

# **Ground Lease Chambers Bay Resort**

This Ground Lease (the "Lease") is made and entered into at Tacoma, Washington this \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between Pierce County, a political subdivision of the State of Washington, ("Landlord"), and Chambers Bay Development, LLC, a Washington limited liability company ("Tenant").

Tenant desires to lease from Landlord, and Landlord agrees to lease to Tenant, certain real property located in University Place, Pierce County, Washington, upon which Tenant will, for Tenant's account, develop, construct, operate and maintain a resort hotel, golf villas, restaurant, clubhouse, event space and golf course support facilities for the term and on the conditions set forth herein.

NOW, THEREFORE, Landlord and Tenant hereby agree:

## SECTION 1 PREMISES AND TERM

1.01 Description. For and in consideration of Tenant's covenants to pay the rental and other sums herein and the performance of Tenant's covenants herein, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") comprising approximately 561,493 square feet, situated in the City of University Place, County of Pierce, State of Washington, as more specifically described and depicted on Exhibit A hereto. The Property, together with all Improvements (as defined in section 1.05 hereof) now or hereafter located thereon, are hereinafter referred to as "Premises." The development of the individual buildings (the "Buildings") and other reasonable and necessary improvements constructed by Tenant and permitted hereunder on the Property (collectively the "Improvements") is sometimes referred to herein collectively as the "Project."

The Property is located within the Chambers Creek Regional Park Master Plan dated August 8, 2017 (the "Master Plan") and is located adjacent to the Chambers Bay Golf Course (the "Golf Course"). Certain real property within the Master Plan is presently owned by Landlord including, without limitation, the Golf Course and the Environmental Services Building (the "ESB") located adjacent to the Property and the Golf Course. For purposes of this Agreement, the term Chambers Creek Properties means those properties within the boundaries of the Master Plan as shown on Exhibit E owned from time to time by Landlord.

1.02 Term. The term of this Lease ("Term") shall be fifty (50) years beginning on the Commencement Date. The Term shall expire at midnight on the fiftieth (50th) anniversary of the Commencement Date unless extended as provided in Section 1.06. After the Effective Date, but prior to the Commencement Date, Tenant shall be entitled to perform certain preconstruction activities on the Property, subject to all of the terms and conditions of this Lease.

1.02.1 Early Termination. If the Commencement Date has not occurred by December 31, 2019 this Lease shall terminate.

1.02.2 Tenant's election to Terminate. Following execution of this Lease, if Tenant determines in its sole judgment that development of the Project is not feasible, Tenant may elect to terminate this Lease prior to the Commencement Date by notice in writing to Landlord, in recordable form, acknowledged by Tenant. Such notice shall be effective upon receipt by Landlord.

1.02.3 Certification. Tenant and Landlord shall agree on a form of memorandum to this Lease in recordable form fixing the Commencement Date in accordance with the provisions hereof, which Tenant shall cause to be recorded in the records of Pierce County, Washington at Tenant's expense.

1.03 Landlord's Warranties. Landlord represents, warrants and covenants that:

(a) The title to the Property is vested in Landlord, subject to no defects or encumbrances except as set forth on Exhibit B attached hereto and incorporated herein by this reference.

(b) Except for liens or encumbrances created by or through Tenant, or based upon Impositions (as defined in Section 3.02 hereof) that are the responsibility of Tenant under this Lease, Landlord shall not, after the date hereof, agree to or create any liens or encumbrances on the Property which are not specifically stated in writing to be subordinate to this Lease and to any amendments or modifications hereto. Landlord shall, at or prior to the Commencement Date, cause the Property to be free of all liens and encumbrances except as shown on Exhibit B. Subject to the preceding requirements, Landlord shall have the right to hypothecate or otherwise pledge the income stream from this Lease as security for obligations of the Landlord. Without limitation, it is intended that Landlord may mortgage or assign its interest in the Property, provided that any mortgage, encumbrance, deed of trust or other instrument creating or evidencing any lien against any interest of Landlord shall specifically state that it is subordinate to this Lease and to any amendments or modifications of this Lease.

(c) Landlord has the authority to enter into this Lease subject to the approval of the Pierce County Council.

(d) Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold and enjoy the Premises, subject to the terms of this Lease.

(e) Landlord has provided to Tenant copies of all environmental and soils reports ("Reports") and land surveys in the possession of Landlord, as listed on Exhibit D hereto, to the extent related to the Property. Landlord has no actual knowledge of any environmental or soils conditions affecting the Property except as set forth in those Reports and is not aware of any Hazardous Materials present on the Property in any material amount, or any violation of any Environmental Laws, or any requirement to remediate any environmental condition. Tenant shall make its own investigation of the condition of the Property prior to the Commencement Date. In the event any soils conditions require environmental remediation as the result of the discovery of Hazardous Materials (as defined below) after the Effective Date, but prior to substantial completion of the hotel portion of the Project, Landlord shall, at Landlord's sole discretion, either: (i) pay for any legally required remediation; or (ii) reimburse Tenant for all reasonable, out-of-pocket funds expended for design and construction of the Project and terminate this Lease. As used herein, "Hazardous Material" means any hazardous or toxic substance, material, waste or similar term

which is regulated by local authorities, the state of Washington and/or the federal government, including, but not limited to, any material, substance, waste or similar term which is: (i) defined as a hazardous material under the laws of the state of Washington; (ii) defined as a hazardous substance under section 311 of the federal water pollution control act (33 U.S.C. §1317); (iii) defined as a hazardous waste substance under section 101 of federal resource conservation and recovery act (42 U.S.C. §6901 et. Seq.); (iv) defined as a hazardous waste substance under section 101 of the comprehensive environmental response, compensation and liability act, (42 U.S.C. §9601 et. Seq.); (v) defined as a hazardous waste or toxic substance, waste, material or similar term in any rules and regulations, which are adopted by any administrative agency including, but not limited to the environmental protection agency, the occupational safety and health administration, and any such similar state or local agency having jurisdiction over the Property whether or not such rules and regulations have the force of law; or (vi) defined as a hazardous or toxic waste, substance, material or similar term in any statute, regulation, rule or law enacted by local authorities, the state of Washington, and/or the federal government and in each case such hazardous or toxic substance is present in quantities or amounts requiring remediation.

1.04.1 Tenant's Warranties. Tenant represents and warrants that:

(a) Tenant has the authority and power to enter into this Lease and to perform its obligations herein;

(b) The execution and delivery by Tenant of this Lease has been duly authorized and the person executing this Lease on behalf of Tenant has been duly authorized to do so; and

(c) Tenant will construct and operate the Premises in accordance with this Lease.

(d) OFAC. Neither Tenant nor any member, partner, owner or affiliate of Tenant is or will be during the Term (a) listed on the Specially Designated Nationals and Blocked Persons List or any other similar list maintained by the Office of Foreign Assets Control, Department of the Treasury or the Department of Foreign Affairs and International Trade (Canada), pursuant to any authorizing statute, executive order or regulation; (b) a “specially designated global terrorist” or other person listed on Appendix A to Chapter V of 31 C.F.R., as the same has been from time to time updated and amended; or (c) a Person either (a) included within the term “designated national” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515; or (b) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or a person similarly designated under any related enabling legislation or any other similar Executive Orders now or hereafter in effect.

1.05.1 Use. The Property is leased to Tenant for the purpose of constructing, maintaining and operating the Improvements consisting of a resort hotel, golf villas, restaurant, spa, event space, golf clubhouse, Golf Course support facilities, on the Property, and for other uses and purposes customarily associated with and reasonably related to a resort hotel, and for no other use or purpose without the prior written consent of Landlord. In no event shall the use include a casino or gaming operation or devices without written approval of Landlord. Tenant will develop, construct and operate certain Improvements including the Buildings as part of the Project which shall include:

1. No more than 190 hotel or golf villa units;
2. Event and meeting space;

3. New clubhouse and pro shop (the “Clubhouse”)
4. Spa;
5. Restaurant (s) and bar(s);
6. Publicly accessible outdoor amenities including a new public plaza and enhanced recreational trails;
7. 200 parking spaces or the minimum required under University Place Municipal Code for the proposed Project; and
8. Not more 239,000 sq. ft. of total Building space

all in accordance with the Plans and Specifications approved by Landlord pursuant to Section 4.04, and no other improvements without the prior written consent of Landlord. Tenant shall not permit the Project or any Improvement to be used for any unlawful purpose nor shall Tenant permit any nuisance or waste in or upon the Premises or the Improvements. Gaming, gambling, and any devices to permit gaming or gambling shall be permitted only if lawful and approved by Landlord. The Project shall be constructed and used as first-class hotel and resort facilities. Subject to Tenant's express rights to cease or interrupt operation of the Project hereunder, the Buildings and Project shall be repaired, maintained and operated by Tenant throughout the term in a first-class condition, as such repair and maintenance standards are measured relative to other similar facilities at first class golf course resorts, taking into account the age and type of building, market conditions, occupancy levels and other relevant factors, all as reasonably determined by Tenant from time to time. Any dispute regarding the first-class nature, condition, operation or maintenance of the Project or the other matters in this Section 1.05 shall be settled by arbitration in accordance with Section 16 of this Lease.

1.05.2 Pro Shop. Tenant will provide a construction cost allowance of one million dollars (\$1,000,000) (the “Construction Allowance”) for construction of a Pro Shop of approximately 2,200 rentable square feet, administrative space of approximately 1,000 rentable square feet, and storage space of 700 rentable square feet (collectively, the “Pro Shop Space”), which shall be constructed by Tenant for Landlord’s use in the hotel portion of the Improvements in accordance with Plans and Specifications approved by Landlord and pursuant to the Pro Shop Space Lease described below. If the actual and reasonable cost of the Pro Shop Space is greater than the Construction Allowance, Landlord will pay any amounts that exceed the Construction Allowance upon execution and commencement of the Pro Shop Space Lease (as defined below), or such excess shall be included in the rent for the Pro Shop Space. Notwithstanding the foregoing, in no event shall the cost of construction of the Pro Shop Space exceed an amount that is 10% greater than the Construction Allowance without prior agreement of the parties.

Tenant will lease the Pro Shop Space to Landlord pursuant to a separate written lease agreement, wherein Tenant will be the landlord and Landlord will be the tenant (the “Pro Shop Space Lease”), and the rent structure in the Pro Shop Space Lease will include the requirement that Landlord pay rent on up to a 25% load factor for common spaces (in addition to the usable portion of the Pro Shop Space) (i.e., common area space such as elevators, corridors, and walkways). The rent structure for the Pro Shop Space Lease will be minimum base rent (“Base Rent”) plus triple net reimbursement for Tenant’s operating expenses allocable to retail space in the hotel on a pro-rata basis, based on the ratio of the Pro Shop Space leased to Landlord, over the total Building space in the Building in which the Pro Shop Space Lease is located. The term of the Pro Shop Space

Lease will be for a minimum ten (10) year term and rent for the Pro Shop Space Lease will commence no later than three (3) months after substantial completion of the Pro Shop Space, or its occupancy, whichever comes first.. Landlord (as tenant under the Pro Shop Space Lease) shall have one (1) option to renew the term of the Pro Shop Space Lease for a period of up to ten (10) years, which option may be exercised by written notice given at least 180 days prior to the then-existing expiration date. The initial rental rate structure (the “Pro Shop Space Rent”) will be negotiated between the parties in good faith and shall be based on Tenant’s budgeted cost estimate (both hard and soft costs) initially, and the negotiation will begin when the drawings and specifications for the hotel are at a 50% Design Development stage. In the event Landlord and Tenant cannot agree to the Pro Shop Space Rent by the time that the Design Development stage is complete, Tenant will propose the terms (including rent) of the Pro Shop Space Lease, and, within 30 days of the Tenant’s proposal, Landlord will elect in writing to accept or reject the proposal.

In the event Landlord accepts the proposal, Landlord and Tenant will execute the Pro Shop Space Lease within 30 days of such acceptance. Tenant will not be required to commence construction of the Pro Shop Space unless the Pro Shop Space Lease is mutually executed, and the same shall occur at least 90 days in advance of the date of commencement of construction of the portion of the hotel in which the Pro Shop is located. Once the Pro Shop Space Lease is executed, when construction is substantially complete, the Pro Shop Space Lease will be amended within 30 days of when the actual costs are known to reflect rent based on the actual cost, subject to the terms of this Section 1.05.2.

In the event Landlord rejects Tenant’s proposal, but wishes to proceed with the Pro Shop Space Lease, the Pro Shop Space Rent shall be at fair market value for retail space in comparable projects, as determined by a mutually agreed upon appraiser. Landlord and Tenant shall then have ten (10) days (from the date of Landlord’s rejection of Tenant’s proposal) to select one neutral real estate appraiser to determine the fair market value of rent for the Pro Shop Space. All appraisers selected or appointed shall be a member of the American Institute of Real Estate Appraisers (“M.A.I.”) with at least ten (10) years’ experience appraising commercial mixed use golf and hotel resort properties in the commercial leasing market in which the Premises are located, but if there are limited comparables available in such market, then in other northwest markets where similar developments are located. The appraiser appointed shall determine the fair market rental value for the Premises within twenty (20) days of appointment, which determination shall be final, conclusive, and binding upon both Landlord and Tenant; provided, however, because the costs of construction are only estimated at the time this analysis is made, then, the Base Rent shall be adjusted within 30 days of when the actual construction costs are known (if Landlord or Tenant elects not to reimburse construction costs in excess of the Construction Allowance as provided above), and the appointed appraiser will make the adjustment based on the reasonable cost submissions received from the Tenant and such adjustment shall be final, conclusive and binding upon the parties, and the Pro Shop Space Rent shall be set accordingly, with an appropriate market escalation for the term. The appraiser’s fees and expenses shall be shared equally between the parties.

If Landlord and Tenant cannot mutually agree upon a single appraiser, then either party may give the other party written notice that it has selected and appointed an M.A.I. appraiser, complete with the name, address, and other identifying information about the appraiser. The party receiving such

notice shall then have ten (10) days to select and appoint its own M.A.I. appraiser and respond by giving written notice to the other party, complete with the name, address, and other identifying information about the appraiser. If, however, the responding party fails to select and appoint an appraiser and give notice to the other party within ten (10) days, the determination of the appraiser first appointed shall be final, conclusive and binding upon both Landlord and Tenant; provided, however, because the costs of construction are only estimated at the time the analysis is made, the Base Rent shall be adjusted within 30 days of when the actual construction costs are known as set forth above. The appraiser's fees and expenses shall be shared equally between the parties.

The appraisers appointed shall proceed to determine fair market rental value including Base Rent and escalation within twenty (20) days following their appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant; provided, however, because the costs of construction are only going to be estimated at the time the analysis is made, then, the Base Rent shall be adjusted within 30 days of when the actual construction costs are known, and the appointed appraisers will make the adjustment based on the cost submissions received from the Tenant and comments submitted by Landlord as set forth above.

If the two appraisers should fail to agree on the fair market rental value, but the difference in their conclusions as to fair market rental value is five percent (5%) or less of the lower of the two appraisals, then the fair market rental value shall be deemed to be the average of the two conclusions, and Base Rent shall be set accordingly for the term; provided, however, because the costs of construction are only going to be estimated at the time this analysis is made, then, the Base Rent shall be adjusted within 30 days of when the actual construction costs are known as provided above.

