeted expenditures, including transfers out, show a slight decrease of $9,600 over last year’s adopted budget. FY2015-2016 budgeted expenditures also show a decrease of $1.2 million from the revised budget, inclusive of encumbrance carryovers, continuing appropriations and budget amendments. Although, the fiscal year General Fund budgeted expenditures are slightly less than the prior year adopted budget, there are increased costs to health insurance premiums of $150,000, general liability premium increase of $195,000, salaries and benefits for new hires/salary increases of $497,000, accrued vacation/sick leave pay for upcoming retirements/resignations of $320,000 and contract services for NPDES regulation program of $250,000. With respect to retirement costs, CalPERS employer rates increased from 16.072% to 17.730% for FY2015-2016 and from 43.330% to 46.595% for FY2015-2016 for the miscellaneous and the safety group, respectively.

In addition to the base operating budget, a few critical positions and items in an amount slightly over $1 million are included that were approved by City Council at the August 31, 2015 Strategic Planning Session.
Below is a list of the critical positions and items that were added to the General Fund base expenditure budget:

**Table 2 – Fiscal Year 2015-2016 Critical Positions and Items Approved:**

<table>
<thead>
<tr>
<th>Critical Positions and Items Approved:</th>
<th>Amount:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td></td>
</tr>
<tr>
<td>3 Police Officers requested, 2 approved</td>
<td>$ 293,876</td>
</tr>
<tr>
<td>1 Promotion Officer to Sergeant</td>
<td>38,100</td>
</tr>
<tr>
<td>IS Professional &amp; technical</td>
<td>50,000</td>
</tr>
<tr>
<td>1 Developer</td>
<td>115,000</td>
</tr>
<tr>
<td>Fire</td>
<td></td>
</tr>
<tr>
<td>Restore Senior Management Analyst</td>
<td>5,600</td>
</tr>
<tr>
<td>2 ECG Monitors</td>
<td>39,000</td>
</tr>
<tr>
<td>City Clerk</td>
<td></td>
</tr>
<tr>
<td>Part-time employee</td>
<td>32,500</td>
</tr>
<tr>
<td>Finance</td>
<td></td>
</tr>
<tr>
<td>License Permit Specialist II</td>
<td>38,200</td>
</tr>
<tr>
<td>Administrative Specialist</td>
<td>22,200</td>
</tr>
<tr>
<td>Public Works</td>
<td></td>
</tr>
<tr>
<td>3 Street Maintenance Workers</td>
<td>224,900</td>
</tr>
<tr>
<td>Operating Supplies</td>
<td>10,000</td>
</tr>
<tr>
<td>Small Tools &amp; Equipment</td>
<td>500</td>
</tr>
<tr>
<td>Laundry &amp; Cleaning</td>
<td>2,000</td>
</tr>
<tr>
<td>Recreation and Parks</td>
<td></td>
</tr>
<tr>
<td>Part-time Personnel</td>
<td>29,000</td>
</tr>
<tr>
<td>Part-time Personnel for Cable</td>
<td>7,600</td>
</tr>
<tr>
<td>Reclass Administrative Specialist</td>
<td>4,000</td>
</tr>
<tr>
<td>Upgrade audio equipment and web-cam</td>
<td>4,000</td>
</tr>
<tr>
<td>Tree Maintenance Contract</td>
<td>75,000</td>
</tr>
<tr>
<td>Centennial &amp; Rose Parade</td>
<td>25,000</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>30,000</td>
</tr>
</tbody>
</table>

$1,046,467

Transfers to other funds decreased $3.9 million mostly due to a one time transfer in FY2014-2015 of $3.2 million to the Capital Improvements Fund and $350,000 to the Facilities Maintenance Fund. In FY2015-2016 only a $200,000 transfer will be made to the Equipment Replacement Fund to help replenish the reserve of the fund and a transfer of $500,000 to the Economic Uncertainty Fund (a reduction of $250,000 from the previously adopted Fund Balance Policy).

The General Fund Reserve will be at the 19% level, based on FY2015-2016 revenues, net of transfers, in the amount of $12 million.
Below is a summary of General Fund Expenditures for FY 2015-2016:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Elected Officials</td>
<td>857,409</td>
<td>918,874</td>
<td>921,000</td>
<td>930,991</td>
<td>1,040,200</td>
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<tr>
<td>Administrative Support</td>
<td>3,529,306</td>
<td>3,826,338</td>
<td>3,975,900</td>
<td>4,494,020</td>
<td>4,268,900</td>
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<tr>
<td>Police</td>
<td>15,697,117</td>
<td>17,333,540</td>
<td>17,999,600</td>
<td>18,131,382</td>
<td>18,854,600</td>
</tr>
<tr>
<td>Fire</td>
<td>13,003,639</td>
<td>14,088,674</td>
<td>14,160,100</td>
<td>14,200,364</td>
<td>14,533,000</td>
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<tr>
<td>Communications Center</td>
<td>1,778,872</td>
<td>2,264,020</td>
<td>2,191,000</td>
<td>2,327,237</td>
<td>2,563,400</td>
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<tr>
<td>Planning/Building Safety</td>
<td>2,284,732</td>
<td>2,264,896</td>
<td>2,685,100</td>
<td>2,808,969</td>
<td>2,755,100</td>
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<tr>
<td>Public Works</td>
<td>5,179,535</td>
<td>5,552,780</td>
<td>5,925,600</td>
<td>6,132,654</td>
<td>6,911,300</td>
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<tr>
<td>Recreation and Parks</td>
<td>4,792,049</td>
<td>5,024,930</td>
<td>5,082,200</td>
<td>5,100,440</td>
<td>5,311,700</td>
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<tr>
<td>Library</td>
<td>2,079,375</td>
<td>2,162,469</td>
<td>2,188,400</td>
<td>2,199,114</td>
<td>2,008,900</td>
</tr>
<tr>
<td>Non department</td>
<td>3,657,518</td>
<td>4,577,597</td>
<td>4,337,800</td>
<td>4,345,850</td>
<td>5,086,400</td>
</tr>
<tr>
<td>Transfers to Other Funds</td>
<td>521,897</td>
<td>1,554,617</td>
<td>4,576,400</td>
<td>4,589,500</td>
<td>700,000</td>
</tr>
<tr>
<td><strong>Total General Fund</strong></td>
<td><strong>53,381,449</strong></td>
<td><strong>59,588,735</strong></td>
<td><strong>64,043,100</strong></td>
<td><strong>65,260,521</strong></td>
<td><strong>64,033,500</strong></td>
</tr>
</tbody>
</table>

**Table 4 – Fiscal Year 2015-2016 General Fund Reserve Calculation:**

<table>
<thead>
<tr>
<th>FUND BALANCE RESERVE CALCULATION:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Fund Balance Reserves, 9/30/15:</td>
<td>$14,351,768</td>
</tr>
<tr>
<td>Less: Designations</td>
<td>(1,100,000)</td>
</tr>
<tr>
<td></td>
<td>13,251,768</td>
</tr>
<tr>
<td>FY 15/16 Revenues</td>
<td>62,829,260</td>
</tr>
<tr>
<td>FY 15/16 Expenditures</td>
<td>64,033,467</td>
</tr>
<tr>
<td>FY 15/16 Operating Deficit</td>
<td>(1,204,207)</td>
</tr>
<tr>
<td>Projected Undesignated Fund Balance</td>
<td>12,047,561</td>
</tr>
<tr>
<td>@ 9/30/16</td>
<td>12,033,359</td>
</tr>
<tr>
<td>19% reserve requirement</td>
<td></td>
</tr>
<tr>
<td>Excess reserve</td>
<td>$ 14,202</td>
</tr>
<tr>
<td>Calculation of Reserve Requirement</td>
<td></td>
</tr>
<tr>
<td>FY 15/16 Revenues</td>
<td>62,779,260</td>
</tr>
<tr>
<td>FY 15/16 Expenditures</td>
<td>63,333,467</td>
</tr>
<tr>
<td>19% reserve requirement</td>
<td></td>
</tr>
<tr>
<td>(greater of revenues or expenditures, net of transfers multiplies by 19%)</td>
<td>12,033,359</td>
</tr>
</tbody>
</table>
Other Funds

Internal Service Funds

The Internal Service Funds, which include Equipment Replacement, General Liability, and Workers’ Compensation, are used to accumulate and allocate costs internally among the City’s various functions.

The Equipment Replacement Fund will charge 100% of the annual equipment replacement charge to all funds, or $1.7 million. In addition, $200,000 will be transferred from the General Fund to replenish amounts underfunded in previous years due to the General Fund’s previous budget shortfalls. Total expenditures of $5,406,800 are the FY 2015-2016 estimated costs to purchase items that are scheduled for replacement. Actual purchases will be reviewed based on equipment conditions. There is enough accumulated fund balance to fund for these items.

The General Liability and Workers’ Compensation Funds have been funded at the actuarially determined expected rate. The City obtained the latest actuarial valuations of the City’s General Liability and Workers’ Compensation actuarial valuation in May 2015. This resulted in a total worker’s compensation charge to other funds of $1,128,597.
Enterprise Funds

The Enterprise Funds include Water and Sewer Funds. These funds also include an additional Capital Outlay amount of $3,235,000 and $5,375,000, respectively, which is funded through reserves for Capital Projects within the funds.

The Golf Course Fund has debt service payments to the General Fund and Equipment Replacement Fund. However, if the full amount of the outstanding amount payable to these funds exceeds the fund balance in the Golf Course Fund, then repayment cannot be made in that year. This fund also includes $60,000 in additional Capital Outlay for equipment purchases. Collectively, these are all separate funds where the City charges a fee to customers to cover the costs of services it provides.

Below is a budget summary of the three Enterprise Funds:

Table 4 – Enterprise Funds Budget – Fiscal Year 2015-2016

<table>
<thead>
<tr>
<th></th>
<th>Water</th>
<th>Wastewater</th>
<th>Golf Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$29,276,400</td>
<td>$3,515,400</td>
<td>$1,934,200</td>
</tr>
<tr>
<td>Operating Expenditures</td>
<td>$25,915,902</td>
<td>$3,170,800</td>
<td>$2,087,600</td>
</tr>
<tr>
<td></td>
<td>$3,360,498</td>
<td>$344,600</td>
<td>($153,400)</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$3,235,000</td>
<td>$5,375,000</td>
<td>$60,000</td>
</tr>
<tr>
<td>Total Fund Expenditures</td>
<td>$29,150,902</td>
<td>$8,545,800</td>
<td>$2,147,600</td>
</tr>
</tbody>
</table>

Below is an illustration of our three Internal Service Fund budgets for FY 2015-2016.
Summary

General Fund – Overall, General Fund Revenues are growing at a rate of 3% compared to the 2014-2015 yearend estimate. The City is exercising caution as demonstrated by increasing the unreserved, undesignated balance within the General Fund from 18% to 20% over the previous year and the next two years. In FY2015-2016 the General Fund reserve will be at the 19% level in the amount of $12 million.

FY 2015-2016 General Fund budgeted expenditures, including transfers out, show a slight decrease of $9,600 over last year’s adopted budget. However, it showed a decrease of $1.2 million from the revised budget, inclusive of encumbrance carryovers, continuing appropriations and budget amendments. Overall, the General Fund expenditures remain relatively flat compared to the prior year’s adopted budget.

In addition to the base operating budget, a few critical positions and items in an amount slightly over $1 million were approved by City Council at the August 31, 2015 Strategic Planning Session and included in the overall expenditures amount.

Although, the General Fund budgeted expenditures exceeded the General Fund budgeted revenues by $1.2 million, the budget was able to be balanced using the available fund balance and a reduction of the transfer out to the Economic Uncertainty Fund from $750,000 to $500,000 per Council direction. Furthermore, the General Fund Reserve will be able to maintain its required reserve at the 19% level for FY2015-2016 in the amount of $12 million.

The next step in the FY 2015-2016 budget process is the second public hearing and final budget adoption on September 28, 2015.
EL SEGUNDO CITY COUNCIL

AGENDA ITEM STATEMENT

AGENDA DESCRIPTION:

Rescission of Brown Act Commitment - In Accordance with Government Code Section 54960.2 (e), consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, not to hold further closed session meetings regarding real property negotiations with regard to ESCenterCal, LLC’s ("CenterCal") proposal to enter into a Due Diligence and Ground Lease Agreement ("Agreement") to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility. (Fiscal Impact: unknown – depends on whether legal proceedings are commenced.)

RECOMMENDED COUNCIL ACTION:

1. Consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, to not hold further closed session meetings regarding real property negotiations with regard to CenterCal’s proposal to enter into an Agreement to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility; or
2. Delay consideration of this item to a future date and give notice of such delay to Ms. Geist in accordance with Government Code Section 54960.2; or
3. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

November 5, 2013, Staff Reports (with attachments); and,
Letter of May 8, 2015 to Ms. Geist

FISCAL IMPACT: $

<table>
<thead>
<tr>
<th>Amount Budgeted:</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Appropriation:</td>
<td>N/A</td>
</tr>
<tr>
<td>Account Number(s):</td>
<td>N/A</td>
</tr>
</tbody>
</table>

PREPARED BY: Mark D. Hensley, City Attorney
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND & DISCUSSION:

This item is being brought back for Council consideration based upon direction given by Council at its May 5, 2015, regular City Council meeting (Staff Report Attached). At that time, staff provided background information to Council including the fact that the City Council had approved the Agreement on November 5, 2013 and subsequently approved minor amendments to the Agreement as well as a reimbursement agreement on March 18, 2014. Staff reported that Center Cal had not signed and returned the Agreement and that the Council then subsequently withdrew the option for CenterCal to execute the Agreement. CenterCal on April 28, 2015 sent a new communication to the City proposing new terms. On May 5, 2015,
the City Council directed the City Attorney’s office to notify Ms. Deborah Geist that the Council would consider rescinding its 2013 commitment not to hold closed sessions regarding this matter. At its May 5th meeting, the Council noted that it would need to consider whether a closed session was needed to discuss CenterCal’s new terms and conditions.

Council was reminded that Ms. Geist would need to be provided 30 days written notice that the Council will be holding a public session meeting to consider rescinding its commitment to not have further closed session discussions regarding the Agreement (Staff Report Attached). The Council would then need to meet thirty or more days after the notice date and consider a public agenda item which, if passed by a majority of the members of the City Council, would rescind the prior commitment made by Council and the Council could then schedule a closed session meeting to discuss different lease payments or payment terms. If the Council does rescind the letter it would restore Ms. Geist’s rights (as well as any other interested party’s right, including the District Attorney’s), if any, to commence a legal action for alleged Brown Act violations.

On May 8, 2015, a letter was transmitted to Ms. Geist (with a copy to the District Attorney’s Office as required by the Brown Act), informing her that the Council on June 16, 2015 would be meeting to discuss the potential of rescinding it prior action regarding closed session negotiations relating to the Top Golf Agreement.

The November 5, 2013, staff report and attachments provide the details regarding Ms. Geist’s allegations of Brown Act violations and the City’s response to same. It did not appear that there were any Brown Act violations, but in order to avoid unnecessary legal actions, particularly since the City understood the negotiations were completed, the Council approved staff’s recommendation to issue the commitment that it would not hold further closed session meetings regarding the Agreement. However, the action referenced, and the Brown Act provides that the Council may rescind such a commitment at a public meeting.
EL SEGUNDO CITY COUNCIL
AGENDA STATEMENT

MEETING DATE: November 5, 2013
AGENDA HEADING: New Business

AGENDA DESCRIPTION:
Consideration and possible action to authorize the Mayor to execute a letter in response to a "cease and desist" letters received on October 1, 2013 and October 17, 2013 from Debra Geist alleging various violations of the Ralph M. Brown Act relating to City's negotiations to lease out a portion of "the Lakes" golf course. (Fiscal Impact: None)

RECOMMENDED COUNCIL ACTION:
1. Receive and file the letters dated October 1, 2013 and October 15, 2013 alleging various violations of the Ralph M. Brown Act;
2. Authorize the Mayor to execute the draft response letter;
3. Take such additional, related, action that may be desirable.

ATTACHED SUPPORTING DOCUMENTS:
1. Letter dated October 15, 2013 (received October 17, 2013);

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

ORIGINATED BY: Mark D. Hensley, City Attorney
Karl H. Berger, Assistant City Attorney

BACKGROUND AND DISCUSSION:
On October 1, 2013 and October 17, 2013, the City Clerk's office received letters alleging that the City Council violated various provisions of the Ralph M. Brown Act when it considered the future of "the Lakes" municipal golf course (see attached Exhibit A – the letters are identical except for with respect to the dates set forth on the letters). These are referred to as the "October 2013 Letters."

As the City Council is aware – and is quite public – the City was approached by two private companies in 2012 regarding a proposal for the Lakes municipal golf course. In general, the proposal is for Centercal, LLC to make various improvements to the golf course and the driving range; for Top Golf to operate the golf course; and for the City to receive a significant increase in rent over a period of potentially fifty years. The details of this deal is set forth in the due diligence and lease agreement that is being considered by the City Council as a separate agenda item for November 5, 2013.

Since first being approached by these companies, the City Council undertook a number of actions to not only negotiate potential deal points to implement a proposal (as set forth in the
draft lease agreement), but also to solicit public input and dialogue regarding the desirability of undertaking such an arrangement. Such activities include, without limitation:

- Public meetings by the City Council and Golf Course Subcommittee in August 2012 regarding the Lakes including a Powerpoint presentation regarding the proposal and direction from the City Council to seek public input.

- Meetings in September 2012 between City staff and various community organizations including the El Segundo Chamber of Commerce and Kiwanis Club.

- Multiple meetings before the City’s Recreation and Parks Commission in September and December 2012.


- Posting the Powerpoint® presentation, draft schematics, and other matters on the City’s website (elssegundo.org/news/displaynews.asp?NewsID=1149&TargeID=1).

- Posting all disclosable public communications regarding the Lakes matter on the City’s website (www.elssegundo.org/depts/cityclerk/documents.asp).

Moreover, these proposals were widely publicized in the media and on various social networks (e.g., Facebook). And, as a result, there was significant public participation in the process including regular public comment during City Council meetings.

The October 2013 Letters do not acknowledge the City Council’s effort to solicit public input regarding the Lakes or the widespread public interest in the subject. Rather, the October 2013 Letters allege that the City Council violated the Brown Act when it discussed the matter in closed session on several occasions in 2012 and 2013.

As you are aware, the California Legislature enacted the Ralph M. Brown Act (Government Code1 §§ 54950-54963) in 1953. The Legislature adopted the Brown Act to ensure that deliberations and actions of local public agencies are performed at meetings open to the public and free from any veil of secrecy.2 To further this overall goal, the Brown Act requires that the City’s meetings be properly noticed and generally open to the public.

There are certain exceptions to the general requirement that all meetings be held in public. These are referred to as “closed session” matters. One of these is the ability for the City Council to meet

"with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease."3

1 Further references to an unspecified code are to the Government Code.
2 § 54950.
3 § 54956.8 (emphasis added).
The October 2013 Letters makes various complaints regarding the City Council exercising its ability to discuss price and terms of leasing the Lakes during closed session. In summary, these allegations are: (1) failure to appoint real property negotiators in open session as required by the Brown Act; (2) incorrect agenda descriptions as to closed session items; and (3) discussing items in closed session beyond the scope of what the Brown Act allows.

The October 2013 Letters is the first step needed to file a lawsuit against the City for alleged violations of the Brown Act. In sum, the law requires a persons seeking to enforce the Brown Act to first send a "cease and desist" letter to a public agency within nine months of the alleged violations before filing a lawsuit. Upon receiving a "cease and desist" letter, the public agency has thirty days within which to consider the matter and, if it chooses, respond with "with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate" the Brown Act. Such a response must be approved by the legislative body in open session and be substantially in a form required by law. If the legislative body opts to undertake such a response, it removes the ability of a person to file a lawsuit.

As noted more completely in the draft letter attached to this staff report, several of the alleged violations occurred more than nine months ago and are therefore time-barred from litigation. Moreover, all of the closed session agenda descriptions correctly identified the City's real property negotiators and described what was being discussed. Most importantly, however, the City Council has not yet committed to taking any action – the draft lease agreement properly contemplated during closed session is a separate agenda item for this meeting. And, as set forth in that draft agreement, there are multiple matters that must be resolved – in open session – before the City (or any other party) is obligated to undertake any real property transaction.

However, in order to avoid potentially unnecessary and costly litigation, it is recommended that the City Council authorize the Mayor to execute the draft letter attached to this staff report (Exhibit B). As may be read, the draft letter constitutes the City Council’s "unconditional commitment" not to undertake the actions identified by the October 2013 Letters. Under the Brown Act it is specifically recognized that sending this type of response is not an admission of guilt and it cannot be used against the City in any future legal proceedings. Given that this matter, as described above, has been a very public process and since the draft agreement is on the agenda for public consideration by the Council, it seems very prudent to simply agree, without admitting fault or that such occurred, to not undertake any further alleged action that violates the Brown Act. This will ensure that the City avoids the need to defend against a lawsuit alleging that the City Council violated the Brown Act.

4 § 54960.2.
5 The City Council may also provide such a response after thirty days, and even during litigation, which would cause a lawsuit to be dismissed. However, the court could under such circumstances award attorneys fees and costs (§ 54960.2(b)).
6 § 54960.2(c).
7 Id.
8 Id.
THE SEPTEMBER 15, 2015 CITY COUNCIL MEETING AGENDA ITEM # 1
IS CONTINUED ITEM #2 FROM JUNE 15TH, JULY 7TH, ITEM #1 FROM JULY 21ST, ITEM #4 FROM AUGUST 4TH, ITEM #1 FROM AUGUST 18 AND SEPTEMBER 1ST

Exhibit A

October 1, 2013 and October 15, 2013 Letters
RECEIVED 10-1-13
CITY CLERK'S OFFICE
October 1, 2013

Via Personal Delivery

Hon. Bill Fisher, Mayor
Mr. Carl Jacobson, Mayor Pro Tem
Ms. Suzanne Fuentes
Mr. Dave Atkinson
Ms. Marie Fellhauer

City Council
City of El Segundo
350 Main Street,
El Segundo, CA 90245

Re: Demand to Cease and Desist from Practices Violating the Ralph M. Brown Act

Mr. Fisher and Members of the El Segundo City Council:

This notice is to caution you that the El Segundo City Council (the "ESCC") has violated the Ralph M. Brown Act (California Government Code Sec. 54050 et seq.), which mandates open and publicized meetings of local government at which the public may be present and comment on relevant matters. ESCC is abusing the "safe harbor" provisions of Government Code Section 54056.8, which allow a limited exception to the general mandate of open meetings only "to grant authority to its negotiator regarding the price and terms of payment for... (a real property lease)." The specific violations are as follows:

1. Conducting Closed Sessions On The Proposed Lease of The Lakes Prior to a Public Hearing

On three separate occasions, June 19, 2012, June 25, 2012 and June 17, 2012, the ESCC conducted closed sessions for the stated purpose of discussions with Greg Carpenter, City Manager, concerning The Lakes, a municipal golf course owned by the City of El Segundo. Although the stated purpose of such meetings, as noted on the relevant Agendas, was "discussion with Real Property Negotiator", ESCC had not yet conducted a public session as required by Government Code Section 54056.8 as follows:

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies the real property...which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

Additionally, the relevant Agendas fail to identify the persons or entities Mr. Carpenter would negotiate with. These meetings patently fall outside the "safe harbor" and are illegal.

2. Conducting Closed Sessions with Top Golf on Related issues

On two separate occasions, February 5, 2013, February 19, 2013, the ESCC conducted closed sessions with Mr. Carpenter relating to Top Golf and Centercal Properties as "negotiating parties." However, the proposed lease is with Centercal only. The City of El Segundo will have no contractual privity with Top Golf, who will sublet from Centercal to operate a golf entertainment business at The Lakes. ESCC was not negotiating a real property lease with Top Golf but rather consulting with Top Golf regarding lease issues. The Brown Act mandates that ESCC conduct any such consultations in public meeting because the "safe harbor" provision pertains only to the proposed lease on price and terms of payment. Consultations with other parties on "related issues" or "background issues" are outside the scope of the exception. See, Shapiro v. City Council of San Diego, 96 Cal.App. 4th 604 (2002).

3. Conducting Serial Closed Sessions on Matters Outside Payment and Terms of Payment

On eight separate occasions, February 5, 2013, February 19, 2013, May 7, 2013, August 6, 2013, August 20, 2013, September 3, 2013, September 17, 2013, and October 1, 2013, the ESCC conducted closed sessions with Mr. Carpenter relating to the lease with Centercal Properties as the negotiating party. The number of closed sessions alone is excessive and proves that the ESCC has trespass beyond the "safe harbor" of price and terms of payment. This situation is analogous to Shapiro v. City Council of San Diego,
88 Cal. App. 4th 804 (2002), where the Court of Appeal held that the San Diego Council had violated the Brown Act in including discussion of a variety of "related issues" in a series of closed sessions held to consult with its agent in real property negotiations concerning a large redevelopment project to create a new baseball park. The Fourth District faulted the San Diego Council's expansive interpretation of the "safe harbor" as follows:

We believe the City Council's view that no detailed disclosures should be required before closed sessions may be held to discuss a complex overall real estate based transaction is inconsistent with the express statutory requirements of section 54046.6.

The Fourth District stressed that the "safe harbor" must be narrowly and not expansively construed as follows:

If we were to accept the City's interpretation of the Brown Act in this respect, we would be turning the Brown Act on its head, by narrowly construing the open meeting requirements and broadly construing the statutory exceptions to it. That would be incorrect. We do not denigrate the important consideration of confidentiality in negotiations. However, we believe that in this case, the City Council is attempting to use the Brown Act as a shield against public disclosure of its consideration of important public policy issues, of the type that are inevitably raised whenever such a large public redevelopment real estate based transaction is contemplated. The important policy consideration of the Brown Act, however, must be enforced, even where particular transactions do not fit neatly within its statutory categories.

Id. at 824. Here, as in Shapiro, ESCC is using closed sessions to shield important development considerations from public view. The sheer number of closed sessions, in contrast to the single open session on the proposed lease, proves that ESCC is shifting its duty to conduct open sessions on matters of public interest that will substantially impact The Lakes future. Indeed, ESCC has disclosed relatively nothing in open sessions regarding its relationship with Cenntecal, Cenntecal's relationship with Top Golf, proposed physical changes to the golf course, proposed physical changes to the driving range, price increases, public programs, changes to the liquor license and more. Members of the public are demanding to be heard on these issues but have been relegated to bystanders in a closed process zealously guarded by ESCC against its public responsibilities under the Brown Act.

4. Substantively Misleading Agenda Description

On August 21, 2012, the ESCC conducted a single public session on the proposed lease of The Lakes which generally describes the Agenda as a direction to staff as follows:

Consideration and possible action to direct staff to take steps necessary to seek input from various City Committees regarding a potential agreement with Cenntecal 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.

This description is inaccurate because it states that the ESCC was to direct staff regarding future action when, in fact, the ESCC contemplated and took immediate action to direct Mr. Carpenter to enter into negotiations with Cenntecal regarding a lease of The Lakes. While the Brown Act requirements for agenda item descriptions are quite lenient, this item just fails to describe the action taken by ESCC to immediately enter into a proposed lease. It's just wrong. The significance of the misdescription is magnified by the fact that this was the only open discussion on the proposed lease and therefore, it was imperative that the ESCC accurately convey notice to the public of what ESCC intended to do. Without such clear notice, those members of the public who might well have attended the meeting to address a proposed decision immediately to proceed with lease negotiations were misled into believing that there would be adequate opportunities to do so later, at meetings of either the "City Committees," the City Council or both. The ESCC failed its duties under the Brown Act and should be enjoined from proceeding further absent a material cure.
The El Segundo City Council has thirty days from receipt of this letter to provide me with an unconditional commitment to cease, desist from, and not repeat the practices noted above, compliant with Government Code Section 54880.2, subdivision (c). Its failure to do so will entitle me to file an action for declaratory judgment and injunctive relief and for attorney's fees and costs.

Respectfully,

[Signature]

Debra V. Geist
(310) 489 7751
cdigeist@verizon.net
October 15, 2013

Via U.S. Mail

Tracy Sherrill Weaver
City Clerk
City of El Segundo
350 Main Street,
El Segundo, CA 90245

Hon. Bill Fisher, Mayor
Mr. Carl Jacobson, Mayor Pro Tem
Ms. Suzanne Puentes
Mr. Dave Atkinson
Ms. Marie Fellhauer

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On three separate occasions, June 19, 2012, June 28, 2012 and July 17, 2012, the ESCC conducted closed sessions for the stated purpose of discussions with Greg Carpenter, City Manager, concerning The Lakes, a municipal golf course owned by the City of El Segundo. Although the stated purpose of such meetings, as noted on the relevant Agendas, was “discussion with Real Property Negotiator”, ESCC had not yet conducted a public session as required by Government Code Section 54956.8 as follows:

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Additionally, the relevant Agendas fail to identify the persons or entities Mr. Carpenter would negotiate with. These meetings patently fall outside the “safe harbor” and are illegal.

2. Conducting Closed Sessions with Top Golf on Related Issues

On two separate occasions, February 5, 2013, February 19, 2013, the ESCC conducted closed sessions with Mr. Carpenter relating to Top Golf and Centercal Properties as “negotiating parties.” However, the proposed lease is with Centercal only. The City of El Segundo will have no contractual privity with Top Golf, who will sublet from Centercal to operate a golf entertainment business at The Lakes. ESCC was not negotiating a real property lease with Top Golf but rather consulting with Top Golf regarding lease issues. The Brown Act mandates that ESCC conduct any such consultations in public meeting because the “safe harbor” provision pertains only to the proposed lease on price and terms of payment. Consultations with other parties on “related issues” or “background issues” are outside the scope of the exception. See, Shapley v. City Council of San Diego, 98 Cal. App. 4th 604 (2002).

3. Conducting Serial Closed Sessions on Matters Outside Payment and Terms of Payment

On eight separate occasions, February 6, 2013, February 19, 2013, May 7, 2013, August 6, 2013, August 20, 2013, September 3, 2013, September 17, 2013, and October 1, 2013, the ESCC conducted closed
sessions with Mr. Carpenter relating to the lease with Centercial Properties as the negotiating party. The number of closed sessions alone is excessive and proves that the ESCC has trespassed beyond the “safe harbor” of price and terms of payment. This situation is analogous to Shapiro v. City Council of San Diego, 96 Cal. App. 4th 904 (2002), where the Court of Appeal held that the San Diego Council had violated the Brown Act in including discussion of a variety of “related issues” in a series of closed sessions held to consult with its agent in real property negotiations concerning a large redevelopment project to create a new baseball park. The Fourth District faulted the San Diego Council’s expansive interpretation of the “safe harbor” as follows:

We believe the City Council’s view that no detailed disclosures should be required before closed sessions may be held to discuss a complex overall real estate based transaction is inconsistent with the express statutory requirements of section 54945.8.

The Fourth District stressed that the “safe harbor” must be narrowly and not expansively construed as follows:

If we were to accept the City’s interpretation of the Brown Act in this respect, we would be turning the Brown Act on its head, by narrowly construing the open meeting requirements and broadly construing the statutory exceptions to it. That would be incorrect. We do not denigrate the important consideration of confidentiality in negotiations. However, we believe that in this case, the City Council is attempting to use the Brown Act as a shield against public disclosure of its consideration of important public policy issues, of the type that are inevitably raised whenever such a large public redevelopment real estate based transaction is contemplated. The important policy consideration of the Brown Act, however, must be enforced, even where particular transactions do not fit neatly within its statutory categories.

Id. at 924. Here, as in Shapiro, ESCC is using closed sessions to shield important development considerations from public view. The sheer number of closed sessions, in contrast to the single open session on the proposed lease, proves that ESCC is shirking its duty to conduct open sessions on matters of public interest that will substantially impact The Lakes future. Indeed, ESCC has disclosed relatively nothing in open sessions regarding its relationship with Centercial, Centercial’s relationship with Top Golf, proposed physical changes to the golf course, proposed physical changes to the driving range, price increases, public programs, changes to the liquor license and more. Members of the public are demanding to be heard on these issues but have been relegated to bystanders in a closed process zealously guarded by ESCC against its public responsibilities under the Brown Act.

4. Substantively Misleading Agenda Description

On August 21, 2012, the ESCC conducted a single public session on the proposed lease of The Lakes which generally describes the Agenda as a direction to staff as follows:

Consideration and possible action to direct staff to take steps necessary to seek input from various City Committees regarding a potential agreement with Centercial Properties, LLC for enhancing the driving range and driving 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.

This description is inaccurate because it states that the ESCC was to direct staff regarding future action when, in fact, the ESCC contemplated and took immediate action to direct Mr. Carpenter to enter into negotiations with Centercial regarding a lease of The Lakes. While the Brown Act requirements for agenda item descriptions are quite lenient, this item just fails to describe the action taken by ESCC to immediately enter into a proposed lease. It’s just wrong. The significance of the misdescription is magnified by the fact that this was the only open discussion on the proposed lease and therefore, it was imperative that the ESCC accurately convey notice to the public of what ESCC intended to do. Without such clear notice, those members of the public who might well have attended the meeting to address a proposed decision immediately to proceed with lease negotiations were misled into believing that there would be adequate opportunities to do so later, at meetings of either the “City Committees,” the City Council or both. The ESCC failed its duties under the Brown Act and should be enjoined from proceeding further absent a material cure.
The El Segundo City Council has thirty days from receipt of this letter to provide me with an unconditional commitment to cease, desist from, and not repeat the practices noted above, compliant with Government Code Section 54960.2, subdivision (c). Its failure to do so will entitle me to file an action for declaratory judgment and injunctive relief and for attorney’s fees and costs.

Respectfully,

[Signature]

Debra V. Gelet
(310) 489 7751
citagelet@verizon.net
THE SEPTEMBER 15, 2015 CITY COUNCIL MEETING AGENDA ITEM # 1
IS
CONTINUED ITEM #2 FROM JUNE 15TH, JULY 7TH, ITEM #1 FROM JULY 21ST, ITEM #4 FROM AUGUST 4TH, ITEM #1 FROM AUGUST 18 AND SEPTEMBER 1ST

Exhibit B
Draft Response Letter
October 30, 2013

Debra V. Gelst
121 16th St
Manhattan Beach, CA 90266

Re: Letter dated October 15, 2013

Dear Ms. Gelst:

Thank you for your letter dated October 15, 2013 (received by the City on October 17, 2013). As you are aware, that letter (the "October 15th Letter") alleges that the City Council violated the Ralph M. Brown Act and constitutes a "cease and desist" letter in accordance with Government Code § 54960.2.

Specifically, the October 15th letter accuses the City Council of violating the Brown Act on the following dates: June 19, 2012; June 25, 2012; July 17, 2012; August 21, 2012; February 5, 2013; February 19, 2013; May 7, 2013; August 6, 2013; August 20, 2013; September 3, 2013; September 17, 2013; and October 1, 2013. In sum, the October 15th letter alleges that the City Council's actions relating to the municipal golf course known as "the Lakes" violated the Brown Act as follows: (1) failure to appoint real property negotiators in open session; (2) incorrect agenda descriptions as to closed session items; and (3) discussing items in closed session beyond the scope of statutory authority. In short, the City Council disagrees with the October 15th letter for several different reasons.

First, as to alleged violations occurring in 2012, these matters are time-barred pursuant to Government Code § 54960.2(a)(2). That section requires actions to be undertaken within nine months of the alleged violation.

Second, (as stated in the October 15th letter at p.2) the City Council (at the latest) did appoint real property negotiators in open session on August 21, 2012 pursuant to Agenda Item No. F9:

"Direct the City Manager and City Attorney to negotiate terms"
of a [sic] agreement with Centrecal Properties, LLC for a new TopGolf facility to be located at The Lakes in place of the existing driving range.”

Moreover, the City Manager was identified on every agenda as the property negotiator for these negotiations. The City Manager has general authority pursuant to El Segundo Municipal Code § 1-5A-7 to “exercise general supervision over all public buildings, public parks and all other public property which is under the control and jurisdiction of the city council.” The City Council believes this would include (at a minimum) initial negotiations regarding potentially leasing the Lakes. As previously noted, however, these matters are time barred in any event.

Third, as explained below, it is plain that the City Council’s considerations regarding the Lakes were (and are) quite public. Even a cursory glance at the City’s webpage, staff reports, and other public outreach documents demonstrate that the City Council sought (and continues to seek) public input regarding what should happen with the municipal golf course. Allegations, therefore, that the City Council was misleading or has somehow attempted to avoid transparency as to the Lakes matter cannot be reconciled with the City’s efforts at encouraging public discourse regarding this important matter.

As you know, the City Council is considering whether to lease a portion of the Lakes municipal golf course to a private company or companies. As part of this process, the City is engaged in an extensive public outreach program seeking public participation. Among other things, the City undertook the following actions:

- August 21, 2012: the City Council heard a presentation regarding the Lakes during open session and then directed the City Manager, or designee, to seek public input regarding a potential agreement with Centrecal and Top Golf.
- August 29, 2012: the City Council’s Golf Course Subcommittee met in public to discuss the matter.
- September 13, 2012: City staff made a presentation to the El Segundo Chamber of Commerce.
- September 18, 2012: City staff met at the El Segundo Public Library with golf industry stakeholders.
- September 19, 2012: City staff made a presentation to the City’s Recreation and Parks Commission during its regular meeting.
- September 25, 2012: City staff made a presentation to the Kiwanis Club.
- October 3, 2012: City staff provided a progress update to the City Council’s Golf Course Subcommittee.
- October 4, 2012: City staff made a presentation at the Rotary Club meeting.

- October 11, 2012: a presentation regarding the matter was made to the City's Planning Commission during its regular meeting.

- October 11, 2012: City staff made a presentation to the City's Economic Development Advisory Council.

- November 18, 2012: the El Segundo Chamber of Commerce voted to endorse/support the Top Golf matter.

- December 5, 2012: the City Council's Golf Course Subcommittee reviewed the matter.

- December 19, 2012: the Recreation and Parks Commission reviewed the findings and analysis.

- Between October and November 2012, City staff met with most business oriented hotels within the City of El Segundo.

- The City posted the Powerpoint presentation, draft schematics, and other matters on the City's website (elsegundo.org/news/displaynews.asp?NewsID=1149&TargetID=1).

- The City has posted and (continues to post) all disclosable public communications regarding the Lakes matter on the City's website (www.elsegundo.org/depts/cityclerk/documents.asp).

Such proactive actions are in addition to the multiple opportunities taken by interested citizens to provide public comment to the City Council during its regular meetings. This matter is also being extensively scrutinized by media coverage (see e.g., www.easyreadernews.com/74699/residents-assail-topgolf; www.dailybreeze.com/20121105/local-golfers-balk-at-proposed-changes-to-the-lakes-in-el-segundo-course) and various social media outlets.

Based upon the foregoing, the City Council respectfully disagrees with the allegations set forth in the October 15th Letter as to purported violations of the Brown Act. Moreover, as you can see from the Due Diligence and Lease Agreement ("Agreement") that the Council will consider approving at its November 5, 2013 regular meeting, the alleged Brown Act violations set forth in the October 15th Letter are without merit. There are twelve specific conditions precedent that must be accomplished before a leasehold interest could be created. Accordingly, the City is not committed to entering into the draft Agreement since there are numerous issues that must be resolved in public meetings before the Planning Commission and City Council before any leasehold could be established. Such matters include review and potential approval of a conceptual plan for the golf course and the driving range improvements; review and potential approval of
a recommended action under the California Environmental Quality Act; review and potential approval of the land use entitlements that would be needed to allow for the uses contemplated by the draft Agreement; and many other items that identified in the draft Agreement.

However, in an abundance of caution, to avoid unnecessary litigation, and without admitting any violation of the Ralph M. Brown Act, the El Segundo City Council unconditionally commits that it will cease, desist from, and not repeat the actions challenged in the October 15th Letter and briefly described above.

Note that the El Segundo City Council may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to Government Code § 54960(a). That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

Bill Fisher,
Mayor
May 8, 2015

Debra V. Geist
121 16th St
Manhattan Beach, CA 90266

Re: Notice of Rescission per Government Code § 54960.2(e)

Dear Ms. Geist:

On November 5, 2013, the City Council committed to refrain from utilizing closed session to discuss real property negotiations concerning its municipal golf course known as "the Lakes." The reasons for such commitments are set forth in the enclosed letter (the "Letter").

As you know, on May 5, 2015, the City Council directed our office to provide you thirty day notice that the City Council would consider rescinding the commitment set forth in the Letter in accordance with Government Code § 54960.2(e). Accordingly, take notice that the City Council will consider a "Rescission of Brown Act Commitment" as a regular agenda item at its regular meeting held on June 16, 2015. Should the City Council decide to rescind its commitment in the Letter, you will have the right to commence legal action in accordance with the Ralph M. Brown Act.

Please note that the City reaffirms its position as set forth in the Letter: this matter is thoroughly transparent; allegations regarding Brown Act violations are without merit. Moreover, the public continues to have a vibrant dialogue regarding the City Council’s actions as to the Lakes.

Note that a copy of this letter is being provided to the Public Integrity Unit of the Los Angeles County District Attorney’s office in accordance with Government Code § 54960.2(e).

Very truly yours,

[Signature]

Assistant City Attorney

c: District Attorney
City Council
City Manager

350 Main Street, El Segundo, California 90245-3813
Phone (310)524-2300 Fax (310) 640-0489
October 30, 2013

Debra V. Geist
121 16th St
Manhattan Beach, CA 90266

Re: Letter dated October 15, 2013

Dear Ms. Geist:

Thank you for your letter dated October 15, 2013 (received by the City on October 17, 2013). As you are aware, that letter (the "October 15th Letter") alleges that the City Council violated the Ralph M. Brown Act and constitutes a "cease and desist" letter in accordance with Government Code § 54960.2.

Specifically, the October 15th letter accuses the City Council of violating the Brown Act on the following dates: June 19, 2012; June 25, 2012; July 17, 2012; August 21, 2012; February 5, 2013; February 19, 2013; May 7, 2013; August 6, 2013; August 20, 2013; September 3, 2013; September 17, 2013; and October 1, 2013. In sum, the October 15th letter alleges that the City Council’s actions relating to the municipal golf course known as “the Lakes” violated the Brown Act as follows: (1) failure to appoint real property negotiators in open session; (2) incorrect agenda descriptions as to closed session items; and (3) discussing items in closed session beyond the scope of statutory authority. In short, the City Council disagrees with the October 15th letter for several different reasons.

First, as to alleged violations occurring in 2012, these matters are time-barred pursuant to Government Code § 54960.2(a)(2). That section requires actions to be undertaken within nine months of the alleged violation.

Second, (as stated in the October 15th letter at p.2) the City Council (at the latest) did appoint real property negotiators in open session on August 21, 2012 pursuant to Agenda Item No. F9:

“Direct the City Manager and City Attorney to negotiate terms

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Phone (310) 524-2300 Fax (310) 640-0489

Direct the City Manager and City Attorney to negotiate terms...
of a [s/c] agreement with Centercal Properties, LLC for a new TopGolf facility to be located at The Lakes in place of the existing driving range."

Moreover, the City Manager was identified on every agenda as the property negotiator for these negotiations. The City Manager has general authority pursuant to El Segundo Municipal Code § 1-5A-7 to "exercise general supervision over all public buildings, public parks and all other public property which is under the control and jurisdiction of the city council." The City Council believes this would include (at a minimum) initial negotiations regarding potentially leasing the Lakes. As previously noted, however, these matters are time barred in any event.

Third, as explained below, it is plain that the City Council's considerations regarding the Lakes were (and are) quite public. Even a cursory glance at the City's webpage, staff reports, and other public outreach documents demonstrate that the City Council sought (and continues to seek) public input regarding what should happen with the municipal golf course. Allegations, therefore, that the City Council was misleading or has somehow attempted to avoid transparency as to the Lakes matter cannot be reconciled with the City's efforts at encouraging public discourse regarding this important matter.

As you know, the City Council is considering whether to lease a portion of the Lakes municipal golf course to a private company or companies. As part of this process, the City is engaged in an extensive public outreach program seeking public participation. Among other things, the City undertook the following actions:

- August 21, 2012: the City Council heard a presentation regarding the Lakes during open session and then directed the City Manager, or designee, to seek public input regarding a potential agreement with Centercal and Top Golf.

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Such proactive actions are in addition to the multiple opportunities taken by interested citizens to provide public comment to the City Council during its regular meetings. This matter is also being extensively scrutinized by media coverage (see e.g., www.easyreadernews.com/74699/residents-assail-topgolf; www.dailybreeze.com/20121105/local-golfers-balk-at-proposed-changes-to-the-lakes-in-el-segundo-course) and various social media outlets.

Based upon the foregoing, the City Council respectfully disagrees with the allegations set forth in the October 15th Letter as to purported violations of the Brown Act. Moreover, as you can see from the Due Diligence and Lease Agreement (“Agreement”) that the Council will consider approving at its November 5, 2013 regular meeting, the alleged Brown Act violations set forth in the October 15th Letter are without merit. There are twelve specific conditions precedent that must be accomplished before a leasehold interest could be created. Accordingly, the City is not committed to entering into the draft Agreement since there are numerous issues that must be resolved in public meetings before the Planning Commission and City Council before any leasehold could be established. Such matters include review and potential approval of a conceptual plan for the golf course and the driving range improvements; review and potential approval of
a recommended action under the California Environmental Quality Act; review and potential approval of the land use entitlements that would be needed to allow for the uses contemplated by the draft Agreement; and many other items that identified in the draft Agreement.

However, in an abundance of caution, to avoid unnecessary litigation, and without admitting any violation of the Ralph M. Brown Act, the El Segundo City Council unconditionally commits that it will cease, desist from, and not repeat the actions challenged in the October 15th Letter and briefly described above.

Note that the El Segundo City Council may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as “Rescission of Brown Act Commitment.” You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to Government Code § 54960(a). That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

Bill Fisher,
Mayor
EL SEGUNDO CITY COUNCIL
AGENDA ITEM STATEMENT

MEETING DATE: September 15, 2015
AGENDA HEADING: Unfinished Business

AGENDA DESCRIPTION:

Consideration and possible action to approve a Due Diligence and Ground Lease Agreement and Reimbursement Agreement with ES CenterCal LLC ("ES CenterCal") to lease the driving range portion of The Lakes Golf Course for the purpose of developing the TopGolf facility consisting of a driving range, restaurant, bar and lounge and event facilities. (Fiscal Impact: See attached report from ProForma Advisors)

RECOMMENDED COUNCIL ACTION:

1. Consideration and possible action to approve and authorize the Mayor to execute the Due Diligence and Ground Lease Agreement subject to ES CenterCal entering into a reimbursement agreement with the City (see item 2);
2. Consideration and possible action to authorize the City Manager to enter into a Reimbursement Agreement that requires ES CenterCal to pay the costs and fees associated with the various due diligence and land use entitlement costs;
3. Consideration and possible action to authorize the City Manager to execute a Professional Service Agreement for CEQA review services related to the Due Diligence and Ground Lease Agreement approved as to form by the City Attorney in an amount not to exceed $257,500; and/or;
4. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Due Diligence and Ground Lease
2. Reimbursement Agreement for Environmental Review Services for the CenterCal/TopGolf Project
3. Pro Forma Advisors Financial Analysis with updated summary sheets

FISCAL IMPACT: See attached Pro Forma Advisors Report

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<th>Amount Budgeted:</th>
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<tr>
<td>Additional Appropriation:</td>
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</tr>
<tr>
<td>Account Number(s):</td>
<td>Developer Reimbursed Trust Fund to be established for this Project</td>
</tr>
</tbody>
</table>

PREPARED BY: Mark Hensley, City Attorney
REVIEWED BY: 
APPROVED BY: Greg Carpenter, City Manager

OVERVIEW OF ACTIONS TO BE CONSIDERED BY COUNCIL:

In November 2013 and March 2014, the City Council approved a proposed Due Diligence and Ground Lease Agreement by and between the City of El Segundo and ES CenterCal, LLC ("Lease") to lease the driving range portion of The Lakes Golf Course for the purpose of developing a TopGolf facility consisting of a driving range, restaurant, bar and lounge, and event facilities. The Lease was not executed by CenterCal. There have been some significant changes to the Lease that are explained in detail below. Thus, the amended lease is being presented to the Council for review and
potential approval.

The City and ES CenterCal have also negotiated a reimbursement agreement to cover the costs of various conditions precedent to the Lease (for example, financial review of the Guarantors, negotiations with Southern California Edison and Chevron, California Environmental Quality Act review, preparation of land use entitlement documents, etc.). Staff is seeking Council approval of the attached Reimbursement Agreement which estimates that the total costs of processing the conditions precedents at $367,500. ES CenterCal, LLC has requested a "Not to Exceed" clause within the Reimbursement Agreement. Should the processing costs and fees exceed the agreed upon amount, the reimbursement agreement provides that the City will cease processing the conditions precedent unless and until ES CenterCal agrees to pay amounts in excess of the currently estimated costs.

Finally, staff is seeking Council approval to enter into a contract for preparation of the necessary environmental review for the Lease pursuant to the California Environmental Quality Act (CEQA). The total estimated costs for environmental review services include $257,500 for an environmental review consultant (of which $75,000 was included for traffic engineering and parking analysis costs).

OVERVIEW OF LEASE AND CHANGES SINCE MARCH 2014 AGREEMENT APPROVED BY THE COUNCIL

TopGolf has numerous facilities throughout the United States and feature driving ranges that have electronic chips built into the golf balls that are hit at targets on the driving range which is tracked on a computer at each driving range bay. This allows for keeping track of a person’s accuracy or for competitive play amongst players. TopGolf facilities also include full service restaurants and bars for serving people within designated restaurant area and to those utilizing the driving range. TopGolf facilities also have banquet facilities.

The Due Diligence and Ground Lease Agreement ("Agreement") between the City of El Segundo and ES Centercal provides for the potential reconstruction of the Lake’s golf course and lease of the driving range for purposes of having it operated as a TopGolf facility. The golf course’s reconstruction is necessary due to the increased size of the proposed driving range facility necessary for TopGolf’s operations.

It is important to note that if the Council approves the Agreement, it does not mean that the TopGolf project has been approved or that there is a lease in existence between the City and CenterCal. As will be discussed in some length below, there are numerous conditions that have to be satisfied and discretionary approvals that the City Council will have to review and either approve or deny at a public hearing to be held in the future. In short, this is just the first step in a relatively lengthy and complex process.

Use, Term and Rent

The Agreement provides that portion of the property that may be leased to CenterCal and then subleased to TopGolf may only be used for a driving range and related clubhouse with restaurant, bar, lounge and event space. The initial term of the lease is twenty years with the potential of CenterCal/Top Golf exercising up to six options to extend the lease by 5 years for each option if Top Golf is in compliance.
with the Agreement at the time the options can be exercised. Thus, the agreement could be in place for 50 years.

If the lease portion of the Agreement becomes effective and during the construction period of the Agreement, CenterCal is required to pay the City $18,000 per month. Once the TopGolf facility is open for business and the golf course reconstruction is completed then the fixed rent is $525,000 per year. This is an increase of $100,000 a year in fixed rent payments from the March 2014 draft Agreement. This amount will be adjusted by 2% per year for the second through 5th year of the operation of the TopGolf facility and then by 10% for each five year period thereafter. In addition to the fixed rent, commencing with third year of TopGolf’s operation, CenterCal is required to pay the City an annual variable rent payment that is equal to 3% of TopGolf’s gross revenues for beverage sales. This variable rent payment was not part of the March 2014 draft Agreement.

**Golf Course Lighting**

In addition to the increased fixed rent and inclusion of the variable rent since the March 2014 draft Agreement, CenterCal has also agreed to pay $400,000 towards installing lights on the golf course. The money will be placed in an interest bearing escrow account and if the City does not use the funds within five years, they will be returned to CenterCal.

**Due Diligence**

The due diligence portion of the Agreement is anticipated to take approximately 12 months to complete and unless and until all of the due diligence conditions are completed, the lease does not become effective. The due diligence conditions are:

1. CenterCal must file an application with the City within 90 days for purposes of the City beginning to process the land use entitlements and conduct the California Environmental Quality Act (“CEQA”) review for the proposed TopGolf facility and the reconstruction of the golf course. CenterCal will need a General Plan Amendment, alcohol permit and CEQA approval, and other permits and approvals, that will be the subject of public hearings before the Planning Commission and City Council which is estimated to be approximately 10 months from the date the agreement is executed. The Council may approve or disapprove of these matters at the public hearing so CenterCal has no guarantee that it will ever gain a leasehold interest in the property and be able to operate a TopGolf facility on the property. This is a very important point as while some members of the Council may like the idea of the potential project, the Council needs to consider the CEQA (traffic, air quality, noise, etc., impacts on the environment) and the land use entitlements and all studies related to such before it can make a decision on the proposed project. The initial portion of the Agreement only provides for the due diligence activities to commence.

2. CenterCal must prepare final building plans for the TopGolf facilities and the golf course reconstruction. The plans for the golf course must conform with the requirements of Exhibit D to the Agreement that require among that a golf shop, starter desk, restrooms, management office, café/bar, outdoor patio seating area, and a nine hole golf course, and other improvements. The golf course must have the same or better degree of play difficulty as the current golf course, a safety rating that is as good or better than the existing course, two Par 4 holes, and the course must maintain the total current play yardage as that which exists at the course currently.
3. TopGolf must have entered into construction contracts to build the TopGolf facility and golf course facilities.

4. TopGolf must execute a sub-lease with CenterCal that requires that TopGolf operate a TopGolf facility on the property for at least seven years.

5. TopGolf must have received approval from Chevron that permits it to operate a TopGolf facility on the property. While the City does not necessarily agree that this is necessary, TopGolf will not move forward with the project without this approval. Chevron's approval cannot affect the City's current rights and obligations regarding Chevron or otherwise burden the land in the future.

6. The Southern California Edison ("SCE") license agreement between SCE and the City must be extended to the satisfaction of both the City and TopGolf. The license agreement allows the City to use the area of land that is adjacent to or under the SCE power lines on the property. The license agreement will expire in 2021 and given the length of the potential lease in the Agreement, it is desirable to get a long term extension to the license agreement. It is unknown at this time how long of an extension SCE may be willing to give the City.

7. There are conditions relating to guaranties that the City is requiring from the parent companies of CenterCal and TopGolf as well as subsidiary of TopGolf. CenterCal is responsible for paying for and constructing the golf course improvements while TopGolf is responsible for paying for and constructing the TopGolf driving range and related improvements. The TopGolf subsidiary is responsible for guarantying that the facility is operated as a TopGolf facility for a seven year period as well as all rent payments and other lessee and TopGolf obligations during this period. The Agreement and lease and sublease are with subsidiaries of the parent companies and the City needs to ensure that the improvements are completed or that the golf course and driving range are returned to their current condition if for some reason the deal falls apart in the future. The City is most at risk with respect to having its current improvements on the property demolished and not having the golf course and TopGolf improvements completed. Thus the City is requiring the parent companies to guaranty that the improvements are completed or that the golf course and driving range are returned to their current condition. The two conditions related to the guaranties are that the City must determine, in its sole discretion, that the parent companies are sufficiently capitalized and that the guaranties are properly executed and delivered to the City. The City is still reviewing the subsidiary guaranty and there may be some revisions made to that particular guaranty prior to Tuesday, September 15, 2015 Council Meeting.

8. CenterCal Golf must have executed an irrevocable license that provides the City with sufficient parking for the golf course users as the lease provides that TopGolf will lease and maintain the parking lot. The agreement provides that 70 spaces must be available for such use and 30 of the 70 spaces be marked for exclusive use for the golf course. It is noted in the Agreement that until the parking studies are completed that these parking numbers are estimates and that the numbers may change.

There are additional conditions that must be met such as TopGolf finding that it can obtain adequate title to the property and that the condition of the soils on the property are suitable for its purposes of constructing the improvements. The City and TopGolf must agree on the underlying value of the land in the event that in the future some third-party condemns the property so that proceeds of the condemnation can be appropriately apportioned between the City and TopGolf. Finally, in the event that all of the due diligence conditions are satisfied, TopGolf has to issue a written statement to the City that it is going to proceed with the project.
The Agreement provides that the due diligence period will be twelve months but can be extended for an additional sixty days by TopGolf. TopGolf is required to enter into a separate agreement with the City to pay for all of the staff, consultant, legal fees, and costs associated with the due diligence requirements.

**Operation of the Top Golf Facilities**

TopGolf is required to have the bottom level of the driving range open for business seven days a week from 6:00 a.m. until 9:00 p.m. and the rest of its facilities from 8:00 a.m. until 9:00 p.m. seven a week except on holidays. Following the expiration of TopGolf’s commitment to be the operator of the facilities, TopGolf may close for up to two years while it finds another operator so long as it is paying rent and otherwise complies with the terms of the Agreement. The City has the right to operate the TopGolf facilities during any such closure period and the rent during such time will be reduced by the amount of net revenue being derived by the City during such operation.

TopGolf is required to provide a 10% discount to City residents that have a City recreation card. This discount is addition to all other discounts offered by TopGolf including a 20% discount for senior citizens and active military personnel.

During the hours of 6:00 a.m. to noon on Monday through Friday and 6:00 a.m. to 9:00 a.m. on Saturday and Sunday, TopGolf must charge driving range fees to El Segundo residents (with City recreation cards) that are consistent with fees charged by other driving ranges open to the public. This provision has been changed from the March 2014 draft Agreement as the prior draft provided for the discount for all patrons from 6:00 a.m. to 9:00 a.m. everyday. Based upon the Council’s direction, this change was made to include only El Segundo residents and extend the time period for discounted driving range fees.

TopGolf must also offer discounted monthly user access cards for frequent users similar to those provided at its other facilities, promote youth and junior golf programs such “Good Swings Happen,” employ golf professionals including those currently providing services at the driving range including employing two during the time period that the facilities are being constructed, use commercially reasonable efforts to include a practice putting element as part of its facilities, and allow junior high school and high school players from El Segundo and Manhattan Beach to use the portion of the facilities used as a driving range from 2:30 p.m. until 5:00 p.m. at no charge when such is a formal practice event and a rate commensurate with surrounding public driving ranges when they are practicing at other times. The provisions re junior golf and employment of golf professionals were tightened up since the March 2014 draft Agreement such that it makes it much more likely that TopGolf will continue these programs as they exist today.

**Insurance and Indemnity**

The March 2014 draft Agreement provided that TopGolf would maintain $1 million insurance during the due diligence period and $3 million thereafter. Based upon the City Attorney’s experience over the past couple of years of seeing increased verdict and settlement amounts, the City Attorney recommended increasing these amounts to $2 million and $5 million respectively, which CenterCal has agreed to. TopGolf is required to defend, indemnify hold the City harmless for claims resulting from TopGolf’s use of the property unless such is the result of the City’s actions in which event the City is
required to defend, indemnify and hold TopGolf harmless.

Assignment and Sublease

The Agreement provides and requires that CenterCal sublease the property to TopGolf for at least a seven year period. Following this seven year period, or if there is a default by TopGolf, CenterCal does have the right to sublease the property to another operator with the City’s consent which the City can withhold if the sublessee does not have sufficient experience or financial strength.

Mortgage of the Leasehold Interest

TopGolf does have the authority to take out a mortgage against the leasehold interest which may be done for purposes of financing the improvements on the property. If TopGolf were to default on the mortgage, so long as rents are kept current and the other provisions of the Agreement are honored the lender has the right to essentially step into TopGolf’s shoes and operate the driving range in accordance with terms of the agreement or enter into an identical lease with the City.

City’s Right to Audit

The City has the right to audit TopGolf for purposes of determining whether the City has been paid the proper amount for TopGolf’s gross revenues from beverage sales. In the event that the audit shows that the City has been underpaid by 3% or more then TopGolf must pay the City the difference between what TopGolf paid and what it should have paid the City, the cost of the audit, and a 4% penalty on the underpaid amount.

Taxes

TopGolf is responsible for payment of all taxes associated with its use and operation of the property. Additionally, TopGolf has agreed that it will not be entitled to the offset its City’s business license tax liability by the amount of sales tax it generates for the City which is an offset that is available to other businesses in the City.
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 _______2015_____, 2015
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DUE DILIGENCE AND GROUND LEASE AGREEMENT ("LEASE")

Date: 20142015 (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")

TopGolf International, Inc. a Delaware corporation ("TGI") for the construction of the Premises Improvements and a wholly owned subsidiary of TGL ("TGI Subsidiary Guarantor") for the Operating Period ("collectively, Topgolf Guarantors")

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 as Exhibit "B-1" is a current preliminary 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 subject to all of the Conditions Precedent and other terms and conditions of this Lease, Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor and to sublease the Premises to TopGolf USA El Segundo LLC, a Delaware limited liability company ("Topgolf El Segundo") for the purpose of operating a
commercial driving range, full service restaurant, clubhouse, and event space (herein called the "Sublease") and Lessee wishes to lease the Premises from Lessor, for such use subject to all of the Conditions Precedent and other terms and conditions of this Lease; 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. For purposes of this Lease, Topgolf Guarantors and Topgolf El Segundo are sometimes collectively referenced as "Topgolf".

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 Lessor has notified Lessor that it desires to have this Lease become effective as provided in Section 5.4 herof ("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 include the Parking License, the License Agreement and the Parking License):Permitted Exceptions as shown on Exhibit "E."

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, (each, an "Option Period"), from the date upon which such term would otherwise expire, provided that Lessee shall be entitled to exercise an
Option Option Period 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 Option Period 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.

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 Forty Three Thousand Fourteen Hundred Sixty and 66/100 Dollars ($35,416,664.75) per month ($429,000.00/525,000 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, Lessee shall pay to Lessor: (i) for each calendar year during the term of this Lease, an amount equal to three percent (3%) of the Gross Receipts from all beverages (alcoholic and non-alcoholic) sold on the Premises during the applicable calendar year (“Variable Rent”); and (ii) 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. Variable Rent and other sums hereunder may be satisfied by any person or entity making payment of Fixed Rent, Variable Rent or other sums to Lessor as hereinafter provided. The term “Gross Receipts” wherever used in this Lease shall mean the aggregate amount of sales (whether for cash, on credit or otherwise) of all alcoholic and non-alcoholic beverages made and rendered on the Premises in connection with the business
operation conducted on the Premises, but shall not include any federal, state, municipal or other sales, value added or retailer's excise taxes paid or accrued, regardless of whether such taxes are collected from customers or absorbed, sales to employees, complimentary sales, donations for charitable events, discounts afforded customers from the redemption of coupons, fees paid to credit card issuers and processors, bulk and/or intercompany transfers of inventory (provided no such transfer is made to avoid liability to Variable Rent), or alcohol beverage license fees (if any).

Within one hundred (120) days after the end of each calendar year following the Variable Rent Commencement Date (defined in Section 3.2 below), Lessee shall deliver to Landlord a written statement setting forth the amount of Gross Receipts for the preceding calendar year. Simultaneously with the delivery of such statement, Lessee shall pay to Landlord the Variable Rent shown by such statement to be then due and owing. In computing the Variable Rent for the first calendar year following the Variable Rent Commencement Date, if such calendar year shall contain less than 365 days, then the Variable Rent shall be multiplied by fraction, the numerator of which shall be the number of days in such shorter calendar year, and the denominator of which shall be 365.

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 (i) the date that the Premises opens to the public for business or (ii) 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 (other than Variable 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. The obligation to pay Variable Rent shall commence on the third anniversary of the Fixed Rent Commencement Date ("Variable Rent Commencement Date"). Within ninety days of the termination of this Lease, Lessee shall pay to Lessor all Variable Rent payments owed to the Lessor based upon the payments being made in arrears. This agreement shall not be construed as giving Lessor any partnership or other interest in Lessee's or Topgolf's business. It is understood and agreed by Lessor that there has been no representation of any kind whatsoever made by Lessee or Topgolf as to the amount of Gross Receipts which may or shall be made from the Premises during any year of the term of this Lease.

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 beThirty-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 ($42,858.16), 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.
3.3 The Fixed Rent shall, for the first five (5) years following the Fixed Rent Commencement Date, increase at the commencement of Years 2, 3, 4 and 5 by two percent (2%) and at the commencement of each five-year period thereafter (i.e., Year 6, Year 11, Year 16), the Fixed Rent shall increase by ten percent (10%) (which shall include any Option Periods that may be exercised by Tenant).

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, the Variable 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/Topgolf driving range, restaurant, bar, lounge, grill and event space, that is similar with regard to the current operations of that certain existing TopGolf/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/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, foreseen 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 Due Diligence Period. 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. Except with respect to provisions that expressly survive the termination of this Agreement, upon expiration of the Due Diligence Period (which shall not be extended under any circumstance by Force Majeure), the failure to satisfy the Conditions Precedent and the termination of this Lease, all of the rights and obligations of the parties hereunder shall terminate and each party represents and warrants that it understands and agrees that it shall have no right to file a legal or equitable action against the other party if the Conditions Precedent are not satisfied during the Due Diligence Period, unless the failed condition was a condition that failed because of a breach of this Agreement by the other party or because of such party's fraud or willful misconduct. For the avoidance of doubt, the mere exercise of discretionary authority by the City is not a breach of this Lease or fraud or willful misconduct by the City or Lessor, provided that in no event shall a party's damages in connection with such legal or equitable action exceed One Hundred Thousand and no/100 Dollars ($100,000.00).

5.2 Cooperation and Entry Notice. Lessor and Lessee agree to reasonably cooperate during the Due Diligence Period, including but not limited to Lessor providing public information to Lessee in Lessor'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.

5.33 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"). Lessor 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 Lessee 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 Lessor’s 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. Lessor’s approval of the Preliminary Report shall be without prejudice to Lessor’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—5.4 Indemnification. 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 $12,000,000.00 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.

5.45.5 Conditions Precedent. The following shall be conditions precedent to the Premises Turnover Date and commencement of the Basic Term hereunder (items (i) through (xiii) 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, 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 all zoning and building and safety laws and regulations, 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; Lessee shall cause the City to be named as an additional insured under the certificate(s) of insurance issued by the architects and design professionals responsible for preparing the plans for the Golf Course and Premises Improvements, (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 and Lessee shall cause the City to be named as an additional insured under the certificate(s) of insurance issued by the contractor(s) for construction of the Golf Course Improvements and Premises 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, 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); however, such approval from Chevron may not impose any obligations on the City or on the Property but may place obligations on the Lessee and the Premises during the term of this Lease which arise from Lessee’s use of the Premises; (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, TGI has sufficient financial strength to guarantee construction of the Premises Improvements, and the 30-West/TGI Subsidiary Guarantor has sufficient financial strength to guarantee construction of the Premises Improvements and operation of the Premises during the Operating Period and to guarantee Rent payments through completion of the Golf Course Improvements and the Premises Improvements Operating Period as expressly required by this Lease and as set forth in the 30-West-Pebblebrook-GuaranteeTopgolf Guarantors. In the event that despite Lessor’s efforts as set forth above, the financial review of the CenterCal Guarantor and the 30-West Guarantor Topgolf Guarantors 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 for the Premises Improvements in the form attached hereto as Exhibit “H”TGI shall have executed the Guaranty for the Premises Improvements in the form attached hereto as Exhibit “H”TGI and delivered such to the Lessor and TGI Subsidiary Guarantor shall have executed a guaranty for the operation of the Premises during the Operating Period and to guarantee Rent payments through completion of the Operating Period in the form attached hereto as Exhibit “H”TGI and delivered such to the Lessor, and (B) the CenterCal Guarantor shall have executed the Guaranty in the form attached hereto as Exhibit “H”TGI and delivered such to Lessor (Delivery of these Guaranties shall also constitute performance of Condition Precedent item (iv); and neither the 30-West Guarantor Topgolf Guarantors nor the CenterCal Guarantor 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; (xii) Lessee shall have prepared at its expense within one hundred and twenty (120) days after the Commencement Date the legal descriptions for Exhibits “A-1” and “A-2” for Lessor’s approval; and (xiii) 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; and, (xiv) provided Topgolf has received all necessary permits and approvals to commence construction of its Topgolf facility upon the Premises, Lessee shall deposit four hundred thousand dollars ($400,000) into an escrow account with the Title Company (“Escrow Holder”) and entered into an escrow agreement (the “Escrow Agreement”) with Lessor and Escrow Holder solely for the purpose of funding a portion of the cost to purchase and install lights on the golf course on the Property for the purpose of allowing golf to be played on the golf course during twilight and after sunset hours. The Escrow Agreement shall provide that if the City shall not have installed lights on the golf course within five (5) years from the date of the Escrow Agreement, then the funds shall be promptly returned to the Lessee. 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.

5.5-5.6 Lease Termination. 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, Lessor 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 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. 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 of 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] Topgolf Guarantors 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] Topgolf Guarantors 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] Topgolf Guarantors 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 City
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 Guarantors 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.

5.87 Survival. 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

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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 threefive million dollars ($35,000,000.00) 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 onehalf Million Dollars ($12,000,000) covering the Due Diligence Period), and thereafter prior to the Premises Turnover Date (evidencing coverage in the amount of threefive million dollars ($35,000,000)), 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 Lessor, Lessee’s first mortgagee, 30 West Pershing and 30 West Pershing’s Topgolf’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 threefive Million Dollars ($35,000,000) per person, with a combined single limit of not less than threefive Million Dollars ($35,000,000.00) on a “per occurrence” basis (bodily injury and property damage), or in
such higher amounts and with such additional coverages as Lessee 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

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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 _______ 10.5.5

There is an existing agreement with Lane Donovan Golf Partners to operate and manage the Property (the “Management Agreement”), but the Lessor shall by the expiration of the Due Diligence Period provide Lessee with reasonable evidence that as of the Commencement Date and as of the Premises Turnover Date, such Management Agreement shall have been terminated with respect to the Leased Premises, and that there are no 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 Topgolf 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 Topgolf, 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 Topgolf delivered to Lessee and Topgolf 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 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. Notwithstanding anything herein to the contrary, in no event during Lessor’s operation of the Premises shall Lessor utilize any proprietary equipment and/or other proprietary elements of Topgolf’s business, including, without limitation, computer hardware and software and other intangible property, located upon or about the Premises.

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 on golf charges 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 golfing discounts offered by Lessee such as the twenty percent (20%) golf discount offered to senior citizens and active military personnel.

11.4 During such times that Top GolfTopgolf is the operator, it shall: (a) between the hours of 6:00 a.m. and 12:00 p.m. on Monday through Friday, and 6:00 a.m. and 9:00 a.m. charge users on Saturday and Sunday, allow City of El Segundo residents that have a Parks and Recreation Card to use the portion of the Premises used as identified in Section 11.2(i) of this Agreement for driving range fees that are generally use, and charged a fee, less the applicable discounts identified in Section 11.3, that is, consistent with fees charged by other driving ranges in Los Angeles County that are open to the public and that are maintained in a similar first class condition; (b) provide discounted monthly user access cards for frequent customers similar to those provided at other Top GolfTopgolf facilities; (c) use commercially reasonable efforts to promote youth and junior golf programs, including but not limited to allowing the “Good Swings Happen” program to continue as well as associated camps, programs and lessons for junior and youth golfers; (d) utilize commercially reasonable efforts to allow golf professionals, including those currently providing lessons and services on the Property, and allow use of the driving range for such groups on the Premises at rates commensurate with those currently charged to youth groups utilizing the driving range which rates may be adjusted on an annual basis using the Los Angeles Area Consumer Price Index for All Urban Consumers; (d) employ or contract with golf professionals (at salaries or rates commensurate with amounts paid to golf professionals in Los Angeles County), including using a good faith effort to employ or contract with those golf professionals currently providing lessons and services on the Property, subject to the parties reaching mutually acceptable employment terms and Topgolf’s receipt of required employment and wage documentation from each prospective hire (Topgolf agrees to use good faith efforts to consider employment terms commensurate with employment terms offered to similarly suited professionals in Los Angeles County), to continue to provide lessons and services in a similar manner as they are currently provided on the Property; including using a good faith effort to employ or contract with two golf professionals that are currently providing services on the Property during the time period between the Initial Term and Premises Turnover Date; (e) if the Site Plan (including the parking layout) will allow, use commercially reasonable efforts to include a putting practice element on the Premises to replace the existing putting practice element on the Property; (f) allow junior high school and high school players attending schools located in El Segundo and Manhattan Beach to use the portion of the Premises used as a driving range between the hours of 2:30 p.m. and 5:30 p.m. at no charge when such is a formal school practice event and at a rate commensurate with fees charged by other driving ranges open to the public that are maintained in a first class condition when they are practicing at other times (provided that such times are prior to 7:00 p.m. local time); and, (g) use commercially reasonable

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efforts to introduce the game of golf to a wider audience and work with PGA of America, PGA of Southern California, and the SCGA in this regard.

11.5 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.

11.6 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-Topgolf 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-Topgolf 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 30 West-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 lessors 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, Lessee on written notice from Lessor 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 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 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 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 Topgolf Guarantors) 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 Topgolf El Segundo 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.

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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, the sublease of the Premises to Topgolf El Segundo shall prohibit the assignment of the Sublease by Topgolf El Segundo until the expiration of the Operating Period, except in connection with a "Permitted Topgolf Transfer" (as such term is hereinafter defined). Topgolf El Segundo shall have the right at any time to assign the Sublease without the consent of Lessor or Lessee to: (a) any business entity which may, as the result of a reorganization, merger, consolidation, or sale of assets succeed to substantially all of the business carried on by TGI, (b) any affiliate of TGI ("Affiliate" means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with TGI). The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of TGI, whether through the ownership of voting securities, by contract or otherwise, (c) any entity which may, as a result of a reorganization, merger, consolidation or sale of assets, succeed to substantially all of the Topgolf business now carried on by TGI, and (d) any entity which acquires 50% or more of the issued and outstanding voting stock or ownership interests (or such lesser percentage as shall be sufficient to acquire voting control) of Topgolf El Segundo or of the corporation or other entity which controls Topgolf El Segundo. Each of the above (a) through (d) referred to herein is a "Permitted Topgolf Transfer."

Lessor hereby approves the sublease of the Premises to 30 West Pershing and the sublease of the Premises from 30 West Pershing to Topgolf El Segundo 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 Topgolf Guarantors and Top Golf Topgolf of such termination and shall provide 30 West Pershing and Top Golf Topgolf with thirty (30) days in which to agree as between themselves as to determine whether one or both of them will enter into a lease of the Premises on the identical terms and conditions as this Lease and Lessor shall afford them Topgolf the opportunity to enter into such lease during such thirty (30) day period which shall take effect immediately upon termination of this Lease; provided that (i) in connection with its execution and delivery of such lease, 30 West Pershing and Top Golf Topgolf 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 or CenterCal Guarantor, 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 Topgolf (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 Topgolf Guarantors or Top Golf 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 Topgolf Guarantors or CenterCal Guarantor under their respective guarantees.