If the two appraisers should fail to agree on the fair market rental value, and the difference between the two appraisals exceeds five percent (5%) of the lower of the two appraisals, then the two appraisers shall appoint a third neutral M.A.I.-qualified appraiser. If they fail to agree on a third appraiser within ten (10) days after their individual determination of the fair market rental value, either party may apply to the courts for the county in which the Premises are located, requesting the appointment of a the third neutral M.A.I.-qualified appraiser. The third appraiser shall promptly determine the fair market rental value of the Premises subject to the required adjustments described above. The parties shall then take the average of the two appraisals that are closest in value, which shall then constitute the fair market rental value; provided, however, that Tenant may be excused from the obligation to construct the Pro Shop Space if the value will result in a net loss to Tenant on its anticipated investment or actual investment, as Tenant can reasonably demonstrate. Landlord may also elect not to proceed with the Pro Shop Space Lease if the results of any determination of fair market rent are not reasonably acceptable to Landlord. In that event, Landlord may construct its own Pro Shop Space elsewhere on Landlord's property, but Tenant shall permit Landlord's Golf Course invitees and guests ingress and egress through the hotel. Subject to said exception, the third appraiser's determination shall be final, conclusive and binding upon both parties; and Base Rent shall be set accordingly for the term, with an appropriate escalation for the term. Each party shall pay the fees and expenses for its own appraiser. In the event a third appraiser must be appointed, his or her fees and expenses shall be borne equally by the parties.

During the first ten (10) years of the Pro Shop Space Lease, Landlord shall have an option to purchase the Improvements referred to herein as the Pro Shop Space, provided the same can be done in compliance with any applicable land use and zoning laws, , the Pro Shop Space may be converted into a condominium form of ownership to facilitate Landlord's purchase of the Pro Shop Space by the Landlord, which may include any necessary easements for ingress and egress to the Pro Shop Space as reasonably required for access to and from the Pro Shop Space to any public street or to the Golf Course. The purchase price will be at a price and terms to be mutually agreed to by the Parties (provided, however, that if Landlord and Tenant cannot agree on the purchase price for the Pro Shop Space, then such purchase price may at either party's election be determined by arbitration in accordance with the same procedure set forth above). Landlord and Tenant will use commercially reasonable efforts to create condominium documents reasonable satisfactory to Landlord and Tenant to create the Pro Shop as a separate ownership unit and Landlord will pay all reasonable expenses involved in the transaction, including but not limited to the cost of any condominium declaration and related covenants, easements, survey map and plans, recording expenses, taxes that may be due for any proprietary use of the Pro Shop Space, excise tax on the transfer, title expenses including any subdivision guarantee, financing costs, inspections, studies, reports and any other expenses related to the transaction, including attorneys' fees and costs of Tenant. Notwithstanding the foregoing, any implied condominium warranties of quality will be waived and the condominium declaration will reserve expressly for the Tenant, all declarant rights available to it by law or otherwise, and Tenant will initially control the association, including the board structure and total allocated votes. Any disputes not otherwise resolved by the appraisers shall be determined by arbitration as set forth in Section 16.

1.05.3 Outdoor Amenities: Public Plaza, Fire Access Road, and 9<sup>th</sup> Tee Box. A portion of the Chambers Creek Properties adjacent to, but not a part of the Property, and as shown on Exhibit F will be improved with a public plaza/small amphitheater to be completed on or about the same time as the hotel portion of the Project, as an enhanced public amenity (the "Public Amenity"), which Public Amenity shall be constructed by Tenant at no cost to Landlord. The plans and specifications for the Public Amenity shall be subject to Landlord's approval as provided in Section 4.04 below. Landlord hereby grants to Tenant a license for construction of the Public Amenity and a license for use thereof during the Term of the Lease as provided in this Section, at no additional cost. During the Term of this Lease the Public Amenity will be open to the public at regular park hours as established from time to time by Landlord and accessible from the walking trail; provided, however, that Tenant shall have the right to reserve for its exclusive use, the Public Amenity for private events for up to 90 partial or full days in each calendar year. With not less than 180 days prior written notice to Tenant, Landlord may reserve the amphitheater portion of the Public Amenity for public events, such as a major golf tournament. Tenant's use of the Public Amenity shall be predominantly on summer weekends. The public use will be subject to reasonable rules of use established by Landlord. Tenant may use the Public Amenity as outlined herein without payment of additional Rent, except that revenues for food, beverage, and sales derived by Tenant associated with the use of the Public Amenity shall be included in Gross Revenue for purposes of computing Percentage Rent under Section 2.03. Landlord shall be responsible for maintenance and repair of the Public Amenity except to the extent required as a result of Tenant's use, which shall be the responsibility of Tenant.

In the event Tenant is required by the City of University Place to put a fire access road outside of the boundaries of the Property, Landlord will grant a license to Tenant to complete that work at Tenant's sole cost and expense, and no additional Rent shall be payable in connection with such license. In the event Landlord chooses to enhance the fire access road to make it a part of the Golf Course or Chambers Creek Park trail system, Landlord shall specify the Plans and Specifications for such enhancement and Tenant shall construct said enhancement at its cost and expense and Landlord shall thereafter reimburse Tenant for Tenant's reasonable costs actually incurred in connection with construction of the enhancement as provided in reasonably detailed documentation to be provided by Tenant to Landlord. In addition, it is anticipated that construction of the Public Amenity will require moving and replacing the 9<sup>th</sup> tee box of the Golf Course. Landlord will manage and complete this work and shall use commercial reasonable efforts to minimize any unreasonable interference with Tenant's development schedule for the Project. The reasonable and necessary costs of the 9<sup>th</sup> tee box work will be reimbursed by Tenant to the Landlord as a rent credit from the Pro Shop Space Rent, up to a maximum of \$50,000, with costs to be reasonably detailed and documented by Landlord. The Public Amenity and the fire access road shall be subject to the Plans and Specifications approval process in Section 4.04. Any disputes regarding this Section shall be resolved by arbitration as provided in Section 16.

1.05.4 Removal of Temporary Facilities. Except as otherwise permitted by Section 18.07, Landlord shall remove all temporary facilities, the existing pro shop, event tent, storage tent, and restaurant on the Property down to the foundations prior to the Commencement Date. Tenant shall give Landlord 90 days' prior written notice that such facilities need to be removed as a result of Tenant's construction schedule. Upon receipt of such notice, Landlord shall elect in writing and deliver to Tenant within five (5) days after receipt of the Tenant Notice, whether it shall perform the work to remove the temporary facilities (the "Demo Work") or whether it will require Tenant to do so (the "Landlord Notice"). If Landlord provides the Landlord Notice electing that Tenant perform the Demo Work Tenant shall perform such Demo Work and Landlord will reimburse the reasonable cost of such Demo Work within 30 days of receipt of the expense thereof. In the event Landlord elects to perform the Demo Work itself, but fails to do so within 90 days of the Landlord Notice, Tenant has the option to perform the Demo Work and Landlord will reimburse Tenant for the reasonable cost of such work. The Commencement Date shall thereafter be determined in accordance with Section 4.02.

1.06 Option to Extend. Tenant shall have the option to extend the Term of this lease for five (5) successive additional periods ("Renewal Periods" or "Extended Term") of ten (10) years each upon all the terms and conditions herein except Minimum Rent which shall be increased as provided in Section 2.02.2 below. It is the intent of the parties that the Renewal Period or Extended Term, notwithstanding the terminology used herein, shall be treated as a continuation of this Lease and not as a new or separate lease. These options may be exercised by Tenant at any time prior to one calendar year before expiration of the Initial Term or the then Renewal Period in effect by notice in writing to Landlord and if not so exercised (time being of the essence) Landlord shall give Tenant a 30-day written notice that its right to renew will expire at the end of a 30-day period. If, at the end of that 30-day period, Tenant has not renewed, this option shall thereupon expire as to all successive Renewal Periods and be of no further force or effect provided, however, that these options may be exercised by any Leasehold Mortgagee and these options shall continue for any such Leasehold Mortgagee until thirty (30) days after the Leasehold Mortgagee has received notice

in writing from Landlord stating that Tenant has failed to exercise this option within the time herein provided, and such Leasehold Mortgagee shall have the right to exercise this option on behalf of Tenant by written notice to Landlord within such 30-day period. Upon exercise of this option, Landlord and Tenant shall prepare a notice thereof in recordable form and cause the same to be recorded in the then applicable recording office of Pierce County, State of Washington. Upon exercise of this option, "Term" as used herein shall include the exercised Renewal Periods.

## SECTION 2 RENTAL

2.01 Definitions. Capitalized terms used in this Lease shall have the following meanings:

2.01.1 "Lease Year" shall mean the calendar year or any portion of a calendar year during the Term and "Month" shall mean each calendar month.

2.01.2 "Affiliate" of any party shall mean any other party controlling, controlled by, or under common control with the party, including any Affiliate of an Affiliate. "Control" shall have the meaning set forth in the Securities Act of 1933 and the rules and regulations promulgated thereunder in effect as of the Effective Date.

2.01.3 "Gross Revenue" shall mean all gross revenues received by Tenant or any Affiliate of Tenant or their agents or managers with respect to gross income (including both cash and credit transactions) derived directly or indirectly from operation of the Premises and the Project, including but not limited to rents, room charges, sales of food and beverages, facility rentals, vending machines revenues, parking revenues, telephone, facsimile, and internet services, in-room video, gaming and gaming activities or devices (to the extent permitted by law and approved by Landlord), cancellation fees, retail sales, proceeds of business interruption and loss of rents insurance, the fair market value of any non-cash consideration, and subtenant rentals or reimbursements with respect to operation of the Premises, but excluding ("Exclusions"):

(a) Sale and refinancing proceeds and insurance and other receipts from claims for losses or damages to the Premises except proceeds from business interruption and loss of rents insurance and as otherwise provided herein;

(b) Proceeds from condemnation or settlements in lieu thereof except for proceeds attributable to a temporary taking pursuant to Section 9.05 hereof;

(c) Receipts from subtenants, licensees and concessionaires as reimbursement of costs incurred for capital improvements paid for by Tenant separately from the initial construction of the Project, such as reasonable capitalized cost reimbursement by subtenants for tenant improvements provided by Tenant on space leased to such subtenant;

(d) Refundable subtenant security and other refundable deposits or refundable fees to the extent such deposits or refundable fees have not been applied;

- (e) Management fees paid to any Affiliate of Tenant or Tenant provided such fees shall not exceed market rate fees generally paid to property managers of similar buildings in the Seattle-Tacoma, Washington metropolitan area;
- (f) Gratuities, tips, and service charges which are collected from customers and paid to Project employees;
- (g) The discounted portion of the price of goods sold or meals provided to employees at a discount to the extent such discount is included in Gross Revenue;
- (h) The discounted portion of guest discounts, comps, or promotions on all or any portion of a meal ticket to a customer to the extent the discounted portion is included in Gross Revenue;
- (i) Federal, State and local room, sales, use, hotel occupancy, gross receipts, admission or tourist taxes or similar impositions collected from customers of the Project and required to be held and remitted to any governmental taxing authority, such as sales tax on the sale of goods, services, and hotel rooms;
- (j) Credit card transaction and discount fees paid by Tenant to credit card processors to the extent such fees are included in the calculation of Gross Revenue;
- (k) Any and all gross income of Subtenants who are not affiliated with Tenant; and
- (l) Gross Revenue earned from food and beverage services to all non-public catered events occurring on Chambers Creek Properties per Section 20.11(f).

If any portion of the Premises is occupied by or leased to Tenant or an Affiliate of Tenant for no charge or at rates less than normal market rates charged to unrelated third parties in comparable buildings in the Seattle-Tacoma, Washington metropolitan area, Gross Revenue shall be adjusted to reflect rents at normal market rates for such space, provided no such adjustment shall be made for a property management office containing not more than one thousand (1,000) rentable square feet occupied by Tenant or an Affiliate of Tenant.

2.02 Rent. Tenant covenants and agrees to pay Landlord the following as rent hereunder (collectively the "Rent"):

2.02.1 Minimum Rent. Tenant shall pay as Minimum Rent hereunder ("Minimum Rent") the amounts set forth below in equal monthly installments on or before the tenth (10th) day of each Month, subject to Paragraph 2.02.4, commencing on the Commencement Date:

Period	Annual Minimum Rent
Years 1 through 8	\$450,000.00
Years 9 through 12	\$472,500.00
Years 13 through 16	\$496,125.00
Years 17 through 20	\$520,931.25
Years 21 through 24	\$546,977.81

Years 25 through 28	\$574,326.70
Years 29 through 32	\$603,043.04
Years 33 through 36	\$633,195.19
Years 37 through 40	\$664,854.95
Years 41 through 44	\$698,097.70
Years 45 through 48	\$733,002.58
Years 49 through 50	\$769,652.71

2.02.2 In the event that the Lease is renewed for one or more Extended Terms, the Minimum Rent shall be increased on the fifty-second (52<sup>nd</sup>) anniversary of the original Commencement Date and every fourth year thereafter by multiplying the Minimum Rent then in effect by 1.05, but in no event will the annual Minimum Rent during the Extended Term exceed the Index increase (if any) from the Commencement Date to the date of determination. Provided, however, in subsequent years, at such time as the Index increase exceeds the scheduled increase, then Tenant’s Minimum Rent shall revert back to the scheduled increase. Index as used above means the Index as defined in Section 21.20.

2.02.3 Rent During Construction Period Prior to Commencement Date. Notwithstanding any provision herein to the contrary, between the Effective Date and the Commencement Date, Tenant shall pay no Minimum Rent or Percentage Rent, but shall be liable for payment of all charges for utilities it utilizes during that period.

2.02.4 Rent During Construction Period beginning on the Commencement Date as defined in Section 4.02. Notwithstanding anything contained herein to the contrary, Tenant’s Minimum Rent between the Commencement Date and December 31, 2022, shall be limited to Twenty-Five Thousand Dollars (\$25,000.000) per month. Upon the expiration of this limitation on Minimum Rent, Tenant shall pay Minimum Rent and Percentage Rent pursuant to Sections 2.02.1 and 2.03.

2.03 Percentage Rent. Commencing on the fourth (4<sup>th</sup>) anniversary of the receipt of a temporary or permanent Certificate of Occupancy for the hotel portion of the Project, but no later than the beginning of the seventh full calendar year following the Commencement Date, Tenant shall pay to Landlord percentage rent (“Percentage Rent”) in addition to the Minimum Rent outlined in Section 2.02.1. Percentage Rent shall be an amount, with respect to each Lease Year, by which the amount pursuant to the following formula exceeds the Minimum Rent for such Lease Year: three percent (3%) of the first \$15 million of Gross Revenue and four percent (4%) of any Gross Revenue over \$15 million as Gross Revenue is defined in Section 2.01.3. Provided, however, no Percentage Rent shall be due to the extent that payment of Percentage Rent would result in an Operating Loss (as defined below) for the Tenant in any calendar year. In such event, Tenant shall provide to Landlord adequate documentation satisfactory to Landlord to substantiate the Percentage Rent waiver. For purposes of this section, “Operating Loss” shall mean Gross Revenue (as defined in Section 2.01.3) is less than Operating Expenses. For purposes of this section, “Operating Expenses” shall mean customary and reasonable operating expenses of Tenant with respect to the Premises (computed on an accrual basis), including, without limitation, the actual property management fees, real estate taxes or payments in lieu thereof, insurance, utilities, maintenance and repairs, salaries and benefits of employees, Minimum Rent, debt service on any Leasehold Mortgage, and deposits to any FF&E reserve in the amounts provided in

Section 19.03(a) for the Hotel. To the extent any Operating Expense is paid to any partner, member, officer, director, stockholder, shareholder, affiliate, or subsidiary of Tenant, or any affiliated person or subsidiary thereof (collectively” the “Tenant Affiliated Parties”), such Operating Expense shall be deemed the lesser of (1) the actual amount of the Operating Expense paid to any such Tenant Affiliated Party or (2) an assumed amount equal to the amount that would be payable to an unaffiliated and unrelated third party to provide the same item or service. Operating Expenses for purposes of this calculation shall exclude (i) capital expenditures, (ii) income taxes, sales taxes, hotel occupancy taxes and similar taxes or amounts to the extent excluded in the computation of Gross Revenue, and (iii) depreciation, amortization, and other non-cash expenses.