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 Partnership “Topolf” 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 full 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 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 Mortgagor sends to Lessor written notice specifying the name and address of the Permitted Leasehold Mortgagor, 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 Mortgagor 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 Mortgagor, and no such notice to Lessee shall be deemed delivered unless a copy is so delivered to the Permitted Leasehold Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor to cure any Event of Default. No such cure shall constitute an assumption of any liability by such Permitted Leasehold Mortgagor (unless the Permitted Leasehold Mortgagor 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 Mortgagor and in such a case the Permitted Leasehold Mortgagor 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 Mortgagor 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 Mortgagor 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 Mortgagor (other than any obligations expressly assumed by the Permitted Leasehold Mortgagor), all such liability (other than any obligations expressly assumed by the Permitted Leasehold Mortgagor) being expressly waived by Lessor.
22.3.6 Lessor, within thirty (30) days after a request in writing by Lessee or any Permitted Leasehold Mortgagor, 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 Mortgagor an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagor and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagor, agreeing to all the provisions of this section. Lessor shall attorn to any Permitted Leasehold Mortgagor 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 TopGolf El Segundo 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 or CenterCal Guarantor 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 $10,000,000 respectively.

22.3.11 If Lessor declares bankruptcy and Lessor’s bankruptcy trustee rejects this Lease when there is a Permitted Leasehold Mortgagor, 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 Mortgagor.

22.3.12 No filing of bankruptcy by Lessee, a sublessee, assignee, or Permitted Leasehold Mortgagor 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 TopGolf Guarantors 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 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). Notwithstanding the foregoing, in no event shall an event of Force Majeure extend the Due Diligence Period (except in the case of certain third party challenges to Required Project Entitlements as more particularly described in Section 5.1).
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 (iii) 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. Brumling

30 – West Pershing TopGolf USA El Segundo, LLC
909 Walnut
8750 N. Central Expressway, Suite 200
Kansas City, Missouri 64106
Phone: (816) 472-1700
Fax: (816) 472-57941200
Dallas, Texas 75231
Attn: Asset Management/ Zach Shor, Vice President of Real Estate

30 – West Pershing TopGolf USA El Segundo, LLC
909 Walnut
8750 N. Central Expressway, Suite 200
Kansas City, Missouri 64106
Phone: (816) 472-1700
Fax: (816) 472-5794
Dallas, Texas 75231
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 & Weisniels, a Professional Corporation
4510 Bellevue, Suite 300
Kansas City, Missouri 64111
Attn: Fred W. Crouse, Esq.

Lee&K& Dentons US LLP
2200 Ross 2000 McKinney Avenue, Suite 2200
Dallas, Texas 75201
Fax: (214) 756-8582
Attn: Donald A. Hammett, Jr.

or such 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/Lessee 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 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] Audit

Lessor shall have the right no more than once annually, to conduct an audit of the Gross Receipts for the immediately preceding calendar year or prior two years with a qualified Certified Public Account. The audit shall be conducted with at least ninety (90) days prior notice to Lessee and during regular business hours at Lessee’s or Lessor’s corporate office, solely for the purpose of determining the accuracy of the Variable Rent calculations and payments for the preceding calendar year or prior two years. Any such audit shall not unreasonably interfere with Lessee’s business operations. Any such audit by Lessor shall be at Lessor’s own expense. If such audit reveals that the Lessor was underpaid by three percent (3%) or more for the audited period, Lessee shall pay Lessor the reasonable cost of the audit together with the amount of the underpayment plus a four percent (4%) penalty on the amount of the underpayment within thirty days of being presented with a copy of the audit from the Lessor. Except as required by law, Lessor agrees not to divulge to any person or persons, firm or corporation, the amount of Gross Receipts made from the Premises except to the taxing authorities and to the extent necessary. Lessor’s attorneys, accountants (and other professional advisors), provided that the public disclosure of the amount of Variable Rent paid by Lessee shall not be a violation of this provision. If the City receives a request for such information it shall immediately notify Lessee.
of such request and if the City determines the information requested is a matter of public record then the City shall immediately notify the Lessee in writing of such determination and deliver to Lessee copies of all correspondence received by City relating to such request. If Lessee provides written notification to the City within five (5) business days that it disagrees with the City’s determination, then the City shall not release the information and in the event there is litigation filed against the City for not releasing the information then the City shall immediately notify Lessee in writing of such litigation, and deliver to Lessee copies of all pleadings, and the Lessee shall be responsible for paying all of the City’s reasonable legal fees and costs as well as monetary award, including legal fees and costs, that a court of competent jurisdiction awards to the plaintiff or petitioner, provided that any counsel selected by the City must be acceptable to Lessee and be independent counsel free of any conflict of interest. In the alternative, Lessee shall have the right to retain its own counsel and upon written notice to the City, take over the litigation, provided that any counsel selected by Lessee must be acceptable to the City and be independent counsel free of any conflict of interest. In the event of any litigation with respect to this matter each party shall reasonably cooperate with the other party, without cost, expense or liability (other than de minimis costs) with respect to any such request for information and/or litigation.

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.

Section 48. Business License Taxes

Lessee hereby waives and agrees it shall have no right to offset the amount of business license taxes owed to the City pursuant to El Segundo Municipal Code Chapters 3 or 4 based upon sales tax the City receives from operations occurring on the Premises during the term of this Lease, and any such applicable sales tax credits are hereby waived.

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
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 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND DESCRIBED IN GRANT DEED RECORDED 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 GASBOUS 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 DEED RECORDED 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 WESTERLY 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

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69
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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 EXCEPTION, 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
EXHIBIT A-1

THE PREMISES

THIS EXHIBIT TO BE PREPARED WITHIN ONE HUNDRED TWENTY DAYS OF COMMENCEMENT DATE AND ATTACHED HERETO.
EXHIBIT A-2

THE GOLF COURSE

THIS EXHIBIT TO BE PREPARED WITHIN ONE HUNDRED TWENTY DAYS OF THE COMENCEMENT DATE AND ATTACHED HERETO.
EXHIBIT “B”
SITE PLAN
EXHIBIT “B-1”

PRELIMINARY SITE PLAN
EXHIBIT "C"

SCE LICENSE AGREEMENT
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.
(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 [Signature]
Real Properties & Administrative Services
CITY OF EL SEGUNDO

"Licensee" By [Signature]
Mayor

ATTEST:

City Clerk
5. 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 50.00 FEET FROM MOST WES TERLEY 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 89 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 WES TERLEY CORNER OF LOT 8.

ALSO BEGINNING AT POINT WHICH BEARS SOUTH 89 DEGREES 59 MINUTES 54 SECONDS WEST 97.12 FEET FROM MOST WES TERLEY 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 WES TERLEY 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 WES TERLEY 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 WITH AND 5.0 FEET AT RIGHT ANGLES FROM VARIOUS COURSES COMPRISING NORTHEASTERLY BOUNDARY OF LOT 11 TO POINT IN WES TERLEY 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 15.01 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 WES TERLEY 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 SEPULVEDA BLVD., AS
ESTABLISHED BY FINAL DECREE 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 SEPULVEDA 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 SEPULVEDA BLVD.; THENCE EASTERLY 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 SOUTHEASTERLY CORNER OF SAID LOT 13; THENCE WESTERLY ALONG
THE SOUTH LINE OF SAID LOT 13 TO THE EAST LINE OF SEPULVEDA BLVD. AS ESTABLISHED
BY SAID DECREE 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 SEPULVEDA 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 EASTERLY, 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 SECTION EAST, 336.77 FEET; THENCE NORTH 0 DEGREES 04 MINUTES 00 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 HEREBEFORE 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 HEREBIN, 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 SOUTHEASTERLY TERMINUS OF THAT PARTICULAR COURSE SHOWN AS SOUTH 75 DEGREES 13 MINUTES 23 SECONDS EAST, 737.68 FEET ON SAID MAP; THENCE SOUTH 46 DEGREES 09 MINUTES 45 SECONDS WEST, 193.34 FEET TO THE POINT OF INTERSECTION OF THE NORTHEASTERLY PROLONATION OF THE NORTHEASTERLY 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 SOUTHEASTERLY BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE SOUTHEASTERLY BOUNDARY OF SAID LOT 12, SAID POINT ALSO BEING IN THE WESTERLY PROLONATION 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...
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA

RECORDED : DECEMBER 17, 1980 AS INSTRUMENT NO. 80-1268253
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, 33.11 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 NORTHEASTERLY LINE OF THAT CERTAIN PARCEL OF
LAND DESCRIBED IN THE DEED TO PACIFIC ELECTRIC LAND COMPANY, RECORDED JULY 7,
1914, IN BOOK 5819, 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 SOUTHEASTERLY BOUNDARY OF SAID LOT 12; SAID POINT
ALSO BEING IN THE WESTERLY 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 NORTHEASTERLY, MEASURED AT RIGHT
ANGLES, FROM THE COURSE HEREBEFOR DESCRIBED AS "SOUTH 46 DEGREES 09 MINUTES
45 SECONDS WEST, 193.34 FEET" AND ITS NORTHEASTERLY 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 SOUTHEASTERLY 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 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 : ROAD PURPOSE
RECORDED : MAY 4, 1981 AS INSTRUMENT NO. 81-445502
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:

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 NORTEASTERLY 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 8DG 34 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.
EXHIBIT PLOT

PORTION OF PARCEL 12
MAP NO. 16 D-0M 3/5

AREA 3.5622 ACRES
156,041 SQ. FT.

PARCEL 1
PM 17749
MS 207/57

EXHIBIT "A"

273
104
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 HEREIN STATED.

TITLE TO THE ESTATE OR INTEREST REFERRED TO HEREIN, 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 HEREIN, 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
AFFECTS : STREETS, ROADS AND ALLEYS
RECORDED : IN BOOK 9840 PAGE 33, OFFICIAL RECORDS

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 160 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 25875 PAGE 356,
OFFICIAL RECORDS.
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA


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.

EE. DATED AUGUST 16, 1955, RECORDED AUGUST 23, 1966, IN BOOK D-3406 PAGE 651
OF OFFICIAL RECORDS, INSTRUMENT NO. 2249.

FF. DATED AUGUST 15, 1966, RECORDED AUGUST 23, 1966, IN BOOK D-3406 PAGE 672
OF OFFICIAL RECORDS, INSTRUMENT NO. 2250.

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

HH. DATED FEBRUARY 1, 1968, RECORDED FEBRUARY 6, 1968, IN BOOK D-3906 PAGE 71
OF OFFICIAL RECORDS, INSTRUMENT NO. 1999.

II. DATED FEBRUARY 1, 1968, RECORDED FEBRUARY 6, 1968 IN BOOK D-3906 PAGE 93

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

KK. DATED JANUARY 15, 1969, RECORDED JANUARY 23, 1969, IN BOOK D-4259 PAGE 611
OF OFFICIAL RECORDS, INSTRUMENT NO. 2271.

LL. DATED JANUARY 15, 1969, RECORDED JANUARY 23, 1969, IN BOOK D-4259 PAGE 627
OF OFFICIAL RECORDS, INSTRUMENT NO. 2272.

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.

OO. DATED DECEMBER 1, 1970, RECORDED DECEMBER 3, 1970 IN BOOK D-4906 PAGE 72
OF OFFICIAL RECORDS, INSTRUMENT NO. 2202.

PP. DATED DECEMBER 1, 1970, RECORDED DECEMBER 3, 1970 IN BOOK D-4906 PAGE 90
OF OFFICIAL RECORDS, INSTRUMENT NO. 2203.

QQ. DATED SEPTEMBER 15, 1971, RECORDED SEPTEMBER 21, 1971 IN BOOK T-7213
PAGE 971 OF OFFICIAL RECORDS, INSTRUMENT NO. 2349.

RR. DATED SEPTEMBER 13, 1971, RECORDED SEPTEMBER 21, 1971 IN BOOK T 7214 PAGE
31, OFFICIAL RECORDS, INSTRUMENT NO. 2350.

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

TT. DATED AUGUST 15, 1972, RECORDED AUGUST 16, 1972 IN BOOK D-5569 PAGE 715,
OFFICIAL RECORDS, INSTRUMENT NO. 2642.

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.

- 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.
- When possible, Lessee shall utilize existing and available poles and netting not otherwise repurposed by TopGolf project.
- 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
EXHIBIT “E”

PERMITTED EXCEPTIONS

[TOT BE FINALIZED AND ATTACHED WITHIN 60 DAYS FROM THE COMMENCEMENT DATE]
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 WITHIN NINETY DAYS AND ATTACHED HERETO.
EXHIBIT "G"

PROTOTYPE FACILITY
http://topgolf.com/assets/gallery/16/347.jpg
EXHIBIT “H”
FORM OF GUARANTIES
CONSTRUCTION AND OPERATING PERIOD GUARANTEE AGREEMENT

THIS CONSTRUCTION AND OPERATING PERIOD GUARANTEE AGREEMENT (this "Guaranty") is executed and delivered as of the __________, 2013 day of __________, 2015, by 30 West Pershing, LLC, TopGolf International, Inc., a Missouri limited liability company ("30 West Pershing Delaware Corporation" or "TGI" or "Guarantor"), whose address is 1200, Dallas, Texas 75231 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 __________, 2014 (the "Contract") by and between ES Centreal, LLC, a Delaware limited liability company (referred to herein as the "Company" or the "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 (ii) to 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 the City as well as perform other obligations under the Contract.

B. 30 West Pershing, TopGolf USA El Segundo, LLC ("TG El Segundo") is a wholly-owned subsidiary of TGI and is contemplated as being a sublessee of the Company and it is one of the Conditions Precedent under the Contract that TG El Segundo 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 into the Contract, 30 West Pershing TGI 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 amounts 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 TGI, CenterCal Guarantor and Top Golf USA El Segundo 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 TGI does not ensure that TG USA El Segundo enters into the Sublease, (ii) TGI 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 TGI 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, to assert 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 TGI USA El Segundo 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 Centrecal has failed to perform under that certain Construction Guarantee Agreement from the Centrecal 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 El Segundo’s 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, adjudicatory or arbitrational 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 TGI is a duly organized, validly existing limited liability company corporation under the laws of the State of Missouri Delaware and is in good standing in the States of Missouri Delaware 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 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 successors 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 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 (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 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:

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

White Law Bowers March Schulte & Weisenfeld,
a Professional Corporation
4510 Belview Avenue, Suite 300
Kansas City, Missouri 64111-5538
Attention: Fred W. Crouch, Esq.
Fax: (816) 753-9204

Loeske Lord, LLP
2200 Ross Avenue, Suite 2200
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.

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

TopGolf International, Inc.,
a Delaware corporation

By: __________________________

Name: _________________________

Its: ___________________________

[Signatures continued on next page]

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 day of __________, 2015 by 30 West Pershing, LLC, a Missouri limited liability company ("30 West Pershing" or ") ("Guarantor"), a wholly owned subsidiary of TopGolf International, Inc., a Delaware corporation, whose address is 909 Walnut 750 N. Central Expressway, Suite 200, Kansas City, MO 64106-1200, Dallas, Texas 75231 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 __________, 2014 (the "Contract") by and between ES Centercal, LLC, a Delaware limited liability company (referred to herein as the "Company" or ") ("Lessees") 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 (ii) to 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 during the Operating Period.

B. 30 West Pershing TopGolf USA El Segundo, LLC ("TG El Segundo") is an affiliate of Guarantor and is contemplated as being a sublessee of the Company and it is one of the Conditions Precedent under the Contract that 30 West Pershing TG El Segundo 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 into the Contract, 30 West Pershing Guarantor 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:

I. 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 GolfTopgolf or other permitted Operator under the Contract for payment of Rent during 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 Guarantor, Centercal Guarantor and Top GolfTG El Segundo 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 PershingGuarantor does ensure that TG El Segundo enters into the Sublease, (ii) Guarantor 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 PershingGuarantor does enter into the Sublease, Guarantor is deemed to have waived any rights it might have under the Contract or this Guaranty, or in law or equity, to assert 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 PershingTG El Segundo 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 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 TG USA El Segundo's 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."

falsely, 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.

{32215 / 66600, 497504.7}
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.

4.2. 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, 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) 30 West Pershing Guarantor is a duly organized, validly existing limited liability company/corporation under the laws of the State of Missouri/Delaware and is in good standing in the States of Missouri/Delaware 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.

5.3. 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 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 successors 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.

(f) Guarantor shall at all times maintain a net worth of not less than $10,000,000.00. Upon request by the City (not more than once annually), Guarantor shall deliver to the City financial statements certified by the Chief Financial Officer of Guarantor (or Guarantor's parent). [Note: Mark, we would typically keep this net worth covenant closer to 10 x Annual Fixed Rent but are willing to expand our obligations in order to make this deal happen]

6.4. 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 (e), 3, 4, 5, 6, 7 and 97 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.

7.5. 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.

8.6. 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.

9.7. 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.

40.8. TIME OF ESSENCE.

Time is of the essence of this Guaranty.

40.9. 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.

42.10. 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
8750 N. Central Expressway Suite 2001200
Kansas City, MO 64106 Dallas, Texas 75231
Attention: General Counsel Elizabeth Bonesio, Esq.

{32215/66600; 497504.7}
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.

43.11. 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 4210 hereof, as such address may be changed from time to time in accordance with such SECTION 4210. 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.

44.12. 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.

15.13. 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.

16.14. 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.

17.15. 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.

18.16. 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, L.L.C.
a Missouri limited liability company

___________________________________________

By: ________________________________

Name: ________________________________

Its: ________________________________

{Signatures continued on next page}
City of El Segundo

Bill Fisher, Mayor

Approved As to Form:

Mark D. Hensley, City Attorney

Attest:

Tracy Weaver, City Clerk
CONSTRUCTION GUARANTEE AGREEMENT

THIS CONSTRUCTION GUARANTEE AGREEMENT (this "Guaranty") is executed and delivered as of the __________, 2014, by CenterCal, LLC, 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 __________, 2014 (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 Lessee, and (iii) the Company delivers to the Lessee 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 Lessee 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 Lessee shall be deemed notice to Lessee 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 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 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
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.

(32215 / 66600; 497304 5 )

7
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 Krasnoye, 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. If there are provisions of the Contract that expressly apply to Guarantor that are not contained in this Guaranty, Guarantor covenants and agrees to honor such provisions as part of this Guaranty.

EVERABILITY.

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.

16. 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.

17. 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
REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is entered into as of ____, 2014 by and between the City of El Segundo, a general law city and municipal corporation ("City"), and ES Centercal, LLC, a Delaware limited liability company ("Centercal"), who agree as follows:

1. **Recitals.** This Agreement is made with reference to the following facts and circumstances:

   a. Centercal has entered into that certain Due Diligence and Ground Lease Agreement with City dated __________, 2014, which may result in Centercal obtaining a long term leasehold interest in the real property generally located at 400 S. Sepulveda Blvd, El Segundo, CA 90245 (the "Lease") if the Conditions Precedent in the Lease are satisfied. Capitalized terms used herein shall have the same meaning as those defined in the Lease.

   b. Pursuant to the Lease, Centercal is seeking to develop the Premises and construct or cause to be constructed approximately 45,000 square feet of Premises Improvements, including a golf driving range and related clubhouse with a full service restaurant and event space, and will also be modifying the existing Golf Course with the Golf Course Improvements.

   c. In order for Centercal to lease the Premises from City and complete such Premises Improvement and Golf Course Improvements, there are a number of Conditions Precedent that must be satisfied under the Lease that will require that the City assign certain City staff or consultants to complete the following administrative tasks and other related work, including but not limited to: real estate appraisal, financial analysis of the Guarantors, meetings and potential negotiations with Chevron and SCE, environmental review, zoning review, public hearings, plans review for compliance with City standards, building code compliance, analysis of technical studies, preparation of staff reports, development of potential mitigation measures, and project management duties (collectively, "Services") which will exceed the capacity of the current city staff.

   d. Centercal is agreeing to pay for such Services as set forth in this Agreement.

2. **City Reimbursement.** Exhibit "A" hereto sets forth an estimated budget for the costs for the Services. The Services to be performed by the outside consultants and other professionals (the "Consultants") shall be set forth in the contracts
between the City and the Consultants (the “Consultant Contracts”). Centercal agrees to reimburse the City for the full amount of such actual costs and expenses in accordance with the terms and conditions of this Agreement and in the manner provided in this Agreement. Upon completion of the Services, City will provide Centercal with a detailed accounting of all costs and expenses. The total of the costs and expenses, as disclosed by the accounting, is called the “Reimbursement Amount.” The City may contract with the Consultants for the performance of any of the Services required to be performed hereunder. Except with respect to legal services, the scope of services to be performed by the Consultants shall be in accordance with a detailed scope of work which includes the timing for the work. Centercal shall have only be provided with monthly billing totals for legal services to be performed as the underlying bills are subject to the attorney-client privilege between the City and its legal counsel, provided that such billing totals shall contain a summary of the work performed to provide reasonably satisfactory evidence that such work was performed in connection with the Services.


Except as provided below, within _____ days from the execution of this Agreement, Centercal agrees to deposit with City $_______ ("Deposit Amount") which represents twenty-five percent (25%) of the estimated Reimbursement Amount. Not more often than monthly, within thirty (30) days of Centercal’s receipt of written notice from the City that the balance of the Project Account is less than $_______ together with a detailed accounting (except legal fees) including without limitation unpaid and/or paid invoices and other reasonable evidence of cost to date of the Services, Centercal shall deposit into the Project Account such additional amount which is requested by the City, up to the amount of $_______ per additional deposit. Upon completion of all services contemplated hereunder, should the actual Reimbursement Amount exceed the Deposit Amount, Centercal agrees to promptly pay City any difference in accordance with Exhibit “A,” and such additional amounts agreed to by Developer. Should the Reimbursement Amount be less than the Deposit Amount, City will refund Centercal any remaining Deposit Amount to Centercal within thirty (30) days after determining the Reimbursement Amount. Notwithstanding the foregoing, Centercal shall have the right in its sole and absolute discretion to notify the City that Centercal refuses to make any further deposits in which event this Agreement and the Lease shall terminate and the City shall have no further obligation to continue services related to the Conditions Precedent in the Lease, but Centercal shall still be obligated to pay for any Services rendered or costs incurred through such date. The Deposit Amount will be placed in a non-interest bearing trust account established by the City Manager (the “Project Account”). Centercal understands and agrees that City will not pay interest to Centercal on the Deposit Amount and Centercal will not seek such interest payments from City. Costs associated with the Services will be charged against the deposit amount. City-Administrative Costs. The
Administrative costs estimated and set forth on Exhibit “A” and incurred by City, including, without limitation, staff time, fees and services (the “City Administrative Costs”), must be reimbursed on a time and materials basis based on current City reimbursement rates. Centercal agrees that it will pay for such costs on a monthly basis within thirty (30) days of receiving an invoice from City. Notwithstanding the foregoing, The aggregate compensation payable to the Consultants shall not exceed two hundred and fifty thousand dollars ($250,000) with respect to the cost of an environmental consultant to perform the documentation required under the California Environmental Quality Act, Public Resources Code §§ 21000 et seq., and one hundred and ten thousand Dollars ($110,000) with respect to the cost of the balance of the Services and the City Administrative Costs except as approved in writing by CenterCal. In the event that the costs exceed, or reach a point where it is anticipated the costs will exceed the amounts set forth on Exhibit A and CenterCal does not approve of paying for additional costs, the Agreement and the Lease shall terminate and the City shall have no further obligation to continue services related to the Conditions Precedent in the Lease, but Centercal shall still be obligated to pay for any Services rendered or costs incurred through such date.

4. **Centercal Default.** Should Centercal fail to perform any of its obligations under this Agreement after ten (10) days notice, then City may, at its option, pursue any one or more or all of the remedies available to it under this Agreement, at law or in equity. Without limiting any other remedy which may be available to it, if Centercal fails to perform any of its obligations under this Agreement and/or the deposit account has a zero or negative balance, City shall no obligation to perform additional services under this Agreement or the Lease until such time as Centercal has cured any failure to perform and/or deposited sufficient additional funds into the deposit account. The city may also bring an action to recover all costs and expenses incurred by the City in completing the Services, together with interest thereon from the date incurred at the rate of 10% per annum.

5. **Compliance with Law.** Centercal will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to this Agreement. Centercal understands and agrees that the City may not ultimately approve the project and that Centercal is obligated to pay for the Services in accordance with this Agreement regardless of the decision made by the City on the project.

6. **Waiver of Breach.** Any express or implied waiver of a breach of any term of this Agreement will not constitute a waiver of any further breach of the same or other term of this Agreement.

7. **Insolvency: Receiver.** Either the appointment of a receiver to take possession of all or substantially all of the assets of Centercal, or a general assignment by Centercal for the benefit of creditors, or any action taken or offered by Centercal
under any insolvency or bankruptcy action, will constitute a breach of this Agreement by Centercal, and in such event this Agreement will automatically cease and terminate.

8. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party will be in writing and will be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

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

City at: City of El Segundo
Attn: Director of Planning and Building Safety
350 Main Street
El Segundo, CA 90245

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

9. Acceptance of Facsimile or Electronic Signatures. The Parties agree that agreements ancillary to this Agreement and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile or electronic transmission. Such facsimile or electronic signature will be treated in all respects as having the same effect as an original signature.

10. Governing Law. This Agreement has been made in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Los Angeles County.

11. Partial Invalidity. Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Agreement will remain in effect, unimpaired by the holding.

12. Integration. This instrument and its attachments constitute the sole agreement between City and Centercal respecting the matters above and correctly set forth the obligations of City and Centercal. Any Agreement or representations respecting the property or its licensing by City to Centercal not expressly set forth in this instrument are void.
13. **Construction.** The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.

14. **Authority/Modification.** The parties hereto represent and warrant that all necessary action has been taken by the parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified solely by written amendment. City’s city manager, or designee, may execute any such amendment on behalf of City.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.
IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

City of El Segundo,  
a municipal corporation.  

[print name]

a California Corporation.

Greg Carpenter, City Manager  
[president]

ATTEST:

Tracy Weaver, City Clerk  
[secretary]

APPROVED AS TO FORM:  
MARK D. HENSLEY, City Attorney  
By:  
Karl H. Berger,  
Assistant City Attorney  

CENTERCAL:  

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”
SERVICES AND COSTS

**Estimated Applicant Costs:**
1. Planning Staff Cost: (based upon a time and materials estimate) $80,000
2. City Attorney Cost: $30,000 @ $265.00/hour
3. Environmental Consultant Cost (including traffic consultant): Maximum of $250,000 (including $75,000 in traffic engineering and parking analysis costs)

Total Cost Anticipated: Approximately $360,000
Summary Sheets
Updated to Reflect
Participation Rent
| Stable Year Average Net Benefits (thousands of constant 2015 dollars) | TopGolf Concept |  |
| --- | --- | --- | --- |
| **Annual Benefits** | Existing Course | Initial Proposal | Revised Proposal | Current Proposal |
| Golf Complex Direct Net Contribution | $476.7 | ($106.3) | ($106.3) | ($106.3) |
| TopGolf Lease Revenue | --- | 425.0 | 525.0 | 525.0 |
| TopGolf Participation Rent | --- | --- | --- | 198.0 |
| Fiscal Revenue | 5.6 | 163.5 | 207.9 | 207.9 |
| **Total Benefits** | $482.3 | $482.3 | $626.6 | $824.6 |
| **Annual Costs** | --- | --- | --- | --- |
| Citywide Administrative/Overhead/Insurance | $160.0 | $150.0 | $150.0 | $150.0 |
| Construction Impact | --- | 21.1 | 21.1 | 21.1 |
| Capital Cost* | 159.5 | 105.7 | 63.0 | 49.0 |
| Fiscal Service Costs | --- | --- | --- | --- |
| **Total Costs** | $319.5 | $276.8 | $234.1 | $220.1 |
| **Net Annual Cost-Benefit** | $162.8 | $205.5 | $392.5 | $604.5 |

* Represents annual reserve amount necessary to fund capital improvement requirements.
<table>
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<tr>
<th>Benefits</th>
<th>Existing Course</th>
<th>Initial Proposal</th>
<th>Revised Proposal</th>
<th>Current Proposal</th>
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<td>($1,347.3)</td>
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<td>6,388.8</td>
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<td>---</td>
<td>2,163.0</td>
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<tr>
<td>Fiscal Revenue</td>
<td>71.0</td>
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<td><strong>Total Benefits</strong></td>
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<td>Costs</td>
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<td>816.8</td>
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<td>Fiscal Service Costs</td>
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<td><strong>Total Costs</strong></td>
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<td><strong>Net Cost-Benefit</strong></td>
<td><strong>$2,639.7</strong></td>
<td><strong>$2,922.2</strong></td>
<td><strong>$4,940.0</strong></td>
<td><strong>$7,232.0</strong></td>
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</table>

* Present value of 25-year stream.
Draft Report

Financial Analysis and Comparison of The Lakes at El Segundo Golf Course & the TopGolf Development Proposal

El Segundo, California

Prepared for: City of El Segundo
Prepared by: Pro Forma Advisors, LLC

April 2015
PFAID: 10-675

Version: 1.1
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Appendix A
General Limiting Conditions

Certain information included in this report contains forward-looking estimates, projections and/or statements. Pro Forma Advisors LLC has based these projections, estimates and/or statements on expected future events. These forward-looking items include statements that reflect our existing beliefs and knowledge regarding the operating environment, existing trends, existing plans, objectives, goals, expectations, anticipations, results of operations, future performance and business plans.

Further, statements that include the words "may," "could," "should," "would," "believe," "expect," "anticipate," "estimate," "intend," "plan," "project," or other words or expressions of similar meaning have been utilized. These statements reflect our judgment on the date they are made and we undertake no duty to update such statements in the future.

No warranty or representation is made by Pro Forma Advisors that any of the projected values or results contained in this study will actually be achieved.

Although we believe that the expectations in these reports are reasonable, any or all of the estimates or projections in this report may prove to be incorrect. To the extent possible, we have attempted to verify and confirm estimates and assumptions used in this analysis. However, some assumptions inevitably will not materialize as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties and unanticipated events and circumstances, which may occur. Consequently, actual results achieved during the period covered by our analysis will vary from our estimates and the variations may be material. As such, Pro Forma Advisors accepts no liability in relation to the estimates provided herein.

In the production of this report, Pro Forma Advisors has served solely in the capacity of consultant and Pro Forma Advisors has not rendered any "expert" opinions and does not hold itself out as an "expert" (as the term "expert" is defined in Section 11 of the Securities Act of 1933).

This report is not to be used in conjunction with any public or private offering of securities, and may not be relied upon without the express written consent of Pro Forma Advisors.

This study is qualified in its entirety by, and should be considered in light of, these limitations, conditions, and considerations.
I. Introduction/Background

The Lakes at El Segundo golf facility is comprised of a 9-hole, par-29, executive length golf course, two-level practice range with 58 tee stations, 4,000-square foot clubhouse, and other support facilities developed on a 30-acre parcel. The golf complex is owned by the City of El Segundo and operated under the oversight of the City (the golf course is managed and maintained by Lane-Donovan, a golf course professional management firm, under a fee-for-service management agreement). The Lakes at El Segundo operates as an enterprise fund within the City, with the objective of operating as a self-sustaining economic entity without General Fund assistance.

The City has been approached by ES CenterCal, LLC (CenterCal), a local developer, to develop a TopGolf facility on the existing practice range site. The TopGolf concept combines a technology-driven golf driving range with an entertainment complex featuring extensive food and beverage facilities. The concept is designed to serve a much broader market than traditional golfers working on their game, and the facility is often used as an event venue. There are about 13 existing TopGolf facilities already operating across the country, and another 10 under construction or in advanced planning. Typically, a TopGolf facility is a 3-level structure with about 35,000 square feet of indoor space, and includes about 100 tee stations.

CenterCal would develop the facility under a ground lease agreement with the City of El Segundo. TopGolf would operate the facility under a sublease agreement with CenterCal. The proposed project would require zoning modifications, reconfiguration of the golf course, replacement of the existing clubhouse, and a parking lot sharing agreement.

The City is interested in a comparative economic analysis of the proposed complex (modified golf course and clubhouse, and TopGolf facility) and the existing golf course. Such a comparative evaluation is dependent on numerous factors and considerations including: the comparative direct economics of both scenarios from the perspective of the City; short- and long-term capital improvement needs at the existing facility; indirect revenues/benefits related to each scenario; construction impacts on existing facilities; risks related to the income stream; parking impacts/requirements; and other such issues.

Work tasks performed for this assignment included the following:

- Inspection of the existing golf course and support facilities
- A series of interviews with individuals employed at The Lakes in various capacities
- Review of historical operating performance of the existing facility
- Assessment of the TopGolf concept proposed for the site, including interviews of general managers at several comparable TopGolf facilities
- Analysis of the local and regional golf market
- Evaluation of current golf facility conditions and long-term capital improvement requirements
Introduction/Background

- Projections of performance relating to retaining the existing facility as-is and the TopGolf development scenario
- Comparative analysis of the direct economics of the existing facility and the TopGolf project
- Assessment of the fiscal benefits associated with each project scenario, along with potential indirect impacts

It should be noted that an initial proposal was submitted by CenterCal/TopGolf, which was followed by a revised proposal submitted in August 2014. In the analysis, the economics of the existing golf complex are compared with both the initial and revised proposals.

Following this Introduction, a summary of key findings is presented in Section II, with documentation and analysis contained in subsequent sections of the report.
II. Summary of Findings

A summary of principal findings and conclusions is presented in this section, with documentation and analysis contained in the subsequent sections of the report.

Concept

› The analysis focuses on comparing the economics related to the existing 9-hole, executive length golf course operation with that of a TopGolf facility combined with a reconfigured standalone golf course/clubhouse. The economics are viewed from the perspective of the City. The economics of the existing complex are compared with both the initial CenterCal/TopGolf proposal and its August 2014 revised proposal.

› The existing golf course operation is evaluated assuming modest revenue enhancement and cost efficiencies. The analysis also assumes that capital reinvestment in the facility is performed on an as-needed basis.

› Under the CenterCal/TopGolf proposal, a state-of-the-art TopGolf facility would be developed on the existing driving range/clubhouse site, with a reconfigured 9-hole golf course which will remain at approximately the same length as the existing course. This analysis also assumes that modest golf course revenue enhancement and cost efficiency measures are implemented.

› The TopGolf concept effectively integrates a food & beverage-oriented entertainment complex with a practice range, providing patrons with a wide variety of entertainment games, including many using the state-of-the-art practice range.

› CenterCal/TopGolf would lease their site from the City, and be responsible for all facility development costs, including construction of a new small pro shop/snack bar, and the cost of reconfiguring the 9-hole golf course. Total development costs are estimated at $25 million for the TopGolf facility, plus about $2.5 million for the new clubhouse and reconfigured golf course. In its revised proposal, TopGolf also includes a contribution of $250,000 toward the cost of night lighting the golf course.

The Lakes Historical Performance

› Mirroring national and regional trends, market support for The Lakes has been impacted by a number of external factors including the overall decline in the demand for golf, unprecedented expansion in the supply of golf courses, and more recently the severe economic downturn which commenced in 2007/2008. Golf rounds on the 9-hole course have declined steadily from over 60,000 in 2000 to a current level of 43,200. Similarly, range revenue has declined from over $900,000 annually to $720,000 over this same period.
Gross revenue for 2014 is reported as follows:

The Lakes 2014 Gross Revenue

<table>
<thead>
<tr>
<th>Department</th>
<th>Annual Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greens Fees</td>
<td>$689,200</td>
</tr>
<tr>
<td>Practice Range Fees</td>
<td>721,100</td>
</tr>
<tr>
<td>Pro Shop Sales</td>
<td>164,300</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>287,100</td>
</tr>
<tr>
<td>Alcohol--City Share</td>
<td>7,200</td>
</tr>
<tr>
<td>Lessons/Camps</td>
<td>176,700</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,047,100</strong></td>
</tr>
</tbody>
</table>

Net operating income from the golf course, before Citywide administrative charges, the City insurance allocation, debt service, capital improvement reserves, and capital charges, has been relatively stable over the last five years, ranging from about $350,000 to $450,000 per year, although 2014 net income declined about 20 percent from the 2013 results. This most recent decline is attributed to a drop-off in play, coupled with a sharp increase in the cost of irrigation water.

The golf course is now over 20 years old. Other than driving range safety improvements (perimeter poles and netting), there has not been any major capital reinvestment in the course or support facilities.

Golf Market Overview

The national and regional golf markets performed exceptionally well in the late 1980s and early 1990s, which resulted in the unprecedented expansion of the golf course inventory in the late 1990s and early 2000-period. As a result of this oversupply condition, combined with declining demand which commenced in the early 2000-period and more recently the severe economic downturn, the golf industry has contracted markedly, with individual golf courses at all levels adversely impacted.

The Lakes more localized golf market has not fared any better than most, despite minimal increases in the supply of courses, and the strong demographics of the local market area residents. The last two courses added to the inventory include The Lakes in 1993 and the Manhattan-Marriott golf course (9-hole par-3), added in 1995.
Summary of Findings

- Despite the golf market decline, the local market for less-than-regulation length golf courses remains roughly in balance in terms of demand and supply, while the area is well under-supplied with respect to regulation length golf courses.

- The outlook for golf over the mid- to long-term is highly uncertain. Most golf analysts are projecting 0.5 to 1.0 percent average annual growth, primarily attributable to the aging baby boom generation, as golf participation and frequency of play increase with age. However, the impact of aging baby boomers has not yet been apparent, and there remains significant concern about the diminishing rate of new entrants to the game.

Revenue Enhancement

- Without strategic capital improvements and intensified programming, operating performance at The Lakes at El Segundo is likely to remain at its current level, with negligible or no growth, over the foreseeable term, even with an improving economy.

- With regard to the existing golf course, there appear to be several potential improvements where the cost-benefit is positive:
  - Night lighting the golf course would increase play (note that the course was designed for lighting, with electrical conduit and junction boxes in place).
  - Heating the lower level of the driving range tee stations would increase range utilization.
  - Expanding junior golf camps to selected non-summer periods.

- With regard to the reconfigured golf course (TopGolf scenario), night lighting of the golf course also appears justified. It is likely that the junior programs would be scaled back somewhat with a reconfigured golf course.

- The existing golf course is operated very efficiently, and there does not appear to be any potential significant cost reduction measures that could be undertaken without affecting revenue.

- Scaling down the restaurant operation to more of a snack bar would likely result in some cost reduction.

Capital Improvement Requirements

- The golf course is in relatively good condition at this time, but given its age there will be required improvements over the next 25 years. Under the TopGolf scenario, some of the required golf course improvements will be completed as part of the TopGolf construction involving the reconfiguration of the golf course.

- The estimated capital costs required over the next 25 years, expressed in constant 2015 dollars, is indicated as follows:
Summary of Findings

The Lakes Capital Improvement Requirements
(Thousands of constant 2015 dollars)

<table>
<thead>
<tr>
<th>Component</th>
<th>Existing Course</th>
<th>Initial Proposal</th>
<th>Revised Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golf Course Lighting</td>
<td>$450</td>
<td>$450</td>
<td>$200</td>
</tr>
<tr>
<td>Golf Course Improvements</td>
<td>1,475</td>
<td>765</td>
<td>765</td>
</tr>
<tr>
<td>Driving Range</td>
<td>210</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Clubhouse/Parking</td>
<td>240</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Total</td>
<td>$2,475</td>
<td>$1,215</td>
<td>$965</td>
</tr>
</tbody>
</table>

Projected Direct Golf Course Performance

- The stable year economics of the golf course under two basic scenarios has been analyzed:
  - Existing golf course, clubhouse and driving range
  - Reconfigured golf course as a standalone facility

- Under each scenario, City administrative expenses have been estimated at their historical “average” cost, and depreciation and other non-cash items have been excluded.

- The direct golf course economics of each scenario is projected as follows:
Summary of Findings

Projected Stable Year Direct Golf Course Economics (thousands of constant 2015 dollars)

<table>
<thead>
<tr>
<th></th>
<th>Actual 2014</th>
<th>Existing Course</th>
<th>Reconfigured Standalone Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Revenue</td>
<td>$2,047.1</td>
<td>$2,227.5</td>
<td>$1,100.0</td>
</tr>
<tr>
<td>Less: Cost of Sales</td>
<td>261.2</td>
<td>254.8</td>
<td>118.8</td>
</tr>
<tr>
<td>Gross Profit</td>
<td>$1,785.9</td>
<td>$1,972.7</td>
<td>$981.2</td>
</tr>
<tr>
<td>Less: Operating Expenses</td>
<td>1,430.8</td>
<td>1,496.0</td>
<td>1,087.5</td>
</tr>
<tr>
<td>Net Operating Income</td>
<td>$355.1</td>
<td>$476.7</td>
<td>($106.3)</td>
</tr>
</tbody>
</table>

1/ Projections reflect implementation of revenue enhancement measures.

2/ Before City administrative expenses, insurance allocation, debt service and capital charges, and capital improvement reserves.

The economics of a standalone practice range also have been projected:

Projected Direct Driving Range Economics (thousands of constant 2015 dollars)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Revenue</td>
<td>$839.0</td>
</tr>
<tr>
<td>Less: Operating Expenses</td>
<td>$445.0</td>
</tr>
<tr>
<td>Capital Improvement Reserve</td>
<td>30.0</td>
</tr>
<tr>
<td>Net Operating Income</td>
<td>$364.0</td>
</tr>
</tbody>
</table>

1/ Expenses include a provision for insurance and administrative expenses currently provided through Citywide overhead.

Projected TopGolf Performance

- The initial CenterCal/TopGolf proposal offered the City a triple-net ground lease with a fixed $425,000 annual amount, increasing by 10 percent every 5 years.

- In August 2014, CenterCal/TopGolf revised its proposal, offering the City a triple-net ground lease with a fixed $525,000 annual amount, increasing by 2 percent per year over the initial five years, and then by a cumulative 10 percent every five years thereafter. TopGolf is obligated to pay CenterCal $710,000 annually, of which the City receives $525,000, after amortization of CenterCal's $2.5 million front-end capital investment.
The annual ground rent ($710,000) represents approximately 3.5-4.0 percent of TopGolf’s projected annual gross revenue, which is consistent with the percentage ground rents observed for food and beverage and entertainment facilities in California coastal locations, which center around 3.5 percent of gross revenue.

**Fiscal Impact**

- Both the existing golf course and TopGolf scenarios will generate ongoing fiscal revenues which accrue to the City of El Segundo. The principal sources of revenue include the City’s share of sales tax, possessory interest tax, utility users tax, and business license fees.

- The annual fiscal revenue of each scenario at stabilization is summarized below:

<table>
<thead>
<tr>
<th>Annual Fiscal Revenue/Cost (constant 2015 dollars)</th>
<th>Existing Golf Course</th>
<th>TopGolf Concept</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Component</strong></td>
<td><strong>Initial Proposal</strong></td>
<td><strong>Revised Proposal</strong></td>
</tr>
<tr>
<td>Fiscal Revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales Tax</td>
<td>$5,600</td>
<td>$110,590</td>
</tr>
<tr>
<td>Utility Users Tax</td>
<td>---</td>
<td>20,940</td>
</tr>
<tr>
<td>Possessory Interest Tax</td>
<td>---</td>
<td>20,200</td>
</tr>
<tr>
<td>Business License Fees</td>
<td>---</td>
<td>11,215</td>
</tr>
<tr>
<td>Total</td>
<td>$5,600</td>
<td>$163,645</td>
</tr>
<tr>
<td><strong>Less: Fiscal Service Costs</strong></td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Net Fiscal Benefit</td>
<td>$5,600</td>
<td>$163,645</td>
</tr>
</tbody>
</table>

*Reflects TopGolf’s waiver of sales tax credit against business license fee.

- Neither scenario is deemed to have a significant impact on service costs.

- In addition to ongoing fiscal revenues, the TopGolf project will generate several one-time fees related to planning, building permits, legal review reimbursement, and other miscellaneous fees. While these revenues may be substantial, they are expected to be fully offset by one-time service costs, and thus no net one-time fiscal impact is likely.
Summary of Findings

Comparative Economic Summary

- The annual stable year economics of each scenario is comprised of direct annual golf course income (net of City administrative and other overhead charges), annual lease payments from TopGolf, fiscal revenues, and the annualized cost of capital improvement requirements. The annual cost of capital improvements is based on the annual amount necessary to amortize the discounted present value of the capital improvements over a 25-year term at a 6 percent cost of capital.

- The comparative annual economics of the two basic scenarios is summarized as follows:

<table>
<thead>
<tr>
<th>Table II-1: Stable Year Average Net Benefits (thousands of constant 2015 dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TopGolf Concept</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Existing Course</td>
</tr>
<tr>
<td>Initial Proposal</td>
</tr>
<tr>
<td>Revised Proposal</td>
</tr>
<tr>
<td>Annual Benefits</td>
</tr>
<tr>
<td>Golf Complex Direct Net Contribution</td>
</tr>
<tr>
<td>TopGolf Lease Revenue</td>
</tr>
<tr>
<td>Fiscal Revenue</td>
</tr>
<tr>
<td>Total Benefits</td>
</tr>
<tr>
<td>Annual Costs</td>
</tr>
<tr>
<td>Citywide Administrative/Overhead/Insurance</td>
</tr>
<tr>
<td>Construction Impact*</td>
</tr>
<tr>
<td>Capital Cost*</td>
</tr>
<tr>
<td>Fiscal Service Costs</td>
</tr>
<tr>
<td>Total Costs</td>
</tr>
<tr>
<td>Net Annual Cost-Benefit</td>
</tr>
</tbody>
</table>

* Represents annual amount necessary to amortize the discounted present value of the capital improvements.

- While the average annual net benefit to the City provides one measure of the comparative economics of the two scenarios, the most accurate measurement is the net present value of the 25-year stream of revenues and costs accruing to the City. Such an analysis takes into account the timing of the revenues and costs associated with each scenario. Within a 2 percent inflation environment, an 8.0
percent present value discount rate is considered reasonable and appropriate in measuring the present value of the cash flow stream.

- The net present value of each scenario is compared as follows:

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Existing Course</th>
<th>Initial Proposal</th>
<th>Revised Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golf Complex Net Contribution</td>
<td>$6,041.7</td>
<td>($1,347.3)</td>
<td>($1,347.3)</td>
</tr>
<tr>
<td>TopGolf Lease Revenue</td>
<td>---</td>
<td>5,163.4</td>
<td>6,388.8</td>
</tr>
<tr>
<td>Fiscal Revenue</td>
<td>71.0</td>
<td>2,074.0</td>
<td>2,634.9</td>
</tr>
<tr>
<td><strong>Total Benefits</strong></td>
<td><strong>$6,112.7</strong></td>
<td><strong>$5,890.1</strong></td>
<td><strong>$7,676.4</strong></td>
</tr>
</tbody>
</table>

**Costs**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Existing Course</th>
<th>Initial Proposal</th>
<th>Revised Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citywide Administrative/Overhead</td>
<td>$2,027.8</td>
<td>$1,901.1</td>
<td>$1,901.1</td>
</tr>
<tr>
<td>Construction Impact</td>
<td>---</td>
<td>250.0</td>
<td>250.0</td>
</tr>
<tr>
<td>Capital Cost</td>
<td>1,445.2</td>
<td>816.7</td>
<td>585.3</td>
</tr>
<tr>
<td>Fiscal Service Costs</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td><strong>$3,473.0</strong></td>
<td><strong>$2,967.8</strong></td>
<td><strong>$2,736.4</strong></td>
</tr>
<tr>
<td><strong>Net Cost-Benefit</strong></td>
<td><strong>$2,639.7</strong></td>
<td><strong>$2,922.3</strong></td>
<td><strong>$4,940.1</strong></td>
</tr>
</tbody>
</table>

* Present value of 25-year stream.

**Other Issues**

- There are a series of other issues which may be considered, but have not been quantified, in the comparative analysis between the existing golf course and TopGolf scenarios.

  - **Risk of Default:** There is always a risk of default on the ground lease payments, particularly for a concept which does not have a long track record. However, the likelihood of a default on the ground lease is substantially mitigated by the non-subordination of the ground lease, and with a pro forma ground lease coverage ratio (annual net operating income to ground lease payment) of nearly 10:1.
Summary of Findings

- **Golf Course Design:** While there are concept renderings which illustrate that the golf course can be reconfigured in such a way to preserve, or even extend, the length of the golf course, there clearly are some safety issues with regard to the design. A qualified golf course architect will be needed to ensure that the reconfigured golf course length and par rating can be safely maintained.

- **Economic Impact:** The TopGolf scenario will produce over 400 jobs (250-300 full time equivalents) and employee payroll of over $3 million annually. The gross multiplier effect (rounds of respending the initial expenditures) will produce nearly $40 million in regional gross product, 600 jobs, and over $15 million in annual payroll based on a gross multiplier of 2.0. Residents and businesses in the City of El Segundo will capture a relatively small percentage of this overall economic impact.

- **Marketing Benefits:** TopGolf is budgeting about $400,000 per year in sales and marketing expenses to promote their facility. This large marketing budget will not only benefit the TopGolf facility, but should heighten awareness of The Lakes at El Segundo golf course. Moreover, this TopGolf promotion would be expected to elevate the City's image and identity.

- **Instruction Revenue:** This analysis assumes that any fees from independent contractors for use of the TopGolf practice range would accrue to TopGolf. TopGolf has indicated their intention to split such fees with the City, which could generate an additional $30,000-$35,000 annually in City revenue.

- **Transient Occupancy Tax:** In most TopGolf facilities, corporate special events account for a substantial portion of overall business activity and, in those locations which have a heavy concentration of regional and national corporate headquarters, some corporate attendees from out of the area utilize local lodging establishments. Conservative numbers suggest that this activity may produce on the order of $15,000 annually in transient occupancy tax, much of which would accrue to the City of El Segundo.

- **TopGolf Reversionary Value:** At the conclusion of the lease period (including lease extensions), both the land and the improvements related to TopGolf will revert to the City. Even though this may be 50 years in the future, the present value of these improvements may still be substantial.

- **CIP Reserve:** In its pro forma projections, TopGolf has a capital improvement replacement reserve of about $400,000, or approximately 2 percent of gross revenue. While this appears to be an appropriate reserve level, mandating that this amount is reserved annually would help preserve the quality of the asset at the conclusion of the lease period.

- **Upside Participation:** At one of their older facilities (Wood Dale, Illinois TopGolf), the lease structure has evolved into a combination of a fixed annual amount, plus a percentage of food and beverage revenue. It may be appropriate for the City of El Segundo to negotiate some upside participation if revenues exceed certain annual thresholds.
Guaranteed Fiscal Revenue: Based on TopGolf pro forma projections, fiscal revenue accruing to the City is projected at nearly $210,000 per year ($165,000 under initial proposal). As this fiscal revenue is directly correlated with TopGolf's performance, it may be appropriate to establish a guaranteed total fiscal revenue amount, with TopGolf funding any shortfall between the budgeted and actual fiscal revenue generated.
III. The Lakes at El Segundo

The following section presents a description of the Lakes at El Segundo, a review of the golf facility’s operating history, and an evaluation of mid- and long-term capital improvement needs.

Project Description

The Lakes at El Segundo is a 9-hole, executive length municipal golf course owned by the City of El Segundo and managed by Lane/Donovan Partners, a professional golf course management company. Opened in 1994, The Lakes complex consists of the nine-hole golf course, a golf practice range, a 4,000-square-foot clubhouse, and other support facilities. The overall site measures approximately 30 acres, including a 4.0-acre right-of-way parcel leased from Southern California Edison. The course is located on the east side of Sepulveda Boulevard (State Highway 1), between El Segundo Boulevard and Rosecrans Avenue, in the City of El Segundo. An aerial view of the golf course is shown in Figure III-1.

With approximately $2 million in annual gross revenue, The Lakes at El Segundo is among the most successful 9-hole short course facilities in the country. It is often used as a model for small golf facilities developed on limited size sites.

The golf course is a par-29, 1,340-yard layout designed by Martin Hawtree/Fred Hawtree. The course offers seven par-3 and two par-4 holes. There are several lakes on the golf course, which come into play on a number of holes, along with approximately 26 sand bunkers. The course is recognized for the excellent condition of its greens.

The golf practice range is a lighted two-level facility with 58 tee stations. The range depth is approximately 250 yards, substantially shorter than the 280-300 yard desired depth, requiring the use of limited flight golf balls. There is 80-120 foot high fencing on the sides and back of the range. The landing area is natural turf.

The 4,000-square-foot clubhouse houses the pro shop, modest size bar/grill, a small meeting room, men’s and women’s restrooms, and circulation area.

The maintenance facility is located on the north side of the golf course (adjacent to the #4 hole).

The source of golf course irrigation water is reclaimed water delivered under pressure from the West Basin Water District Reclamation Plant located immediately south of the golf course. Annual consumption averages about 100 acre feet per year. The cost of the water currently is about $1,268 per acre foot ($2.12 usage charge per hundred cubic feet plus a $.79 recycle water surcharge). In FY2013/2014, annual water costs at The Lakes totaled just over $150,000.
Figure III-1: The Lakes Golf Course Existing Layout
Operating History

Annual historical play (starts) on the golf course are summarized as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Rounds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>56,901</td>
</tr>
<tr>
<td>2011</td>
<td>52,850</td>
</tr>
<tr>
<td>2012</td>
<td>49,464</td>
</tr>
<tr>
<td>2013</td>
<td>49,172</td>
</tr>
<tr>
<td>2014</td>
<td>43,129</td>
</tr>
</tbody>
</table>

Annual rounds by type for 2014 are approximately as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Resident</th>
<th>Non-Resident</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular</td>
<td>2,964</td>
<td>23,688</td>
<td>26,652</td>
</tr>
<tr>
<td>Senior</td>
<td>908</td>
<td>6,521</td>
<td>7,429</td>
</tr>
<tr>
<td>Monthly Passes</td>
<td>284</td>
<td>411</td>
<td>695</td>
</tr>
<tr>
<td>Punch Cards*</td>
<td>600</td>
<td>4,285</td>
<td>4,885</td>
</tr>
<tr>
<td>Junior</td>
<td>83</td>
<td>1,246</td>
<td>1,329</td>
</tr>
<tr>
<td>Replay/Lessons/Other*</td>
<td>280</td>
<td>1,959</td>
<td>2,239</td>
</tr>
<tr>
<td>Total</td>
<td>5,119</td>
<td>38,010</td>
<td>43,129</td>
</tr>
</tbody>
</table>

* Resident/Non-Resident distribution based on ratio of regular and senior play.

As indicated, resident rounds account for approximately 12 percent and non-resident rounds about 88 percent of total play at The Lakes.

Current greens fees are as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Weekday</th>
<th>Weekend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Regular</td>
<td>$10.00</td>
<td>$12.00</td>
</tr>
<tr>
<td>Non-Resident Regular</td>
<td>15.00</td>
<td>18.00</td>
</tr>
<tr>
<td>Resident Senior</td>
<td>8.00</td>
<td>---</td>
</tr>
<tr>
<td>Non-Resident Senior</td>
<td>12.00</td>
<td>---</td>
</tr>
<tr>
<td>Resident Junior</td>
<td>8.00</td>
<td>12.00</td>
</tr>
<tr>
<td>Non-Resident Junior</td>
<td>11.00</td>
<td>15.00</td>
</tr>
</tbody>
</table>
Current staffing at the golf complex is distributed by department as follows:

<table>
<thead>
<tr>
<th>Department</th>
<th>Full Time</th>
<th>Part Time</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Course Maintenance</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Golf Operations</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Range</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>6</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>General &amp; Admin</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16</strong></td>
<td><strong>5</strong></td>
<td><strong>22</strong></td>
</tr>
</tbody>
</table>

In addition to the golf course employees, there are 10 independent contractors (teaching professionals) who work at the range providing instruction.

Annual gross revenue for fiscal years 2009-2014 (fiscal year ending September 30), by department is shown in Table III-1. Note that the food and beverage gross revenue excludes alcoholic beverages, which average just under $80,000 per year. Rather, the City’s 10 percent share of gross revenue (lease income) is shown in the table. Lessons revenue is comprised of rent from the independent teaching professional contractors (9-10 contractors at $600 per month per contractor), plus revenue from the junior golfer summer camp program. Also note that a greens fees increase went into effect in May 2013.

<table>
<thead>
<tr>
<th>Table III-1: The Lakes Annual Gross Revenue ($000)</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greens Fees</td>
<td>$676.2</td>
<td>$639.2</td>
<td>$657.0</td>
<td>$662.8</td>
<td>$711.8</td>
<td>$689.2</td>
</tr>
<tr>
<td>Range Revenue</td>
<td>744.0</td>
<td>696.0</td>
<td>696.0</td>
<td>675.0</td>
<td>752.1</td>
<td>721.1</td>
</tr>
<tr>
<td>Pro Shop Merchandise</td>
<td>306.3</td>
<td>255.4</td>
<td>252.2</td>
<td>172.9</td>
<td>167.4</td>
<td>164.3</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>324.6</td>
<td>285.0</td>
<td>263.9</td>
<td>275.3</td>
<td>298.9</td>
<td>287.1</td>
</tr>
<tr>
<td>Alcohol-Net Lease</td>
<td>8.8</td>
<td>7.3</td>
<td>8.4</td>
<td>7.7</td>
<td>7.7</td>
<td>7.2</td>
</tr>
<tr>
<td>Lessons</td>
<td>59.2</td>
<td>60.4</td>
<td>67.1</td>
<td>124.8</td>
<td>171.4</td>
<td>176.7</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>4.4</td>
<td>15.7</td>
<td>9.9</td>
<td>29.3</td>
<td>7.4</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$2,123.6</td>
<td>$1,961.6</td>
<td>$1,954.5</td>
<td>$1,947.8</td>
<td>$2,116.6</td>
<td>$2,047.1</td>
</tr>
</tbody>
</table>

Annual operating expenses for The Lakes for fiscal year 2014, by department, are shown in Table III-2. The expenses have been reclassified to conform to a more standardized accounting format for golf course properties.
<table>
<thead>
<tr>
<th>Department</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Course Maintenance</strong></td>
<td></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
<td>$220.5</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
<td>112.6</td>
</tr>
<tr>
<td>Irrigation Water (80% of total)</td>
<td>121.0</td>
</tr>
<tr>
<td>Equipment Replacement Charge</td>
<td>8.7</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$462.8</td>
</tr>
<tr>
<td><strong>Golf Operations</strong></td>
<td></td>
</tr>
<tr>
<td>Payroll &amp; Benefits (Pro Shop)</td>
<td>$44.1</td>
</tr>
<tr>
<td>Range Expenses/Utilities</td>
<td>147.6</td>
</tr>
<tr>
<td>Services &amp; Supplies (Golf)</td>
<td>10.8</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$202.5</td>
</tr>
<tr>
<td><strong>Lessons</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$81.2</td>
</tr>
<tr>
<td><strong>Food &amp; Beverage</strong></td>
<td></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
<td>$158.5</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
<td>40.7</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$199.2</td>
</tr>
<tr>
<td><strong>Clubhouse Undistributed</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$74.2</td>
</tr>
<tr>
<td><strong>General &amp; Administrative</strong></td>
<td></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
<td>$143.1</td>
</tr>
<tr>
<td>Marketing &amp; Promotion</td>
<td>17.5</td>
</tr>
<tr>
<td>Credit Card</td>
<td>35.8</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
<td>76.7</td>
</tr>
<tr>
<td>Management Fee</td>
<td>96.0</td>
</tr>
<tr>
<td>SCE Right-of-Way Lease</td>
<td>41.8</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$410.9</td>
</tr>
<tr>
<td><strong>Total--Golf Course Level</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$1,430.8</td>
</tr>
<tr>
<td><strong>Plus: City Administration</strong></td>
<td></td>
</tr>
<tr>
<td>Insurance &amp; Bonds</td>
<td>119.6</td>
</tr>
<tr>
<td>Adjusted Total</td>
<td>$1,680.8</td>
</tr>
</tbody>
</table>
As noted, at the golf course level, operating expenses for 2014 total $1.43 million. Adding the City administrative expense and the allocation for insurance and bonds yields total operating expenses of $1.68 million for the year.

Golf course operating income is summarized for the past 6-year period in Table III-3. As shown, Net operating income is first shown at the golf course level, before City administrative and insurance charges. Then, City administrative expenses and the allocation for insurance and bonds are deducted from the course level, yielding adjusted net operating income. Note that non-cash depreciation expenses have been omitted from the analysis. As indicated, net operating income at the course level declined from just over $460,000 in FY 2013 to about $355,000 in FY2014, reflecting the decline in rounds played and a slight increase in operating expenses. After Citywide deductions, net operating income declined sharply in FY2014, mostly due to the significant burden of insurance and bonds costs, as well as a significant increase in the cost of irrigation water.

| Table III-3: The Lakes Annual Net Operating Income ($000) |
|--------------|-------|-------|-------|-------|-------|-------|
|              | 2009  | 2010  | 2011  | 2012  | 2013  | 2014  |
| Gross Revenue| $2,123.6 | $1,961.6 | $1,954.5 | $1,947.8 | $2,116.6 | $2,047.1 |
| Less: Cost of Sales |  |  |  |  |  |  |
| Food & Beverage| $130.0 | $127.0 | $127.2 | $131.4 | $131.2 | $134.7 |
| Merchandise | 173.2 | 150.6 | 141.9 | 97.0 | 138.1 | 126.5 |
| Total | $309.2 | $277.6 | $269.1 | $228.4 | $269.3 | $261.2 |
| Gross Profit | $1,814.4 | $1,684.0 | $1,685.4 | $1,719.4 | $1,847.3 | $1,785.9 |
| Less: Operating Expenses | 1,340.9 | 1,332.2 | 1,398.6 | 1,351.5 | 1,399.4 | 1,430.6 |
| Net Operating Income | 473.5 | 351.8 | 286.8 | 367.9 | 457.9 | 355.3 |
| Less: City Administrative | 130.2 | 130.2 | 130.2 | 130.2 | 130.2 | 130.2 |
| Insurance & Bonds | 60.4 | 60.5 | 18.5 | 18.0 | 23.1 | 119.6 |
| Adjusted Net Income* | 282.9 | 161.1 | 138.1 | 219.7 | 304.6 | 105.5 |

* Before depreciation and interest payments on General Fund debt.
Course Condition/Capital Cost

The Lakes at El Segundo is nearly 25 years old such that there are a number of capital improvements which the existing golf complex will need to address, particularly in the mid- to long-term. The reconfigured golf course under the TopGolf proposal also will require capital improvements, although the scale of these improvements will be reduced compared to the existing complex for two reasons. First, under the TopGolf scenario, the driving range will be the responsibility of TopGolf, and second, a substantial portion of the golf course will be renovated as part of the reconfiguration of the golf course—that is, with at least 4 holes affected, greens, tees, bunkers, irrigation components will be reconstructed as part of the estimated $2.5 million CenterCal expenditure.

Existing Golf Course and Range

Based on discussions with representatives of Lane-Donovan (golf course management) and the golf course superintendent, along with visual inspection and analysis of the golf course infrastructure, capital improvement replacement for the existing golf course and driving range are shown in Table III-4. The costs are expressed in constant 2015 dollars, and generally reflect prevailing wage rates. For most of the components, the timing of the cost is based on current condition and typical useful life experience. Nonetheless, the timing is highly variable, and there is often a tradeoff between deferring capital costs and maintenance intensity. As well, depending on the availability of capital, some improvements may be deferred. The estimated capital cost and timing assumes that capital is available as needed. Also, it should be noted that the cost of replacing maintenance equipment is included as an annual equipment replacement reserve in the pro forma operating statements.

Greens—For the most part the greens are in very good condition, although some authoritative sources such as the USGA call for replacement of greens every 25 years. Actual experience suggests that, with proper maintenance, the greens may last much longer, and may never need to be rebuilt. Nonetheless, this analysis includes an allowance of $300,000 for greens replacement in year 20 is included, equal to about $30,000 per green for 10 greens.

Bunkers—There are 26 bunkers on the existing golf course, all of which are in generally poor condition. The analysis assumes that the bunkers are the highest priority, with the reconstruction of all bunkers in year 1. A cost allowance of $200,000, equal to approximately $7,500 per bunker, is included in the analysis.

Tees—The golf course tees are in fair condition, and will need to be replaced over the mid-term. While it may be sufficient to complete 2-3 tees every couple of years, the analysis assumes that all of the tees are rebuilt in year 5. The cost of leveling (and rebuilding where necessary) is indicated at $100,000, equal to about $10,000 per hole.
Table III-4: Summary of Capital Cost Requirements

<table>
<thead>
<tr>
<th>Item</th>
<th>Existing Course</th>
<th></th>
<th>TopGolf--Reconfigured Course</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year</td>
<td>Amount(^1)</td>
<td>Year</td>
<td>Amount(^1)</td>
</tr>
<tr>
<td>Golf Course</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greens</td>
<td>20</td>
<td>$300,000</td>
<td>20</td>
<td>$150,000</td>
</tr>
<tr>
<td>Bunkers</td>
<td>10</td>
<td>200,000</td>
<td>1</td>
<td>100,000</td>
</tr>
<tr>
<td>Tees</td>
<td>5</td>
<td>100,000</td>
<td>1</td>
<td>50,000</td>
</tr>
<tr>
<td>Irrigation System</td>
<td>15</td>
<td>550,000</td>
<td>15</td>
<td>275,000</td>
</tr>
<tr>
<td>Lighting</td>
<td>1</td>
<td>450,000</td>
<td>1</td>
<td>200,000(^2)</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
<td>150,000</td>
<td>15</td>
<td>100,000</td>
</tr>
<tr>
<td>Soft Costs (@10%)</td>
<td>---</td>
<td>175,000</td>
<td>---</td>
<td>90,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>---</td>
<td>$1,925,000</td>
<td>---</td>
<td>$965,000</td>
</tr>
<tr>
<td>Driving Range</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netting</td>
<td>15</td>
<td>160,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Heating/Other</td>
<td>1</td>
<td>50,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td>$210,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Clubhouse/Parking</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clubhouse</td>
<td>5</td>
<td>$240,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Parking</td>
<td>10</td>
<td>100,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$340,000</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,475,000</td>
<td></td>
<td>$965,000(^2)</td>
</tr>
</tbody>
</table>

\(^1\) Values expressed in constant 2015 dollars.

\(^2\) Under the initial proposal, lighting is indicated at $450,000, yielding a total cost of $1,215,000.
Irrigation System—The irrigation system is nearly 25 years old, about the expected life of the system. The system currently is in satisfactory condition, but eventually will need replacement. Based on approximately 22 irrigated acres and a cost factor of $25,000 per acre, the cost of replacing the irrigation system is indicated at $550,000. The project is scheduled in year 15 of the analysis.

Course Lighting—The analysis of the existing golf course assumes that the course is night lighted. Given that much of the installation work was completed when the golf course was originally built, the cost of lighting the existing golf course, including additional required installation costs, is indicated at $450,000. The analysis assumes the lighting project is undertaken in year 1.

Range Netting—Most of the driving range netting was replaced recently, along with poles. The lifetime of netting is about 15 years. As such, an allowance for replacing the netting at a cost of $160,000 is included in year 15 of the analysis.

Other Capital Costs—In addition to the major components identified above, there will be periodic other capital cost requirements relating to such items as lake linings, major tree trimming, course safety netting, perimeter fencing, signage, and other miscellaneous items. An allowance of $150,000 in year 15 is included.

Clubhouse Renovation/Parking—Capital costs for the clubhouse are based on the premise that the existing structure will be preserved, with substantial cosmetic improvements. An allowance of $60 per square foot ($240,000) is included in year 5 of the analysis for these improvements. Parking lot refurbishment is estimated at $100,000 in year 10.

Soft Costs—An allowance of soft costs at 10 percent of hard costs shown above is included.

Reconfigured Golf Course

The Center Cal/TopGolf proposal stipulates that the developer will reconfigure the golf course, replace parking, replace the clubhouse and complete any other capital improvements to provide a standalone golf complex. CenterCal has budgeted $2.5 million for these items, which appears to of appropriate magnitude. In addition, under their revised proposal, TopGolf has committed to contributing $250,000 towards night lighting the golf course.

Until the final golf course reconfiguration is designed, exactly how much of the golf course will be replaced can only be estimated. At this time, it appears that perhaps 50 percent of the golf course will be affected, and 50 percent not impacted. For planning purposes, it is assumed that the undisturbed portion of the golf course will generally require capital improvements at a proportionate cost and time to that estimated for the existing course (that is, 50 percent).

To preserve the quality and consistency of the golf course experience, it may be necessary to complete improvements for some items such as bunkers and tees at the same time as the improvements related to
reconfiguring the golf course are completed. Thus, the timing of those components is accelerated to year 1 of the analysis.
IV. TopGolf

The following section describes the proposed TopGolf project, and presents estimates of operating performance.

TopGolf Project Concept

The TopGolf concept integrates a golf practice complex with an entertainment facility, offering a unique experience in the golf industry. The TopGolf concept can best be described as a large upscale "sports bar" featuring a broad range of amenities and games, including a series of technology-driven golf games utilizing the driving range. Utilizing golf balls embedded with a microchip and targets in the landing area with sensors, players score points by hitting balls into the targets. The more accurate the shot and farther the distance, the more points earned. The golf games are designed to appeal to a broad range of golfers, from those with no experience to golf professionals.

The proposed TopGolf El Segundo facility would consist of a 65,000 square foot enclosed structure (35,000 square feet of climate-controlled space), along with a three level driving range offering 102 hitting stations. Each station would accommodate up to 6 golfers, and also include a seating area for food and beverages. Each station would have a high tech electronic display for recording scores much like a bowling alley. Stations would be rented on a pay and play basis, with pricing ranging from $20-$25 for non-peak times to $40-$45 for peak times. In addition, individual games are priced at an average of about $5 each. Memberships also are offered, with a single (executive) membership priced at $125 per month and a family (two adults, two children) membership in the range of $200 per month. Both memberships require a $100 one-time initiation fee.

The sports bar component of TopGolf features two principal bar/grill areas, about 200 television monitors, and numerous competitive table (e.g. billiards, foosball, shuffle board) and virtual games. The sports bar concept has some similarities to a Dave and Buster's establishment where bar/grill and entertainment activities are combined. While clearly catering to a young demographic segment, TopGolf facilities have also demonstrated substantial support derives from the family market.

TopGolf also is designed to accommodate events including corporate outings, social gatherings and kid's parties.

While TopGolf is characterized as a food and beverage oriented entertainment enterprise, the facility also caters to a component of the traditional golfer segment. Most avid golfers elect to purchase a membership rather than use the facility on an hourly basis.

TopGolf at The Lakes

A conceptual plan for the proposed TopGolf facility at The Lakes is presented in Figure IV-1. The plan would involve the following components:
A new TopGolf facility, including the structure and practice range, would be developed utilizing the existing driving range, practice green area, clubhouse site, and a portion of the parking lot. In total, the building envelope for the TopGolf complex is approximately 12 acres.

Replacement of existing and additional parking would be developed on the western portion of the site, along Sepulveda Boulevard, impacting existing hole #1.

A new practice putting green, with a minimum of 4,500 square feet, and practice bunkers would be constructed.

A new, smaller 2,500-square-foot clubhouse (small pro shop and snack bar) would be developed, along with an outdoor patio area.

A new on-course restroom would be constructed.

The golf course would be reconfigured, with four holes being affected to the extent that tees and/or greens would be constructed. The course length would be at least as long as the existing 1,340-yard layout, with the objective of lengthening the course to 1,500 yards, subject to the design feasibility. The course would remain a par-29 layout, again subject to design feasibility.

The initial terms of the proposed ground lease agreement between CenterCal/TopGolf and the City of El Segundo called for annual lease payments of $425,000 per year, with escalations of 10 percent every five years over the lease term.

In August 2014, CenterCal/TopGolf revised their proposal. The basic terms of the revised proposed ground lease agreement between CenterCal/TopGolf and the City of El Segundo are summarized as follows:

| Lease Term: | 20 years |
| Options to Extend: | six 5-year options |
| Ground Rent Construction Period (10 months) | $18,000 per month |
| Operating Period Year 1 | $525,000 |
| Year 2 | 535,500 |
| Year 3 | 546,210 |
| Year 4 | 537,135 |
| Year 5 | 568,280 |
| Rent Escalation | 10% every 5 years, beginning year 11 |

In both the original and revised proposals, the agreement stipulates that CenterCal/TopGolf will fund all of the costs to develop the TopGolf facility, and all related costs including the replacement parking, reconfiguration of the golf course, new clubhouse and other support facilities. As well, the proposed ground lease is a triple-net agreement such that TopGolf is responsible for all operating expenses related to the TopGolf facility. The City of El Segundo would be responsible for maintenance, operation and management of the golf course and clubhouse only.
The revised proposal also included a commitment of $250,000 towards the installation of lights on the reconfigured golf course, and offered to waive the business license fee sales tax credit.

The turnkey development cost of the TopGolf facility is estimated, based primarily on the experience of the Roseville, California project, at approximately $25 million. In addition, the CenterCal/TopGolf proposal calls for the cost of the reconfiguration of the golf course to be funded by CenterCal/TopGolf. The costs related to the reconfiguration of the golf course are estimated by CenterCal at approximately $2.5 million.

TopGolf has provided stable year revenue projections for the TopGolf El Segundo project. The annual gross revenue for the first operating year is projected, by major component, as follows:

<table>
<thead>
<tr>
<th>TopGolf Year 1 Revenue Projection</th>
<th>Amount ($000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TopGolf</td>
<td>$8,128.4</td>
</tr>
<tr>
<td>F&amp;B (incl. events)</td>
<td>10,561.7</td>
</tr>
<tr>
<td>Net Event</td>
<td>2,009.5</td>
</tr>
<tr>
<td>Retail &amp; Other</td>
<td>197.0</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$20,896.6</td>
</tr>
</tbody>
</table>

As part of this assignment, the managers of several contemporary TopGolf facilities considered directly comparable to that proposed for El Segundo were contacted. Specifically, the managers of the Tampa TopGolf, Colony TopGolf (Dallas) and Gilbert TopGolf (Phoenix) were interviewed regarding their performance and experience at their facility. The results of these interviews is highlighted as follows:

- Each facility features 102 driving range "bays" with a gross structure size of 65,000 square feet, of which about 35,000-40,000 square feet is climate controlled, essentially identical to the facility proposed for El Segundo.

- The revenue volume and distribution by major component at each of these TopGolf facilities was entirely consistent with the El Segundo projections provided by TopGolf. In particular, taxable food and beverage and retail sales achieved at these comparable facilities support the El Segundo projections.

- Event sales and related activity represent an estimated 20-25 percent of total gross revenue volume. These events range widely from birthday parties for children to corporate team building functions. On average, between 25 and 50 percent of the events are corporate related.

- There is monthly variation in the business activity, which is influenced primarily by climate.
TopGolf offers a range of membership types priced from $80 to $250 per month which allow use of the range at designated times. First year membership sales appear to be at about the 200 member level at facilities surveyed, although some facilities have twice that number of members.

Avid golfers who want to work on their golf game typically purchase a membership rather than using the driving range on a daily fee basis.

The facilities have been successful at creating numerous programs which target varied market segments, including corporate leagues, tournaments, a junior golf academy and golf instruction.

Each facility employs approximately 450 employees, with about one-half full-time and one-half part-time.

The TopGolf facilities have established relationships with local hotels and with meeting planners as part of their corporate event promotion. It is not uncommon for hotel guests to patronize a nearby TopGolf facility, and there is a small percentage of corporate event attendees who are from outside the area, thus utilizing local hotels.