2.03.1 Calculation of Percentage Rent. Percentage Rent shall be calculated on an annualized calendar year, i.e. Lease Year, basis, or pro rata portion thereof, and deficits or losses shall not be carried forward from one calendar year to the next calendar year in making such computation. Tenant shall provide Landlord by February 1 of each year an estimated pro forma statement for that Lease Year showing the expected Gross Revenue, and the amount of expected Percentage Rent calculated in good faith on the basis of information then available to Tenant. Within thirty (30) days following the end of each calendar quarter during the Term hereof, Tenant shall furnish to Landlord a statement of operations for the preceding calendar quarter, including all items of revenue and expenses required to determine Percentage Rent payable hereunder.

2.03.2 Payment of Percentage Rent. Tenant shall pay to Landlord on or before the 30th day after the end of each calendar quarter during the Term of this Lease an amount equal to the estimated Percentage Rent for such calendar quarter based on the quarterly operating statements. The payment for the final calendar quarter of each year shall be increased or decreased, as appropriate, to reflect the calculation of Percentage Rent on an annual Lease Year basis based on the estimated annual statement.

2.03.3 Annual Statement. Tenant shall furnish to Landlord not later than May 30 of each year an annual review quality statement (“Annual Statement”) prepared by a firm of independent certified public accountants approved in writing by Landlord (which approval shall not be unreasonably withheld) and who maintain an office and regularly do business in the State of Washington, showing accurately the Gross Revenues defined in Section 2.01.03 for the preceding calendar year such detail as reasonably necessary to establish the calculation of Percentage Rent for such Lease Year. In the event Tenant has paid more than the Percentage Rent due for the preceding year, the amount of the overpayment shall be deducted by Tenant from the next succeeding payment or payments of Minimum or Percentage Rent due under this Lease. In the event Tenant has paid less than the Percentage Rent due for the preceding Lease year, Tenant shall pay Landlord on or before the tenth (10th) day of the following month the amount of Percentage Rent due for the preceding year.

2.03.4 Audit by Landlord. Tenant shall, upon reasonable notice from Landlord, allow Landlord or Landlord's employees, agents or accountants to examine the books and records and review systems and procedures of Tenant at Landlord's expense, for the purpose of verifying statements furnished or to be furnished pursuant to Sections 2.03.1 and 2.03.3, such examination to be conducted within one (1) year after Landlord's receipt of the Annual Statement (time being of the essence) during

ordinary business hours and in a manner that will not unreasonably interfere with the carrying on of the business of Tenant. Any dispute regarding exclusion or the inclusion of any item in Gross Revenue or determination of Percentage Rent shall be resolved by arbitration in accordance with Section 16 hereof.

2.03.5 Adjustment of Payments. If Landlord's audit thereof shows that the Percentage Rent paid to Landlord was less than the amount due, then Tenant shall pay such deficiency to Landlord within thirty (30) days after the date of such audit. If the payment of Percentage Rent was greater than the amount owing, such excess shall be credited against the next payments of Minimum or Percentage Rent due under this Lease. In the event Landlord's examination shows that Tenant has underpaid the Percentage Rent during any Lease Year by an amount equal to the greater of \$5,000 or five percent (5%) of the total Percentage Rent payable during such Lease Year, Tenant shall promptly pay to Landlord the reasonable expense incurred by Landlord in making such examination.

2.03.6 Maintenance of Books and Records. Tenant shall keep complete books of account and records of all operations in and with respect to the Premises, including specifically the detailed records necessary to establish Gross Income and other facts necessary to establish the amount of Percentage Rent owing hereunder, in accordance with generally accepted accounting principles and applied consistently from year to year. All of the books and records shall be physically located in and kept in Pierce County, Washington, and shall be retained for seven (7) years after the end of the Lease Year to which such records pertain.

2.03.7 Reimbursement of Landlord Expense. Upon the earlier of (a) Tenant receiving a conditional commitment for Leasehold Mortgage financing or (b) the occurrence of the Commencement Date, Tenant shall reimburse Landlord's legal fees in the preparation and administration of this Lease not to exceed \$50,000. Payment of this amount shall be additional Rent. In addition, Tenant shall pay or reimburse to Landlord any escrow, recording and title insurance fees related to this Lease.

### SECTION 3 ASSESSMENTS AND UTILITIES; TAXES; CONTEST OF IMPOSITIONS

3.01 Utilities. Tenant shall pay or cause to be paid when due as additional Rent, and shall indemnify, protect and hold harmless Landlord and the Premises from all charges for public or private utility services to or for the Premises from and after the Effective Date, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telephone service, surface water management, weed control, conservation district assessments, flood control, district assessments, garbage collection and sewage and drainage service.

3.02 Taxes. Tenant shall pay when due as additional Rent each and every one of the following ("Impositions") levied for periods falling from and after the Commencement Date:

(a) All real property taxes or payments in lieu thereof due with respect to the Premises or any portion thereof;

(b) Taxes due or which may be due upon or with respect to the leasehold estate created by this Lease, or the Rents payable or paid by Tenant to Landlord, including any business and occupation and leasehold excise taxes, but excluding any tax measured by net income of Landlord;

(c) All taxes imposed on or with respect to personal property and intangibles located in or used in connection with the Premises;

(d) All assessments and similar charges with respect to the Premises for public improvements or benefits which are assessed from and after the Effective Date; and

(e) All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary, or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time from and after the Commencement Date may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof.

3.02.1 Installments. If by law any Imposition may at the option of the taxpayer be paid in installments, Tenant may exercise such option, and shall pay all such installments (and interest, if any) becoming due from and after the Effective Date as the same become due (including any installment with respect to any assessment which may be payable following the Effective Date) and shall at the end of the Term deposit with Landlord an amount sufficient to pay Tenant's pro rata share of all Impositions for the calendar year in which the Lease terminates. Payments for any partial period covered by this Lease shall be prorated.

3.02.2 Proof of Payment. Tenant shall furnish to Landlord, upon request, for inspection, within thirty (30) days after the date any Imposition would become delinquent (unless being contested in conformity with Section 3.03), official receipts of the appropriate taxing authority or other proof satisfactory to Landlord evidencing the payment of such Imposition.

3.02.3 Certain Assessments. Tenant shall be responsible for all assessments made against the Premises pursuant to any conditions to the building permit that may be imposed by the City of University Place in connection with construction of the Project.

3.03 Permitted Contests. Tenant at its sole cost and expense may by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, or any other lien, encumbrance or charge against the Premises arising from work done or materials provided to or for Tenant, if:

(a) Such proceedings suspend the collection thereof from Landlord, Tenant and the Premises, unless Tenant has furnished security as provided in subparagraph (b) of this Section 3.03;

(b) Tenant shall have furnished such security, if any, as may be required in the proceedings or which will discharge the lien (by substitution or otherwise) against the Premises, or is otherwise reasonably satisfactory to Landlord; and

(c) Tenant shall give Landlord reasonable notice of, and information pertaining to, such contest and regular progress reports with respect thereto. Tenant shall indemnify, protect and hold harmless Landlord and the Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses related thereto.

#### SECTION 4 CONSTRUCTION OF IMPROVEMENTS

4.01 Acceptance of Premises. Tenant has inspected the Property and the Premises and will accept the same on the Commencement Date in their present condition.

4.02 Commencement Date. The Commencement Date shall be 75 days after Tenant's notice to Landlord pursuant to Section 1.05.4 requiring the temporary facilities be removed. In the event Landlord or Tenant, as provided in Section 1.05.4, fails to substantially complete removal of the temporary facilities with that 90-day period, the Commencement Date shall be extended day for day until the removal of the temporary facilities is substantially completed. In no event shall the Commencement Date be later than December 31, 2019, unless after Landlord elects to perform the Demo Work the delay is caused by Landlord's failure to remove the temporary facilities, i.e. the Demo Work, outlined in Section 1.05.4. Following the Commencement Date, Tenant shall diligently proceed with completion of the Improvements substantially in accordance with the Plans and Specifications approved by Landlord under Section 4.04 hereof and otherwise in accordance with and subject to the terms of this Lease, subject to delays beyond the reasonable control of Tenant after the exercise of due diligence. In the event University Place has not granted approvals and permits necessary to proceed with construction as anticipated by the parties by December 31, 2019, but reasonable progress has been made on the Project, Tenant may ask, and Landlord may approve, an extension of time of the Commencement Date. Such approval shall not be unreasonably withheld. In any event, Tenant must make timely application for permits and approvals and use all reasonable diligence in its efforts to get all necessary approvals and permits.

4.02.1 Preconstruction Activities. The following preconstruction activities shall not be considered commencement of construction: (i) relocation of utilities and provision of temporary power to the Property; (ii) transplanting trees; and (iii) soils studies and survey work. If Tenant or Tenant's contractor, architects, engineers, and/or consultants conduct any activity on the Property prior to the Commencement Date, Tenant shall pay or cause to be paid all utilities consumed or used as a result of such activities and shall provide to Landlord, at Tenant's expense, the liability insurance required under Section 8.01.2 hereof, and shall hold Landlord harmless under the terms of Section 4.06 of this Lease, with respect to such activities.

4.03 The Project. Tenant shall construct the Project as a multi-story first-class hotel and resort together with parking areas and facilities for related purposes all as provided in the Plans and Specifications approved by Landlord under Section 4.04 hereof. All construction shall be performed in a good and workmanlike manner using only first-class materials. The construction contract for the Project shall provide for a guaranteed maximum price and if the contractor is not a contractor reasonably approved by Landlord, such contractor shall provide for a payment and performance bond in the amount of the contract naming Landlord as a dual obligee or as otherwise

specified by Landlord. Such contract shall be collaterally assignable by Tenant to Landlord (subject to the rights of any Leasehold Mortgagee).

#### 4.04 Approval of Plans.

(a) Construction of the Improvements described in Sections 1.05 and 4.03 hereof, the Pro Shop Space, the Public Amenity, and any other improvements to be constructed by Tenant on or adjacent to the Property, or any modification, replacement, alteration, reconstruction, or addition thereto which materially affects public space of the improvements (e.g., the main lobby, parking, main lobby elevator corridors, loading areas, vehicular access areas and other building space open to the public), the exterior of the buildings, or the first-class quality of the Project shall be in accordance with plans and specifications previously approved by Landlord (the "Plans and Specifications"). No improvement for which Landlord's approval is required shall be constructed on the Property unless the Plans and Specifications therefor have been reviewed and approved by Landlord. Landlord shall be invited to attend design meetings as an observer to allow sufficient familiarity with the drawings to facilitate Landlord's review in accordance with the following schedule:

(i) Schematic drawings and preliminary specifications for the Project shall be provided to Landlord for review which review shall be completed within ten (10) working days after submittal.

(ii) Design development drawings for the Project shall be provided to Landlord for review which review shall be completed within ten (10) working days after submittal.

(iii) Design development and schematic drawings shall conform with the scope of work for such drawings as established by the standards of the American Institute of Architects.

(b) Landlord's approval shall not be required for any further drawings, plans or specifications for construction of the Project or any modification, replacement, alteration, or addition thereto, unless there is a material change in the Plans and Specifications previously approved by Landlord. Any material changes shall be reviewed by Landlord within ten (10) working days after submittal. A change shall be deemed "material" only if the change results in a reduction in the cost of the work that exceeds \$200,000, such change materially and adversely affects Landlord's rights or obligations under this Lease, or the quality or value of the Improvements or any part thereof is materially reduced or diminished.

(c) Approvals by Landlord under this Section 4.04 shall not be unreasonably withheld or delayed except for any material change in use of the Premises. Approvals shall be deemed given unless Landlord shall notify Tenant in writing stating the reasons for withholding such approval within (10) working days after Tenant's submittal. Tenant shall, upon receipt of Landlord's reasonable objections, modify the Plans and Specifications submitted, taking into account Landlord's objections, and resubmit such revised Plans and Specifications for approval by Landlord in accordance with this Section 4.04. Such process of submittal, review and comment by Landlord, and resubmittal by Tenant shall continue until such time as the Plans and Specifications have been approved by Landlord. Any dispute regarding approval of Plans and Specifications shall be resolved by arbitration in accordance with Section 16.

For purposes of approvals required in this Section the Landlord's representative shall be the County Executive or his or her designee as provided in Section 21.19.

4.05 Approval of Construction. Prior to commencement of construction of the Project, Tenant shall furnish to Landlord for its approval, such approval not to be unreasonably withheld or delayed:

- (a) A copy of the building and demolition permits and the plans and specifications approved by the City of University Place and by the Leasehold Mortgagee;
- (b) A copy of the development and construction budget for the Project in form approved by the Leasehold Mortgagee itemizing all of the hard and soft costs of the Project;
- (c) Evidence that Tenant has sufficient funds available from a Leasehold Mortgagee and from equity commitments to fund the development and construction budget in subsection (b) above; and
- (d) A copy of the proposed management agreement for the hotel portion of the Project.

Such items shall be deemed approved unless Landlord has given Tenant written notice of its disapproval thereof within fifteen (15) days of Landlord's receipt stating the reasons for such disapproval. Any dispute regarding approval of such items shall be resolved by arbitration in accordance with Section 16. For purposes of Landlord approvals required in this Section, the Landlord's representative shall be the County Executive or his or her designee as provided in Section 21.19.

4.06 Hold Harmless. While the Premises is subject to the Lease, Tenant shall indemnify, protect, defend and hold harmless Landlord from and against all claims and liabilities arising by virtue of or relating to construction of the Improvements, repairs made at any time to the Premises including repairs, restoration and rebuilding, and any accident, injury, or damage to person or property in or about the Premises. Landlord's approval of any Plans and Specifications shall not render Landlord liable therefore and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims arising out of or from the use of any Plans and Specifications or out of Tenant's control, possession or use of the Premises, or out of Tenant's activities with respect to the Premises. If Tenant is required to defend any action or proceeding pursuant to this Section to which action or proceeding Landlord is made a party, Landlord shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Landlord is indemnified under this Section, Tenant shall bear the cost of Landlord's defense, including reasonable attorney's fees; provided, however, Tenant shall be liable for attorney's fees of separate counsel selected by Tenant to defend Landlord and reasonably approved by Landlord only if single legal counsel (or a single firm of legal counsel) cannot represent both Landlord and Tenant without there arising an actual conflict of interest and only for fees and costs actually and reasonably incurred.