Construction Impact

Construction of the TopGolf facility and reconfigured golf course will result in closure of the golf course for a 10-month period, depriving the City of nearly one year’s net operating income (at the course level), or approximately $450,000. There may also be costs related to maintaining key staff during the construction period, and it could be argued that closure of the course during the construction period will have a short term adverse impact on the rate at which displaced golfers return to The Lakes. While these other potential costs are acknowledged, for analysis purposes, only the loss of operating income during the construction period is included. Offsetting part of the loss in revenue is $18,000 per month paid during the construction period, or an estimated $180,000. Thus, the net construction impact is estimated at $270,000.


V. Golf Market Overview

The following section presents an overview of the golf market in which The Lakes at El Segundo golf course competes.

Demographics

The Lakes at El Segundo

Executive length golf courses and golf driving ranges typically draw support from a relatively local market area. In a suburban setting such as that provided in the South Bay, the majority of market support for an executive length golf course would derive from residents (and employees) located within a relatively small market area. A demographic profile for market area defined by a 5-, 10- and 15-minute drive time is presented in Table V-1. The 5-minute drive time market area includes most of El Segundo, and small portions of Manhattan Beach to the south and Hawthorne to the east. The broader 15-minute drive time area generally extends from Marina del Rey/Venice on the north to south Redondo Beach on the south, and from the coastline on the west to Hawthorne Boulevard on the east. Key characteristics are summarized below.

- Population density in the market areas is relatively high, consistent with suburban residential development. As expected, the population expands significantly as the drive time is increased from 5- to 10-minutes, and from 10- to 15-minutes. For example, while there currently is only about 17,500 population within a 5-minute drive time of The Lakes, there is nearly 190,000 population within the band between 5- and 10-minutes drive time, and nearly 440,000 between a 10- and 15-minute drive time.
- Population growth within the 15-minute drive time area is projected at less than .5% per year, confirming that this region of the County is relatively built-out. Most of the slight new growth will derive from redevelopment at somewhat higher densities.
- The median age for the 5-minute drive time area is 41.0 years, substantially higher than the statewide median of 35.2, while the median for the 15-minute drive time area is only slightly higher than the California median. The population age 65+ in the 5-minute drive time area is notably higher than observed statewide, while the percentage of senior population with the 15-minute drive time market area corresponds to the statewide share. Growth in the 65+ population is forecast to increase sharply over the next 5- to 10-year period as the first wave of the baby boom continues to age.
- The more localized area is relatively affluent with a median household income of just over $103,000. The median for the 15-minute drive time area is reported at about $59,000, slightly higher than the statewide median.
- The percentage of the population within a 5-minute drive time is predominantly non-Hispanic white (70.7 percent), declining sharply as the market area expands to the 15-minute drive time (16.9 percent).
# Golf Market Overview

## Table V-1: The Lakes Demographic Summary

<table>
<thead>
<tr>
<th></th>
<th>Drive Time Market Area</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>5-Minute</td>
<td>10-Minute</td>
<td>15-Minute</td>
</tr>
<tr>
<td><strong>Population</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010 (census)</td>
<td>16,910</td>
<td>202,978</td>
<td>637,091</td>
<td></td>
</tr>
<tr>
<td>2014 (estimated)</td>
<td>17,497</td>
<td>205,670</td>
<td>643,983</td>
<td></td>
</tr>
<tr>
<td>2019 (projected)</td>
<td>18,135</td>
<td>210,476</td>
<td>658,223</td>
<td></td>
</tr>
<tr>
<td>Average Annual Growth 2014-2019</td>
<td>0.72%</td>
<td>0.46%</td>
<td>0.44%</td>
<td></td>
</tr>
<tr>
<td><strong>Age Distribution</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 20</td>
<td>26.6%</td>
<td>26.3%</td>
<td>25.9%</td>
<td></td>
</tr>
<tr>
<td>20-64</td>
<td>60.3%</td>
<td>62.9%</td>
<td>62.5%</td>
<td></td>
</tr>
<tr>
<td>65+</td>
<td>13.1%</td>
<td>10.8%</td>
<td>11.6%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td></td>
</tr>
<tr>
<td>Median Age</td>
<td>41.0</td>
<td>36.0</td>
<td>35.9</td>
<td></td>
</tr>
<tr>
<td><strong>Income</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median Household Income</td>
<td>$103,080</td>
<td>$70,966</td>
<td>$58,964</td>
<td></td>
</tr>
<tr>
<td>Households Exceeding:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$100,000</td>
<td>51.7%</td>
<td>36.7%</td>
<td>29.9%</td>
<td></td>
</tr>
<tr>
<td>$150,000</td>
<td>32.7%</td>
<td>20.5%</td>
<td>15.0%</td>
<td></td>
</tr>
<tr>
<td>$200,000</td>
<td>20.0%</td>
<td>11.9%</td>
<td>8.1%</td>
<td></td>
</tr>
<tr>
<td><strong>Race (percent)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White + Asian</td>
<td>86.9%</td>
<td>65.8%</td>
<td>55.2%</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>16.2%</td>
<td>39.5%</td>
<td>38.3%</td>
<td></td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>60.3%</td>
<td>26.3%</td>
<td>16.9%</td>
<td></td>
</tr>
</tbody>
</table>

*Source: ESRI Business Analyst; Pro Forma Advisors, LLC*
Golf Market Overview

In general, the localized (5-minute drive time) market area is relatively more affluent, older and predominantly non-Hispanic white, all factors which favorably affect golf. As the market area expands, population increases significantly, although income levels and age profiles approach the levels observed statewide.

A very significant factor which favorably affects demand for golf and the driving range is the daytime population in and around the City of El Segundo. The daytime population within the City of El Segundo is estimated at over 70,000, which compares with a resident population of only about 16,900.

TopGolf

In general, a TopGolf facility serves a much broader market area than a 9-hole executive length golf course. According to TopGolf, an estimated 75-80 percent of market support derives from about a 10-mile radius (equivalent to a 15- to 20-minute drive time). The balance of market support would be generated from residents beyond 10-miles, mostly within the south and western segments of Los Angeles County.

Golf Market Overview

National Market

Nationwide, golf play increased steadily between the mid-1980s and 2000. As shown in Table V-2, during this period, the total number of annual rounds played nationally increased at an average rate of 2.4 percent per year. Golf balls sold, perhaps the best indicator of play, increased at a similar rate (2.5 percent per year). This unprecedented growth in golf play was due to a number of factors including:

- An increase in the number of golfers
- The increasing importance of golf-oriented real estate
- Expansion of the golf tourism industry
- One of the longest economic expansions in the nation’s history.

The increase in golf demand and the popularity of golf-related housing development during the 1990s stimulated extraordinary expansion of the national golf course inventory, primarily between 1995 and 2002. Over the full 1990-2010 period, the inventory of golf courses in the United States increased by 34 percent, while the U.S. population registered only a 24 percent gain, and golf demand (play) increased only 12 percent over this same period.

Right after the new century started, the first signs of industry problems surfaced, and have persisted for the past 10 years. While total golfers and rounds played are down industrywide, individual golf courses have experienced steeper declines in utilization, along with revenue contraction and falling net operating income, as the market totals are spread over an increased supply of facilities. Further, golf course transaction prices have declined precipitously, bankruptcies and foreclosures have become routine, and new golf course construction has virtually ceased while the number of courses closing now well exceeds new openings. The
## Table V-2: Indicators of U.S. Golf Demand (1985-2013)

<table>
<thead>
<tr>
<th>Year</th>
<th>Rounds (millions)</th>
<th>Number of Golfers (millions)</th>
<th>Participation Rate</th>
<th>Golf Ball Sales (millions of dozens)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>365</td>
<td>17.5</td>
<td>10.2</td>
<td>36.0</td>
</tr>
<tr>
<td>1990</td>
<td>400</td>
<td>27.8</td>
<td>13.5</td>
<td>42.0</td>
</tr>
<tr>
<td>1995</td>
<td>420</td>
<td>25.0</td>
<td>11.6</td>
<td>46.0</td>
</tr>
<tr>
<td>2000</td>
<td>518</td>
<td>28.8</td>
<td>11.7</td>
<td>52.2</td>
</tr>
<tr>
<td>2001</td>
<td>518</td>
<td>29.5</td>
<td>11.9</td>
<td>50.0</td>
</tr>
<tr>
<td>2002</td>
<td>502</td>
<td>29.5</td>
<td>12</td>
<td>46.7</td>
</tr>
<tr>
<td>2003</td>
<td>496</td>
<td>30.4</td>
<td>12.4</td>
<td>43.4</td>
</tr>
<tr>
<td>2004</td>
<td>499</td>
<td>29.5</td>
<td>11.5</td>
<td>43.4</td>
</tr>
<tr>
<td>2005</td>
<td>489</td>
<td>29.3</td>
<td>11.2</td>
<td>43.6</td>
</tr>
<tr>
<td>2006</td>
<td>493</td>
<td>29.4</td>
<td>11.2</td>
<td>44</td>
</tr>
<tr>
<td>2007</td>
<td>490</td>
<td>29.5</td>
<td>11.1</td>
<td>43.5</td>
</tr>
<tr>
<td>2008</td>
<td>481</td>
<td>28.6</td>
<td>10.7</td>
<td>42.2</td>
</tr>
<tr>
<td>2009</td>
<td>477</td>
<td>27.1</td>
<td>10</td>
<td>40.1</td>
</tr>
<tr>
<td>2010</td>
<td>475</td>
<td>26.1</td>
<td>9.6</td>
<td>3.9*</td>
</tr>
<tr>
<td>2011</td>
<td>463</td>
<td>25.7</td>
<td>9.2</td>
<td>3.9*</td>
</tr>
<tr>
<td>2012</td>
<td>490</td>
<td>25.3</td>
<td>9.0</td>
<td>3.9*</td>
</tr>
<tr>
<td>2013</td>
<td>465</td>
<td>24.7</td>
<td>8.9</td>
<td>3.9*</td>
</tr>
</tbody>
</table>

### Average Annual Growth

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual Growth</th>
<th>Average Annual Growth</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985-1990</td>
<td>1.5%</td>
<td>9.7%</td>
</tr>
<tr>
<td>1990-1995</td>
<td>1.0%</td>
<td>(2.1)%</td>
</tr>
<tr>
<td>1995-2000</td>
<td>4.3%</td>
<td>2.9%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>2.4%</td>
<td>3.4%</td>
</tr>
<tr>
<td>2000-2005</td>
<td>(1.1%)</td>
<td>0.3%</td>
</tr>
<tr>
<td>2005-2010</td>
<td>(1.0%)</td>
<td>(2.3)%</td>
</tr>
<tr>
<td>2010-2013</td>
<td>(0.7%)</td>
<td>(1.8%)</td>
</tr>
</tbody>
</table>

1/ Represents golfers over 12 years of age.  2/ Estimated by PFA.  3/ Estimated by PFA based on "soft goods" sales recorded by Data Tech and golf ball manufacture sales.  4/ For period 2005-2009.  * Data for 2010-2013 not available in comparable format.  Source: National Golf Foundation and Pro Forma Advisors LLC.
impact of market softness has been widespread and affected all segments of the market and all geographic areas.

The National Golf Foundation (NGF) reports that over the 2001-2011 period, annual golf play in the United States declined from 518 million to 463 million rounds, or over 11 percent, rebounding somewhat in 2012 to 490 million rounds before declining again in 2013 and 2014 to about 465 million rounds. Golf ball sales, perhaps a better indicator of demand, declined by about 20-25 percent over this time period. The golf participation rate, after rising steadily through 2003, has fallen precipitously from 12.4 percent in 2004 to a current level estimated at just under 9.0 percent. (It should be noted that the golfer participation rate is based on the number of golfers relative to the population over the age of 6 years old). Since 2007, the golf market has been significantly impacted by the national economic recession. Annual rounds in the U.S., according to industry reports, have declined by nearly 5 percent since 2007. Other independent sources indicate a much more severe contraction, which is borne out by other market indicators.

Since 2002, the construction of new courses has declined sharply, and the rate at which courses have closed has accelerated. Between 2006 and 2014, for example, the number of courses closed exceeded new course openings. New courses have been added to the inventory since 2006 at an annual rate of 50-60 courses per year, while course closings have averaged about 120 per year over this period. Despite the slowing expansion of new supply over the past eight years, golf market conditions in most markets continued to deteriorate, although most markets experienced some stability over the past three years.

Regional Golf Market

Golf demand in Southern California also increased steadily over the 1980-2000 period. Through the mid-1990s, there was relatively limited expansion of the inventory of golf facilities. In the early 1990s, the municipal golf courses and limited number of daily fee golf courses in Southern California were performing exceptionally well, with municipal golf course play exceeding 100,000 rounds at many Southern California courses and play on daily fee courses in the range of 60,000-80,000 annual rounds.

In response to increasing demand and a static supply situation, a number of golf courses were developed. A total of 55 public golf courses have opened in Southern California since 1995. These additions represent a 33 percent increase in the Southern California public golf course inventory. At the same time, six regulation length public golf courses have been closed in Southern California over the past 6-7 years, reducing the net increase to 49 courses (29%).

Play at public golf courses in the region for the 2008 through 2014 period has varied according to market positioning. High-end daily fee courses have generally experienced declines in play averaging about 15 to 25 percent from 2007 levels. Entry level and mid-market courses have experienced moderate (10-15 percent) changes in play over the 2007-2014 period. The loss in play on shorter courses (par-3 and executive length) has generally been greater than on regulation length courses, apparently reflecting the decline in new golf participants as well as the general falloff in golf participation.
Regional Market Characteristics

An inventory of regional golf courses is contained in Table V-3. The inventory of par-3 and executive length public golf courses located within (or on the periphery of) the primary market area is as follows:

<table>
<thead>
<tr>
<th>Course</th>
<th>Course Type</th>
<th>Number of Holes</th>
<th>Distance From Subject (miles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lakes at El Segundo*</td>
<td>Executive</td>
<td>9</td>
<td>---</td>
</tr>
<tr>
<td>Manhattan-Marriott**</td>
<td>Par-3</td>
<td>9</td>
<td>1.7</td>
</tr>
<tr>
<td>Westchester*</td>
<td>Executive</td>
<td>18</td>
<td>4.6</td>
</tr>
<tr>
<td>Alondra Park*</td>
<td>Par-3</td>
<td>18</td>
<td>5.3</td>
</tr>
<tr>
<td>Penmar</td>
<td>Executive</td>
<td>9</td>
<td>8.3</td>
</tr>
<tr>
<td>Rancho Park</td>
<td>Par-3</td>
<td>9</td>
<td>9.8</td>
</tr>
</tbody>
</table>

* Within 15-minute drive time market area.

Selected characteristics of nine hole par-3 and executive length courses is presented in Table V-4. The following provides a brief overview of golf market conditions.

- Nationally and in California, short courses (executive and par-3) account for 11 percent and 20 percent of the total number of public golf courses, respectively. In Los Angeles County, about 30 percent of the public inventory is less than regulation length.
- The ratio of population per short course (18-hole equivalent), a general measure of supply-demand condition, is calculated at 321,500 within the primary (15-minute drive time) market area compared with 335,000 in Los Angeles County and 300,000 statewide. This gross measure suggests that the local less-than-regulation length golf market is generally in-balance at this time.
- Par-3 and executive length courses typically attract three distinct market segments: juniors, seniors, and beginning golfers. These courses, in many respects, serve as the incubator for the golf industry. Combining practice facilities with the short courses creates the opportunity for a full-service golf learning center.
- In addition to these shorter courses, there are three regulation length 18-hole golf courses available to the public in the broader market area. The ratio of regulation length golf courses in the broader region is calculated at about 500,000 population per course compared with a statewide ratio of only 90,000, suggesting this region is substantially underserved with regard to public access regulation length golf courses.
- Annual play (starts) at this selected sample of short courses varies widely. Most facilities without lights accommodate 40,000 to 60,000 rounds per year.
### Table V-3: Inventory of Public Golf Courses--West Los Angeles/South Bay Region

<table>
<thead>
<tr>
<th>Course</th>
<th>Driving Distance (miles)</th>
<th>Number of Holes</th>
<th>Par</th>
<th>Golf Course Length (yards)</th>
<th>Range (number of tees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Lakes</td>
<td>---</td>
<td>9</td>
<td>29</td>
<td>1,340</td>
<td>58</td>
</tr>
<tr>
<td>Manhattan Marriott</td>
<td>1.7</td>
<td>9</td>
<td>27</td>
<td>1,209</td>
<td>---</td>
</tr>
<tr>
<td>Westchester</td>
<td>4.6</td>
<td>18</td>
<td>64</td>
<td>4,339</td>
<td>80</td>
</tr>
<tr>
<td>Alondra Park-Reg</td>
<td>5.3</td>
<td>18</td>
<td>72</td>
<td>6,323</td>
<td>40</td>
</tr>
<tr>
<td>Alondra Park-Exec</td>
<td>5.3</td>
<td>18</td>
<td>54</td>
<td>2,356</td>
<td>40</td>
</tr>
<tr>
<td>Chester Washington</td>
<td>6.0</td>
<td>18</td>
<td>72</td>
<td>6,348</td>
<td>20</td>
</tr>
<tr>
<td>Penmar</td>
<td>8.3</td>
<td>9</td>
<td>33</td>
<td>2,501</td>
<td>---</td>
</tr>
<tr>
<td>Rancho Park-Reg</td>
<td>9.8</td>
<td>18</td>
<td>72</td>
<td>6,585</td>
<td>45</td>
</tr>
<tr>
<td>Rancho Park-Par 3</td>
<td>9.8</td>
<td>9</td>
<td>27</td>
<td>1,984</td>
<td>45</td>
</tr>
<tr>
<td>Victoria</td>
<td>10.5</td>
<td>18</td>
<td>72</td>
<td>6,616</td>
<td>30</td>
</tr>
<tr>
<td>Harbor Park</td>
<td>14.3</td>
<td>9</td>
<td>36</td>
<td>3,161</td>
<td>---</td>
</tr>
<tr>
<td>Links at Terranea</td>
<td>14.7</td>
<td>9</td>
<td>27</td>
<td>1,239</td>
<td>---</td>
</tr>
<tr>
<td>Los Verdes</td>
<td>15.6</td>
<td>18</td>
<td>72</td>
<td>6,273</td>
<td>44</td>
</tr>
</tbody>
</table>
# Table V-4: Selected Characteristics of Regional Short Golf Courses

<table>
<thead>
<tr>
<th></th>
<th>The Lakes</th>
<th>Manhattan-Marriott</th>
<th>Penmar</th>
<th>Roosevelt</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Course</strong></td>
<td>Executive</td>
<td>Par-3</td>
<td>Executive</td>
<td>Executive</td>
</tr>
<tr>
<td><strong>Owner</strong></td>
<td>City of El Segundo</td>
<td>Marriott</td>
<td>City of Los Angeles</td>
<td>City of Los Angeles</td>
</tr>
<tr>
<td><strong>Operator</strong></td>
<td>Lane/Donovan</td>
<td>Marriott</td>
<td>City of Los Angeles</td>
<td>City of Los Angeles</td>
</tr>
<tr>
<td><strong>Year Opened</strong></td>
<td>1994</td>
<td>1988</td>
<td>1962</td>
<td>1964</td>
</tr>
<tr>
<td><strong># of Holes</strong></td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Par</strong></td>
<td>29</td>
<td>27</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td><strong>Lighted</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Length (yards)</strong></td>
<td>1,340</td>
<td>1,213</td>
<td>2,501</td>
<td>2,400</td>
</tr>
<tr>
<td><strong>Type of Tees</strong></td>
<td>Natural Turf</td>
<td>Natural Turf</td>
<td>Natural Turf</td>
<td>Natural Turf</td>
</tr>
<tr>
<td><strong>Practice Range</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong># of Tees</strong></td>
<td>58</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Lighted</strong></td>
<td>Yes</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Natural/Artificial</strong></td>
<td>Artificial Mats</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Annual Rounds</strong></td>
<td>43,200</td>
<td>25,000</td>
<td>90,000</td>
<td>75,000</td>
</tr>
<tr>
<td><strong>Greens Fees</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WD Regular</td>
<td>$15/$10(^1)</td>
<td>19.00</td>
<td>$17.50/$14.50(^1)</td>
<td>$17.50/$14.50(^1)</td>
</tr>
<tr>
<td>WD Senior</td>
<td>12/8(^1)</td>
<td>15.00/12.00(^1)</td>
<td>12.00/9.00(^1)</td>
<td>12.00/9.00(^1)</td>
</tr>
<tr>
<td>WD Junior</td>
<td>11/8(^1)</td>
<td>15.00/12.00(^1)</td>
<td>5.00</td>
<td>5.00</td>
</tr>
<tr>
<td>WE Regular</td>
<td>$18/$12(^1)</td>
<td>22.00</td>
<td>22.00/19.00(^1)</td>
<td>22.00/19.00(^1)</td>
</tr>
<tr>
<td>WE Senior</td>
<td>$18/$12(^1)</td>
<td>---</td>
<td>14.00/11.00(^1)</td>
<td>14.00/11.00(^1)</td>
</tr>
<tr>
<td>WE Junior</td>
<td>$15/$12(^1)</td>
<td>---</td>
<td>6.00</td>
<td>6.00</td>
</tr>
<tr>
<td>Golf Carts-Inventory</td>
<td>none</td>
<td>none</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>Fee/Player</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>Ironwood</td>
<td>Van Nuys</td>
<td>Vista Valencia</td>
<td>Lake Forest</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------</td>
<td>----------</td>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>Type of Course</strong></td>
<td>Executive</td>
<td>Executive</td>
<td>Par-3</td>
<td>Executive</td>
</tr>
<tr>
<td><strong>Owner</strong></td>
<td>City of Cerritos</td>
<td>L.A. Dept of Airports</td>
<td>American Golf</td>
<td>County of Orange</td>
</tr>
<tr>
<td><strong>Operator</strong></td>
<td>City of Cerritos</td>
<td>Sc. Cal. Golf LLC</td>
<td>American Golf</td>
<td>American Golf</td>
</tr>
<tr>
<td><strong>Year Opened</strong></td>
<td>1977</td>
<td>1965</td>
<td>1963</td>
<td>1991</td>
</tr>
<tr>
<td><strong># of Holes</strong></td>
<td>9</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Par</strong></td>
<td>29</td>
<td>30</td>
<td>27</td>
<td>29</td>
</tr>
<tr>
<td><strong>Lighted</strong></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Length (yards)</strong></td>
<td>1,468</td>
<td>1,574</td>
<td>915</td>
<td>1,115</td>
</tr>
<tr>
<td><strong>Type of Tees</strong></td>
<td>Both</td>
<td>Artificial Mats</td>
<td>Turf</td>
<td>Turf</td>
</tr>
<tr>
<td><strong>Practice Range</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong># of Tees</strong></td>
<td>25</td>
<td>42</td>
<td>30</td>
<td>86</td>
</tr>
<tr>
<td><strong>Lighted</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Natural/Artificial</strong></td>
<td>Both</td>
<td>Artificial Mats</td>
<td>Both</td>
<td>Artificial Mats</td>
</tr>
<tr>
<td><strong>Annual Rounds</strong></td>
<td>55,000</td>
<td>60,000</td>
<td>35,000</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>Greens Fees</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>WD Regular</strong></td>
<td>$13.00</td>
<td>$13.00</td>
<td>$13.00</td>
<td>$14.00</td>
</tr>
<tr>
<td><strong>WD Senior</strong></td>
<td>9.00/8.00</td>
<td>11.00</td>
<td>10.00</td>
<td>9.00</td>
</tr>
<tr>
<td><strong>WD Junior</strong></td>
<td>8.50/7.50</td>
<td>11.00</td>
<td>10.00</td>
<td>9.00</td>
</tr>
<tr>
<td><strong>WE Regular</strong></td>
<td>14.00/12.00</td>
<td>17.00</td>
<td>16.00</td>
<td>16.00</td>
</tr>
<tr>
<td><strong>WE Senior</strong></td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>11.00</td>
</tr>
<tr>
<td><strong>WE Junior</strong></td>
<td>8.50/7.50</td>
<td>---</td>
<td>---</td>
<td>11.00</td>
</tr>
<tr>
<td><strong>Golf Carts-inventory</strong></td>
<td>none</td>
<td>none</td>
<td>none</td>
<td>3</td>
</tr>
<tr>
<td><strong>Fee/Player</strong></td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>$7.00</td>
</tr>
</tbody>
</table>
Use of golf course night lighting extends the capacity of the course by an average of four hours in the winter and two hours in the summer. A high percentage (40-50 percent) of additional capacity is utilized in the summer, and 20-30 percent in the winter. Overall, night lighting should result in an increase of about 15-20 percent in play levels annually.

Greens fees also vary widely depending on the course location, quality, length and other factors. However, a reasonable rule-of-thumb is a standard rate structure based on about $10 per 1,000 yards of course length:

<table>
<thead>
<tr>
<th>Course</th>
<th>Course Length (yards)</th>
<th>Standard Greens Fees</th>
<th>Standard Greens Fees per 1,000 Yards of Course Length</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Weekday</td>
<td>Weekend</td>
</tr>
<tr>
<td>Lakes at El Segundo</td>
<td>1,340</td>
<td>$15.00</td>
<td>$18.00</td>
</tr>
<tr>
<td>Manhattan Marriott</td>
<td>1,209</td>
<td>19.00</td>
<td>22.00</td>
</tr>
<tr>
<td>Westchester</td>
<td>4,339</td>
<td>23.50</td>
<td>30.50</td>
</tr>
<tr>
<td>Van Nuys</td>
<td>2,181</td>
<td>16.00</td>
<td>20.00</td>
</tr>
<tr>
<td>Alondra Park</td>
<td>2,356</td>
<td>13.00</td>
<td>16.25</td>
</tr>
<tr>
<td>Verdugo Hills</td>
<td>1,805</td>
<td>16.00</td>
<td>18.00</td>
</tr>
<tr>
<td>Heartwell</td>
<td>2,143</td>
<td>16.00</td>
<td>18.00</td>
</tr>
<tr>
<td>El Cariso</td>
<td>4,463</td>
<td>23.00</td>
<td>30.25</td>
</tr>
<tr>
<td>Vista Valencia-Exec</td>
<td>4,366</td>
<td>22.50</td>
<td>29.50</td>
</tr>
<tr>
<td>Vista Valencia-Par 3</td>
<td>915</td>
<td>13.00</td>
<td>16.00</td>
</tr>
<tr>
<td>Bixby Village</td>
<td>1,795</td>
<td>14.50</td>
<td>16.50</td>
</tr>
<tr>
<td>Lake Forest</td>
<td>1,115</td>
<td>14.00</td>
<td>16.00</td>
</tr>
</tbody>
</table>

Seniors and juniors typically receive greens fees discounts at the competitive courses surveyed. However, most facilities impose restrictions when discount play is accepted. Generally, discount play is either totally restricted on weekends, or limited until afternoon on these days.

Nearly all 18-hole courses offer twilight or 9-hole rates, typically set at about 60 percent of the regular rate. Courses with night lighting have varying price policies. Some charge the twilight rate, but most charge either the regular rate or the weekend rate for night play.
Short courses in this region are used heavily by juniors and seniors. The percentage of play at Los Angeles County courses, for example, is summarized as follows:

<table>
<thead>
<tr>
<th>Golfer Classification</th>
<th>Par-3/Executive</th>
<th>Regulation</th>
<th>All Courses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular</td>
<td>63%</td>
<td>71%</td>
<td>69%</td>
</tr>
<tr>
<td>Junior</td>
<td>5%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Senior</td>
<td>28%</td>
<td>18%</td>
<td>21%</td>
</tr>
<tr>
<td>Tournament</td>
<td>2%</td>
<td>7%</td>
<td>6%</td>
</tr>
<tr>
<td>Complimentary/Special</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Note: Regular play also includes senior/junior golfers paying regular greens fees.

In general, most par-3 and executive length golf courses have experienced modest declines in play, while regulation length golf course play has been relatively stable. While The Lakes experienced a decline in play of about 12 percent in 2014 compared with 2013, Westchester's 18-hole executive course has showed no decline at all over the past several years. On the other hand, play on the 18-hole par-3 golf course at Alondra Park has declined nearly 20 percent over the past year.

There are six golf course-affiliated practice ranges in (and on the periphery of) the primary market area:

<table>
<thead>
<tr>
<th>Facility</th>
<th>Distance from Subject (miles)</th>
<th>Number of Tees</th>
<th>Night Lights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lakes at El Segundo</td>
<td>---</td>
<td>58</td>
<td>Yes</td>
</tr>
<tr>
<td>Westchester</td>
<td>4.6</td>
<td>80</td>
<td>Yes</td>
</tr>
<tr>
<td>Alondra Park</td>
<td>5.3</td>
<td>40</td>
<td>Yes</td>
</tr>
<tr>
<td>Chester Washington</td>
<td>6.0</td>
<td>20</td>
<td>No</td>
</tr>
<tr>
<td>Rencho Park</td>
<td>9.8</td>
<td>43</td>
<td>Yes</td>
</tr>
<tr>
<td>Los Verdes</td>
<td>15.6</td>
<td>42</td>
<td>No</td>
</tr>
<tr>
<td>Total Market Area</td>
<td>---</td>
<td>283</td>
<td>---</td>
</tr>
</tbody>
</table>

Most of the facilities are price in the $.12 per ball range for medium-sized buckets (60-70 balls) and $.10 per ball for a large bucket (100 balls).
Annual gross revenue at the lighted facilities with 40-60 tee stations is generally in the $10,000 to $12,000 per tee station.
VI. Revenue Enhancement/Cost Efficiencies

Several modifications to the facility and changes in operating policies have been suggested in an effort to increase play and revenue on the golf course. The following section evaluates the merit of several suggested modifications.

Revenue Enhancements

Night Lighting

The concept of night lighting at The Lakes is evaluated on a cost-benefit basis. The benefit of night lighting is attributed to extending the capacity of the golf course by both allowing play to start pre-dawn and into the evening. A number of par-3 and executive length golf courses in Southern California feature night lighting including Westchester Golf Course in Westchester, David Baker Golf Course in Fountain Valley, Lake Forest Golf and Practice Center in Irvine, Newport Beach Golf Course in Newport Beach, Mission Bay Golf Course in San Diego, Arroyo Seco in South Pasadena, and Van Nuys Golf Course in Van Nuys. A survey of these courses revealed the following observations:

- The moderate Southern California climate lends itself to night time play.
- Night lighting creates greater capacity, ranging from four additional hours in the winter and two additional hours in the summer. At an average of 30 golfer tee times per hour, additional capacity averages about 90 tee times per day on a year-round basis.
- Utilization of night time tee times varies among golf course depending on location, strength of market, climate, pricing, product quality and other factors. On average, utilization tends to average about 20-30 percent, resulting in about 20-30 additional rounds per day.
- Most of the existing lighted courses operate with older generation systems which are less effective and more costly than current technology provides.
- The pricing strategy for night play varies among courses. Some courses charge the same rates throughout the day/night, while others charge the twilight rate for night time play.
- Night lighting creates greater opportunity to accommodate league play.
- Most night lighted golf courses also offer lighted driving ranges such that there are clear economies in staffing at night.
- Managers believe that while the economics of night lighting are not overwhelmingly positive given the age of their lighting systems, the uniqueness of the lighting is beneficial in project identification and image.
Revenue Enhancement

The electrical cost of the older lighting systems average about $3.50-$4.00 per acre per hour, substantially more than the $1.00 per acre per hour cost associated with contemporary systems. Importantly, The Lakes was designed and constructed with the idea that night lighting could be easily added. As such, the course includes a network of junction boxes, and underground electrical conduit for lighting is in-place. Given this situation, and based on discussions with a sports lighting manufacturing representative with golf course lighting experience, the “turnkey” capital cost of a lighting system for The Lakes is roughly estimated at about $450,000, including the lighting system and installation. The annual amortization cost, based on a 25-year life and 5 percent cost of capital, is calculated at $32,000.

Based on the experience of other Southern California lighted courses, it is estimated that night lighting at The Lakes will result in an average of about 25 rounds of golf per day, or 8,750 rounds annually. Thus, the annual economic cost-benefit of providing night lighting is projected as follows:

<table>
<thead>
<tr>
<th>Table VI-1: Impact of Night Lighting at The Lakes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Existing Facility</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>With $250,000 Contribution</td>
</tr>
<tr>
<td>Greene Fees (8,750@$12)</td>
</tr>
<tr>
<td>Ancillary Net Revenue (8,750@$1)</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

**Incremental Expenses**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Additional Staffing (4 hours/day @$15/hour)</td>
</tr>
<tr>
<td>Utilities (20 acres @$1/acre/hour, 4 hours daily)</td>
</tr>
<tr>
<td>Debt Service</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Net Operating Income</td>
</tr>
</tbody>
</table>

**Golf Retailer**

Occasionally, a golf course/driving range location also serves as a desirable location for a large golf retailer like a Roger Dunn Golf Shop. The ability to demonstrate golf clubs on the golf practice range offers an
additional benefit for the retailer. Successful golf retail shops operate at the Del Mar Golf Center in San Diego County and The Islands Golf Center in Anaheim.

A representative of one of the country’s leading golf retail outlets indicated that The Lakes location may offer an opportunity for a major golf retailer. Most retailers desire a store with about 3,000 square feet of leasable floor area. Minimum store annual gross sales volume ranges upward from $1.5 million ($500 per square foot per year). Typically such stores operate with percentage rents, averaging about 5 percent of gross sales, triple-net. At gross sales volume of $1.5 to $2 million, annual rent would be on the order of $75,000 to $100,000, equal to $25 to $33 per square foot per year.

Locating a major retailer at The Lakes would require major modification to the existing clubhouse and/or construction of a new facility to house a 3,000 square foot retailer, provide a small snack bar, a small starter house and administrative office space. In addition to the cost of creating the floor area required, locating a major retailer would displace the net margin currently generated by pro shop sales, estimated at about $50,000 per year (30 percent margin on $170,000 annual pro shop sales).

If the cost of modifying/adding space to facilitate locating a major golf retailer exceeded $600,000, the additional net rent collected would be fully offset by the cost to amortize the capital cost and the loss of the net contribution from existing pro shop sales.

Electric Golf Carts

A few 9-hole executive length golf courses have a small inventory, typically 2-4, of electric golf carts available to golfers. However, such carts are primarily provided for senior golfers requiring mobility assistance. Most short 9-hole golf courses with carts report that utilization is relatively low. Thus, most of the revenue generated from the rental of the carts is offset by the cost of their amortization and maintenance costs, resulting in negligible net income. Moreover, additional up-front capital would be required for a minimal cart path system and cart storage.

Expanded Instructional Programs

Under the leadership of teaching professional Josh Alpert, The Lakes at El Segundo has developed a very strong junior golf program. The Junior Summer Camp has been a resounding success, introducing and developing young golfers to the game, and generating a modest income flow for the golf course. There appears to be an opportunity to expand junior golf programs at The Lakes through both offering several camps during the non-summer months, and group instructional programs.

Heated Driving Range Tee Stations

Heating the lower tee line (29 tee stations) would provide a more desirable environment for range users during cold periods, primarily in the evenings. The range currently generates gross revenue of about $12,400 per tee station per year. It is estimated that heating the lower tee line would generate an additional
Revenue Enhancement

$40,000 to $50,000 per year in gross revenue, with minimal associated expenses, thus increasing the gross revenue per tee station from $12,400 to about $13,000 per year (5% increase).
VII. Direct Economics

The following section presents projections for the two basic scenarios—(1) continuation of The Lakes golf facility under its current configuration (golf course and range); and (2) development of a TopGolf complex along with a similar standalone golf course.

Golf Course Economics

The golf complex is analyzed under both basic scenarios. The existing golf course scenario assumes the golf course and driving range continue to operate under their current structure, with the facility owned by the City and maintained, managed, and operated by a professional golf course management company on a fee-for-service basis. The TopGolf scenario assumes the golf course is reconfigured as a standalone facility, operated without a golf practice range. The golf course also is maintained, managed and operated by a professional golf course management company.

The comparative analysis is based on the following general assumptions:

- The analysis period is 25 years, with no reversionary value assigned at the end of the analysis period.
- Capital improvements are implemented in a timely manner.
- The golf course would be lighted for night play under both scenarios.
- The lower level of the driving range is equipped with heaters under the existing golf course scenario.
- Junior golf camps, and other programs are extended from the Summer months to year-round availability under both scenarios.
- Irrigation water is available from the West Basin Water District.
- The course continues to provide resident greens fees discounts.
- Revenues and expenses increase at a 2 percent average annual rate, unless otherwise noted. All values shown in the documentation below are expressed in constant 2015 dollars.

Golf Course Revenues

Golf Course Play—Both Scenarios:

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>43,200</td>
<td>50,000</td>
</tr>
<tr>
<td>* Assumes night lighting</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Greens Fees (average revenue per paid round)—Both Scenarios:

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$15.95 per round</td>
<td>$15.20 per round (reflects lower rate for night play)</td>
</tr>
</tbody>
</table>
Practice Range Revenue--Existing Course Scenario (with heated tee line):

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$721,100</td>
<td>$754,000</td>
</tr>
<tr>
<td>($ per tee)</td>
<td>($12,430 per tee)</td>
<td>($13,000 per tee)</td>
</tr>
</tbody>
</table>

Pro Shop Retail Sales:

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected--Existing Course Scenario</th>
<th>Projected--TopGolf Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
<td>$3.80 per round</td>
<td>$3.50 per round</td>
</tr>
</tbody>
</table>

Food & Beverage Sales (excluding alcoholic beverages)

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected--Existing Course Scenario</th>
<th>Projected--TopGolf Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
<td>$6.65 per round</td>
<td>$6.00 per round (reflects night lighting)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$3.50 per round</td>
</tr>
</tbody>
</table>

Alcoholic Beverage--Net Lease (10%)

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected--Existing Course Scenario</th>
<th>Projected--TopGolf Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
<td>$0.17 per round</td>
<td>$0.17 per round</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$0.10 per round</td>
</tr>
</tbody>
</table>

Lessons (assumes expanded year-round junior golfer programming)

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected--Existing Course Scenario</th>
<th>Projected--TopGolf Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$176,700 per year (includes range lessons)</td>
<td>$225,000 per year (includes range lessons)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$80,000 per year (30% reduction from current level)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Miscellaneous

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected--Existing Course Scenario</th>
<th>Projected--TopGolf Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
<td>$0.10 per round</td>
<td>$0.10 per round</td>
</tr>
</tbody>
</table>

**Cost of Sales (both scenarios)**

**Pro Shop Merchandise**

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Projected (both scenarios)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>64% of merchandise gross revenue</td>
<td>65% of merchandise gross revenue</td>
</tr>
</tbody>
</table>
Food & Beverage

Current 47% of F & B gross revenue (excluding alcohol)
Projected-Existing Course Scenario 47% of F & B gross revenue (excluding alcohol)
Projected-TopGolf Scenario: 40% of F & B gross revenue (excluding alcohol)

Operating Expenses

Annual stable year operating expenses for each scenario are presented in Table VII-1, by major component. The expenses are expressed in constant 2015 dollars. Projected expenses for the existing golf course scenario approximate current levels, while projected expenses for the TopGolf scenario are based on the standalone golf course, without the range operations.