4.07 Permits; Compliance With Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction and use of the Improvements and any subsequent

Improvements, repairs, replacements or renewals to the Premises shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Tenant. Landlord agrees to cooperate reasonably with Tenant and the City of University Place at Tenant's sole cost and expense. Landlord's obligation to cooperate includes the obligation to consent to and take the appropriate actions to fulfill the conditions which the City of University place may impose as a condition to the issuance of a building permit for the Improvements, provided such cooperation and actions to fulfill such conditions shall be at no material expense to Landlord, unless Landlord specifically agrees in writing to pay such expense, which will be reimbursed as provided below, and shall not materially impair the use or value of the property owned by Landlord adjacent to the Property including the Golf Course.

Tenant shall cause all work on the Premises from and after the Effective Date to be performed in accordance with the Plans and Specifications and all applicable laws and all lawful directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction all at Tenant's expense. Notwithstanding the foregoing, Landlord will pay for reasonable costs of any additional work requested by Landlord related to utility line relocation not included in the description of the Project set forth in Section 1.05 above or the Plans and Specifications; *provided, however*, that the foregoing obligation of Landlord to pay for utility line relocation shall not apply to relocation of any utility or irrigation lines serving the Golf Course to the extent such relocation is necessitated by Tenant's construction of the Project.

Notwithstanding any other terms of this section, each party's obligation to reimburse expenses under this section, shall be limited to reasonable and necessary third party expenses approved by the other party in writing in advance of the expenditure, and shall not include either party's staff, employee, or administrative costs.

4.08 Landlord Cooperation. Landlord shall reasonably cooperate with Tenant to facilitate Tenant's construction, maintenance and operation of the Premises from and after the Effective Date and throughout the Term, including without limitation Landlord's executing as owner of the Property documents related to the granting of entitlements, easements, zoning changes, or similar matters affecting the Premises, all of which must be reasonably satisfactory in form and content to Landlord, at no material cost to Landlord, and must comply with the operation and use covenants herein.

4.09 Ownership of Improvements. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of Landlord, as provided in Section 4.10 below.

4.10 Surrender Upon Termination. Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant's personal property and equipment unattached to the Improvements or the Property (excluding such equipment as is necessary for the proper operation of the Improvements and any equipment the removal of which would cause Landlord to be in breach of the condition of

any tenancy of any subtenant within the Improvements, all of which shall become the property of the Landlord) and shall surrender the Premises to Landlord in good and tenantable condition, and any plans and specifications which Tenant then possesses; provided, however, that Landlord may acquire any such personal property or equipment that Tenant has the right to remove hereunder by payment to Tenant of an amount equal to the then fair market value of such property. Tenant shall not remove any appurtenant fixtures, machinery or equipment, or any additions to or replacements thereof made during the Term of this Lease without replacing such items with similar items or similar function, it being the intent of the parties that Landlord shall receive operating Buildings as described in Section 1.05 except for damage or destruction under Section 7 or condemnation under Section 9 and except for reasonable wear and tear through the Term of the Lease, all which Tenant is not required to repair or reconstruct. All operating manuals, computer programs and software, and other personal property, tangible or intangible, necessary to operation of the Buildings or the systems within the Buildings, excluding proprietary software, manuals or equipment of any manager or franchisor, shall be delivered to Landlord upon expiration or sooner termination of the Lease without cost to Landlord. Tenant's personal property and equipment not removed by Tenant at expiration or other termination of the Lease shall be deemed abandoned and Landlord may dispose of such property in accordance with the law governing abandoned property in effect at the time of abandonment. At the request of Landlord, Tenant shall assign to Landlord Tenant's interest in any licenses, franchise rights and subleases of any portion or the Property with a term continuing beyond the Term of this Lease (but the foregoing shall not be construed as the consent of Landlord to any such sublease). Notwithstanding anything to the contrary, Landlord may, in its sole discretion, grant Tenant an extension of the Term as Landlord may approve.

4.11 As-Built Drawings. Upon completion of the Improvements, Tenant shall deliver to Landlord one copy of an updated record set of drawings of the Improvements and an as-built survey.

4.12 Progress Reports. From and after the Effective Date of this Lease and until the Improvements are completed. Tenant shall provide to Landlord monthly progress reports consisting of (i) the then current construction schedule prepared by Tenant and/or its general contractor; (ii) a leasing status report including the basic terms of all executed leases and the status of all pending lease negotiations and prospects listed by category, and without the identity of any such prospects; and (iii) notice of any laborer's or materialmen's liens filed against the Premises.

4.13 Redevelopment. If at any time during the Term, as the same may be extended, Tenant requests Landlord's approval of a substantial change in use, in whole or in part, of the Premises, or a substantial redevelopment or expansion of the Improvements estimated to cost more than Five Hundred Thousand Dollars (\$500,000.00) as adjusted pursuant to Section 21.20 hereof (the "Proposal"), Tenant shall provide to Landlord in writing a financial analysis of such Proposal, including a development budget and financial operating projections, and outline plans and specifications as relevant to the Proposal, together with assurances of Tenant's financial capacity to complete the Proposal as described. Upon receipt thereof, Landlord shall not unreasonably withhold or delay approval thereof; provided, however it shall not be unreasonable for Landlord to withhold approval if the Proposal would materially reduce the value or utility of the Premises or materially change the use of the Premises; or to require insurance, bonds, title insurance, inspections and other requirements applicable to the original construction of the Premises hereunder as conditions to such approval.

4.14 Utility Access. Tenant shall be responsible for all cost and expense in bringing utilities to the Premises, including water, sewer, electric, natural gas, cable and internet. To the extent reasonably necessary, and at no cost to Landlord, Landlord will grant utility easements to the Premises in favor of utility providers, the location of which shall be selected by Landlord.

## SECTION 5 NO FEE SUBORDINATION

5.01 No Subordination of the Fee. Landlord and Tenant contemplate that Tenant will obtain construction and permanent financing from a bank or other lending institution secured by one or more Leasehold Mortgages pursuant to Section 6 hereof. Landlord will not subordinate or subject its fee interest in the Property to Tenant's financing.

## SECTION 6 LEASEHOLD MORTGAGES

6.01 Leasehold Mortgages Authorized.

6.01.1 Leasehold Mortgages. On one or more occasions Tenant may mortgage or otherwise encumber Tenant's Leasehold Estate to an Institutional Investor under one or more Leasehold Mortgages and assign this Lease as security for such Leasehold Mortgage.

6.01.2 Fee Mortgages. Tenant shall not place or create any mortgage, deed of trust, or other lien or encumbrance affecting Landlord's fee interest in the Property.

6.02.1 Notice to Landlord. Each time Tenant shall mortgage Tenant's Leasehold Estate to an Institutional Investor, the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. Following receipt of such notice by Landlord, the provisions of this Section 6 shall apply in respect to such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an Assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to Landlord.

6.02.2 Receipt. Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by Section 6.02.1 above acknowledge in writing receipt of such communication as constituting the notice provided for by Section 6.02.1 above, or in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 6.02.1 and specify the basis of such rejection.

6.02.3 Documents. After Landlord has received the notice provided for by Section 6.02.1 above, Tenant shall with reasonable promptness provide Landlord with copies of the note, construction loan agreement, permanent loan agreement or other obligations secured by such Leasehold Mortgage and of any other documents pertinent to the Leasehold Mortgage. Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or

supplement to such instruments. All documents shall be accompanied by a certification by Tenant that such documents are true and correct copies of the originals. Copies of all recorded documents shall show the recording data.

### 6.03 Definitions.

6.03.1 "Leasehold Estate" shall mean the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

6.03.2 The term "Institutional Investor" as used in this Lease shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, state or local governmental authority, real estate investment trust, pension fund, commercial mortgage-backed security trustee and other investors of substance that are actively engaged in commercial real estate financing, and that have assets in excess of one billion dollars (\$1,000,000,000) at the time the Leasehold Mortgage loan is made, and subsidiaries of any of the foregoing that are regularly engaged in the business of making real estate mortgage loans or other investments in commercial real estate. Landlord agrees to waive the requirement of one billion dollars (\$1,000,000,000) in assets upon verification suitable to Landlord that the Institutional Investor has the financial capability to fund the amounts secured by the Leasehold Mortgage.

6.03.3 The term "Leasehold Mortgage" as used in this Lease shall include a mortgage, a deed of trust, and any other security instrument or instruments by which Tenant's Leasehold Estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation.

6.03.4 The term "Foreclosure" as used in this lease with respect to a Leasehold Mortgage shall include a trustee's sale pursuant to a deed of trust, a judicial sale and other similar realization proceedings. "Realization Proceedings" shall mean Foreclosure or any deed or assignment in lieu of Foreclosure.

6.03.5 The term "Leasehold Mortgagee" as used in this lease shall refer to a holder of a Leasehold Mortgage who has given notice to Landlord and whose notice has been received by Landlord as provided in Section 6.02.

6.04 Default Notice. Landlord, upon providing Tenant any notice of (i) default under this Lease, (ii) a termination of this Lease, or (iii) a matter upon which Landlord may predicate or claim a default, shall at the same time provide a copy of such notice to every Leasehold Mortgagee. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has transmitted to every Leasehold Mortgagee of which Landlord has received notice pursuant to Section 6.02. After such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the giving of such notice upon it for remedying any default or causing the same to be remedied as is given Tenant after the giving of such notice to Tenant plus, in each instance, the additional periods of time specified in Sections 6.06 and 6.07 to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry

upon the Premises by the Leasehold Mortgagee for such purpose. Performance by any Leasehold Mortgagee hereunder shall not cause it to be treated as a mortgagee in possession of the Premises or otherwise cause it to be deemed in possession of the Premises or liable under this Lease.

#### 6.05 Notice to Leasehold Mortgagee.

6.05.1 Notice. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur that entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default, Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate ("Termination Notice") at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent or a sum of money to Landlord, and at least sixty (60) days in advance of the proposed effective date of such termination in the event of any other default. The provisions of Sections 6.06 and 6.07 below of this Article shall apply if, during such thirty- or sixty-day period, any Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Termination Notice, and

(b) Pay or cause to be paid all Minimum Rent, Percentage Rent and other payments then due and in arrears as specified in the Termination Notice and that may become due during such thirty- or sixty-day period, and further provided that with respect to any Percentage Rent or other amounts, to the extent any of the same are not then reasonably determinable, or to the extent the same are the subject of a bona fide dispute, such Leasehold Mortgagee shall undertake in writing to and shall thereafter pay the same promptly upon the determination of the amount thereof or resolution of such dispute, and the parties shall cooperate to make such determination or resolution promptly in accordance with this Lease; and

(c) Comply or in good faith, with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such thirty or sixty day period to cure or commence to cure any default consisting of (i) Tenant's failure to satisfy and discharge any lien, charge, or encumbrance against the Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee or (ii) non-monetary obligations then in default and not reasonably susceptible to being cured by such Leasehold Mortgagee.

6.05.2 Notice Address. Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Section shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 6.02.1 unless notice of a change of Mortgage ownership has been given to Landlord setting forth the address of the party or parties to whom the Leasehold Mortgage was assigned.

#### 6.06 Procedure on Default.

6.06.1 Extension. If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 6.05 of

this Section, the specified date for the termination of this Lease as fixed by Landlord in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(a) Pay or cause to be paid the Minimum Rent, Percentage Rent and other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and (ii) non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee; and

(b) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by Foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence.

6.06.2 Further Extension. If at the end of such six (6) month period such Leasehold Mortgagee is complying with this Lease, it shall not then terminate; and the time for completion by such Leasehold Mortgagee of proceedings pursuant to Section 6.06.1 above shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by Foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 6.06, however, shall be construed to extend this Lease beyond the Term hereof, as may be extended by any options to extend the Term of this Lease properly exercised by Tenant or a Leasehold Mortgagee in accordance with Section 1.06 of this Lease, nor to require a Leasehold Mortgagee to continue such Foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such Foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

6.06.3 Continuation. If a Leasehold Mortgagee is complying with Section 6.06.1, upon the acquisition of Tenant's Estate herein by such Leasehold Mortgagee or its designee or any other purchaser at any Realization Proceeding and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease that is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and that the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

6.06.4 No Assignment. The making of a Leasehold Mortgage as permitted by this Section shall not be deemed to constitute an assignment or transfer of this Lease or of the Leasehold Estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants, or conditions on the part of the Tenant to be performed hereunder. Notwithstanding the foregoing, the purchaser at any sale of this Lease and of the Leasehold Estate hereby created in any proceedings for the Foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the

Leasehold Estate hereby created under any instrument of assignment or transfer in lieu of the Foreclosure of any Leasehold Mortgage, or any Leasehold Mortgagee or its nominee or designee who shall acquire this Lease and the leasehold estate created hereby, whether by Foreclosure, assignment in lieu thereof, or otherwise, or pursuant to a New Lease (as hereinafter defined), shall be deemed to be an assignee or transferee within the meaning of this Section 6.06, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the Leasehold Estate. If the Leasehold Mortgagee or its designee shall become the holder of the Leasehold Estate and if the Buildings and Improvements on the Premises shall have been or become materially damaged on, before, or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace, or reconstruct the Buildings or other Improvements (if otherwise required by the terms of this Lease) only to the extent of the net insurance proceeds received by the Leasehold Mortgagee or such designee by reason of such damage. Should such net insurance proceeds be insufficient to repair, replace, or reconstruct the Buildings or other Improvements to the extent required by Section 7.01, and should the Leasehold Mortgagee or such designee choose not to fully reconstruct the Buildings or other Improvements to the extent required by Section 7.01, such failure shall entitle the Landlord to terminate this Lease pursuant to Section 7 hereof, and the net insurance proceeds shall be distributed to the parties as provided in Section 8.07.1

6.06.5 Permitted Transfers. Notwithstanding any other provision of this Lease, any sale of this Lease and of the Leasehold Estate hereby created in any Realization Proceedings shall be deemed to be a permitted sale, transfer, or assignment of this Lease and of the Leasehold Estate hereby created.

6.07 New Lease. In the event of the termination of this Lease as a result of an Event of Default or in connection with any bankruptcy, insolvency or similar proceeding involving Tenant or otherwise, Landlord shall provide each Leasehold Mortgagee with written notice ("New Lease Notice") that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, effective as of the date of termination, at the same Minimum Rent and Percentage Rent, and upon the terms, covenants, and conditions (including all options to renew and rights to a New Lease under this Section 6.07 but excluding requirements that are not applicable or that have already been fulfilled) of this Lease, provided:

6.07.1 Request. Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Landlord's New Lease Notice given pursuant to this Section 6.07.

6.07.2 Payment. Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease, but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees

that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest.

6.07.3 Other Defaults. Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's New Lease Notice and that are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

6.07.4 Priority. Any New Lease made pursuant to this Section 6.07 and any extension of the Term of this Lease exercised by a Leasehold Mortgagee pursuant to Section 1.06 hereof, shall have the same priority with respect to any mortgage or other lien, charge, or encumbrance on the Premises or on Landlord's fee interest in the Property as this Lease, and the tenant under such New Lease shall have the same right, title, and interest in and to any subleases, licenses, concessions or similar rights or interests therein, and to the Premises and the Buildings and Improvements thereon as Tenant had under this Lease as of the date of the New Lease; provided, however, that Landlord shall not make any warranty of title, express or implied, with respect to any New Lease or other property of Tenant, and shall have no obligation to deliver possession of the Premises under the New Lease, except for any liens, claims or encumbrances created by Landlord or arising through Landlord.

6.8 Leasehold Mortgagee Need Not Cure Certain Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee in order to comply with the provisions of Section 6.05 or 6.06 of this Section or as a condition of entering into the New Lease provided for by Section 6.07 of this Section. The financial condition of any Leasehold Mortgagee or successor to Tenant's interest under this Lease or a New Lease shall not be a consideration in the determination of the reasonable susceptibility of cure of any default hereunder. No default, the cure of which, and no obligation of Tenant, the performance of which, requires possession of the Premises shall be deemed reasonably susceptible of cure or performance by any Leasehold Mortgagee or successor to Tenant's interest under this Lease or a New Lease not in possession of the Premises, nor shall any Leasehold Mortgagee be required to cure the bankruptcy, insolvency, or any related or similar condition of Tenant.

6.9 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property or casualty insurance policies required to be carried by Tenant hereunder. The Leasehold Mortgagee may provide a manner for the disposition of Tenant's interest in such proceeds.

6.10 Arbitration. Landlord shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties do hereby consent to such intervention; provided that no Leasehold Mortgagee which intervenes shall be entitled to an award of attorney's fees from Landlord. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of

any award or decision made in, any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice thereof. In the event Tenant shall fail to appoint an arbitrator, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have one additional period of thirty (30) days (in the aggregate for all Leasehold Mortgagees) after notice by Landlord that Tenant failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed. shall thereupon be recognized in all respects as if appointed by Tenant.

6.11 Bankruptcy. In the event of any proceeding by Tenant under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect, the following terms apply:

6.11.1 Rejection by Tenant. If the Lease is rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of Foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 6 as if such bankruptcy proceeding had not occurred, unless such Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within thirty (30) days following the later of (i) rejection (or deemed rejection) of the Lease by Tenant or Tenant's trustee in bankruptcy; or (ii) approval of such rejection by the bankruptcy court. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in connection with any such proceedings, the rights of any Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 6.07 hereof shall not be affected thereby.

6.12 Proceeds of Insurance and Eminent Domain. Tenant's share, as provided in Section 8 of this Lease, of insurance proceeds and Tenant's share arising from an exercise of the power of eminent domain shall, subject to the provisions of Section 9, be disposed of as provided for by any Leasehold Mortgage.

6.13 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

6.14 Notices. Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 6.05 and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 17.11 hereof. All Notices from any Leasehold Mortgagee or Landlord shall be given in the manner described in Section 21.11 and shall in all respects be governed by the provisions of that section.

6.15 Erroneous Payments. No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and any Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken Notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefor not later than twelve (12) months after the date of its payment.

6.16 Termination of Lease by Landlord. If this Lease is rejected or otherwise terminated in connection with any bankruptcy proceeding by Landlord or by Landlord's trustee in bankruptcy:

6.16.1 Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

6.16.2 Unless this Lease is treated as terminated in accordance with Section 6.16.1 hereof, this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. Thereafter, Tenant or its successors shall be entitled to any offsets against Rent payable hereunder for any damages arising from such rejection or other termination and, notwithstanding any provision of this Lease to the contrary, any such offset properly made shall not be deemed a default under this Lease. Only after Tenant fails to pay Landlord any amount previously offset within ten (10) business days after a final and nonappealable judgment finding that Tenant is required to pay such amount to Landlord shall Landlord have, subject to all other terms and conditions of this Lease, the rights and remedies provided in this Lease with respect to the nonpayment of Rent. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection or other termination with the same priority as it would have enjoyed had such rejection or other termination not taken place.

6.16.3 If, in any bankruptcy or similar proceeding in which Landlord is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Tenant under this Lease, each of Tenant and any Leasehold Mortgagee shall be entitled to: (i) receive prior written notice of such proposed sale not less than ten (10) business days prior to the earliest date such sale or proposed sale is to or could occur; (ii) contest such sale or proposed sale; and (iii) petition for and receive adequate protection of their respective interests under this Lease, it being acknowledged and agreed that monetary damages are not, and will not be, adequate protection thereof.

6.17 Leasehold Mortgagee as Trustee. A Leasehold Mortgagee may hold and disburse in accordance with this Lease any funds received as the proceeds of property or casualty insurance or condemnation.

6.18 Rights Against Tenant. The rights of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Landlord against Tenant for damages or other monetary relief under this Lease.

6.19 Lease Amendments Requested by Leasehold Mortgagee. In the event Tenant seeks to obtain or modify a Leasehold Mortgage, and the applicable Leasehold Mortgagee requires amendments to this Section 6, then Landlord agrees to amend this Lease from time to time to the extent reasonably requested by the Leasehold Mortgagee, provided that the form and content of such

amendments are reasonable, that such proposed amendments do not reduce the Rent hereunder, or otherwise materially and adversely affect the rights of Landlord hereunder or its interest in the Premises. All reasonable expenses incurred by Landlord in connection with any such amendment shall be paid by Tenant.

## SECTION 7 DAMAGE OR DESTRUCTION

7.01 Repair and Reconstruction. In the event of any damage or destruction to the Buildings or Improvements, by fire or other casualty covered by property damage insurance (or required to be covered by such insurance under this Lease), Tenant shall, with reasonable dispatch, commence repair or rebuilding of the Premises and Improvements to substantially the same condition and configuration as they were immediately before such loss, with any modifications required to comply with then applicable laws and regulations, provided that:

(a) All Minimum Rent and other sums payable to Landlord under this Lease, and all taxes, utilities and other charges relating to the Premises, shall be paid by Tenant as provided herein.

(b) All funds available from insurance or other recoveries with respect to such loss shall be held and disbursed as provided herein.

(c) Plans and specifications for such repair or rebuilding, to the extent reasonably required therefor, shall be provided to Landlord prior to commencement of such work and such plans and specifications shall comply with requirements of this Lease. Any material modifications to the Premises or the Improvements shall be highlighted therein. Any such modifications not required to comply with then applicable laws and regulations shall be subject to the reasonable review and approval of Landlord as provided in Section 4.13 hereof.

(d) If the cost of repairing or reconstructing the Premises and Improvements to the condition and form immediately prior to such damage or destruction, as reasonably determined by Tenant, is more than thirty percent (30%) of the then full replacement cost of the Premises and Improvements or if repairing or reconstructing the Premises and Improvements to the condition and form immediately prior to such damage or destruction may not be performed under then-existing Laws (except with minor and non-material changes as reasonably determined by Tenant), Tenant, with the prior written consent of any Leasehold Mortgagee, may elect to: (i) terminate this Lease and raze the Improvements, or (ii) reconstruct the Improvements in such size and configuration as Tenant shall reasonably determine to be prudent or valuable under the circumstances, taking into account, without limitation, applicable Laws, then-prevailing construction and engineering practices, and market conditions, subject to Landlord's approval of the Plans and Specifications therefor as provided in Section 4.04. Tenant shall provide notice to Landlord of its election within sixty (60) days after the determination by Tenant of the reasonable costs of such repair or restoration. If Tenant fails to timely provide Landlord such notice, Tenant's right to make such an election shall not expire until Landlord notifies Tenant in writing that Tenant failed to make such an election and Tenant fails, within thirty (30) days from receipt of Landlord's notice, to so make an election. If Tenant fails to provide Landlord with notice of Tenant's election prior to the expiration of such 30-day period, Tenant shall be deemed to have elected to proceed under clause "i" above.

## 7.02 Prompt Repair.

(a) If Tenant, pursuant to the terms hereof or Section 9.03.4 below, is obligated or elects to repair, replace, reconstruct or rebuild the Improvements or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense (which may be paid from insurance proceeds available as above provided and subject to the provisions of subparagraph (b) of Section 7.01 or condemnation proceeds to the extent provided in Section 9.03.4 below), and Tenant shall diligently commence and continuously carry out such repair, replacement, reconstruction or rebuilding, to full completion as soon as possible, except to the extent of delays due to events described in Section 21.18. If the Leasehold Mortgagee elects to apply the insurance proceeds to satisfy the indebtedness secured by the Leasehold Mortgage, Tenant shall have a reasonable period of time (not longer than one year following the determination of the insurance surveyor with respect to such damage or destruction) to obtain financing reasonably required to satisfy the requirements of this Section and the notice periods of Section 7.01 shall be adjusted accordingly. If Tenant elects to terminate this Lease, Tenant shall, at its sole cost and expense and as soon as reasonably possible after making the applicable election, raze Tenant's Buildings, clear the Premises of all debris and level, clear and improve all areas not restored to their original use with, at the option of Tenant, either landscaping or parking area of like standard and design as the balance of Landlord's property and as approved by Landlord.

(b) All such work shall be carried on in accordance with Plans and Specifications prepared by a licensed architect or architects approved by Landlord (acting reasonably) if such an architect is reasonably required, given the scope and nature of the work, provided no Landlord approvals shall be required if the Improvements are reconstructed in substantial conformity with the original Plans and Specifications approved by Landlord.

7.03 Damage During Last Five (5) Years of Term. If there occurs during the last five (5) Years of the Term damage or destruction to any structure or improvement on or in the Premises and the costs of repairing, restoring, replacing or rebuilding the same exceed Five Hundred Thousand Dollars (\$500,000) (adjusted every fifth Anniversary Date during the Term as provided in Section 21.20), then Tenant may elect to terminate the Term and, in such event, Tenant shall give notice to Landlord of its election within sixty (60) days after the determination by the insurance surveyor of the amount of damage, and the Term shall thereupon terminate as of the date of such notice. The proceeds of any applicable insurance policies shall be distributed pursuant to Section 8.07.1 below.

7.04 Tenant's Determinations. The determinations required under this Section 7 shall be made by Tenant acting reasonably or, if a Leasehold Mortgage shall then be in effect, by the Leasehold Mortgagee acting in good faith or by an independent qualified insurance appraiser selected by the Leasehold Mortgagee.

## SECTION 8 INSURANCE AND BOND

8.01 Tenant to Insure. Tenant shall, at its sole expense, from and after the Effective Date, maintain the following insurance (or its then reasonably available equivalent):

8.01.1 Property Insurance. Tenant shall maintain or cause to be maintained "special causes of loss" or then industry standard "all risk" coverage including equipment breakdown insurance for an amount equal to 100% of the replacement cost of the Improvements on the Premises (the "Property Insurance"), which for purposes of this Lease shall mean actual new replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation. If not included within the "special causes of loss" coverage above, Tenant shall also carry or cause to be carried coverage against damage by terrorism, collapse, windstorm, flood and earthquake, which shall be written with limits of coverage of not less than the then replacement value per occurrence except flood shall be written with limits of coverage equal to at least the greater of twenty-five percent (25%) of the full replacement cost or Ten Million Dollars (\$10,000,000), and earthquake shall be written as provided in Section 8.04 hereof and if customarily carried by owners of properties similarly situated to the Premises, insurance against other risks or hazards as Landlord may reasonably require. Each such policy shall be endorsed with (i) an agreed amount clause (waiving applicable co-insurance clause), and (ii) coverage for law and ordinance, including debris removal, demolition costs and increased costs of construction due to changes in Requirements. This policy shall have a deductible of no more than five percent (5.0%) of the full replacement cost per occurrence. The full replacement cost shall be redetermined from time to time (but not more frequently than once in any two-year period) at the request of Landlord by an appraiser or contractor designated and paid by Tenant and approved by Landlord, or by an engineer or appraiser in the regular employ of the insurer providing the relevant coverage. Tenant shall, at Landlord's request from time to time, provide Landlord with a current certificate of insurance throughout the Term evidencing Tenant's compliance. Tenant shall be named as the first named insured and Landlord shall be named as an additional insured and any Leasehold Mortgagee shall be named as mortgagee and loss payees. Insurance proceeds shall be held and made available in accordance with the terms of this Lease and in the event of a conflict between the terms of this Lease and the terms of any Leasehold Mortgage the terms of this Lease shall be controlling.

8.01.2 Liability Insurance. Tenant shall maintain or cause to be maintained commercial general liability insurance coverage with limits of liability in respect of bodily injury (including death), personal injury and property damage of at least Fifty Million and No/100 Dollars (\$50,000,000.00) for each occurrence, and at least a Fifty Million and No/100 Dollars (\$50,000,000.00) aggregate limit (each such limit being adjusted every fifth Anniversary Date during the Term as provided in Section 21.20) (the "Liability Insurance"). The foregoing Liability Insurance may be maintained as a combination of commercial general liability and umbrella coverage. Such Liability Insurance shall be written on a commercial general liability insurance policy form with coverage at least as broad as the current ISO commercial general liability policy (form CG0001), or its then equivalent, on an occurrence basis with respect to the Premises and all operations related thereto, whether conducted on or off the Premises, and with respect to private events catered by Tenant on Chambers Creek Properties, whether on or off of the Premises, and coverage shall include

specifically the Premises and all elevators, garages, parking areas, streets, alleys and sidewalks adjoining or appurtenant to the Premises, and private events catered by Tenant on Chambers Creek Properties, whether on or off of the Premises, and shall cover the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; (4) standard blanket contractual liability covering the insurable indemnities in accordance with the indemnification obligations of Tenant under this Lease; (5) with an annual aggregate limit per location, and (6) personal and advertising liability.

8.01.3 Rental Interruption Insurance. Tenant shall maintain or cause to be maintained business income/rent insurance and extra expense insurance: (a) covering "special causes of loss" required to be covered by the insurance provided for in subsection (i) above with an unlimited indemnity period, (b) containing an extended period of indemnity endorsement which provides that after the physical loss to the improvements, and any personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the same is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period, and (c) in an amount equal to one hundred percent (100%) of the projected gross income from the Premises for a period of twenty-four (24) months from the date of loss. (assuming such loss had not occurred) and notwithstanding that the policy may expire prior to the end of such period. The proceeds of rental interruption insurance shall be considered revenue for the purpose of computing Percentage Rent.

8.01.4 Workers' Compensation. Tenant shall maintain or cause to be maintained workers' compensation insurance as required by law.

8.01.5 Employer's Liability Insurance. Tenant shall maintain employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any work or operations on or about the Premises, or in connection with the Premises or its operation.

8.01.6 Builder's Risk Insurance. At all times during which structural construction, repairs or alterations are being made with respect to the Premises, Tenant's insurance shall include:

(1) Coverage in accordance with the above mentioned commercial general liability insurance policy; and (i) provide XCU coverage with regard to the construction project; (ii) include three (3) years extended completed operations coverage, after completion of the project.

(2) Builder's Risk "all risk" or "special causes of loss" Insurance. Such policy(ies) shall: (i) be written on a completed value form; (ii) include all the terms required in subsection 8.01.1 above; (iii) include foundations, excavations, underground machinery or equipment, retaining walls, and all paved surfaces; (iv) have limits equivalent to 100% of the hard costs and soft costs for all recurring expenses in the event of damage or destruction; (v) maintain deductibles not to exceed \$25,000 (vi) maintain sub-limits for each of the perils of flood and earthquake to be the greater of (a) \$10,000,000, or (b) the amount otherwise specified by the Leasehold Mortgagee; (vii) allow for permission to occupy.

8.01.7 Other Insurance. Provide and keep in force such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of comparable properties.

8.02 Nature of Insurance Program. All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A" or better, based on the latest ratings by A.M. Best Company (or its equivalent if such publication ceases to be published); and (b) are licensed or permitted to do business in the State of Washington. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amounts) of the total insurance allocated to the Premises, which amounts) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties below the amounts required by this Lease; and (ii) such policy otherwise complies with this Lease.