Stable Year Net Operating Income

Stable year net operating income for the existing golf course/clubhouse and golf practice range, and reconfigured golf course as a standalone facility is projected in Table VII-2. The values in the table are expressed in constant 2015 dollars. As noted above, the revenue estimates (and operating expenses) reflect a series of improvements including night lighting of the golf course, heating of the lower tee line of the practice range, and expanded year-round junior golf programming.

The net income shown is on the course level, before deductions for several other overhead and "below the line" items including City administrative charges, City insurance allocations, interest on General Fund debt, and depreciation.
<table>
<thead>
<tr>
<th>Table VII-1: The Lakes Projected Operating Expenses By Department--($000)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Course Maintenance</strong></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
</tr>
<tr>
<td>Irrigation Water/Electricity (80%)</td>
</tr>
<tr>
<td>Equipment Replacement Charge</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td><strong>Golf Operations</strong></td>
</tr>
<tr>
<td>Payroll &amp; Benefits (Pro Shop)</td>
</tr>
<tr>
<td>Range Expenses/Utilities</td>
</tr>
<tr>
<td>Services &amp; Supplies (Golf)</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td><strong>Lessons</strong></td>
</tr>
<tr>
<td><strong>Food &amp; Beverage</strong></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td><strong>Clubhouse Undistributed</strong></td>
</tr>
<tr>
<td><strong>General &amp; Administrative</strong></td>
</tr>
<tr>
<td>Payroll &amp; Benefits</td>
</tr>
<tr>
<td>Marketing &amp; Promotion</td>
</tr>
<tr>
<td>Credit Card</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
</tr>
<tr>
<td>Management Fee</td>
</tr>
<tr>
<td>SCE Right-of-Way Lease</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
<tr>
<td>Plus: City Administration</td>
</tr>
<tr>
<td>Insurance &amp; Bonds</td>
</tr>
<tr>
<td><strong>Adjusted Total</strong></td>
</tr>
</tbody>
</table>
Table VII-2: The Lakes Projected Net Operating Income

<table>
<thead>
<tr>
<th></th>
<th>Actual FY2014</th>
<th>Existing Course $/ Standalone Course</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greens Fees</td>
<td>$689.2</td>
<td>$760.0</td>
</tr>
<tr>
<td>Range Revenue</td>
<td>721.1</td>
<td>754.0</td>
</tr>
<tr>
<td>Pro Shop Sales</td>
<td>164.3</td>
<td>175.0</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>287.1</td>
<td>300.0</td>
</tr>
<tr>
<td>Alcoholic Beverage-Lease Payment</td>
<td>7.2</td>
<td>8.5</td>
</tr>
<tr>
<td>Lessons/Camps</td>
<td>176.7</td>
<td>225.0</td>
</tr>
<tr>
<td>Other/Miscellaneous</td>
<td>1.4</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$2,047.1</td>
<td>$2,227.5</td>
</tr>
<tr>
<td><strong>Less: Cost of Sales</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro Shop Sales</td>
<td>$126.5</td>
<td>$113.8</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>134.7</td>
<td>141.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$261.2</td>
<td>$254.8</td>
</tr>
<tr>
<td><strong>Gross Profit</strong></td>
<td>$1,785.9</td>
<td>$1,972.7</td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Course Maintenance</td>
<td>$462.8</td>
<td>$495.0</td>
</tr>
<tr>
<td>Golf Operations/Range</td>
<td>202.5</td>
<td>197.0</td>
</tr>
<tr>
<td>Lessons</td>
<td>81.2</td>
<td>120.0</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>199.2</td>
<td>200.0</td>
</tr>
<tr>
<td>Clubhouse Undistributed</td>
<td>74.2</td>
<td>75.0</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>410.9</td>
<td>409.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,430.8</td>
<td>$1,496.0</td>
</tr>
<tr>
<td><strong>Net Operating Income--Course Level</strong></td>
<td>$355.1</td>
<td>$476.7</td>
</tr>
</tbody>
</table>

1\/ Projections reflect implementation of revenue enhancement measures.
TopGolf

The TopGolf scenario is comprised of a new TopGolf facility and modified 9-hole executive length golf course. The economics of just the TopGolf component are shown below. The analysis is based on the following general assumptions:

- The analysis period is for 25 years, plus one year construction period (assumes term extension option exercised).
- The TopGolf rent is triple-net, with all expenses relating to the TopGolf facility (including the driving range) the responsibility of the lessee.
- The golf course would continue to be owned by the City and operated on a fee-for-service management contract basis.
- The existing clubhouse would be razed and replaced by a small starter operation/snack bar of approximately 2,500 square feet.
- A number of the TopGolf driving range stations would be available at selected times at no cost for junior golf programs.
- Teaching professionals would contract for range use directly with TopGolf.

The initial CenterCal/TopGolf proposal called for annual ground lease payments of $425,000, with a 10 percent escalation every five years.

Based on the revised proposal submitted by CenterCal/TopGolf, the following ground lease payments are projected:
### Table VII-3: Projected TopGolf Annual Ground Rent-Revised Proposal

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Rent</th>
<th>Year</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>$180,000</td>
<td>13</td>
<td>$625,100</td>
</tr>
<tr>
<td>1</td>
<td>525,000</td>
<td>14</td>
<td>625,100</td>
</tr>
<tr>
<td>2</td>
<td>535,500</td>
<td>15</td>
<td>625,100</td>
</tr>
<tr>
<td>3</td>
<td>546,200</td>
<td>16</td>
<td>687,600</td>
</tr>
<tr>
<td>4</td>
<td>557,100</td>
<td>17</td>
<td>687,600</td>
</tr>
<tr>
<td>5</td>
<td>568,300</td>
<td>18</td>
<td>687,600</td>
</tr>
<tr>
<td>6</td>
<td>568,300</td>
<td>19</td>
<td>687,600</td>
</tr>
<tr>
<td>7</td>
<td>568,300</td>
<td>20</td>
<td>687,600</td>
</tr>
<tr>
<td>8</td>
<td>568,300</td>
<td>21</td>
<td>756,400</td>
</tr>
<tr>
<td>9</td>
<td>568,300</td>
<td>22</td>
<td>756,400</td>
</tr>
<tr>
<td>10</td>
<td>568,300</td>
<td>23</td>
<td>756,400</td>
</tr>
<tr>
<td>11</td>
<td>625,100</td>
<td>24</td>
<td>756,400</td>
</tr>
<tr>
<td>12</td>
<td>625,100</td>
<td>25</td>
<td>756,400</td>
</tr>
</tbody>
</table>

### Standalone Golf Practice Range

Net operating income projections for a standalone practice range at The Lakes are presented in Table VII-4. As a standalone facility, the practice range would require its own administrative and operating overhead, while under a combined golf course/driving range operation, these duties would be shared. For example, as golf course and practice range standalone operations, each would require operations personnel and management, whereas under a single operation, this redundancy would be eliminated.

Net operating income of a standalone practice range, expressed in constant 2015 dollars, is projected at $394,000 per year. The net income is presented before before any City overhead, debt service, or depreciation, and capital improvement reserves. In effect, the projections relate to a privately owned/operated practice range.
<table>
<thead>
<tr>
<th>Table VII-4: Projected Net Income of Standalone Golf Practice Range</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
</tr>
<tr>
<td>Range Fees</td>
</tr>
<tr>
<td>Instruction (net)</td>
</tr>
<tr>
<td>Golf Repair Shop/Other (net)</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
</tr>
<tr>
<td>Salaries and Benefits</td>
</tr>
<tr>
<td>Golf Ball/Mat Replacement</td>
</tr>
<tr>
<td>Promotion &amp; Advertising</td>
</tr>
<tr>
<td>Utilities &amp; Water</td>
</tr>
<tr>
<td>Maintenance &amp; Repair</td>
</tr>
<tr>
<td>Insurance</td>
</tr>
<tr>
<td>Property Taxes</td>
</tr>
<tr>
<td>Services &amp; Supplies</td>
</tr>
<tr>
<td>Management Fee</td>
</tr>
<tr>
<td>SCE Right-of-Way Lease</td>
</tr>
<tr>
<td>Total Expenses</td>
</tr>
<tr>
<td><strong>Net Operating Income$\textsuperscript{1}$</strong></td>
</tr>
</tbody>
</table>

$\textsuperscript{1}$ Before capital improvement replacement reserve.
VIII: Fiscal Impact

Both the existing golf course and the TopGolf project would generate fiscal revenue to jurisdictions providing services, including the City of El Segundo.

Revenue Sources

The principal fiscal components include the following:

Sales and Use Tax: The City receives 1 percent (out of 9.00%) of taxable retail sales, including merchandise and food and beverage purchases.

Utility Users Tax: The City imposes a 3 percent utility users tax on non-residential water, power and natural gas consumption, and 2 percent on telephone charges.

 Possessory Interest Property Tax: Lessees are subject to possessory interest property tax. The possessory interest in land and improvements of leasehold property is assessed the 1 percent ad valorem property tax, of which the City is allocated 6.4 percent.

Business License Fees: Entities doing business in the City of El Segundo are required to secure an annual business license fee. There is a base rate of $99.66 for the first 10 employees and 5,000 square feet of indoor covered space. In addition, employers are assessed $123.44 per employee (full time and part time) over 10, plus $0.23 per square foot of indoor covered space. Note that, under the initial proposal, a credit against the business license fee is applied, with the credit equal to 40% of the local 1% sales and use tax collected by the City. Under the revised proposal, the sales tax credit is waived.

Existing Golf Course Scenario

City Fiscal Revenue

Sales and Use Tax

- Pro Shop Sales ($175,000 @1 percent) $1,750
- Food & Beverage Sales ($300,000 @1 percent) 3,000
- Alcohol Sales ($85,000 @1 percent) 850
- Total Sales and Use Tax $5,600

Utility Users Tax--None

Property/Possessory Interest Tax--None

Business License Fees--$1,580, fully offset by sale and use tax credit, yielding net revenue of zero.
City Service Costs

The existing golf course receives police, fire and other City services. However, with the systems in-place there is no marginal cost associated with the existing golf course operation.

TopGolf Scenario

City Fiscal Revenue

Sales and Use Tax

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TopGolf Food &amp; Beverage Sales ($10,562,000 @ 1 percent)</td>
<td>$105,620</td>
</tr>
<tr>
<td>TopGolf Merchandise Sales ($197,000 @ 1 percent)</td>
<td>1,970</td>
</tr>
<tr>
<td>Golf Course Pro Shop Sales ($75,000 @ 1 percent)</td>
<td>750</td>
</tr>
<tr>
<td>Golf Course Snack Bar Sales ($225,000 @ 1 percent)</td>
<td>2,250</td>
</tr>
<tr>
<td>Total Sales and Use Tax</td>
<td>$110,590</td>
</tr>
</tbody>
</table>

Utility Users Tax

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TopGolf ($682,000 utility costs @ 3%; $24,000 telephone costs @ 2%)</td>
<td>$20,940</td>
</tr>
<tr>
<td>Golf Course--None</td>
<td></td>
</tr>
</tbody>
</table>

Property/Possessor Interest Tax

Assessed Valuation

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TopGolf Improvements</td>
<td>$25,000,000</td>
</tr>
<tr>
<td>Possessor Interest Land (8% cap)</td>
<td>6,560,000</td>
</tr>
<tr>
<td>Golf Course--None</td>
<td>---</td>
</tr>
<tr>
<td>Total</td>
<td>$31,560,000</td>
</tr>
</tbody>
</table>

| Possessor Interest Tax @ 1%--City Share 6.4% | $20,200 |

Business License Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 10 employees/5,000 sq. ft.</td>
<td>$99</td>
</tr>
<tr>
<td>Next 400 employees @ $123</td>
<td>49,200</td>
</tr>
<tr>
<td>Next 30,000 square feet @ $.23</td>
<td>6,900</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$56,199</td>
</tr>
<tr>
<td>Sales Tax Credit (40% credit)^1/</td>
<td>---</td>
</tr>
<tr>
<td>Net Business License Fees</td>
<td>$56,199</td>
</tr>
</tbody>
</table>
Golf Course--None (fees offset by sales tax credit)

1 TopGolf revised proposal waives the sales tax credit. Initial proposal includes sales tax credit, reducing the net business license fees to $11,915.

City Service Costs
The TopGolf facility and reconfigured standalone golf course also will receive police, fire and other City services. A report prepared by the City Police Department indicates that no additional resources will be required. Similarly, the fire network which is in-place is capable of providing needed services. As such, there are no marginal costs likely to be incurred as a result of the TopGolf project.

Comparative Fiscal Impact
The stable year net fiscal impact of the two scenarios are compared as follows:

<table>
<thead>
<tr>
<th>Component</th>
<th>Existing Golf Course</th>
<th>TopGolf Initial Proposal</th>
<th>TopGolf Revised Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales Tax</td>
<td>$5,600</td>
<td>$110,590</td>
<td>$110,590</td>
</tr>
<tr>
<td>Utility Users Tax</td>
<td>---</td>
<td>20,940</td>
<td>20,940</td>
</tr>
<tr>
<td>Possessory Interest Tax</td>
<td>---</td>
<td>20,200</td>
<td>20,200</td>
</tr>
<tr>
<td>Business License Fees</td>
<td>---</td>
<td>11,815</td>
<td>56,199</td>
</tr>
<tr>
<td>Total</td>
<td>$5,600</td>
<td>$163,845</td>
<td>$207,929</td>
</tr>
<tr>
<td>Less: Fiscal Service Costs</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Net Fiscal Benefit</td>
<td>$5,600</td>
<td>$163,845</td>
<td>$207,929</td>
</tr>
</tbody>
</table>
IX: Comparative Economics

Based on the analysis presented in the previous sections of the report, the overall comparative economics of the two scenarios is projected.

Average Annual Impact

The analysis illustrates the differential between the annual average net operating contribution and the associated costs for each scenario. Annual benefits consist of the direct golf course level economics, CenterCal/TopGolf lease revenue, and fiscal revenue produced. Annual costs include Citywide administrative/overhead expenses, the capital cost requirements, and fiscal service costs. The annual capital costs is based on amortization of the discounted present value (at 4 percent) of the capital component over a 25-year term at a 6 percent cost of capital.

The full comparative economics of the two scenarios, expressed on an annual basis in constant 2015 dollars, is presented in Table IX-1.

Present Value Comparison

While the average annual net benefit to the City provides one measure of the comparative economics of the two scenarios, the most accurate measurement is the net present value of the 25-year stream of revenues and costs accruing to the City. Such an analysis takes into account the timing of the revenues and costs associated with each scenario.

The 25-year annual cash flow for each scenario is presented in Appendix A. Again, the golf course revenues, expenses and capital costs are subject to a 2.0 percent average annual rate of increase. Within a 2 percent inflation environment, an 8.0 percent present value discount rate is considered reasonable and appropriate in measuring the present value of the cash flow stream.

The net present value of each scenario is compared in Table IX-2. Under the existing golf course scenario, deducting the present value of the costs from the present value of the benefits yields a net present value of $2.64 million, which compares with the TopGolf scenario at $2.92 million under the initial TopGolf proposal, and $4.94 million under the revised proposal.
<table>
<thead>
<tr>
<th></th>
<th>Existing Course</th>
<th>Initial Proposal</th>
<th>Revised Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Benefits</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golf Complex Direct Net Contribution</td>
<td>$476.7</td>
<td>($106.3)</td>
<td>($106.3)</td>
</tr>
<tr>
<td>TopGolf Lease Revenue</td>
<td>---</td>
<td>425.0</td>
<td>525.0</td>
</tr>
<tr>
<td>Fiscal Revenue</td>
<td>5.6</td>
<td>163.6</td>
<td>207.9</td>
</tr>
<tr>
<td><strong>Total Benefits</strong></td>
<td>$482.3</td>
<td>$482.3</td>
<td>$626.6</td>
</tr>
<tr>
<td><strong>Annual Costs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citywide Administrative/Overhead/Insurance</td>
<td>$160.0</td>
<td>$150.0</td>
<td>$150.0</td>
</tr>
<tr>
<td>Construction Impact</td>
<td>---</td>
<td>21.1</td>
<td>21.1</td>
</tr>
<tr>
<td>Capital Cost--Golf Course*</td>
<td>84.1</td>
<td>67.0</td>
<td>47.4</td>
</tr>
<tr>
<td>Capital Cost--Clubhouse/Maintenance Facility*</td>
<td>17.1</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Capital Cost--Driving Range*</td>
<td>13.2</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Capital Cost--Course Lighting*</td>
<td>38.7</td>
<td>38.7</td>
<td>15.6</td>
</tr>
<tr>
<td>Capital Cost--Parking Lot*</td>
<td>6.4</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Fiscal Service Costs</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td>$319.5</td>
<td>$276.8</td>
<td>$234.1</td>
</tr>
<tr>
<td><strong>Net Annual Cost-Benefit</strong></td>
<td>$162.8</td>
<td>$205.5</td>
<td>$392.5</td>
</tr>
</tbody>
</table>

* Represents annual reserve amount necessary to fund capital improvement requirements.
## Table IX-2: Present Value of 25-Year Net Benefits to City (000)*

<table>
<thead>
<tr>
<th>Benefits</th>
<th>TopGolf Concept</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing Course</td>
<td>Initial Proposal</td>
<td>Revised Proposal</td>
</tr>
<tr>
<td>Golf Complex Net Contribution</td>
<td>$6,041.7</td>
<td>($1,347.3)</td>
<td>($1,347.3)</td>
</tr>
<tr>
<td>TopGolf Lease Revenue</td>
<td>---</td>
<td>5,163.4</td>
<td>6,388.8</td>
</tr>
<tr>
<td>Fiscal Revenue</td>
<td>71.0</td>
<td>2,074.0</td>
<td>2,634.9</td>
</tr>
<tr>
<td><strong>Total Benefits</strong></td>
<td>$8,112.7</td>
<td>$5,890.1</td>
<td>$7,676.4</td>
</tr>
<tr>
<td>Costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citywide Administrative/Overhead</td>
<td>$2,027.8</td>
<td>$1,901.1</td>
<td>$1,901.1</td>
</tr>
<tr>
<td>Capital Cost--Construction Impact*</td>
<td>---</td>
<td>250.0</td>
<td>250.0</td>
</tr>
<tr>
<td>Capital Cost--Golf Course*</td>
<td>636.0</td>
<td>$400.1</td>
<td>$400.1</td>
</tr>
<tr>
<td>Capital Cost--Clubhouse/Maintenance Facility</td>
<td>180.3</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Capital Cost--Driving Range*</td>
<td>114.1</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Capital Cost--Course Lighting*</td>
<td>458.3</td>
<td>416.7</td>
<td>185.2</td>
</tr>
<tr>
<td>Capital Cost--Parking Lot*</td>
<td>56.5</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Fiscal Service Costs</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td>$3,473.0</td>
<td>$2,967.9</td>
<td>$2,736.4</td>
</tr>
<tr>
<td><strong>Net Cost-Benefit</strong></td>
<td>$2,639.7</td>
<td>$2,922.2</td>
<td>$4,940.0</td>
</tr>
</tbody>
</table>

* Present value of 25-year stream.
X. Valuation of Project Components

This section estimates the value of the project components as follows:

- Total integrated Golf Course and Practice Range
- Standalone Practice Range & Related Activity
- Standalone Golf Course/Clubhouse

The market value of the components is estimated as a fee simple interest—that is, the value the entity would command on the open market rather than from the City perspective. As an enterprise fund, where the objective is to breakeven, the entity has no economic value.

The value of these components is estimated based on the income approach to value. The cost or market approaches are not considered in this valuation analysis. Direct capitalization of the stable year net operating income is the basic methodology employed in the valuation analysis.

Net Operating Income

The value of the asset is estimated by capitalizing annual net operating income at an appropriate direct capitalization rate. Net operating income is defined as earnings before interest, taxes, depreciation and amortization (EBITDA). Net operating income is equal to gross revenue less direct operating expenses, management fees, and the Southern California Edison lease payment.

Based on estimates presented in Section VII (Direct Economics) of the report, Table X-1 presents stable year net operating income for the existing golf course, standalone golf course and standalone driving range. Note that the cost of the services currently provided by the City (administration and overhead) are incorporated in the general and administrative expenses of the component being valued. That is, adjustments to general and administrative expenses are applied to reflect the self-contained operation of the component.

In analyzing the economics of The Lakes golf course, the sum of the net operating income of each principal component (golf course/clubhouse and practice range) is less than that of the combined operation as a single entity. Specifically, as standalone facilities, each entity would require its own administrative and operating overhead, while under a combined operation, these duties would be shared. For example, as standalone operations, each would require operations personnel and management, whereas under a single operation, this redundancy would be eliminated.
<table>
<thead>
<tr>
<th>Table X-1: The Lakes Projected Net Operating Income ($000)¹</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Revenue</strong></td>
</tr>
<tr>
<td>Greens Fees</td>
</tr>
<tr>
<td>Range Revenue</td>
</tr>
<tr>
<td>Pro Shop Sales</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
</tr>
<tr>
<td>Alcoholic Beverage-Lease Payment</td>
</tr>
<tr>
<td>Lessons/Camps</td>
</tr>
<tr>
<td>Other/Miscellaneous</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

**Less: Cost of Sales**

- Pro Shop Sales                                         | $113.8 | $48.8 | --- |
- Food & Beverage                                        | 141.0  | 70.0  | --- |
- **Total**                                               | $254.8 | $118.8 | --- |

**Gross Profit**                                         | $1,972.7 | $981.2 | $839.0 |

**Operating Expenses**

- Course Maintenance                                      | $495.0 | $485.0 | --- |
- Golf Operations/Range                                   | 197.0  | 65.0   | --- |
- Lessons                                                 | 120.0  | 60.0   | --- |
- Food & Beverage                                         | 200.0  | 87.5   | --- |
- Clubhouse Undistributed                                 | 75.0   | 38.0   | --- |
- General & Administrative                                | 459.0² | 392.0² | --- |
- **Total**                                               | $1,546.0 | $1,127.5 | $445.0 |

**Net Operating Income**                                 | $426.7 | ($146.3) | $394.0 |

¹ Projections reflect implementation of revenue enhancement measures.
² Includes $50,000 to account for current City administrative services/overhead.
Capitализation Rate
The income approach to value generally is regarded as the most reliable in valuing public and semiprivate
golf course properties. The value of golf courses which are operating efficiently and at stabilized play levels
typically is determined by capitalizing current annual net operating income at an appropriate rate. Applying a
direct capitalization rate yields the value of the property.

It is very difficult to establish market-based capitalization rates for golf properties for a variety of reasons.
One of the most significant factors is that very few golf courses are sold at a point of stabilized operation.
The actual capitalization rates observed on most golf course transactions, therefore, generally are very low,
typically in the 4 to 6 percent range. In many cases, the capitalization rate is lower, and many courses are
selling for significant amounts when operating at little more than a breakeven level. Capitalization rates for
California golf properties tend to be lower than observed in other markets nationally. This difference is
attributed to several factors including longer playing seasons (climate), population/market growth,
inexpensive maintenance labor, high barriers to entry, and higher construction costs.

While actual capitalization rates observed based on trailing 12-month EBITDA are in the 4 to 6 percent range,
pro forma capitalization rates, based on buyer revenue/expense "expectations," buyers in the market are
seeking returns based on capitalization rates in the 8-10 percent range, although the capitalization rate at the
time of the transaction often is well below this target return. The buyers believe, however, that through both
improvements in revenues and reductions in expenses, capitalization rates in the 8-10 percent range will be
achieved within a short period of time. At stabilization, we believe a 8 percent direct capitalization rate is
reasonable for The Lakes at El Segundo.

Asset Value
Table X-2 presents the as-is valuation of The Lakes at El Segundo, as well as each of its two principal
components. As indicated, the direct capitalization rate is applied to "adjusted" net operating income. The
adjustment accounts for a capital improvement replacement reserve, reflecting the future anticipated needs
of the golf course (including night lighting).

As shown, the value of the existing golf complex is estimated at $3.71 million. There is no value assigned to
the golf course as a standalone facility, and the value of the standalone practice range is indicated at $4.55
million. That is, virtually all of the value of the combined complex is attributable to the golf practice range.
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XI. Other Issues

The following presents a discussion of other issues which may be considered, but have not been quantified, in the comparative analysis.

Risk of Default

As with any ground lease, there is always the possibility of a default. According to City representatives, the ground lease payment would not be subordinated, and thus the City would be in a first position regarding encumbrances on the property. That is, the City would be entitled to their ground lease payment before debt service, if any, on the facility.

A review of projections by TopGolf indicate a lease payment coverage ratio (annual net operating income to ground lease payment) of nearly 10:1. This suggests that the risk of default on the ground lease payment is relatively low.

Golf Course Design

Several conceptual golf course routing plans have been formulated relative to the reconfigured golf course. These plans have been developed without the input of a qualified golf course architect. This analysis assumes that the reconfigured golf course has at least equal length to the existing golf course, without any safety concerns. It will be necessary for a golf course architect to prepare the routing plan for the reconfigured golf course.

Economic Impact

As noted, annual spending at the TopGolf facility in El Segundo is projected at approximately $20 million. This initial round of spending creates over 400 jobs (275-300 full time equivalent), and over $8 million in annual payroll. Subsequent rounds of re-spending the initial impact dollars will create additional spending, payroll and employment (the multiplier effect). The Department of Commerce, Bureau of Economic Analysis produces regional multipliers for major industry classifications. The overall gross multiplier for both recreational activities and food and beverage establishments is in the range of 2.0 for Los Angeles County. Applying this multiplier suggests the gross regional output associated with the TopGolf facility will be in the range of $40 million annually, and account for nearly 600 jobs (FTE) and over $15 million in annual payroll.

Again, this annual impact relates to the region, with the City of El Segundo capturing a portion of this impact. Based on the City's residential population and economic base, El Segundo would likely capture a relatively small portion of the overall impact, although even a small percentage potentially translates into a significant level of local impact. In addition to the ongoing annual impact, there will be one-time construction impact with the City of El Segundo again capturing a relatively small portion.

TopGolf has been well received in the market, with annual attendance estimated at approximately 500,000 patrons at other metropolitan locations similar to El Segundo. The TopGolf concept has received significant
media coverage both inside and outside the golf industry. The profile of the facility also has been raised through the many corporate outings and events hosted.

In addition to the impacts related to the “multiplier effect” of initial spending at the TopGolf facility, TopGolf may play a part in stimulating interest in El Segundo as a business location. Clearly, there are numerous factors which are evaluated in a major employer’s site selection including area image, the residential location of officers and employees, regional and local access, surrounding land uses, airport proximity, climate, occupancy cost, local suppliers and services, and the like. It would appear that development of a TopGolf would help in establishing the identity and image of the City of El Segundo, and represent a community amenity which enhances the attractiveness of the City.

It is not possible to isolate the specific impact on business attraction stemming from locating a TopGolf facility in El Segundo, and thus quantifying the impact would be extremely speculative, and clearly the impact would vary by type of business.

**Transient Occupancy Tax**

The experience at some TopGolf locations—primarily those where there are heavy concentrations of regional and national headquarters companies—is that some of the attendees at corporate events are from out-of-town, and thus patronize local lodging establishments. Events account for about 20-25 percent of TopGolf total business activity, with corporate events representing about 25-50 percent of events. With annual attendance of about 500,000, corporate attendance at a TopGolf is in the range of 45,000 attendees. If 2-3 percent of attendees are from out of the area, in the range of 1,000-1,200 room nights would be generated, producing about $15,000 annually in transient tax revenue, much of which would accrue to the City of El Segundo.

**Capital Improvement Replacement Reserve**

As with all entertainment oriented facilities, there are periodic requirements for replacing and updating capital components of the project. TopGolf’s pro forma projections include a capital replacement reserve equal to $400,000 per year. This annual amount represents about 2 percent of annual gross revenue, consistent with industry standards for projects of this scale.

While TopGolf has provided an allowance for a capital improvement reserve, it may be in the City’s best interest to mandate funding the reserve annually at a rate of 2 percent of gross revenue. The proceeds would be placed in a fund, and withdrawn for TopGolf project components at the mutual agreement of both TopGolf and the City of El Segundo. This would ensure that capital improvements are completed on a timely basis.
Guaranteed Fiscal Revenue

Based on TopGolf pro forma projections, fiscal revenue accruing to the City is projected at about $165,000 per year. As this fiscal revenue is directly correlated with TopGolf's performance, it may be appropriate to establish a guaranteed total fiscal revenue amount, with TopGolf funding any shortfall between the budgeted and actual fiscal revenue generated.

Upside Participation

The agreement between CenterCal/TopGolf and the City of El Segundo calls for CenterCal to pay $525,000 in Year 1 fixed ground rent, with escalations scheduled over the full lease term. Clearly, the TopGolf concept is unique, and there is limited long term performance history with the facility. Because of the degree of uncertainty in TopGolf performance at The Lakes location, it may be appropriate to structure the ground lease agreement with some City upside participation. One such structure would be to establish an annual gross revenue threshold, with the City sharing in annual gross revenue which exceeds the threshold. For example, the City might receive 3 to 5 percent of gross revenue which exceeds the budgeted amount.

TopGolf Reversionary Value

The TopGolf lease, assuming all of the six 5-year options are exercised, extends for a total of 50 years. At the conclusion of the 50-year term, the improvements on the property revert to the City. At that point, the rent for the facility would be based on land and improvements rather than land value alone. Although the present value of this potential asset is 50 years in the future, the value is nonetheless substantial.
# Appendix A

## Table A-1: Existing Golf Course—Summary of Net Present Value

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Pro Forma Advisors, LLC  
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## Table A-3: TopGolf Scenario Revised Proposal—Summary of Net Present Value

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**TOTAL WARRANTS** $ 637,754.07

**STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

Information on actual expenditures is available in the Director of Finance's office in the City of El Segundo.

I certify as to the accuracy of the Demands and the availability of fund for payment thereof.

For Approval: Regular checks held for City council authorization to release.

**CODES:**

- **R** = Computer generated checks for all non-emergency payments for materials, supplies and services in support of City Operations.
- **A** = Payroll and Employee Benefit checks.
- **B-F** = Computer generated Early Release disbursements and adjustments approved by the City Manager. Such as payments for utility services, petty cash, and employee travel expense reimbursements, various refunds, contract employee services consistent with current contractual agreements, instances where prompt payment discounts can be obtained, or late payment penalties can be avoided or when a situation arises that the City Manager approves.
- **H** = Handwritten Early Release disbursements and/or adjustments approved by the City Manager.

**FINANCE DIRECTOR**  
**DATE:**

**CITY MANAGER**  
**DATE:** 9-9-15

**VOID CHECKS DUE TO ALIGNMENT:** N/A

**VOID CHECKS DUE TO INCORRECT CHECK DATE:**

**VOID CHECKS DUE TO COMPUTER SOFTWARE ERROR:**

**NOTES:**

[Handwritten signature]
# CITY OF EL SEGUNDO
## PAYMENTS BY WIRE TRANSFER
### 8/17/15 THROUGH 8/30/15

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**Total Payments by Wire:**

893,555.80

---

**DATE OF RATIFICATION: 8/31/15**

**TOTAL PAYMENTS BY WIRE:**

893,555.80

Certified as to the accuracy of the wire transfers by:

**Deputy City Treasurer II**

Date: 8/31/15

**Director of Finance**

Date: 9-7-15

**City Manager**

Date: 9-9-15

Information on actual expenditures is available in the City Treasurer's Office of the City of El Segundo.
REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL  
TUESDAY, AUGUST 18, 2015 – 5:00 PM

5:00 P.M. SESSION

CALL TO ORDER – Mayor Fuentes at 5:00 PM

ROLL CALL

Mayor Fuentes - Present
Mayor Pro Tem Jacobson - Present
Council Member Atkinson - Present
Council Member Fellhauer - Present
Council Member Dugan - Present

PUBLIC COMMUNICATION – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) None

SPECIAL ORDER OF BUSINESS:

Mayor Fuentes announced that Council would be meeting in closed session pursuant to the items listed on the Agenda.

CLOSED SESSION:

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators; as follows:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Gov’t Code §54956.9(d) (1): -3- matter

1. City of El Segundo vs. City of Los Angeles, et.al. LASC Case No. BS094279
2. Penuelas vs. City of El Segundo, LASC Case No. BC523072
3. O’Leary v. City of El Segundo WCB/EAMS Nos. ADJ8702179 and 918053

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(d) (2): -1- matter.

Initiation of litigation pursuant to Government Code §54956.9 (d) (4): -4- matters.
DISCUSSION OF PERSONNEL MATTERS (Gov't Code §54957): -0- matter

APPOINTMENT OF PUBLIC EMPLOYEE (Gov't. Code § 54957): -0- matter

PUBLIC EMPLOYMENT (Gov't Code § 54957) -0- matter

CONFERENCE WITH CITY'S LABOR NEGOTIATOR (Gov't Code §54957.6): -8- matters

1. Employee Organizations: Police Management Association; Police Officers Association; Police Support Services Employees Association; Fire Fighters Association; Supervisory and Professional Employees Association; City Employees Association; Executive Management Group (Unrepresented Group); Management/Confidential Group (Unrepresented Group)

   Agency Designated Representative: Steve Filarsky and City Manager

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Gov't Code §54956.8): -0- matters

Adjourned at 6:55 PM
REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, AUGUST 18, 2015 - 7:00 P.M.

7:00 P.M. SESSION

CALL TO ORDER – Mayor Fuentes at 5:03 PM

INVOCATION – Pastor Lee Carlisle, United Methodist Church

PLEDGE OF ALLEGIANCE – Council Member Jacobson

ROLL CALL

Mayor Fuentes - Present
Mayor Pro Tem Jacobson - Present
Council Member Atkinson - Present
Council Member Fellhauer - Present
Council Member Dugan - Present

ITEM E6 MOVED FORWARD

6. Authorize the Mayor to approve the sale of police canine, “Arthur”, to his handler, Officer Chris Cameron, for the nominal fee of one dollar ($1.00), Agr. No. #4900. (Fiscal Impact: None)

Presentation by Mitch Tavera, El Segundo Police Chief.

MOTION by Mayor Pro Tem Jacobson, SECONDED by Council Member Fellhauer approving the sale of police canine, “Arthur”, to his handler, Officer Chris Cameron, for the nominal fee of one dollar ($1.00). MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

PRESENTATIONS

a. Presentation by LA Sanitation – Hyperion Reclamation Treatment Plant, concerning the Water Reclamation Plant EPP Header Replacement Project,

b. Presentation by Scott Houston, Director, West Basin Municipal Water District, Division IV, on the West Basin Municipal Water District’s drought updates and efforts.

c. Presentation by Council Member Atkinson, on the Special Olympics World Games Los Angeles 2015 and El Segundo as a Host Town. Video presented by El Segundo Cable TV.
PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total)
Elyse Rothstein, resident and South Bay Workforce Investment Board (SBWIB) representative, presented the quarterly update.
Matt Stauffer, with Autumn Burke’s office, invited all to attend a Back to School Health and Wellness Fair on Saturday, August 22, 2015 at Oakwood Park in Venice, CA.
Mike Robbins, resident, commented on the recent campaign by the members of the El Segundo Coalition of Labor Association, ES Fire Fighter Association and ES Police Officer Association.
Marc Rener, resident, commented on the Fire Department’s practice to collect fees for services rendered that are not paid for by insurance during an emergency call.
Laura McConahey, resident, not in favor of making salary cuts to the Fire and Police Departments.

CITY COUNCIL COMMENTS – (Related to Public Communications)

A. PROCEDURAL MOTIONS

Consideration of a motion to read all ordinances and resolutions on the Agenda by title only.

MOTION by Mayor Pro Tem Jacobson, SECONDED by Council Member Fellhauer to read all ordinances and resolutions on the Agenda by title only. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

B. SPECIAL ORDERS OF BUSINESS (PUBLIC HEARING)

C. UNFINISHED BUSINESS

OPENED ITEMS C1 AND C2 CONSECUTELY

1. [CONTINUED ITEM #C3 FROM AUGUST 4, 2015 CITY COUNCIL MEETING]
   Rescission of Brown Act Commitment - In Accordance with Government Code Section 54960.2 (e), consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, not to hold further closed session meetings regarding real property negotiations with regard to ESCenterCal, LLC’s (“CenterCal”) proposal to enter into a Due Diligence and Ground Lease Agreement (“Agreement”) to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility. (Fiscal Impact: unknown – depends on whether legal proceedings are commenced.)