8.03 Policy Requirements and Endorsements. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

8.03.1 Insureds. All Property Insurance provided by Tenant, shall be carried in favor of Tenant and shall name Landlord as insured and Leasehold Mortgagee as loss payee under a standard mortgagee clause, and all liability insurance provided by Tenant shall name as additional insureds Landlord and its shareholders, officers, directors, employees and agents, each Leasehold Mortgagee, and such other persons as Landlord shall reasonably require.

8.03.2 Primary Coverage. All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry.

8.03.3 Contractual liability. Liability Insurance policies shall contain contractual liability coverage, for Tenant's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant's failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

8.03.4 Notice to Landlord. The insurance carrier shall give Landlord and all Leasehold Mortgagees thirty (30) days prior notice, ten (10) days with respect to nonpayment of premiums, of cancellation, modification or nonrenewal.

8.03.5 Deliveries to Landlord. Not later than five (5) days before any Liability Insurance or Property Insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant's maintenance of all Liability Insurance, Property Insurance and any other insurance this Lease requires, in each case providing coverage for at least one year from the date delivered and accompanied by evidence of payment of premium reasonably satisfactory to Landlord. In the event of any dispute regarding Tenant's compliance with the insurance requirements of this Lease, Tenant may at Tenant's option obtain a certificate from a reputable insurance broker confirming such compliance. Tenant shall deliver an original "binder" and then standard industry insurance certificates (ACORD 25) for Liability and ACORD 28 (for property and equipment breakdown) or then industry equivalent evidencing that Tenant has obtained the

requisite insurance required under this Lease, and then complete copies of the policies shall follow to Landlord.

8.03.6 No Representation. Neither party makes any representation that the limits, scope, or forms of insurance coverage this Lease requires are adequate or sufficient.

8.03.7 Other Provisions. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall contain (if obtainable) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

8.04 Earthquake Insurance. Tenant shall provide earthquake insurance so long as such coverage is available at commercially reasonable rates or is required by any Leasehold Mortgagee. If the earthquake insurance limits and aggregates are shared with other locations insured on the same policy as the Premises or, if the amount of earthquake insurance provided is less than 100% of the insurable value of the building then the amount of earthquake coverage shall be based on a "Probable Maximum Loss" Study (PML) for the Premises, which shall be conducted by a seismic engineering company reasonably satisfactory to Landlord. The results of the PML study, on an individual location basis and for all locations insured in the same earthquake insurance policy, shall be used to determine the amount of earthquake coverage to be provided by Tenant. The amount of insurance shall be determined by the total expected damage to all improvements under a policy subject to a single earthquake event in a given region. Should the available aggregate limits of earthquake insurance be eroded by losses so that the remaining limits available to pay losses are less than forty percent (40%) of the required limits, Tenant shall purchase additional coverage to restore the available limit and aggregate limit to not less than eighty percent (80%) of the required amount of insurance.

8.05 Landlord's Acquisition of Insurance. If Tenant at any time from and after the Effective Date fails to procure or maintain insurance required hereunder or to pay the premiums therefor, Landlord shall have the right (but not the obligation) to procure the same and to pay any and all premiums thereon without any liability to Tenant or any Leasehold Mortgagee for any insufficiency or defect in any such insurance or insurance carrier Landlord shall also have the right to obtain insurance coverage for Landlord's interests in the Premises only, excluding any interest of Tenant, in such amounts and with such coverages as Landlord shall determine in its sole discretion, without any liability to Tenant.

Notwithstanding any insurance obtained by Landlord hereunder, Tenant shall continue in default under this Lease until such time as Tenant shall have obtained and/or paid for all insurance required to be maintained by Tenant under this Lease. Any amounts paid by Landlord in connection with the acquisition of insurance upon notice to Tenant shall be immediately due and payable as additional Rent, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 21.13 hereof from the date of such expenditure by Landlord until repayment thereof by Tenant as additional Rent hereunder. Any policies of insurance obtained by Landlord covering physical damage to the Premises shall contain a waiver of subrogation against Tenant if and to the extent such waiver is

obtainable and if Tenant pays to Landlord on demand the additional costs, if any, reasonably incurred in obtaining such waiver.

8.06 Insurance Money and Other Funds Held in Trust. All insurance money, or condemnation proceeds as provided in Section 9, shall be held in trust and, except as provided otherwise in Section 8.07, shall be applied as follows: First, to any Leasehold Mortgagee as required under the terms of its Mortgage, provided that such Leasehold Mortgage was of record and secured a loan made or committed to Tenant in compliance with all of the terms and conditions of this Lease (including the provisions of Section 6 hereof) prior to the occurrence of such loss; second, for the purpose of defraying the cost of repairing, restoring, replacing and/or rebuilding any structure or improvement on or in the Premises as provided in Section 8.07 hereof; and third, if the damaged or destroyed structure or improvement is not repaired, restored, replaced or rebuilt as hereinafter provided, said funds shall be disposed of as provided in Section 8.07.

8.07 Application of Proceeds of Physical Damage Insurance. The application of insurance proceeds from damage or loss to property shall be determined in accordance with Sections 7.01, 7.02 and 7.03 hereof and, in the event of any such repair, replacement, restoration or rebuilding, shall be applied to the cost of such work upon certificate of satisfactory progress and/or completion in form satisfactory to the licensed architect or engineer in charge of the work. Any amounts payable to Tenant or any Affiliate of Tenant for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Tenant shall, upon request of Landlord, make available to Landlord and its representatives in Pierce County, Washington all books and records of Tenant relating to such work, services and materials. Upon completion of such repair, replacement, restoration or rebuilding in accordance with the provisions of this Lease, and the full payment therefor (so no liens, encumbrances or claims with respect thereto can be asserted against the Premises, this Lease, Landlord or Tenant), any insurance proceeds with respect to the damage or destruction involved, and not used, shall be paid to Tenant and shall be deemed Gross Revenue under Section 2.01.3 of this Lease.

8.07.1 Distribution of Unutilized Proceeds. In the event of any damage to or destruction of any Improvements at the Premises and if Tenant is not required to and does not proceed with repair, replacement, reconstruction or rebuilding, or if Tenant elects to terminate this Lease on account of such damage or destruction pursuant to the terms of Section 7 hereof, any such property insurance proceeds received and held by Tenant (or by the Leasehold Mortgagee if the Premises is then encumbered by a Leasehold Mortgage and the Leasehold Mortgagee so requires) and not used for repair, replacement, reconstruction or rebuilding ("Available Proceeds"), shall be disposed of as follows:

(a) First, unless Tenant has already satisfied its obligation to raze pursuant to Section 7 hereof, (or unless paid directly to Landlord by the insurance carrier or the condemning authority), Landlord shall be awarded an amount sufficient to remove improvements not repaired and to return the Premises and Property to grade level and removing any debris therefrom;

(b) Second, to any Leasehold Mortgagee to satisfy the amount then secured by a Leasehold Mortgage;

(c) Third, Landlord or Tenant (as the case may be) shall be awarded any obligations of the other party arising from such other party's default, if any, under this Lease; and

(d) Any remainder shall be paid to Landlord and Tenant, and shall be divided between them according to their respective interests in the Leasehold Estate as defined in the last two sentences of Section 9.01.2 below.

8.08 Insurance Surveyor. The determinations required under Section 7 and this Section 8 shall be made by an independent qualified insurance appraiser selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance appraiser within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Superior Court of Pierce County, Washington upon the application of either party.

8.9 Waiver of Subrogation. Tenant hereby releases Landlord from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to real or personal property on the Premises caused by fire or any other insured peril, even if such fire or other casualty shall have been caused by the fault or negligence of the Landlord or anyone for whom such party may be responsible, to the extent insurance proceeds are available from such fire or insured peril. Tenant shall procure insurance policies with such a waiver of subrogation and with a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder; provided, however, if policies with such a clause or endorsement shall not be obtainable or shall be obtainable only at a premium over that chargeable without such waiver (any dispute regarding which shall be subject to arbitration pursuant to Section 16 of this Lease), the Tenant shall notify the Landlord, and the latter shall have ten (10) days thereafter either (a) to procure such insurance in companies reasonably satisfactory to the other party or (b) to agree to pay such additional premium if neither (a) nor (b) are done, this Section shall have no effect during such time as such policies shall not be obtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but shall be subsequently obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party.

8.10 Construction Bond. Prior to the start of construction, Tenant shall provide Landlord with security by providing a one hundred percent (100%) performance and payment bond from its prime contractor as security for the completion of construction of the Project.

Should Tenant elect to terminate this Lease pursuant to Section 1.02.2, then the parties shall have no further obligations to one another, this Lease shall terminate, and Landlord shall have the right to lease the Property to any other party. In such event, Tenant shall assign to Landlord all Project Approvals and any plans, specifications, drawings, reports, tests, surveys and any other information produced by or for Tenant and relevant to the Property and the Project at no cost to Landlord but without warranty from Tenant.

8.11 All minimum insurance coverage limits and all deductibles required by this Section 8 shall be subject to adjustment pursuant to Section 21.20.

8.12 Both parties recognize that standard insurance policies and amount of deductibles change over time. It is the intent of the parties that Tenant maintain insurance and appropriate deductibles throughout the Term of this Lease that are standard in the industry for property similar to the Premises and approved by Landlord, not to be unreasonably withheld, at that time and to allow the Tenant and Landlord to exercise prudent business judgment.

## SECTION 9 CONDEMNATION

9.01 Total Taking. In the event of the taking or condemnation by any competent authority of the whole of the Premises or materially all of the Premises (as defined in Section 9.03.3 below) at any time from and after the Effective Date, the right of Landlord and Tenant to share in the proceeds of any award for the Premises, the Building, Improvements and damages upon any such taking, shall be as follows:

9.01.1 Termination of Lease. The Lease Term shall cease as of the date of possession by the condemnor and all Rent and other payments shall be apportioned as of such date.

9.01.2 Landlord's and Tenant's Shares. Subject to the terms and conditions hereof, Landlord and Tenant shall each receive the present value of their respective interests in the Leasehold Estate and Improvements, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and attorney's fees and other costs to the extent awarded. The values of Landlord's and Tenant's respective interests in the Leasehold Estate and Improvements shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine Landlord's and Tenant's respective interests, those interests shall be determined by arbitration pursuant to Section 16 hereof. The value of Landlord's interest in the Leasehold Estate and Improvements at the time of such award shall be the net present value of the Rent payable under this Lease for the balance of the Term plus the present value of the reversionary interest in the Leasehold Estate and Improvements, and the value of Tenant's interest shall be the fair market value of its Leasehold Estate under this Lease, including the value of the Improvements less the present value of Landlord's reversionary interest in the Improvements. Such values shall be determined without regard for any early termination of this Lease due to any taking or condemnation.

9.02 Substantial Taking. In the event of the taking in condemnation of less than the whole of the Leasehold Estate and Improvements, but materially all of the Leasehold Estate and Improvements, resulting in the termination of this Lease as provided in Section 9.03.3 below, the then value of the part of the Improvements that remains shall be deemed paid to Landlord in partial satisfaction of the share of the award to which Landlord shall be entitled hereunder.

9.03 Partial Taking. In the event of a partial taking or condemnation, e.g., a taking or condemnation of less than materially all of the Premises:

9.03.1 The Term of this Lease (except as hereinafter provided) shall continue but the annual Minimum Rent to be paid by Tenant under Section 2 shall thereafter be reduced in proportion to the amount that the rental value of the Premises immediately after such taking bears to the rental value of the Premises immediately prior to such taking, together with appropriate adjustments to Percentage Rent to reflect the reduced size and value of the Premises. If the parties cannot agree upon a just proportion of Rent to be abated, or adjustments to Percentage Rent, the amounts shall be determined in accordance with the arbitration provision of Section 16 hereof.

9.03.2 The award shall be divided and shared by Landlord and Tenant as provided in Section 9.01.2 hereof; provided that there shall also be determined, as provided in Section 9.01.2, the portion of the award which represents the estimated cost of restoration, repair or reconstruction of the portions of the Building and other Improvements not taken, as required to restore, repair or reconstruct the Premises to a functional unit as provided in Section 9.03.4 (the "Restoration Amount").

9.03.3 If the remaining part of the Premises not so taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete functional unit of the Project capable of producing after the payment of all reasonable operating expenses thereof, the annual Minimum Rent (as adjusted pursuant to paragraph 9.03.1 above) and Percentage Rent and other charges herein reserved, the debt service charges on any then existing Leasehold Mortgages held by a Leasehold Mortgagee, and after the performance of all covenants, terms, agreements and provisions herein and by law provided to be performed and paid by Tenant, a fair and reasonable net annual income, as hereinafter determined, then Tenant shall have the right, to be exercised by written notice to Landlord within sixty (60) days after the date of taking (or, if later, 30 days after the determination of both the Restoration Amount and the Rent abatement under Section 9.03.1), to terminate this Lease as to such remaining part of the Premises not so taken on a date to be specified in said notice not earlier than the later of (i) the date of such taking or (ii) the date of such notice. In such case Tenant shall pay and satisfy all rent due and accrued hereunder up to such date of such termination including all Minimum Rent, Percentage Rent and all other charges and shall (to the extent reasonably practicable) perform all of the obligations of Tenant hereunder to such date and thereupon this Lease shall terminate. Should the parties be unable to agree as to whether the part not taken is susceptible of adequate restoration, repair or reconstruction as aforesaid, such controversy shall be determined by arbitration in the manner provided in Section 16 of this Lease.

9.03.4 If the Lease is not terminated as hereinabove provided, and if such taking occurs prior to the last ten (10) years of the Lease Term, then, as to the Premises not taken in such condemnation proceeding, subject to the terms and conditions of Section 7.02 above, Tenant shall proceed diligently, to the extent the Restoration Amount together with the portion of the condemnation proceeds awarded to Tenant is sufficient for such purpose, to make an adequate restoration, repair or reconstruction of the part of the Buildings not taken so as to restore, repair or reconstruct the Premises, to the extent practicable.

9.04 Successive Takings. In case of a second or any other additional partial taking or takings from time to time, the provisions hereinabove contained shall apply to each partial taking.

9.05 Temporary Taking. If the whole or any part of the Premises or of Tenant's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of the Minimum Rent, Percentage. Rent and all Impositions and other charges payable by Tenant hereunder, this Lease shall continue and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority. Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In such event, Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise. If such period of temporary use or occupancy shall extend to or beyond the expiration date of the Term of this Lease, such award shall be apportioned between Landlord and Tenant as of such date of taking. Any awards received by Tenant with respect to such taking shall be deemed Gross Revenue.

9.06 Notwithstanding the foregoing, if Landlord completes condemnation proceedings against any part of the Premises that would materially interfere with operation of the Project, then Tenant shall be entitled to 105% of the share of any award Tenant would otherwise be entitled to in connection with such proceeding. For purposes of clarity, the preceding sentence shall not apply to minor portions of the Premises or easements such as utility or access easements which do not materially interfere with the operation of the Project.

## SECTION 10 TENANT TO COMPLY WITH LAWS; MANAGEMENT

10.01 Compliance by Tenant. Tenant shall at all times from and after the Effective Date, at Tenant's sole cost and expense, perform and comply with laws, rules, orders, ordinances, regulations and requirements ("Laws") now or hereafter enacted or promulgated which are applicable to the Premises and the business of Tenant conducted with respect thereto.

10.02 Management. Throughout the Term of this Lease Tenant shall employ a managing agent ("Managing Agent") for the Improvements who shall be Tenant, an Affiliate of Tenant or a professional management firm with regular offices located in Washington, which Managing Agent shall at all times retain sufficient experienced, competent personnel in connection with management of the Improvements. Landlord shall be provided with a copy of the management agreement with the Managing Agent then in effect for the Premises. The determination of whether such personnel are adequately competent and experienced shall be made on the basis of experience in managing like facilities, success and reputation in doing so and ability to maintain and operate the Premises to standards specified and as otherwise provided herein. Any dispute under this Section shall be resolved by arbitration in accordance with Section 16.

10.03 Hazardous Materials. Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any applicable environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Materials, or transportation to or from the Premises of any Hazardous Materials, unless both: (i) reasonably necessary and customary to conduct any business in the Premises in accordance with customary standards in such business, or to operate and maintain the Premises for uses this Lease

permits and (ii) in compliance with all environmental Laws. Tenant shall, at Tenant's expense: (a) comply with environmental Laws and, to the extent environmental Laws require, clean up any Hazardous Materials discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any government agency under environmental Laws; (c) if any government agency requires any clean-up plan or clean-up because of a Hazardous Materials discharge during the Term by Tenant or its subtenants or agents, prepare and submit the required plans and all related bonds and other financial assurances; and (d) promptly and diligently carry out all such clean-up plans. Any party's obligations under this paragraph shall not limit such party's rights against third parties. Hazardous Materials means any substances or material as defined in Section 1.03.

## SECTION 11 INSPECTION BY LANDLORD

11.01 Inspection of Premises. Landlord and Landlord's agents and representatives shall be entitled, from time to time, upon reasonable notice to Tenant, to go upon and into the Premises for the purpose of:

- (a) Inspecting the same; or
- (b) Inspecting the performance by Tenant of the agreements and conditions of this Lease.

Landlord shall assume no duty or liability with respect to the Premises or their maintenance as a result of such inspection.

During the last twenty-four (24) months of the Term of this Lease, Tenant shall permit inspection of the Premises at reasonable times and for reasonable periods by or on behalf of prospective tenants and prospective purchasers of the Premises.

11.02 Rights of Subtenants. Notwithstanding the provisions of Section 11.01, the rights of Landlord to enter into any portion of the Premises which are subject to a sublease from Tenant to any subtenant, shall be subject to reasonable restrictions contained in such sublease which are applicable to Tenant and to any provisions of applicable law.

## SECTION 12 INDEMNIFICATION

12.01 Tenant to Indemnify Landlord. Notwithstanding that joint or concurrent liability may be imposed upon Landlord by law, Tenant shall upon demand indemnify, defend, hold harmless and reimburse Landlord, its officers, employees and agents (each, a "Landlord Indemnified Party") from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs and expenses of any kind or nature including without limitation reasonable architects', engineers', and attorneys' fees which may be incurred by, imposed upon or asserted against any Landlord Indemnified Party by reason of Tenant's occupancy and/or use of the Premises or Tenant's occupancy/use or conduct of any event or activities on the Chambers Creek

Properties, including but not limited to the occurrence of any one or more of the following or of facts or events which result in any one or more of the following:

12.01.1 Tenant's Breach. Any breach, violation or non-performance by Tenant of any covenant or agreement in this Lease including any failure of Tenant to maintain or renew any insurance policy required by the terms of this Lease, set forth herein on the part of the Tenant to be fulfilled, kept, observed or performed;

12.01.2 Use or Occupancy. Any accident, injury or damage to person and/or property arising from any use or occupancy of the Premises or Tenant's occupancy/use or conduct of any event or activities on the Chambers Creek Properties which Tenant may make, permit or suffer to be made or exist, or occasioned by any use, occupancy of, or activity on the Premises or Chambers Creek Properties and/or on any sidewalk, street, alley, curb, passageway or space adjacent thereto, or any part thereof, by or for Tenant (or any subtenant, invitee, contractor, employee or agent of Tenant or any subtenant);

12.01.3 Tenant Negligence. Any negligence or wrongful act or omission on the part of Tenant or its subtenants or any of their agents, contractors, servants, employees, licensees, sublessees or invitees, or anyone claiming through the foregoing; or

12.01.4 Tenant Work. Any work or thing done by or for Tenant in, on or about the Premises and/or on any sidewalk, plaza, street, alley, curb, passageway or space adjacent thereto, or any part thereof unless performed by a Landlord Indemnified Party.

12.01.5 Limitation. The foregoing indemnity shall run to the parties specified in the capacities specified and shall not affect the rights or obligations of any Landlord Indemnified Party in any other capacity, such as a subtenant or occupant of the Buildings.

12.02 Landlord to Indemnify Tenant. Landlord shall indemnify, defend, hold harmless and reimburse Tenant, its shareholders, officers, members, and agents from and against and for any and all liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs and expenses of any kind or nature including without limitation reasonable attorneys' fees which may be imposed upon or asserted against Tenant by reason of: (i) any matters occurring prior to the Commencement Date of this Lease except to the extent caused by the acts or omissions of Tenant or parties under Tenant's control; (ii) any breach, violation or non-performance by Landlord of any covenant or agreement in this Lease (except to the extent arising from the nonperformance or breach of any covenant or obligation undertaken by Tenant under this Lease) which is not cured within the applicable time set forth in Section 15.07; and (iii) any negligence or wrongful act or negligent omission on the part of Landlord or its agents, contractors, servants, employees, licensees or invitees, or anyone claiming through the foregoing.

12.03 Legal Proceedings. If Tenant is required to defend any action or proceeding pursuant to this Section to which any Landlord Indemnified Party is made a party, such Landlord Indemnified Party shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent such Landlord Indemnified Party is indemnified under this Section, Tenant shall bear the cost of such Landlord Indemnified Party's

defense, including reasonably attorneys' fees actually incurred; provided, however, that Tenant shall be liable for attorneys' fees of separate counsel selected by Tenant to defend Landlord and reasonably approved by such Landlord Indemnified Party only if a single legal counsel (or a single firm of legal counsel) selected by Tenant cannot represent both Tenant and such Landlord Indemnified Party without there arising an actual conflict of interest.

### SECTION 13 ASSIGNMENT

13.01 Covenant Against Assignments. Tenant shall not assign its interest in the Premises or this Lease or in the leasehold estate it creates, nor shall Tenant's rights hereunder be assigned or otherwise transferred by operation of law, in whole or in part, except in compliance with this Section 13. If Tenant is a corporation, partnership, limited liability company or any other entity, any transfer of 50% or more of the direct or indirect capital or profits interest in Tenant or any transfer of this Lease by merger, consolidation or liquidation shall be deemed an assignment requiring Landlord's consent under this Section 13. Provided, however, nothing in this Lease shall be construed to prohibit any individual member of Tenant from making transfers or gifts of non-managing interests in Tenant to his or her spouse, lineal descendants, and principals and/or employees of Tenant or its Affiliates provided that Dan Absher and Dan Putnam ("Key Principals") retain control of and a material interest in Tenant until Completion of Development (as defined below).

13.01.1 Prior to the Commencement Date, Tenant may assign its interest in and to this Lease, without the consent of Landlord but with prior written notice to Landlord, to any partnership or limited liability company in which Tenant is a general partner (if a partnership) or a managing member or manager of a limited liability company in which the other partners or members are either (i) principals and/or employees of Tenant or its Affiliates; and (ii) equity investors in the Project, provided, in each case, that the Key Principals retain control of and a material interest in Tenant. Except as provided in Section 6 as to Leasehold Mortgagees, Tenant shall not otherwise assign the Lease except as provided in Section 13.01.2 and 13.04.

13.01.2 After Completion of Development (which, for purposes of this Section means completion and opening of business by the hotel portion of the Project and not less than one-half of the Villas (as defined in the Plans and Specifications)), Tenant shall not assign this Lease or any interest in Tenant except with the prior written consent of Landlord and otherwise in compliance with the following terms and conditions:

(i) Tenant shall deliver to Landlord notice in writing of any proposed assignment together with sufficient information concerning the identity, financial condition, and business experience and reputation of the proposed assignee so that Landlord may make a reasonable determination regarding the suitability of the proposed assignment and assignee.

(ii) Tenant shall pay to Landlord promptly upon receipt of a billing therefore all reasonable out-of-pocket costs incurred by Landlord in connection with any proposed assignment, including reasonable attorneys' and accountants' fees.

(iii) In Landlord's reasonable judgment such proposed assignee has the financial capability and the operating and ownership experience to perform all the obligations of Tenant under this Lease, including, if reasonably required by Landlord, the assignee's agreement in writing for the benefit of Landlord to employ at all times a responsible and experienced managing agent for the operation of the Premises, and such assignee has a positive reputation in the business community for competence and integrity.

(iv) If Landlord determines to withhold its consent to any proposed assignment, Landlord shall notify Tenant in writing of the reasons therefore not later than thirty (30) business days after receipt by Landlord of Tenant's request for approval together with all other information reasonably required for Landlord's decision. If Landlord does not so notify Tenant within such thirty day period, Landlord shall be deemed to have consented to the proposed assignment. If Landlord withholds such consent by notice in writing to Tenant within such period, Tenant may submit such determination to arbitration pursuant to Section 16 by notice to Landlord within thirty (30) days of receipt by Tenant of such notice of rejection.

(v) Upon any assignment of this Lease after Completion of Development pursuant to this Section 13.01.2, Tenant shall be relieved of any liability for any of the obligations or liabilities of Tenant hereunder relating solely to events or time periods after such assignment; provided that with respect to any Minimum Rent and/or Percentage Rent that is not determinable or not payable as of the date of such assignment, which Rent relates in whole or in part to any period prior to such assignment, Tenant shall be and remain jointly and severally liable with such assignee for the payment of such Rent until the same is paid in full.

13.01.3 Notwithstanding any other provision of this Section 13, Tenant shall not assign this Lease or any of its rights or interest hereunder if Tenant is then in monetary default in the payment of Rent or material non-monetary default hereunder without first curing any and all such defaults in their entirety.

13.02 Tenant Liability. Except as otherwise provided in this Section, upon any assignment permitted under this Lease, or made with the consent of Landlord, the assignor, with respect to the interest assigned, shall not have any liability hereunder with respect to events or conditions first arising or existing, or obligations first accruing and owing, after such assignment.

13.03 Covenants Binding on Successors and Assigns. All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto, but the provisions of this Section 13.03 shall in no way affect or derogate from the other provisions of this Section 13. If there occurs any assignment permitted under this Section 13, or made with the consent of Landlord, Tenant shall cause to be delivered to Landlord concurrently with or prior to such assignment, an instrument in writing signed and duly acknowledged by the assignee or successor by which such assignee or successor agrees to perform for the benefit of Landlord all of the terms and provisions of this Lease applicable to Tenant.

13.04 Rights of Leasehold Mortgagees. Notwithstanding the foregoing provisions of this Section 13, Tenant shall have the right to mortgage or grant a deed of trust on the Premises to a Leasehold

Mortgagee and such Leasehold Mortgagee may acquire Tenant's interest in this Lease and the Premises by judicial or nonjudicial foreclosure or by deed in lieu of foreclosure, and any such Leasehold Mortgagee may assign its interest in this Lease and the Premises to any Affiliate of such Leasehold Mortgagee, all subject to and as provided in Section 6 of this Lease.

13.05 Rights of Subtenants. If requested, Landlord will provide commercial subtenants of Tenant with a Non-Disturbance and Attornment Agreement (NDA) upon Landlord's approval of the Subtenants suitability, which approval shall not be unreasonably withheld and provided such sublease shall not extend beyond the then Term of this Lease.

#### SECTION 14 LANDLORD AND TENANT TO FURNISH STATEMENT

14.01 Landlord's Statement. Landlord, within twenty (20) days after written request to Landlord from Tenant or any Leasehold Mortgagee or prospective Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, as to the following items:

- (a) The amount of the Rent due, if any;
- (b) Whether or not the Lease is modified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (c) Whether or not to Landlord's actual knowledge Tenant is in default and specifying the nature of any such default; and
- (d) Such other matters as Tenant or the Leasehold Mortgagee may reasonably request and which relate to the actual knowledge of Landlord.

14.02 Tenant's Statement. Tenant, within twenty (20) days after written request of the Landlord, shall furnish a written statement, duly acknowledged, as to:

- (a) Whether the Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);
- (b) Whether there are any defaults thereunder on the part of Landlord to the actual knowledge of Tenant and specifying the nature of such defaults, if any; and
- (c) Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

14.03 Failure to Furnish. Upon the failure of Landlord or Tenant, as the case may be, to furnish such statements within the said twenty (20) day period, it shall be conclusively presumed that the Lease is in full force and effect and that there are no defaults thereunder by the other party, except to the extent of facts actually known by the party to whom such statement was to be directed.

## SECTION 15 DEFAULT

15.01 Event of Default. The occurrence of any of the following shall constitute an Event of Default:

15.01.1 Payments to Landlord. Failure of Tenant to duly and punctually pay the Rent or make any other payment owing to Landlord hereunder, or to pay any Imposition or any other payment which if not paid may result in a lien on the Premises (except as and to the extent permitted under Section 3.03 of this Lease), as and when the same becomes due and payable, or the failure to maintain any of the insurance coverage required hereunder or pay any of the premiums required to be paid with respect thereto, and such occurrence or failure continues for a period of five (5) business days after notice thereof given to Tenant by Landlord.

15.01.2 Other Covenants. Tenant failing to perform, comply with, or observe any other material term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease other than those referred to hereinabove in this Section 15 and such failure continues for a period of thirty (30) days after notice thereof is given, provided that, if such default is not susceptible of cure within 30 days, such 30-day period shall be extended so long as the Tenant commences to cure such default within such thirty (30) day period and thereafter diligently and continuously prosecutes such cure, but not to exceed ninety (90) days.

15.01.3 Notice and Cure Periods. The parties hereby acknowledge and agree that no "Event of Default" shall be deemed to have occurred under this Lease unless and until any and all applicable grace, cure and notice periods shall have expired.

15.02 Termination of Lease. In addition to all other rights and remedies available to Landlord by law or equity, Landlord may, at any time after the occurrence of any Event of Default on the part of Tenant, and while the same remains unremedied, give notice to Tenant of its intention to terminate this Lease, in which case, unless within ninety (90) days after the giving of such notice, the condition creating or upon which is based such Event of Default is cured, this Lease shall terminate as of the expiration of such ninety (90) days and Landlord may reenter upon the Premises and have possession thereof; provided, however, if the Event of Default is one described in Section 15.01.2 and is one which can be cured, but cannot with due diligence (without regard to the availability of funds or the financial condition of Tenant) be cured prior to the expiration of the period provided herein, and Tenant proceeds promptly and thereafter prosecutes with all due diligence the curing of such default, then the time for curing of such Event of Default shall be extended for such period as may be necessary to complete the same with all due diligence, but not to exceed ninety (90) days. Notwithstanding the foregoing provisions of this Section 15.02 or the provisions of Section 15.01 hereof, if the asserted default is subject to arbitration pursuant to any provision of this Lease, and the existence of such default is being contested in good faith by the Tenant, the time for curing such default shall commence upon the rendering of the arbitration decision with respect thereto, or other resolution thereof, whichever occurs first; provided, however, if the matter being arbitrated is capable of performance to the extent not in dispute, e.g., the undisputed portion of monies owing), performance to the extent not in dispute shall be a condition precedent to the effectiveness of this sentence.