MOTION by Council Member Fellhauer, SECONDED by Mayor Pro Tem Jacobson to continue item #C1 to the September 1, 2015 City Council Meeting. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0
2. Consideration and possible action regarding receiving an update with respect to the City's negotiations with CenterCal and Top Golf regarding the draft Due Diligence Lease Agreement that provides for the leasing of the driving range at the Lake's Golf Course to CenterCal and Top Golf for purposes of operating a Top Golf facility and the reconstruction of the golf course.

(Fiscal Impact: None)

Mark Hensley, City Attorney, presented the Council with an update on the Due Diligence and Ground Lease Agreement for item #C2.

Council Discussion

Mark Hensley, City Attorney, answered and clarified questions from Council.

Council consensus agreed to discounts to El Segundo residents only from 6:00 am – 12:00 pm.

Item #C2 will be brought back to Council at the September 1, 2015 City Council meeting.

D. REPORTS OF COMMITTEES, COMMISSIONS AND BOARDS

E. CONSENT AGENDA

All items listed are to be adopted by one motion without discussion and passed unanimously. If a call for discussion of an item is made, the item(s) will be considered individually under the next heading of business.

3. Approve Warrant Numbers 3007105 through 3007332 on Register No. 21 in the total amount of $1,000,990.95 and Wire Transfers from 7/13/2015 through 8/09/2015 in the total amount of $2,708,616.62. Authorized staff to release. Ratified Payroll and employee Benefit checks; checks released early due to contracts or agreement; emergency disbursements and/or adjustments; and wire transfers.


5. Authorize the Chief of Police to hire one Police Officer to backfill a vacancy created by filling a position with the “Taskforce for Regional Autotheft Prevention” (TRAP).

(Fiscal Impact: Net savings of approximate $76,000)

6. MOVED FORWARD ON THE AGENDA
7. Authorize the City Manager to execute a contract amendment No. 4480B, in a form approved by the City Attorney, for an additional $30,000 with DownStream Services, Inc. for pump stations on-call repair services in the 2014-15 Fiscal Year. (Fiscal Impact: None)

8. Consideration and possible action to award a standard Public Works Contract No. 4901 to the lowest responsible bidder, American Asphalt South, Inc., for the FY 14-15 Slurry Seal Project in the area bounded by the west City boundary, the north City boundary, Sheldon Street and Mariposa Avenue. Project No.: PW 15-02. (Fiscal Impact: $500,000.00)

9. Authorize the City Manager to execute agreement No. 4902, adopt Resolution No. 4929 authorizing the examination of prepaid mobile telephony services surcharge and local charge records and approve Resolution No. 4930 allowing the State Board of Equalization to collect and administer local user utility taxes ("UUT") on the City's behalf. (Fiscal Impact: None)

10. Approve the thirty (30) day provisional appointment extension for the position of Interim Deputy City Clerk II. (Fiscal Impact: None)

11. Authorize the City Manager to execute an amendment No. 4802A, in a form approved by the City Attorney, to MuniTemps agreement number 4802 for temporary staffing in City Clerk's Office / Deputy City Clerk I. (Fiscal Impact: $16,000.00)

12. Receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code ("ESMC") §§ 1-7-12 and 1-7A-4. (Fiscal Impact: $50,000.00)

MOTION by Council Member Atkinson, SECONDED by Council Member Fellhauer to approve Consent Agenda items 3, 4, 5, 7, 8, 9, 10, 11, and 12. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

F. NEW BUSINESS

G. REPORTS – CITY MANAGER – Welcomed Barbara Voss, our new Economic Development Manager.

H. REPORTS – CITY ATTORNEY - None
I. REPORTS – CITY CLERK - None

J. REPORTS – CITY TREASURER – Not present

K. REPORTS – CITY COUNCIL MEMBERS

Council Member Fellhauer – Mentioned she would be unable to attend the EDAC meeting on Wednesday, August 19, 2015.

Council Member Atkinson – Thanked the community and council members for their support of the Special Olympics World Games.

Council Member Dugan – None

Mayor Pro Tem Jacobson – None

Mayor Fuentes – Attended the 2015 Aerospace Summer Games at Dockweiler State Beach.

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total).
Marc Rener, resident, stated he has nothing against our Fire Fighter’s or Police Officer’s, however, he does not agree with the practice of collecting for fees not covered by one’s insurance company by the Fire Department for services rendered during an emergency.
Mike Robbins, resident, commented on the compensation data posted to the City’s website.

MEMORIALS – Robert L. “Bob” Dugan

ADJOURNMENT at 8:46 PM

__________________________
Tracy Weaver, City Clerk
SPECIAL MEETING OF THE EL SEGUNDO CITY COUNCIL
MONDAY, AUGUST 31, 2015
El Segundo Public Library
111 W. Mariposa Avenue, El Segundo, CA 90245
6:00 p.m.

6:00 P.M. SESSION

CALL TO ORDER – Mayor Fuentes at 6:01 PM

PLEDGE OF ALLEGIANCE – Council Member Atkinson

ROLL CALL

Mayor Fuentes - Present
Mayor Pro Tem Jacobson - Present
Council Member Atkinson - Present
Council Member Fellhauer - Present
Council Member Dugan - Present

PUBLIC COMMUNICATIONS – (Related to City Business Only) – 5 minute limit per person, 30 minute limit total. None

SPECIAL ORDERS OF BUSINESS:

Greg Carpenter, City Manager, gave a brief overview of the Agenda for the meeting.

1. Consideration and possible action regarding a strategic planning workshop resulting in City Council receiving and filing of staff’s analysis and recommendations for the Fiscal Year 2015-2016 Preliminary Budget which includes Council approved departmental requests from August 3rd Strategic Planning Session. Staff will present an update Fiscal Year 2014-2015 year-end estimates and fund balance.


2. Information System Division Assessment updates – Presented by Larry Klingaman, IS Manager.

Council discussion and questions

3. Recreation & Parks updates – Presented by Meredith Petit, Recreation and Parks Director.

Council discussion and questions


Council Discussion and questions

Council Discussion and questions

6. Transient Occupancy Tax Option – Presented by Greg Carpenter, City Manager and Misty Cheng, Acting Finance Director.

Council Discussion and questions

Council Consensus directing staff to begin the process of writing a TOT (Transient Occupancy Tax) initiative for placement on the April 2016 ballot.

Mayor Fuentes recessed the meeting at 7:11 PM

Mayor Fuentes reconvened the meeting at 7:26 PM

7. A revised Fiscal Year 2015-2016 Preliminary Budget with various options to meet the needs of the approved departmental requests and an updated fund balance for each option – Presented by Greg Carpenter, City Manager and Misty Cheng, Acting Finance Director.

Council Discussion and questions

MOTION by Council Member Atkinson, SECONDED by Council Member Fellhauer to approve modified Option #2 of the FY 2015-2016 Department requests. (Options are listed in the presentation attached to the minutes) MOTION PASSED BY VOICE VOTE. 4/1 YES: Atkinson, Dugan, Fellhauer, Fuentes; NO: Jacobson.

Option #2 worksheet with modifications by Council for the Fiscal Year 2015-2016 Preliminary Budget is attached.

8. Council may raise other developments, fiscal policy, capital projects and other related topics as part of staff’s preparation for the Fiscal Year 2015-2016 Preliminary Budget. None


Misty Cheng, Acting Finance Director, stated the Preliminary Budget for Fiscal Year 2015-2016 will be ready for the first hearing at the regular City Council Meeting of September 15, 2015.

Council consensus to hold a Special City Council meeting on Monday, September 28, 2015 to adopt the Final Budget for Fiscal Year 2015-2016/

ADJOURNMENT at 8:43 PM

Tracy Weaver, City Clerk
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<th>Outcome 2</th>
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<td>67,715,600</td>
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<tr>
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<td>62,360,000</td>
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<tr>
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Departmental Revenues

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<tr>
<th>Original Amount</th>
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<td>Police</td>
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<td>Parks and Recreational and Parks</td>
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</table>

Total Revenues

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<tbody>
<tr>
<td>62,360,000</td>
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Revised Operating Expenditures

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<th>Revised Amount</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>64,699,968</td>
<td>64,699,968</td>
<td></td>
</tr>
</tbody>
</table>

Options:
- Option A: Reduce revenue unessary by $25,000 to increase excess reserves to fund requests
- Option B: Reduce revenue unessary by $25,000 to increase excess reserves to fund requests

Note: Due to the Equipment Replacement Fund having sufficient funds, the Anticipated amount of $2,500 has been absorbed by the ERF rather than funded by the General Fund. Therefore, the Excess Revenue amount has increased from $7,980 to $34,600.
REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, SEPTEMBER 1, 2015 – 5:00 PM

5:00 P.M. SESSION

CALL TO ORDER – Mayor Fuentes at 5:00 PM

ROLL CALL

Mayor Fuentes - Present
Mayor Pro Tem Jacobson - Present
Council Member Atkinson - Present
Council Member Fellhauer - Present
Council Member Dugan - Present

PUBLIC COMMUNICATION – (Related to City Business Only – 5 minute limit per person, 30 minute limit total). None

SPECIAL ORDER OF BUSINESS:

Mayor Fuentes announced that Council would be meeting in closed session pursuant to the items listed on the Agenda.

CLOSED SESSION:

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators; as follows:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Gov’t Code §54956.9(d)(1): -3- matter

1. City of El Segundo vs. City of Los Angeles, et.al. LASC Case No. BS094279
2. Penuelas vs. City of El Segundo, LASC Case No. BC523072
3. O’Leary v. City of El Segundo WCB/EAMS Nos. ADJ8702179 and 918053

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(d)(2): -1- matter.

DISCUSSION OF PERSONNEL MATTERS (Gov't Code §54957): -0- matter

APPOINTMENT OF PUBLIC EMPLOYEE (Gov't. Code § 54957): -0- matter

PUBLIC EMPLOYMENT (Gov't Code § 54957) -0- matter

CONFERENCE WITH CITY'S LABOR NEGOTIATOR (Gov't Code §54957.6): -8- matters

1. Employee Organizations: Police Management Association; Police Officers Association; Police Support Services Employees Association; Fire Fighters Association; Supervisory and Professional Employees Association; City Employees Association; Executive Management Group (Unrepresented Group); Management/Confidential Group (Unrepresented Group)

   Agency Designated Representative: Steve Filarsky and City Manager

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Gov't Code §54956.8): -0- matters

Adjourned at 6:50 PM
REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, SEPTEMBER 1, 2015 - 7:00 P.M.

7:00 P.M. SESSION

CALL TO ORDER – Mayor Fuentes at 7:02 PM

INVOCATION – Scott Lambert, Hilltop Community Church of Christ

PLEDGE OF ALLEGIANCE – Council Member Atkinson

PRESENTATIONS - None

ROLL CALL

Mayor Fuentes - Present
Mayor Pro Tem Jacobson - Present
Council Member Atkinson - Present
Council Member Fellhauer - Present
Council Member Dugan - Present

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) None

Brittany Commodore, Executive Director at MDA – Los Angeles (Muscular Dystrophy Association), thanked the El Segundo Fire Fighters for their Fill the Boot efforts. The Fill the Boot campaign will take place on September 14, 18 and 22 on the corners of El Segundo Blvd and Sepulveda Blvd and Sepulveda Blvd. and Grand Ave. Nate Chittick, resident, spoke concerning letters written by Steven Filarksy, who is representing the City during labor negotiations.

CITY COUNCIL COMMENTS – (Related to Public Communications)
Council commented

A. PROCEDURAL MOTIONS

Consideration of a motion to read all ordinances and resolutions on the Agenda by title only.

MOTION by Council Member Fellhauer, SECONDED by Mayor Pro Tem Jacobson to read all ordinances and resolutions on the Agenda by title only. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

B. SPECIAL ORDERS OF BUSINESS (PUBLIC HEARING)

C. UNFINISHED BUSINESS
OPENED ITEMS C1 AND C2 CONSECTIVELY

1. [CONTINUED ITEM #C1 FROM AUGUST 18, 2015 CITY COUNCIL MEETING]
   Rescission of Brown Act Commitment - In Accordance with Government Code Section 54960.2 (e), consideration and possible action to rescind the commitment made by the City Council on November 5, 2013, not to hold further closed session meetings regarding real property negotiations with regard to ESCenterCal, LLC’s (“CenterCal”) proposal to enter into a Due Diligence and Ground Lease Agreement (“Agreement”) to lease the driving range portion of the Lakes Golf Course from the City for the purpose of developing a Top Golf facility. (Fiscal Impact: unknown – depends on whether legal proceedings are commenced.)

2. Consideration and possible action regarding receiving an update with respect to the City’s negotiations with CenterCal and Top Golf regarding the draft Due Diligence Lease Agreement that provides for the leasing of the driving range at the Lake’s Golf Course to CenterCal and Top Golf for purposes of operating a Top Golf facility and the reconstruction of the golf course. (Fiscal Impact: None)

   Greg Carpenter, City Manager, presented the Council with an update on the Due Diligence and Ground Lease Agreement for item #C2.

Council Discussion

Karl Berger, Assistant City Attorney, answered and clarified questions from Council.

MOTION by Council Member Fellhauer, SECONDED by Mayor Pro Tem Jacobson to continue items #C1 and #C2 to the September 15, 2015 City Council Meeting. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

D. REPORTS OF COMMITTEES, COMMISSIONS AND BOARDS

E. CONSENT AGENDA

All items listed are to be adopted by one motion without discussion and passed unanimously. If a call for discussion of an item is made, the item(s) will be considered individually under the next heading of business.

3. Approve Warrant Numbers 3007333 through 3007522 on Register No. 22 in the total amount of $563,765.29 and Wire Transfers from 8/10/2015 through 8/16/2015 in the total amount of $3,100,864.89. Authorized staff to release. Ratified Payroll and employee Benefit checks; checks released early due to contracts or agreement; emergency disbursements and/or adjustments; and wire transfers.
4. Approve Special City Council Meeting Minutes of August 17, 2015.

5. Receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code ("ESMC") §§ 1-7-12 and 1-7A-4. 
   
   (Fiscal Impact: $50,000.00)

6. Approve the purchase of forty (40) VIEVU LE3 Body Worn Video/Audio Recorder Systems from L3 Communications using COPS Grant Funds, pursuant to El Segundo Municipal Code §1-7-10, waive the bidding process and authorize the City Manager, or designee, to execute agreement No. 4897 in a form approved by the City Attorney with L3 Communications piggybacking on a GSA Contract # GS 07F-5377P.
   
   (Fiscal Impact: $36,480.56 from COPS Grant Fund.)

7. Approve the thirty (30) day provisional appointment extension for the position of Interim Wastewater Supervisor.
   
   (Fiscal Impact: $0)

8. Authorize the City Manager to execute a standard Public Works Contract No. 4889 in a form as approved by the City Attorney with FS Construction in the amount of $229,922.75 for the 2014-15 Curb, Gutter, Sidewalk and other Concrete Improvements Project, authorize the City Manager to amend the Maintenance Agreement No. 4899 with West Coast Arborist, in a form approved by the City Attorney, for tree removal and replacement services associated with the concrete repairs for an amount not to exceed $55,000.00, authorize an additional contingency of $15,077.25 for unforeseen conditions and authorize an additional $200,000.00 for additional Project locations based on the Contractor's unit bid price. Project No. PW 14-16.
   
   (Fiscal Impact: $500,000.00)

MOTION by Council Member Fellhauer, SECONDED by Council Member Atkinson to approve Consent Agenda items 3, 4, 5, 6, 7, and 8. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

F. NEW BUSINESS

G. REPORTS – CITY MANAGER - None

H. REPORTS – CITY ATTORNEY - None

I. REPORTS – CITY CLERK
9. Consideration and possible action relating to State Legislation (Assembly Bill 254 and Senate Bill 415) regarding local election dates. (Fiscal Impact: $0)

Tracy Weaver, City Clerk, introduced the item and gave a brief description of the bills and how they affect the City of El Segundo.

Council Discussion

MOTION by Mayor Pro Tem Jacobson, SECONDED by Council Member Fellhauer to oppose AB 254 and SB 415 and direct staff to send the proposed letter to Governor Jerry Brown opposing the legislation. MOTION PASSED BY UNANIMOUS VOICE VOTE. 5/0

J. REPORTS – CITY TREASURER – Not present

K. REPORTS – CITY COUNCIL MEMBERS

Council Member Fellhauer – None
Council Member Atkinson – None
Council Member Dugan - None
Mayor Pro Tem Jacobson – None
Mayor Fuentes – None

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total)
Jack Axelrod, resident, opposes the Pledge of Allegiance and Invocation during our City Council meetings.
Mrs. Wilson, resident, spoke on behalf of the right to vote.

MEMORIALS – None

ADJOURNMENT at 7:41 PM

Tracy Weaver, City Clerk
AGENDA DESCRIPTION:
Consideration and possible action to receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code ("ESMC")§ 1-7-12 and 1-7A-4. (Fiscal Impact: $50,000.00)

RECOMMENDED COUNCIL ACTION:
(1) Receive and file this report regarding emergency work to repair dwelling units at the Park Vista Senior Housing Facility due to water intrusion without the need for bidding in accordance with Public Contracts Code §§ 20168 and 22050 and El Segundo Municipal Code ("ESMC")§ 1-7-12 and 1-7A-4.
(2) Alternatively, discuss and take other possible action related to this item.

ATTACHED SUPPORTING DOCUMENTS:
None

FISCAL IMPACT: Included in Adopted Budget
Amount Budgeted: $50,000.00
Additional Appropriation: No
Account Number(s): 405-400-0000-6215 (Facilities Maintenance: Repairs and Maintenance)

ORIGINATED BY: Stephanie Katsouleas, Director of Public Works
REVIEWED BY: Gregg Kovacevich, Assistant City Attorney
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
The work will commence in September and take approximately two weeks to complete. As a recap, the work includes installing six (6) new drains and applying new elastomeric deck coating on the balconies of three (3) units for an estimated $38,000 plus contingency. The work is expected to be completed before the onset of the rainy season this fall.

Public Contracts Code § 22050 (c) requires that the City Council receive updates at every regularly scheduled meeting until the emergency repair is completed. Therefore, staff recommends that City Council receive and file this report on the status of the emergency repair to address the water intrusion issues at Park Vista Senior Housing Facility.
EL SEGUNDO CITY COUNCIL
AGENDA ITEM STATEMENT

MEETING DATE: September 15, 2015
AGENDA HEADING: Consent Agenda

AGENDA DESCRIPTION:

Consideration and possible action to 1) receive and file this report regarding the City of El Segundo (City) entering into a license agreement with Warner Bros. Pictures – New Line Productions, Inc. (Warner Bros.) to film at City Hall, in accordance with El Segundo Municipal Code (“ESMC”) 4-11-4: ADDITIONAL AGREEMENTS section and as to form approved by the City Attorney; and 2) authorize filming and ancillary activities to commence beyond the municipal code’s ordinance of 10:00 p.m. on Thursday, October 8, 2015 until 4:00 a.m. on Friday, October 9, 2015 and 10:00 p.m. on Friday, October 9, 2015 until to 6:00 a.m. on Saturday, October 10, 2015.

(Fiscal Impact: Approximate revenue of $82,736 plus personnel cost.)

RECOMMENDED COUNCIL ACTION:

1. Receive and file report regarding the City entering into a license agreement with Warner Bros.
2. Authorize filming and ancillary activities to commence beyond the municipal code’s ordinance of 10:00 p.m. on Thursday, October 8, 2015 until 4:00 a.m. on Friday, October 9, 2015 and 10:00 p.m. on Friday, October 9, 2015 until to 6:00 a.m. on Saturday, October 10, 2015.
3. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. License Agreement Template
2. Calendar of Days with Description of Activities
3. Permit Fee and Location Fee – Summary of Cost Estimate

FISCAL IMPACT: $

Amount Budgeted: N/A
Additional Appropriation: N/A
Account Number(s): XXX-XXX-XXXX-XXXX (General Fund)

PREPARED BY: Mickie Tagle, Senior Executive Assistant
REVIEWED BY: Steve Jones, Finance Business Services Division Manager
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND & DISCUSSION:

Warner Bros. Pictures – New Line Productions, Inc. has turned in a film permit application and provided the required proof of insurance coverage to film a movie, “The House” (http://bit.ly/WBTTheHouse) at the City. Film license permit applications are processed and approved in and by the Finance Business Licensing Division and usually does not pass through the City Manager’s Office nor does it require City Council approval as the Municipal Code authorizes staff to approve applications that comply with regulations. In this case, there is a request of Council to override the existing ordinance due to a special circumstance and to charge fees in excess of the approved resolution.
1) **License Agreement**

Warner Bros. has requested permission to film at City Hall, which is why it was escalated to the City Manager’s attention. Warner Bros. had many City Hall locations to choose from, all of which were significantly lower in fees, but chose to pursue doing business with the City of El Segundo due to the desirability of our location.

While the Municipal Code permits filming at City Hall, staff had concerns initially due to unknown impact of filming at City Hall in contrast to the current daily location fee of two thousand dollars ($2,000).

After much consideration and discussion within staff, it was determined that given the disruption, and displacement of staff and operations that five thousand dollars ($5,000) per day would be a more appropriate fee, regardless of whether it’s a prep, wrap-up/strike, or shoot day. The five thousand dollar ($5,000) per day fee would cover our location fee, custodial, disruption and displacement costs, etc.

The City’s ESMC, Title 4, Chapter 11, Section 4 states the following:

**4-11-4: ADDITIONAL AGREEMENTS:**

In addition to, or in lieu of, a permit required by this chapter, use of any public facility within the city may require a rental or use agreement. (Ord. 1424, 10-7-1008)

As per ESMC 4-11-4 above, the City will enter into a license agreement approved as to form by the City Attorney with Warner Bros. Pictures – New Line Productions, Inc. to film at City Hall for a location fee of five thousand ($5,000) per day.

Staff recommends that Council receive and file this report regarding entering into a license agreement with Warner Bros.

2) **Request for Waiver of Filming Hours**

Warner Bros. proposes to use City Hall for 11 days in a span of two and a half weeks. Please see Attachment 2 for calendar of days with description of activities and Attachment 3 for film permit and location fee – summary of cost estimates.

Five of the 11 days are shoot days while the remaining six are prep and wrap-up/strike days. Two of the five shoot days will be mostly of the Council Executive Assistant’s and the City Manager Intern’s workstation areas, City Hall’s hallways/corridors, and one short scene will be shot in the courtyard area by the Police Department steps.

Staff asked if the two shoot days of said areas could take place after City Hall hours and weekends so as to have the least impact on City staff and operations. As it turns out, it works well for Warner Bros. because the scenes to be filmed on said two days are mostly night scenes.
The City’s Municipal Code, Title 4, Chapter 11, Section 23 states the following:

4-11-23: GENERAL PERMIT CONDITIONS; ADDITIONAL REQUIREMENTS:

E. All filming and ancillary activities must commence not earlier than seven o’clock (7:00) A.M. and cease not later than ten o’clock (10:00) P.M. Filming and ancillary activities east of Sepulveda Boulevard and south of El Segundo Boulevard must commence and cease at the times indicated by a valid permit, except for filming and ancillary activities occurring within two hundred seventy five (275’) of hotels which must commence not earlier than seven o’clock (7:00) A.M. and cease at ten o’clock (10:00) P.M.

Therefore, hence this request of Council’s approval to authorize filming and ancillary activities to commence beyond the municipal code’s ordinance of 10:00 p.m. on Thursday, October 8, 2015 until 4:00 a.m. on Friday, October 9, 2015 and 10:00 p.m. on Friday, October 9, 2015 until to 6:00 a.m. on Saturday, October 10, 2015. (While one shoot day would be when City Hall is closed, the film union requires a 12 hour break between shoots hence another similar shoot schedule on the second shoot day.)

If Council approves the exception to ESMC 4-11-23, E., staff will include language in the license agreement in addition and film permit that requires steps be taken to minimize outdoor noise and require that a city appointed film monitor be onsite during these hours in order to minimize impact on neighboring properties.

If Council does not approve to the extended hours, staff will go back and negotiate a revised schedule with Warner Bros.
LICENSE AGREEMENT BETWEEN THE
CITY OF EL SEGUNDO AND
WARNER BROS. PICTURES – NEW LINE PRODUCTIONS, INC.

THIS LICENSE is made and executed this 1 day of ______, 20___, between the CITY OF EL SEGUNDO, a municipal corporation (“CITY”), and ________, a California nonprofit corporation (“LICENSEE”).

1. LICENSE; DESCRIPTION OF PROPERTY. CITY licenses LICENSEE to use, on the terms and conditions in this License, real property located at [INSERT ADDRESS] (“Property”). CITY’s action is not, and should not be construed to be, a conveyance of a property interest or a lease; it is a license to use property only.

2. USE OF PROPERTY.

   A. LICENSEE may temporarily use the Property for the purposes of ______.

   B. CITY may change, amend, or terminate LICENSEE’s use of Property at any time, and in its sole discretion, verbally or in writing.

3. TERM. Except as provided in Section 4, the term of this license will begin on ______, 20____ and end on ________, 20____. Upon mutual written agreement between the parties, this License may be renewed for additional time.

4. TERMINATION.

   A. As stated above, CITY may terminate this License at any time with or without cause, upon written or verbal notification. Termination will be effective upon notification, unless CITY specifies otherwise.

   B. LICENSEE may terminate this License at any time in writing at least five (5) days before the effective termination date.

   C. By executing this document, LICENSEE waives any and all claims for damages that might otherwise arise from CITY’s termination under this Section.

   D. Upon termination, LICENSEE will remove all personal property and improvements from Property within two (2) days. Property will be left in a clean and orderly fashion.

5. COMPENSATION. In exchange for the use of the facilities at Property, LICENSEE agrees to pay CITY a sum of ______ dollar ($____) for the term of this License.
6. CONDEMNATION. If all or part of Property is acquired by eminent domain or purchase in lieu thereof, LICENSEE acknowledges that it will have no claim to any compensation awarded for the taking of Property or any portion thereof or for loss of or damage to LICENSEE’s improvements.

7. RELOCATION BENEFITS. LICENSEE acknowledges that it has been informed that CITY is a public entity and that Property was previously acquired by CITY for a public purpose. LICENSEE further acknowledges that any rights acquired under this License arose after the date of acquisition of Property and that said rights are subject to termination when Property is needed by CITY. LICENSEE hereby acknowledges that at the time of said termination of this License by CITY, it will not be a “displaced person” entitled to any of the relocation assistance or benefits offered to displaced persons under State or Federal law.

8. ALTERATIONS. LICENSEE will not make, or cause to be made, any alterations to Property, or any part thereof, without CITY’s prior written consent.

9. HAZARDOUS/TOXIC WASTE. CITY has not, nor, to CITY’s knowledge, has any third party used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined below) on, under, about or within Property in violation of any law or regulation. LICENSEE agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within Property in violation of any law or regulation. LICENSEE agrees to defend and indemnify CITY, to the extent stated in Section 12, against any and all losses, liabilities, claims or costs arising from any breach of any warranty or agreement contained in this Section. As used in this Section, “Hazardous Material” means any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

10. SIGNS. LICENSEE will not place any sign upon Property without CITY’s prior written consent. LICENSEE will pay for all costs of any approved signage and comply with all applicable sign codes and ordinances.

11. ASSIGNMENT. LICENSEE will not be permitted to assign this License or any interest therein.

12. INDEMNIFICATION.

A. LICENSEE will hold CITY harmless and free from any and all liability arising out of this License, or its performance, except for such loss or damage arising from CITY’s sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be against it, by suit or otherwise, whether the same be groundless or not, arising out of this License, or its performance, pursuant to this License, LICENSEE will defend CITY (at CITY’s request and with counsel satisfactory to CITY) and will indemnify it for any judgment rendered against it or any sums paid out in settlement or otherwise.
License and such other evidence of insurance or copies of policies as may be reasonably required by CITY from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of “A:VII.” Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. CONTRACTOR will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions.

D. Should LICENSEE, for any reason, fail to obtain and maintain the insurance required by this License, CITY may obtain such coverage at LICENSEE’s expense and charge the cost of such insurance to LICENSEE under this License or terminate pursuant to Section 4.

14. COMPLIANCE WITH LAW. LICENSEE will, at its sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to Property and will faithfully observe in the use of Property all applicable laws. The judgment of any court of competent jurisdiction, or the admission of LICENSEE in any action or proceeding against LICENSEE, whether CITY be a party thereto or not, that LICENSEE has violated any such ordinance or statute in the use of Property will be conclusive of that fact as between CITY and LICENSEE.

15. BREACH OF AGREEMENT. The violation of any of the provisions of this License will constitute a breach of this License by LICENSEE, and in such event said License will automatically cease and terminate.

16. WAIVER OF BREACH. Any express or implied waiver of a breach of any term of this License will not constitute a waiver of any further breach of the same or other term of this License.

17. ENTRY BY CITY AND PUBLIC. This License does not convey any property interest to LICENSEE. Except for areas restricted because of safety concerns, CITY and the general public will have unrestricted access upon Property for all lawful acts.

18. INSOLVENCY; RECEIVER. Either the appointment of a receiver to take possession of all or substantially all of the assets of LICENSEE, or a general assignment by the LICENSEE for the benefit of creditors, or any action taken or offered by LICENSEE under any insolvency or bankruptcy action, will constitute a breach of this License by LICENSEE, and in such event said License will automatically cease and terminate.

19. NOTICES. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this License or by law to be served on or given to either party to this License by the other party will be in writing and will be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service,
upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to LICENSEE at:

or to CITY at:

Either party may change its address for the purpose of this Section by giving written notice of the change to the other party.

20. **ACCEPTANCE OF FACSIMILE SIGNATURES.** The Parties agree that agreements ancillary to this License and related documents to be entered into in connection with this License will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

21. **GOVERNING LAW.** This License has been made in and will be construed in accordance with the laws of the State of California and exclusive venue for any action involving this License will be in Los Angeles County.

22. **PARTIAL INVALIDITY.** Should any provision of this License be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this License will remain in effect, unimpaired by the holding.

23. **ENTIRE AGREEMENT.** This instrument and its Attachments constitute the sole agreement between CITY and LICENSEE respecting Property, the use of Property by LICENSEE, and the specified License term, and correctly sets forth the obligations of CITY and LICENSEE. Any agreement or representations respecting Property or its licensing by CITY to LICENSEE not expressly set forth in this instrument are void.

24. **CONSTRUCTION.** The language of each part of this License will be construed simply and according to its fair meaning, and this License will never be construed either for or against either party.

25. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this License and to
engage in the actions described herein. This License may be modified by written agreement.
CITY’s city manager, or designee, may execute any such amendment on behalf of CITY.

26. COUNTERPARTS. This License may be executed in any number or counterparts, each of
which will be an original, but all of which together will constitute one instrument executed on
the same date.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year
first hereinabove written.

CITY OF EL SEGUNDO

Greg Carpenter,
City Manager

______________________________

ATTEST:

______________________________
Tracy Weaver,
City Clerk

Taxpayer ID No. ________________

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By: __________________________
Karl H. Berger, Assistant City Attorney
<table>
<thead>
<tr>
<th>MONDAY</th>
<th>TUESDAY</th>
<th>WEDNESDAY</th>
<th>THURSDAY</th>
<th>FRIDAY</th>
<th>SAT/SUN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
<td>3/4</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>6 (7am-3pm)</td>
<td>7 (7am-7pm)</td>
<td>8 (12pm-4am)</td>
<td>9 (2am-6am)</td>
<td>10/11</td>
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<tr>
<td>CITY COUNCIL MTG</td>
<td>PREP - CC's EA &amp; CM's Intern Work Station Areas</td>
<td>PREP - CC's EA &amp; CM's Intern Work Station Areas</td>
<td>SHOOT DAY - CC/CM Work Areas</td>
<td>SHOOT DAY - CC/CM Work Areas + Police Dept Steps + PREP - Chambers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CITY COUNCIL MTG</td>
<td>PLANNING COMMISSION MTG</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>12 (7am-7pm)</td>
<td>RESTORE - CC/CM Work Station Areas PREP - Chambers PREP - Hallways</td>
<td>13 (7am-10pm)</td>
<td>14 (7am-10pm)</td>
<td>15 (7am-10pm)</td>
<td>16 (7am-10pm)</td>
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<tr>
<td></td>
<td>SHOOT DAY - Council Chambers</td>
<td>PREP - Chambers PREP - Hallways</td>
<td></td>
<td>SHOOT DAY - Council Chambers</td>
<td>SHOOT DAY - Council Chambers</td>
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<tr>
<td>19 (7am-7pm)</td>
<td>RESTORE - Chambers Hallways</td>
<td>20 (7am-3pm)</td>
<td>21</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>RESTORE - Chambers Hallways</td>
<td>RESTORE - Chambers Hallways</td>
<td></td>
<td>CITY COUNCIL MTG</td>
<td>REC &amp; PARKS MTG</td>
<td>PLANNING COMMISSION MTG</td>
</tr>
<tr>
<td>26</td>
<td>27</td>
<td>28</td>
<td>29</td>
<td>30</td>
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</table>
# Warner Brothers - The House

## Cost Estimates

To Film at the City of El Segundo

### Film Permit Costs

<table>
<thead>
<tr>
<th>Description</th>
<th>QTY</th>
<th>DAYS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit App</td>
<td>$640</td>
<td>1</td>
<td>$640</td>
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<tr>
<td>Daily Film Permit Fee</td>
<td>$100</td>
<td>1</td>
<td>$1,096</td>
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<tr>
<td>Police Personnel (IF Higher Ranking, Hourly is Higher)</td>
<td>$95</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Police Vehicle</td>
<td>$5</td>
<td>11</td>
<td>TBD</td>
</tr>
<tr>
<td>Fire Personnel (IF Higher Ranking, Hourly is Higher)</td>
<td>$59</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Fire Vehicle</td>
<td>$5</td>
<td>11</td>
<td>TBD</td>
</tr>
<tr>
<td>Fee for Public Right-of-Way Usage</td>
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<td></td>
<td>TBD</td>
</tr>
<tr>
<td>City Street / Parking</td>
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<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Holly St (Main &amp; Std.)</td>
<td>$750</td>
<td>1</td>
<td>$8,250</td>
</tr>
<tr>
<td>Main St (Holly &amp; Grand)</td>
<td>$750</td>
<td>1</td>
<td>$5,250</td>
</tr>
<tr>
<td>Exec Staff Pkng (Holly &amp; Std.)</td>
<td>$1,000</td>
<td>1</td>
<td>$11,000</td>
</tr>
<tr>
<td>Richmond St (Non-City Hall Shoot)</td>
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<td>2</td>
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<tr>
<td>Film Permit Revisions / Riders</td>
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<tr>
<td>Fire Inspection (Spot Check Determined by Fire Department)</td>
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<tr>
<td>Addtl Street Dept Fees (Barricades / Personnel)</td>
<td>TBD</td>
<td>TBD</td>
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</tr>
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</table>

### Location Fee

<table>
<thead>
<tr>
<th>Description</th>
<th>QTY</th>
<th>DAYS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Hall (Council Chambers, CM/CC's Foyer Office, Corridor by CM/CC's Office, Steps to Police Dept.) - FLAT FEE (Location + Dislocation Fee + Custodial Fee, etc.)</td>
<td>$5,000</td>
<td>11</td>
<td>$55,000</td>
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</table>

**Total** $82,736
AGENDA DESCRIPTION:

Consideration and possible action regarding a request from the El Segundo Kiwanis Club to operate a Beer Garden on public right of way at the 39th Annual Richmond Street Fair on Saturday, September 26, 2015 from 11:00 am – 5:00 pm. (Fiscal Impact: None)

RECOMMENDED COUNCIL ACTION:

1. Approve the request from the El Segundo Kiwanis Club to operate a Beer Garden on public right of way at the 39th Annual Richmond Street Fair on Saturday, September 26, 2015 from 11:00 am – 5:00 pm, subject to compliance with all Alcohol Beverage Commission regulations and permits;
2. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Request letter from Kiwanis Club

FISCAL IMPACT: None

<table>
<thead>
<tr>
<th>Amount Budgeted:</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Appropriation:</td>
<td>N/A</td>
</tr>
<tr>
<td>Account Number(s):</td>
<td>N/A</td>
</tr>
</tbody>
</table>

PREPARED BY: Jackie Day, Administrative Specialist
REVIEWED BY: Meredith Petit, Recreation & Parks Director
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND & DISCUSSION:

The El Segundo Kiwanis Club is sponsoring the 39th Annual Richmond Street Fair to be held on Richmond Street between Holly Avenue and El Segundo Boulevard, Grand Avenue between Main Street and Concord Street, and on portions of Franklin Avenue on Saturday, September 26, 2015. A request has been submitted by the El Segundo Kiwanis Club to operate a Beer Garden at the Fair from 11:00 a.m. – 5:00 p.m.

The El Segundo Kiwanis Club is experienced in operating Beer Gardens at local special events, including the Hometown and Richmond Street Fairs, and the club has a proven track record in upholding state Alcoholic Beverage Commission regulations. The Beer Garden is a significant fundraising component for the event.

The Beer Garden for this event was held on private property for the last two years. This year, the Kiwanis Club has modified the layout of the event to have the Beer Garden on the public right of way, therefore requiring the approval of City Council. The proposed Beer Garden will be located south of Grand Avenue, on the east side of Richmond Street, between Sunset Carpet One and George’s Barbershop.
Kiwanis

El Segundo Kiwanis Club, P.O. Box 392, El Segundo, CA 90245

August 31, 2015

City of El Segundo
350 Main Street
El Segundo, CA 90245

Honorable Mayor and Members of the City Council:

On September 26, 2015, our El Segundo Kiwanis Club will be presenting the 39th Annual Richmond Street Fair.

We would like to request permission that our beer garden be able to be on public property. It would be located on Richmond Street just South of Grand behind Sunset Carpet and just North of George's Barber Shop. The hours of operation would be from 11am until 5pm.

Thank you for your consideration.

Best Regards,

Lee Ostendorf
Fair Director
El Segundo Kiwanis
AGENDA DESCRIPTION:
Consideration and possible action regarding a thirty (30) day provisional appointment extension for the position of Interim Deputy City Clerk II in the City Clerk’s office.
(Fiscal Impact: $)

RECOMMENDED COUNCIL ACTION:
1. Approve the thirty (30) day provisional appointment extension for the position of Interim Deputy City Clerk II;
2. Alternatively, discuss and take other actions related to this item.

ATTACHED SUPPORTING DOCUMENTS:
El Segundo City Code Section 1-6-13

FISCAL IMPACT: $

Amount Budgeted: None
Additional Appropriation: N/A
Account Number(s):

ORIGINATED BY: Tracy Weaver, City Clerk
REVIEWED BY: Tracy Weaver, City Clerk
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
The City Clerk’s office is requesting a 30 day extension for the interim position of Deputy City Clerk II. Mona Shilling has been acting Deputy City Clerk II since January 2015 due to the retirement of Cathy Domann, who held the position for over 13 years. The position requires the Deputy City Clerk II to be a Certified Municipal Clerk, a designation Ms. Shilling is expected to receive in the latter part of September 2015. In order to allow Ms. Shilling to be eligible to compete in the selection process for Deputy City Clerk II, the Clerk’s office is requesting an extension for the position of Interim Deputy City Clerk II.

In accordance with El Segundo City Code (ESCC) Section 1-6-13(c), no person shall be employed by the City under provisional appointment for more than six (6) months in any fiscal year. The Code further states the provisional appointment may be extended for not more than thirty (30) days with Council approval. Staff is requesting a thirty (30) day extension through August 4, 2015. It is the Clerk’s Office intent to request additional thirty (30) day extensions through the remainder of the fiscal year to comply with ESCC Section 1-6-13(c).
AGENDA DESCRIPTION:
Consideration and possible action regarding approval of 1) a revised Class Specification for the classification of Revenue Manager (formerly Business Services Manager), and 2) examination plans for Revenue Manager, Purchasing Agent, and License Permit Specialist I/II and 3) adoption of a Resolution establishing the new classification title and salary for Revenue Manager. Fiscal Impact: None.

RECOMMENDED COUNCIL ACTION:
1. Approve the proposed Class Specification for Revenue Manager
2. Approve the proposed examination plans.
3. Adopt the Resolution establishing the salary and class title for Revenue Manager
4. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:
1. Revenue Manager Class Specification.

FISCAL IMPACT: Included in the Adopted Budget

<table>
<thead>
<tr>
<th>Amount Budgeted:</th>
<th>$ N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Appropriation:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

ORIGINATED BY: Martha A. Dijkstra, Human Resources Director

REVIEWED BY: Martha A. Dijkstra, Human Resources Director

APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
In anticipation of the recruitment, testing and selection process to fill vacancies in the Finance and Planning & Building Safety Departments, staff has determined the need to revise the Business License Manager class specification and request approval of examination plans for License/Permit Specialist I/II, Purchasing Agent, and Revenue Manager (formerly titled Business Services Manager). Staff also requests adoption of the Resolution to recognize the title change from Business Services Manager to Revenue Manager and establish the salary range associated with the new title. It should be noted that there are no changes to the salary range for this position.

The Business Services Manager classification has not been revised since September 2000. The long-time incumbent is scheduled to retire later this month so in preparation for this recruitment, staff has reviewed the class specification and made the changes necessary to more accurately reflect the responsibilities, scope, and nature of the position. Revisions include changing the title from Business Services Manager to Revenue Manager and updating the essential job functions to include revenue management responsibilities, which were omitted from the original version.
Examination Plans

1. **License Permit Specialist I/II**
   - Written Test (Pass/Fail)
   - Structured Interview
   Open-Competitive
   Closed-Promotional
   100%

2. **Purchasing Agent**
   - Structured Interview
   Open-Competitive
   Closed-Promotional
   100%

3. **Revenue Manager**
   - Structured Interview
   Open-Competitive
   Closed-Promotional
   100%

Approval of exam plans for Merit System job classifications in all City Departments has been required since the passage of Initiative Ordinance No. 586 in April 1962.

For departments other than Police and Fire, the plan may consist of any one or combination of the following techniques:

1. Written;
2. Oral;
3. Demonstration; and
4. Any evaluation of education, experience, or skills or physical fitness, which fairly evaluated the relative capacities of the applicants.

Police and Fire Departments:

The examination plan, for entrance or promotional, for the Police and Fire Departments, shall consist of a written examination and one or more of the following:

1. Oral;
2. Demonstration; and
3. Any evaluation of education certification, experience, or skills or any test of manual skills or physical fitness, which fairly evaluates the relative capacities of the applicant.
RESOLUTION NO. ____________

A RESOLUTION ESTABLISHING A BASIC MONTHLY SALARY FOR THE JOB CLASSIFICATION OF REVENUE MANAGER

The City Council of the City of El Segundo does resolve as follows:

Section 1: The City Council approves the following basic monthly salary range:

<table>
<thead>
<tr>
<th>Revenue Manager</th>
<th>Step A</th>
<th>Step B</th>
<th>Step C</th>
<th>Step D</th>
<th>Step E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Range 51M</td>
<td>$7983.79</td>
<td>$8382.98</td>
<td>$8802.13</td>
<td>$9242.24</td>
<td>$9704.35</td>
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</tbody>
</table>

Section 2: The City Clerk is directed to certify the adoption of this Resolution; record this Resolution in the book of the City’s resolutions; and make a minute of the adoption of the Resolution in the City Council’s records and the minutes of this meeting.

Section 3: This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this 15th day of September, 2015.

Suzanne Fuentes,
Mayor
CERTIFICATION

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES ) SS
CITY OF EL SEGUNDO )

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. ______ was duly passed and adopted by said City Council, approved and signed by the Mayor, and attested to by the City Clerk, all at a regular meeting of said Council held on the 15th day of September, 2015, and the same was so passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

NOT PARTICIPATING:

WITNESS MY HAND THE OFFICIAL SEAL OF SAID CITY this _____ day of ________, 2015.

Tracy Weaver, City Clerk
of the City of El Segundo,
California
(SEAL)

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By:

Karl H. Berger
Assistant City Attorney
City of El Segundo, CA

**REVENUE MANAGER**

**Job Description**

**Definition:** Under general supervision, plans, manages and coordinates the revenue and business license functions within the Finance Department and provides highly responsible and complex management support to the Finance Director.

**Essential Functions:** Essential functions, as defined under the Americans with Disabilities Act, may include the following duties and responsibilities, knowledge, skills and other characteristics. This list of duties and responsibilities is ILLUSTRATIVE ONLY, and is not a comprehensive listing of all functions and tasks performed by positions in this class.

**Characteristic Duties and Responsibilities:**

Plans and manages the work of various business services functions involving billing and collecting revenues associated with the City’s business license tax and film permits; coordinates bringing delinquent business license accounts into compliance and making payment arrangements with businesses where appropriate; enforces applicable municipal codes; coordinates the administration of business services contracts; oversees all bank ruptcies and general city collections for the City; supervises and/or coordinates the processing of film permit applications to ensure all details of the event are identified and applications are properly processed in accordance with the City’s Ordinance.

Manages and monitors a variety of revenue sources for the City including business tax, utility users’ tax, transient occupancy tax, sales tax, franchise fees, and property taxes; participates in fiscal year-end activities including reconciliations and year-end accruals.

Participates in the planning, direction and coordination of business services activities and services within the Finance Department, recommending and developing technical and operational procedures and systems, and policy and procedures according to applicable laws, ordinances, rules and regulations; conducts special projects for the Department as assigned.

Resolves business services-related discrepancies or procedural problems and responds to program procedural and/or delivery questions ensuring necessary follow-up occurs; controls program records for operational and budget accountability; confers with and advises staff and program participants by providing advice, problem solving assistance, answers to questions and interpretation of program goals and policy.

Works with the City’s independent auditors and other City departments to ensure effective internal controls over revenue management; maintains a current and thorough working knowledge of State and local laws and procedures regarding municipal revenue sources including business taxes; accurately interprets and applies such laws and implement policies and procedures to assure compliance with such laws.

Recruits, schedules, assigns, monitors and evaluates staff; provides for and/or conducts staff development; establishes work methods and standards; initiates corrective and/or disciplinary

(continued on reverse side)
action and responds to grievances and complaints according to established personnel policies and procedures and in consultation with Human Resources.

**Knowledge, Skills and Other Characteristics:**

Knowledge of fiscal operations, revenue management, and generally accepted accounting principles and practices.
Knowledge of laws and regulations related to the management, control, and reporting of municipal revenue.
Knowledge of automated business computing systems.
Knowledge of the principles and practices of effective supervision.
Knowledge of project management principles and practices.

**Knowledge, Skills and Other Characteristics (Continued):**

Skill in program implementation, management and evaluation.
Skill in preparing complex financial and statistical reports.
Skill in supervising, developing, motivating and evaluating staff.
Skill in the use of personal computers and applicable office and financial related software.
Skill in conducting research and preparing clear, concise and comprehensive reports.
Skill in understanding and applying complex regulations, procedures and guidelines.
Skill in communicating effectively orally and in writing.
Skill in working under pressure, handling day-to-day operational problems and tasks that arise simultaneously and/or unexpectedly.
Skill in establishing and maintaining effective working relationships with staff, other City employees, and the public.

**Qualifications:**

Bachelor's degree in Accounting, Business Administration, Finance or a directly related field; and three (3) years of progressively responsible municipal financial operations experience such as revenue management, budgeting, auditing or financial analysis, including one (1) year of project management or supervisory experience; or an equivalent combination of education and experience.

Deleted: Business
Deleted: Services
Deleted: Purchasing
Deleted: and/or purchasing experience
Deleted: PSC
Deleted: /
EL SEGUNDO CITY COUNCIL MEETING DATE: September 15, 2015
AGENDA STATEMENT AGENDA HEADING: Consent Agenda

AGENDA DESCRIPTION:
Consideration and possible action to authorize the City Manager, or designee, to record the Notice of Completion accepting completion of work for forty-two (42) homes related to Project RSI 14-18 (the City’s Residential Sound Insulation Program’s Group 61).
(Final Contract Amount: $797,676.82)

RECOMMENDED COUNCIL ACTION:
1. Authorize the City Clerk to file the City Manager’s, or designee’s, Notice of Completion in the County Recorder’s Office;
2. Authorize the City Manager, or designee, to close out Project No. RSI 14-18;
3. Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAWA; and/or
4. Alternatively discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:
Notice of Completion
List of homes included in Group 61 (Exhibit A to the Notice of Completion)
Sample of Title 21 Compliance Certificate
Sample of cover letter to property owners for Title 21 Compliance Certificates

FISCAL IMPACT: Included in Adopted Budget
Amount Budgeted: $823,860
Additional Appropriation: N/A
Account Number(s): 116-400-0061-8960

ORIGINATED BY: James S. O'Neill, Program Manager
REVIEWED BY: Sam Lee, Director of Planning and Building Safety
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
The RSI Program offers modifications to owners of qualifying residential property in the City of El Segundo that reduce interior sound levels of noise generated by air traffic from neighboring Los Angeles International Airport (LAX).

At its meeting October 21, 2014 the City Council awarded a construction contract to Spec Construction Co. Inc. for the construction of improvements at Forty-two (23) homes, commonly referred to as Group 61 of the RSI Program.

Work at the forty-two (42) homes has now been completed. The final contract amount is $797,676.82.
The Letter Agreement between the City of El Segundo and Los Angeles World Airports (LAWA), which outlines City obligations with regards to grant funds received from LAWA, states,

"The City of El Segundo will issue a Title 21 Compliance Certificate for each eligible incompatible property that it sound insulates with LAWA and/or FAA funds..."  

With sound insulation work now complete, a Title 21 Compliance Certificate would be required for these forty-two (42) homes.
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 61
Project No.: RSI 14-18

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.
2. The project owner’s name is: City of El Segundo
3. The full addresses of the project are: attached as Exhibit A and incorporated by reference
4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A
5. The work done was: Residential Sound Insulation Program Improvements
6. On September 8, 2015, City Council of the City of El Segundo accepted the work of this contract as being complete and directed the recording of this Notice of Completion in the Office of the County Recorder.
7. The name of the Contractor for such work of improvement was: Spec Construction Co., Inc.
8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A
9. The street address of said properties are: set forth in Exhibit A

Dated: ____________________________

Sam Lee
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ______________________ at El Segundo, California.

Sam Lee
Planning and Building Safety Director

Notice of Completion
## Exhibit A

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<thead>
<tr>
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</table>
TO THE CITY OF LOS ANGELES

TITLE 21 COMPLIANCE CERTIFICATE
California Airport Noise Standards
Incompatible Land Use Sound Insulation Projects

Dated ______________________

This is to certify that the residential property for which a legal description, including addresses and assessor’s parcel number, are attached hereto and marked Exhibit “A” has been determined by the City of El Segundo (“City”) to be compatible land within the noise impact boundary around Los Angeles International Airport.

Certification of land use compatibility is based on compliance with the requirements of the California Airport Noise Standards, set forth in California Code of Regulations, Title 21 “Division of Aeronautics”, Subchapter 6 “Noise Standards”, Section 5014, in that either:

☐ (a) The residential structure(s) on the property have/have been sound insulated to achieve a maximum interior Community Noise Equivalent Level of 45dB in all habitable rooms, or

☐ (b) The property owner has declined, either explicitly or through a lack of response to inquiries, an offer to participate in a Sound Insulation Program administered by the Implementing Jurisdiction which would have resulted in a maximum interior Community Noise Equivalent Level of 45dB in all habitable rooms, and that the property may, therefore, be considered compatible land pursuant to Section 5014 (a)(4). If declination is through a lack of response, this is to also certify that the City of El Segundo provided adequate opportunities and invitations for participation.

☐ (c) A noise easement has been filed with the County Recorder relative to the property in a form and manner approved by the Los Angeles City Attorney.

This Title 21 Compliance Certificate shall serve as notice to the owner(s) of the property, the California Department of Transportation, and Los Angeles World Airports that the property has been determined to be compatible land within the noise impact boundary around the subject Airport pursuant to Section 5014 of the California Airport Noise Standards.

A copy of this Certificate will be sent to Los Angeles World Airports by certified mail on the date shown above. Return receipts will be made available to Los Angeles World Airports for a period of not less than two years after that date.

This Certificate shall be filed in the City of El Segundo’s City Clerk’s Office, or in such other permanent location as approved by Los Angeles World Airports, and shall continue in effect until the subject Airport shall be abandoned and shall cease to be used for public airport purposes. Furthermore, in the case where the owner has previously declined to participate in a sound insulation program under (b) above, the Title 21 Compliance Certificate shall continue in effect until the owner(s) or owner’s heirs, successors or assigns subsequently participate in a Residential Sound Insulation Program and a new Title 21 Compliance Certificate is filed for the property with (a), above, indicated on the new recorded form.

Nothing herein contained shall constitute a waiver of any rights by the owner(s) of the property or owner’s heirs, successors and assigns.

Approved by: ____________________________
James S. O’Neill
Program Manager
EXHIBIT A

Property Address: ______________________

APN: _____-____-___
Planning & Building Safety
Residential Sound Insulation Program

[DATE]

[PROPERTY OWNERS]
[MAILING ADDRESS]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]

Dear [PROPERTY OWNER],

Attached is a copy of the Title 21 Compliance Certificate for your property at:

[PROPERTY ADDRESS], El Segundo, California 90245

You are receiving this notice because your property received Residential Sound Insulation Improvements through the City of El Segundo's Residential Sound Insulation (RSI) Program.

This Title 21 Compliance Certificate serves as notice that the property has been determined to be compatible land within the noise impact boundary around Los Angeles International Airport pursuant to Section 5014 of the California Airport Noise Standards.

If you have any questions, please contact me at (310) 524-2352 or via email at joneill@elsegundo.org.

Respectfully,

James S. O'Neill
Program Manager
AGENDA DESCRIPTION:
Consideration and possible action to authorize the City Manager, or designee, to record the Notice of Completion accepting completion of work for twenty-four (24) homes related to Project RSI 14-23 (the City's Residential Sound Insulation Program's Group 65).
(Final Contract Amount: $786,461.08)

RECOMMENDED COUNCIL ACTION:
1. Authorize the City Clerk to file the City Manager’s, or designee’s, Notice of Completion in the County Recorder’s Office;
2. Authorize the City Manager, or designee, to close out Project No. RSI 14-23;
3. Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAWA; and/or
4. Alternatively discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

Notice of Completion
List of homes included in Group 65 (Exhibit A to the Notice of Completion)
Sample of Title 21 Compliance Certificate
Sample of cover letter to property owners for Title 21 Compliance Certificates

FISCAL IMPACT: Included in Adopted Budget

Amount Budgeted: $828,685
Additional Appropriation: N/A
Account Number(s): 116-400-0065-8960

ORIGINATED BY: James S. O’Neill, Program Manager
REVIEWED BY: Sam Lee, Director of Planning and Building Safety
APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
The RSI Program offers modifications to owners of qualifying residential property in the City of El Segundo that reduce interior sound levels of noise generated by air traffic from neighboring Los Angeles International Airport (LAX).

At its meeting November 18, 2014 the City Council awarded a construction contract to Spec Construction Co. Inc. for the construction of improvements at twenty-four (24) homes, commonly referred to as Group 65 of the RSI Program.

Work at the twenty-four (24) homes has now been completed. The final contract amount is $786,461.08.
The Letter Agreement between the City of El Segundo and Los Angeles World Airports (LAWA), which outlines City obligations with regards to grant funds received from LAWA, states,

"The City of El Segundo will issue a Title 21 Compliance Certificate for each eligible incompatible property that it sound insulates with LAWA and/or FAA funds..."

With sound insulation work now complete, a Title 21 Compliance Certificate would be required for these twenty-four (24) homes.
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 65
Project No.: RSI 14-23

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.

2. The project owner’s name is: City of El Segundo

3. The full addresses of the project are: attached as Exhibit A and incorporated by reference

4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A

5. The work done was: Residential Sound Insulation Program Improvements

6. On September 15, 2015, City Council of the City of El Segundo accepted the work of this contract as being complete and directed the recording of this Notice of Completion in the Office of the County Recorder.

7. The name of the Contractor for such work of improvement was: Spec Construction Co., Inc.

8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A

9. The street address of said properties are: set forth in Exhibit A

Dated:  

Sam Lee  
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ______________________ at El Segundo, California.

Sam Lee  
Planning and Building Safety Director

Notice of Completion
## Exhibit A

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Assessor's Parcel Number __________

TO THE CITY OF LOS ANGELES

TITLE 21 COMPLIANCE CERTIFICATE
California Airport Noise Standards
Incompatible Land Use Sound Insulation Projects

Dated ______________

This is to certify that the residential property for which a legal description, including addresses and assessor's parcel number, are attached hereto and marked Exhibit "A" has been determined by the City of El Segundo ("City") to be compatible land within the noise impact boundary around Los Angeles International Airport.

Certification of land use compatibility is based on compliance with the requirements of the California Airport Noise Standards, set forth in California Code of Regulations, Title 21 "Division of Aeronautics", Subchapter 6 "Noise Standards", Section 5014, in that either:

☐ (a) The residential structure(s) on the property has/have been sound insulated to achieve a maximum interior Community Noise Equivalent Level of 45dB in all habitable rooms, or

☐ (b) The property owner has declined, either explicitly or through a lack of response to inquiries, an offer to participate in a Sound Insulation Program administered by the Implementing Jurisdiction which would have resulted in a maximum interior Community Noise Equivalent Level of 45dB in all habitable rooms, and that the property may, therefore, be considered compatible land pursuant to Section 5014 (a)(4). If declination is through a lack of response, this is to also certify that the City of El Segundo provided adequate opportunities and invitations for participation.

☐ (c) A noise easement has been filed with the County Recorder relative to the property in a form and manner approved by the Los Angeles City Attorney.

This Title 21 Compliance Certificate shall serve as notice to the owner(s) of the property, the California Department of Transportation, and Los Angeles World Airports that the property has been determined to be compatible land within the noise impact boundary around the subject Airport pursuant to Section 5014 of the California Airport Noise Standards.

A copy of this Certificate will be sent to Los Angeles World Airports by certified mail on the date shown above. Return receipts will be made available to Los Angeles World Airports for a period of not less than two years after that date.

This Certificate shall be filed in the City of El Segundo's City Clerk's Office, or in such other permanent location as approved by Los Angeles World Airports, and shall continue in effect until the subject Airport shall be abandoned and shall cease to be used for public airport purposes. Furthermore, in the case where the owner has previously declined to participate in a sound insulation program under (b) above, the Title 21 Compliance Certificate shall continue in effect until the owner(s) or owner's heirs, successors or assigns subsequently participate in a Residential Sound Insulation Program and a new Title 21 Compliance Certificate is filed for the property with (a), above, indicated on the new recorded form.

Nothing herein contained shall constitute a waiver of any rights by the owner(s) of the property or owner's heirs, successors and assigns.

Approved by: ___________________________
James S. O'Neill
Program Manager
EXHIBIT A

Property Address: ______________________

APN: ____-____-____
Planning & Building Safety
Residential Sound Insulation Program

[DATE]

[PROPERTY OWNERS]
[MAILING ADDRESS]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]

Dear [PROPERTY OWNER],

Attached is a copy of the Title 21 Compliance Certificate for your property at:

[PROPERTY ADDRESS], El Segundo, California 90245

You are receiving this notice because your property received Residential Sound Insulation Improvements through the City of El Segundo’s Residential Sound Insulation (RSI) Program.

This Title 21 Compliance Certificate serves as notice that the property has been determined to be compatible land within the noise impact boundary around Los Angeles International Airport pursuant to Section 5014 of the California Airport Noise Standards.

If you have any questions, please contact me at (310) 524-2352 or via email at joneill@elsegundo.org.

Respectfully,

James S. O’Neill
Program Manager

www.elsegundo.org
AGENDA DESCRIPTION:

Consideration and possible action regarding adoption of a Resolution authorizing the City Manager, or designee, to accept the Work of Projects 14-12 (the City's Residential Sound Insulation Program's Group 56), 14-14 (the City's Residential Sound Insulation Program's Group 58), 14-25 (the City's Residential Sound Insulation Program's Group 67) and 14-26 (the City's Residential Sound Insulation Program's Group 68) as complete, and determine the appropriate liquidated damages to be assessed, after staff has determined that remaining tasks have been completed by the respective contractors. (Final Contract Amounts of: $885,290, 649,488.02, $939,885.44 and $455,397.84 respectively, less any liquidated damages determined to be appropriate)

RECOMMENDED COUNCIL ACTION:

1. Adopt a resolution delegating authority to the City Manager to accept Work as complete, determine liquidated damages and record notices of completion for Residential Sound Insulation (RSI) Projects 14-12 (Group 56), 14-14 (Group 58), 14-25 (Group 67) and 14-26 (Group 68);

2. Authorize the RSI Program Manager to sign the Title 21 Compliance Certificates in accordance with the requirements of the grant funding from Los Angeles World Airports (LAWA) and mail originals to LAWA; and/or

3. Alternatively discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Resolution delegating authority to the City Manager to accept Work as complete, determine liquidated damages and record notices of completion for Residential Sound Insulation (RSI) Projects 14-12 (Group 56), 14-14 (Group 58), 14-25 (Group 67) and 14-26 (Group 68)

2. Notice of Completion for Group 56

3. Notice of Completion for Group 58

4. Notice of Completion for Group 67

5. Notice of Completion for Group 68

6. List of homes included in Group 56 (Exhibit A to the Notice of Completion)

7. List of homes included in Group 58 (Exhibit A to the Notice of Completion)

8. List of homes included in Group 67 (Exhibit A to the Notice of Completion)

9. List of homes included in Group 68 (Exhibit A to the Notice of Completion)

10. Sample of Title 21 Compliance Certificate

11. Sample of cover letter to property owners for Title 21 Compliance Certificates

FISCAL IMPACT: Included in Adopted Budget

| Amount Budgeted: | $973,819, $714,437, $988,383 and $496,100 respectively |
| Additional Appropriation: | N/A |
| Account Number(s): | 116-400-0056-8960 |
| | 116-400-0058-8960 |
| | 116-400-0067-8960 |
| | 116-400-0068-8960 |
BACKGROUND AND DISCUSSION:

The RSI Program offers modifications to owners of qualifying residential property in the City of El Segundo that reduce interior sound levels of noise generated by air traffic from neighboring Los Angeles International Airport (LAX).

Typically, the City Council would accept a project as complete after staff has concluded that all known reports have been submitted and all physical work has been inspected, with no deficiencies found by City staff. Staff is currently recommending the City Council authorize the City Manager to accept projects as complete is based on the unique circumstance that the Federal Aviation Administration (FAA) requires any project not complete by September 30, 2015 to meet a set of criteria to confirm the eligibility of each Home within the project prior to its inclusion in that project. The eligibility criteria for the homes in Groups 56, 58, 67 & 68 were not confirmed to that standard, as the protocol to be followed in making that determination has not been finalized, and the projects were contractually obligated to be complete well in advance of the September 30th deadline.

City staff believes the work defined by the subject four projects is nearly complete with the exception of the following:

Group 56 – This project was to be completed in late February and was not. Numerous delays, and lack of communication from the contractor has made it extremely difficult to have the physical work completed. Ultimately, City staff has determined that the physical work is now complete, yet required reports – including Federally required Certified Payroll, payment applications that accurately reflect the status of work for the period of time covered by the payment application, and Final Clearance Air Monitoring for asbestos activities – have not been properly submitted by Harry Joh Construction. It is expected that the remaining work will not have an impact on the final contract amount, yet associated liquidated damages will deduct from the amount paid to Harry Joh Construction.

Group 58 – This project was to be completed in late February and was not. Numerous delays, and lack of communication from the contractor has made it extremely difficult to have the physical work completed. Ultimately, City staff has determined that the physical work is now complete, with the exception of nine improperly sized windows that have not yet been replaced. Also, like Group 56, required reports – including Federally required Certified Payroll, payment applications that accurately reflect the status of work for the period of time covered by the payment application, and Final Clearance Air Monitoring for asbestos activities – have not been properly submitted by Harry Joh Construction. It is expected that the remaining work will not have an impact on the final contract amount, yet associated liquidated damages will deduct from the amount paid to Harry Joh Construction.

Group 67 – This project was to be completed in late June. City staff has determined that the physical work is complete, yet required reports – including Final Clearance Air Monitoring for asbestos activities, and potentially related Certified Payroll for such monitoring – have not been properly submitted by Big West Construction. It is expected that the remaining work will not
have an impact on the final contract amount, yet associated liquidated damages will deduct from the amount paid to Big West Construction.

Group 68 – This project was to be completed in late June. City staff has determined that the physical work is complete, yet required reports – including Final Clearance Air Monitoring for asbestos activities, and potentially related Certified Payroll for such monitoring – have not been properly submitted by Big West Construction. It is expected that the remaining work will not have an impact on the final contract amount, yet associated liquidated damages will deduct from the amount paid to Big West Construction.

The Letter Agreement between the City of El Segundo and Los Angeles World Airports (LAWA), which outlines City obligations with regards to grant funds received from LAWA, states,

"The City of El Segundo will issue a Title 21 Compliance Certificate for each eligible incompatible property that it sound insulates with LAWA and/or FAA funds..."

With sound insulation work now complete, a Title 21 Compliance Certificate would be required for these homes.
RESOLUTION NO. __

A RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER TO ACCEPT WORK AS COMPLETE, DETERMINE LIQUIDATED DAMAGES AND RECORD NOTICES OF COMPLETION FOR RESIDENTIAL SOUND INSULATION PROGRAM PROJECTS 14-12, 14-14, 14-25 AND 14-26 (GROUPS 56, 58, 67 AND 68).

The City Council of the city of El Segundo resolves as follows:

SECTION 1: The City Council finds and declares as follows:

A. Currently, there are four projects in the City’s Residential Sound Insulation (“RSI”) Program (Projects 14-12, 14-14, 14-25 and 14-26) that are nearly complete; these projects, commonly referred to as Groups 56, 58, 67 and 68, consist of sound insulation work on homes throughout the City;

B. The work on the projects is funded in part by the Federal Aviation Administration (“FAA”); the FAA requires these projects to be completed by September 30, 2015, or else the projects must meet certain additional criteria before the FAA will fund the projects. For this reason, it is in the public interest for the City to accept these projects as complete as expeditiously as is practical in order to limit the City’s exposure to any additional liabilities;

C. In order to meet the September 30, 2015, deadline, the City Council desires to authorize and direct the City Manager to accept the work for Groups 56, 58, 67 and 68, as complete, upon staff’s determination that the remaining tasks for each Group have been completed, and also desires to authorize the City Manager to determine the appropriate liquidated damages to be assessed for delays related to each of these groups, and to authorize the City Manager to execute Notices of Completion (“NOC”) for each of these groups, as necessary;

D. The City Council believes that delegating the ministerial task of recording NOCs for RSI Groups 56, 58, 67 and 68 to the City Manager will help ensure that such notices are recorded promptly and avoid unnecessary delays.

SECTION 2: The City Manager is authorized to accept the Work on RSI Projects 14-12, 14-14, 14-25 and 14-26 (Groups 56, 58, 67 and 68, respectively) as complete, upon staff’s determination that the remaining tasks for each group have been completed. The City Manager is further authorized to determine the appropriate liquidated damages to be assessed for each of these projects, and is authorized to record notices of completion, in a form approved by the City Attorney, pursuant to Civil Code § 9204.

SECTION 3: The City Manager is directed to inform the City Council regarding the recordation of a notice of completion for each of these Groups as soon as
practicable but not later than thirty (30) days after such recordation. Failure to inform the City Council within this time period will not invalidate the notice of completion.

SECTION 4: This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this ___ day of September, 2015

______________________________
Suzanne Fuentes, Mayor

ATTEST:

______________________________
Tracy Weaver, City Clerk

APPROVED AS TO FORM:

______________________________
Mark D. Hensley, City Attorney
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 56
Project No.: RSI 14-12

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.

2. The project owner’s name is: City of El Segundo

3. The full addresses of the project are: attached as Exhibit A and incorporated by reference

4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A

5. The work done was: Residential Sound Insulation Program Improvements

6. On _____________, 2015, the City Manager for the City of El Segundo accepted the work of this contract as being complete and authorized the recording of this Notice of Completion in the Office of the County Recorder.

7. The name of the Contractor for such work of improvement was: Harry H. Joh Construction, Inc.

8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A

9. The street address of said properties are: set forth in Exhibit A

Dated: ________________

Sam Lee
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ________________ at El Segundo, California.

Sam Lee
Planning and Building Safety Director
### Exhibit A

<table>
<thead>
<tr>
<th>RSI Number</th>
<th>Project Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>56.01</td>
<td>121 West Palm Ave., #1</td>
</tr>
<tr>
<td>56.02</td>
<td>123 West Palm Ave., #2</td>
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<td>56.25</td>
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</table>
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 58
Project No.: RSI 14-14

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.
2. The project owner’s name is: City of El Segundo
3. The full addresses of the project are: attached as Exhibit A and incorporated by reference
4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A
5. The work done was: Residential Sound Insulation Program Improvements
6. On _____________, 2015, the City Manager for the City of El Segundo accepted the work of this contract as being complete and authorized the recording of this Notice of Completion in the Office of the County Recorder.
7. The name of the Contractor for such work of improvement was: Harry H. Joh Construction, Inc.
8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A
9. The street address of said properties are: set forth in Exhibit A

Dated: ________________

Sam Lee
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ________________ at El Segundo, California.

Sam Lee
Planning and Building Safety Director

Notice of Completion
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<tr>
<th>RSI Number</th>
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<td>605 Sheldon Street</td>
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</tbody>
</table>
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 67
Project No.: RSI 14-25

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.

2. The project owner’s name is: City of El Segundo

3. The full addresses of the project are: attached as Exhibit A and incorporated by reference

4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A

5. The work done was: Residential Sound Insulation Program Improvements

6. On ____________, 2015, the City Manager for the City of El Segundo accepted the work of this contract as being complete and authorized the recording of this Notice of Completion in the Office of the County Recorder.

7. The name of the Contractor for such work of improvement was: Big West Construction Corporation

8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A

9. The street address of said properties are: set forth in Exhibit A

Dated: ____________

Sam Lee
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ______________ at El Segundo, California.

Sam Lee
Planning and Building Safety Director
### Exhibit A

<table>
<thead>
<tr>
<th>RSI Number</th>
<th>Project Address</th>
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</thead>
<tbody>
<tr>
<td>67.01</td>
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<td>835 Center Street</td>
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<td>609 East Maple Avenue</td>
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</tbody>
</table>
NOTICE OF COMPLETION OF CONSTRUCTION PROJECT

Project Name: Residential Sound Insulation Program – Group 68
Project No.: RSI 14-26

Notice is given pursuant to California Civil Code §§ 3093, et seq. that:

1. The undersigned is an officer of the owner of interest of the property described below.

2. The project owner’s name is: City of El Segundo

3. The full addresses of the project are: attached as Exhibit A and incorporated by reference

4. A work of improvement on the property hereinafter described was field reviewed by City representatives on: see attached Exhibit A

5. The work done was: Residential Sound Insulation Program Improvements

6. On ______________, 2015, the City Manager for the City of El Segundo accepted the work of this contract as being complete and authorized the recording of this Notice of Completion in the Office of the County Recorder.

7. The name of the Contractor for such work of improvement was: Big West Construction Corporation

8. The property on which said work of improvement was completed is in the City of El Segundo, County of Los Angeles, State of California, and is described as follows: Private Residence(s) listed in Exhibit A

9. The street address of said properties are: set forth in Exhibit A

Dated: ______________
Sam Lee
Planning and Building Safety Director

VERIFICATION

I, the undersigned, say: I am the Director of Planning and Building Safety of the City El Segundo, the declarant of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury the foregoing is true and correct.

Executed on ________________ at El Segundo, California.

Sam Lee
Planning and Building Safety Director

Notice of Completion
## Exhibit A

<table>
<thead>
<tr>
<th>RSI Number</th>
<th>Project Address</th>
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<td>68.21</td>
<td>227 East Oak Avenue, Unit 303</td>
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</table>
Assessor’s Parcel Number _____-_____  

TO THE CITY OF LOS ANGELES

TITLE 21 COMPLIANCE CERTIFICATE  
California Airport Noise Standards  
Incompatible Land Use Sound Insulation Projects

Dated ____________________

This is to certify that the residential property for which a legal description, including addresses and assessor’s parcel number, are attached hereto and marked Exhibit “A” has been determined by the City of El Segundo (“City”) to be compatible land within the noise impact boundary around Los Angeles International Airport.

Certification of land use compatibility is based on compliance with the requirements of the California Airport Noise Standards, set forth in California Code of Regulations, Title 21 “Division of Aeronautics”, Subchapter 6 “Noise Standards”, Section 5014, in that either:

☐ (a) The residential structure(s) on the property has/have been sound insulated to achieve a maximum interior Community Noise Equivalent Level of 45dBA in all habitable rooms, or

☐ (b) The property owner has declined, either explicitly or through a lack of response to inquiries, an offer to participate in a Sound Insulation Program administered by the Implementing Jurisdiction which would have resulted in a maximum interior Community Noise Equivalent Level of 45dBA in all habitable rooms, and that the property may, therefore, be considered compatible land pursuant to Section 5014 (a)(4). If declination is through a lack of response, this is to also certify that the City of El Segundo provided adequate opportunities and invitations for participation.

☐ (c) A noise easement has been filed with the County Recorder relative to the property in a form and manner approved by the Los Angeles City Attorney.

This Title 21 Compliance Certificate shall serve as notice to the owner(s) of the property, the California Department of Transportation, and Los Angeles World Airports that the property has been determined to be compatible land within the noise impact boundary around the subject Airport pursuant to Section 5014 of the California Airport Noise Standards.

A copy of this Certificate will be sent to Los Angeles World Airports by certified mail on the date shown above. Return receipts will be made available to Los Angeles World Airports for a period of not less than two years after that date.

This Certificate shall be filed in the City of El Segundo’s City Clerk’s Office, or in such other permanent location as approved by Los Angeles World Airports, and shall continue in effect until the subject Airport shall be abandoned and shall cease to be used for public airport purposes. Furthermore, in the case where the owner has previously declined to participate in a sound insulation program under (b) above, the Title 21 Compliance Certificate shall continue in effect until the owner(s) or owner’s heirs, successors or assigns subsequently participate in a Residential Sound Insulation Program and a new Title 21 Compliance Certificate is filed for the property with (a), above, indicated on the new recorded form.

Nothing herein contained shall constitute a waiver of any rights by the owner(s) of the property or owner’s heirs, successors and assigns.

Approved by: ________________________________

James S. O’Neill  
Program Manager
EXHIBIT A

Property Address: ____________________________

APN: _____-____-____
Planning & Building Safety
Residential Sound Insulation Program

[DATE]

[PROPERTY OWNERS]
[MAILING ADDRESS]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]

Dear [PROPERTY OWNER],

Attached is a copy of the Title 21 Compliance Certificate for your property at:

[PROPERTY ADDRESS], El Segundo, California 90245

You are receiving this notice because your property received Residential Sound Insulation Improvements through the City of El Segundo’s Residential Sound Insulation (RSI) Program.

This Title 21 Compliance Certificate serves as notice that the property has been determined to be compatible land within the noise impact boundary around Los Angeles International Airport pursuant to Section 5014 of the California Airport Noise Standards.

If you have any questions, please contact me at (310) 524-2352 or via email at joneill@elsegundo.org.

Respectfully,

James S. O’Neill
Program Manager