15.03 Effect of Termination. Subject to the provisions of Section 6 (relating to the rights of Leasehold Mortgagees), upon termination of the Term under this Section 15, all rights and privileges of Tenant and all duties and obligations of Landlord hereunder shall terminate. Immediately upon such termination, and without further notice to any other party, Landlord shall have the right to assert, perfect, establish and confirm all rights reverting to Landlord by reason of such termination by any means permitted by law, including the right to take possession of the Premises together with all Improvements thereto, fixtures therein (including Tenant's trade fixtures) and any and all capital alterations and Improvements which may be constructed upon or to the Premises, and to remove all personal property from the Premises and all persons occupying the same, and in all respects to take the actual, full and exclusive possession of the Premises and every part thereof as Landlord's original estate, thereby wholly terminating any right, title, interest or claim of or through Tenant as to the Premises or the Improvements or fixtures and alterations to the Improvements, and all personal property located on the Premises, all without incurring any liability to Tenant or to any person occupying or using the Premises for any damage caused or sustained by reason of such entry or such removal, except for damage resulting from Landlord's negligence in effecting such removal, and Tenant agrees to indemnify, protect and save harmless Landlord, and all employees, agents and representatives of Landlord, from all costs, loss or damage arising or occasioned thereby to Tenant, or its agents, employees, officers, guests, invitees or subtenants, except as limited hereinabove, including attorneys' fees.

15.04 Damages and Remedies. The exercise by Landlord of any remedy arising by virtue of an Event of Default shall not be considered exclusive, but Landlord may exercise any and all other rights or remedies provided by this Lease or by law or equity. Landlord may elect to sue Tenant hereunder without terminating this lease. The termination of the Term pursuant to this Section 15 shall not extinguish the right of either party to collect damages arising from the breach of this Lease by the other party. Tenant shall be liable for Rents accruing up to the end of the Term specified in this Lease notwithstanding the early termination of such Term due to an Event of Default and the reentry of Landlord before the normal expiration of the Term, except that Landlord shall make commercially reasonable and diligent efforts to rerent the Premises upon such terms as it sees fit in its reasonable discretion and for a term which may expire either before or after the specified termination date of the Term herein, and Tenant shall pay to Landlord all Rent and other sums which would be payable hereunder by Tenant if no such termination and reentry had occurred, less the net proceeds, if any, of any such reletting after deducting Landlord's reasonable expenses in connection with such reletting, including but not limited to repossession costs, brokerage commissions, legal fees and expenses, employee expenses, alteration costs and other such reletting preparation expenses, and operating expenses, and Tenant shall pay such current damages to Landlord on the days on which such Rent would have been payable hereunder if no such termination and repossession and reentry had occurred.

15.05 No Waivers. No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision of this Lease. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect,

or the rights of any party hereto with respect to any other then existing or subsequent breach of the same or any other provision hereof.

15.06 Payment by Landlord of Tenant's Defaulted Payments. In case of default on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, Landlord may, at its option, after notice to Tenant, pay any or all such sums, or do any or all such acts which require the payment of money, or incur any necessary expense to remedy the failure of Tenant to perform any one or more of the covenants herein contained. Tenant shall repay the same to Landlord on demand together with interest at the rate provided in Section 21.13 hereof, such interest to be calculated from the date payment is made by Landlord, and all of such amounts shall be Rent hereunder.

15.07 Landlord Default. Tenant shall notify Landlord in writing of any alleged or actual default by Landlord or failure to perform, comply with or observe any term, covenant, warranty, condition, agreement or undertaking of Landlord contained in or arising under this Lease and Landlord shall have a period of thirty (30) days after notice thereof is given by Tenant to Landlord to cure such matter; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period, such thirty (30) day period shall be extended until such cure is complete so long as Landlord diligently and continuously prosecutes such cure or is contesting the existence of such breach or failure.

## SECTION 16 ARBITRATION

16.01 Applicability. Any dispute, controversy or claim arising out of this Lease which is to be determined by arbitration shall be subject to the procedures set forth in this Section 16.

16.02 Notice of Demand. In any event referred to in Section 16.01, either party may demand arbitration by notifying the other party in writing in accordance with the notice provisions of Section 21.11. The notice shall describe the reasons for such demand, the amount involved, if any, and the particular remedy or remedies sought. The notice shall also list the names of three arbitrators qualified in accordance with Section 16.04 if the arbitration panel is to be a single arbitrator or a single arbitrator if the panel is to be three arbitrators.

16.03 Response. The party that has not demanded arbitration shall respond to the notice of demand within ten (10) calendar days of receipt of such notice by delivering a written response in accordance with the notice provisions of Section 21.11. The response shall list the name of a second arbitrator qualified in accordance with Section 16.04 if the arbitration panel is to be three arbitrators or a selection of a single arbitrator from the list provided by the demanding party. The response shall also describe counterclaims, if any, the amount involved, and the particular remedy or remedies sought. If a party fails to respond timely to the notice of demand, the arbitrator selected by the party making such demand under Section 16.02 shall resolve the dispute, controversy or claim within thirty (30) calendar days of the deadline for response.

16.04 Qualified Arbitrator. Any arbitrator selected in accordance with Sections 16.02, 16.03 or 16.05 shall be a neutral retired Federal or State court judge (e.g., JAMS).

16.05 Appointment of Third Arbitrator. If the amount in controversy exceeds \$1,000,000 (as adjusted pursuant to Section 21.20) and if a party responds timely to a notice of demand for arbitration under Section 16.03, a third arbitrator shall be appointed by the parties if they can agree within a period of ten (10) calendar days. If the parties cannot timely agree, then either party may request the appointment of such third arbitrator by the Presiding Judge of the Superior Court of Pierce County, Washington; and the other party shall not raise any question as to the Court's full power and jurisdiction to entertain such application and to make such appointment. If the amount in controversy is less than \$1,000,000 (as adjusted pursuant to Section 21.20), then the responding party shall select an arbitrator from the demanding party's list of not less than three arbitrators and the arbitration panel shall be a single arbitrator.

16.06 Arbitration Hearing; Discovery; Venue. The arbitration hearing shall commence within sixty (60) calendar days of appointment of the third arbitrator or single arbitrator as provided above. The arbitration hearing shall be conducted under the American Arbitration Association (AAA) Commercial Arbitration Rules with Expedited Procedures in effect or their then reasonable equivalent as modified by this Agreement, but the arbitration shall not be administered by the AAA. The hearing shall in no event last longer than two (2) calendar days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrators in their discretion to insure a fair private hearing; and any such discovery or dispositive motion practice permitted by the arbitrators shall not in any way conflict with the time limits contained herein. The arbitrators shall not be bound by any rules of civil procedure or evidence, but rather shall consider such writings and oral presentations as reasonable business persons would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrators may determine to be appropriate. It is the intention of the parties to limit live testimony and cross examination to the extent reasonably necessary to insure a fair hearing to the parties on significant and material issues. Venue of any arbitration proceeding pursuant to this Section 16 shall be in Pierce County, Washington.

16.07 Decision. The arbitrators' decision shall be made in no event later than ten (10) calendar days after the commencement of the arbitration hearing described in Section 16.06 and the decision of any two arbitrators or the single arbitrator as the case may be shall constitute the decision of the arbitrators. The award shall be final and judgment may be entered in any court having jurisdiction thereof. The arbitrators may award specific performance of this Agreement. The arbitrators may also require remedial measures as part of any award. The arbitrators in their discretion may award reasonable attorneys' fees and costs to either party, as they determine just and equitable. Each party shall pay the fees and expenses of the arbitrator appointed by it and one-half the fees and expenses of the third arbitrator, except as otherwise ordered, or if there is a single arbitrator, each party shall pay one-half of the fees and expenses of the single arbitrator.

## SECTION 17 TENANT'S RIGHT TO ACQUIRE

17.01 First Right of Refusal. Provided Tenant is not then in default, Landlord hereby grants to Tenant a first right of refusal to purchase the Property and/or the Golf Course during the Term and

any extensions of this Lease in accordance with the terms of this Section 17.01 (the “Right of First Refusal”). If Landlord shall desire to sell the Property (subject to the terms of this Lease) or the Golf Course and Landlord has established a price it would accept, or Landlord has received a bona fide offer to purchase signed by a third party which Landlord intends to accept (either situation described herein as an, “Offer”), Landlord shall give Tenant written notice of the terms of the Offer, including a copy of any offer letter signed by a third party (“Landlord’s ROFR Notice”), or thirty (30) days following Tenant’s receipt of Landlord’s ROFR Notice, Tenant shall have the option to purchase the Landlord’s interest in the Property and/or Golf Course at the same price and under the same terms as stated in Landlord’s ROFR Notice. A written notice addressed to the Landlord and signed by Tenant, within the period for exercising the Right of First Refusal, submitted with a bank cashier’s check or money order payable to the order of Landlord in the amount of \$100,000.00 (the Earnest Money) shall be an effective exercise of this Right of First Refusal, and Landlord and Tenant shall proceed to close on the same terms as those contained in the Offer. The Right of First Refusal shall be personal to Tenant and shall not be transferable or assignable except in connection with an assignment of this Lease or as otherwise agreed to by Landlord. If Landlord is then subject to laws requiring public bidding as provided in Section 17.04(g), then Landlord shall permit Tenant to participate in such process and that participation shall satisfy Tenant’s Right of First Refusal. In the event Tenant is not the highest bidder for the subject property, Landlord, if then permitted by applicable law, shall still nonetheless offer the property to Tenant at the highest bid and Tenant may then exercise its Right of First Refusal as outlined in this Section without having to again participate in the public bidding process. If Tenant chooses not to accept the Offer, Landlord may proceed to close the Offer with the third party offeror on terms and conditions not materially less favorable to Landlord and at a price not less than 99% of the purchase price set forth in the Offer as originally presented to Tenant. If the Offer should fail to close with a third party or with Tenant except by reason of Tenant’s default, Tenant’s rights hereunder shall be automatically reinstated, and any subsequent Offer shall be presented to Tenant in the same manner as that described herein, and the process will continue until any such Offer is closed on the terms described herein or not accepted by Tenant. Landlord shall not be in breach of this agreement if the exercise of this Right of First Refusal would constitute a violation of Washington State law (as opposed to local ordinances).

17.02 Rights of First Offer. Provided that Tenant is not then in default, Tenant shall have the right of first offer with regard to (each, a “Right of First Offer”):

- a) the purchase of all or any part of the Environmental Services Building (“ESB”) located within the Chambers Creek Properties;
- b) any ground lease for the development of residences within the boundaries of Chambers Creek Properties including, but not limited to, multi-family, senior housing or hotels; and
- c) an agreement to manage the Golf Course in the event Landlord changes management companies.
- d) to provide food and beverage services for short term public nonprofit events within the Chambers Creek Properties. This Right of First Offer does not include public events that allow multiple vendors for limited times to provide services such as a "Taste of Pierce County", or temporary or seasonal food trucks to support special public activities such as races, fund raisers or other community events or non-public events of any kind.

This Right of First Offer shall be personal to Tenant and shall not be transferable or assignable. In the event of sale, assignment or sublease of Tenants' interest in this Lease, such Right of First Offer shall automatically lapse.

At any time, Landlord may provide written notice to Tenant that Tenant's Right of First Offer is being triggered (the "ROFO Notice"). Any Right of First Offer must be exercised within sixty (60) days of Tenant's receipt of the ROFO Notice of Landlord's intent to sell or ground lease the subject property or change management of the Golf Course or otherwise provided herein or within five (5) days for food and beverage services. Landlord shall have, in its sole and unfettered discretion, the right to reject any offer from Tenant, regardless of its terms. If Tenant fails to exercise any Right of First Offer within such 60-day or 5-day period, or if Landlord rejects Tenant's offer, the applicable Right of First Offer shall automatically terminate as to the matter that was the subject of that particular ROFO Notice without the necessity of further action by Tenant and Landlord shall have the right to sell or ground lease the property that is the subject of such ROFO Notice. Notwithstanding, the terms of this ROFO provision will continue to apply to any and each new ROFO Notice that has not been the subject of a prior ROFO Notice as to the property or matter described therein that is delivered to the Tenant, as the case may be, from time to time.

17.03 Assignment of Rights. Tenant shall not have the right to assign its rights pursuant to Section 17.01 to any third party other than in connection with assignment of this Lease.

17.04 Terms of Purchase. In the event that Landlord and Tenant engage in a purchase and sale pursuant to the terms of this Lease, and unless otherwise specified in Landlord's notice to Tenant pursuant to Section 17.01 and 17.02, the purchase and sale shall occur in accordance with the following terms and conditions:

- (a) The purchase price is to be paid in cash at closing or on such terms as set out in a third party offer to purchase.
- (b) Closing of real property sales is to occur on or before one hundred twenty (120) days after the earlier of Landlord and Tenant have reached an agreement to proceed with the purchase and sale or Tenant has exercised the applicable right.
- (c) Closing shall occur at the offices of a title insurance company doing business in Pierce County and selected by purchaser.
- (d) Landlord as Seller shall provide Tenant as purchaser with an owner's standard coverage ALTA policy of title insurance.
- (e) Closing costs shall be paid as follows:
  - (i) Landlord as seller is to pay for standard coverage title insurance, real estate excise tax, if any, and one-half of the closing escrow fee.

(ii) Tenant as purchaser is to pay for recording costs, extended coverage title insurance in excess of standard coverage, sales tax on personal property, if any, and one-half of the closing escrow fee.

(iii) Real property taxes, leasehold taxes, utilities, rents, and other such costs and payments shall be prorated between purchaser and seller as of the date of closing. If the Property is the subject of the sale, Tenant shall continue to pay Rent in accordance with the terms of this Lease until closing and Rent for any partial month shall be prorated at closing.

(f) Encumbrances on the Property (other than (i) encumbrances existing of record on the date of this Lease which do not secure an obligation to pay money or (ii) subsequent encumbrances which do not materially impair the use of the Property or (iii) are imposed by law) that are subject to the purchase and sale shall be removed by seller, except purchaser shall be responsible for removing or accepting any encumbrances that purchaser has placed or caused to be placed upon the Property.

(g) Seller shall not be required to perform any sale if the sale cannot be completed in accordance with laws related to public bidding, or in compliance with the terms of any bonds issued by Pierce County without incurring a penalty. The timeframes imposed herein for Closing will be extended day for day as needed under Section 21.18 to accommodate any public bidding process requirements.

(h) The terms of the sale shall provide that Tenant as purchaser is purchasing the applicable property "as-is" without warranty or representation except title, which shall be conveyed by bargain and sale deed; provided, Tenant will be entitled to a 10-day inspection period immediately following receipt of the ROFO Notice or ROFR Notice to access and inspect the Property and to conduct any non-invasive investigations and have prepared such studies or reports as it deems necessary or appropriate, at its sole expense, and Tenant will indemnify Landlord from any damages resulting from any such access or inspection to enable it to make an informed decision in responding to the ROFO Notice or the ROFR Notice.

17.05. Deposit by Purchaser. In the event Tenant or any Leasehold Mortgagee elects to purchase the Property hereunder, if such purchaser shall deposit in escrow with the title company in cash a sum equal to not less than five percent (5%) of the total purchase price of the Property thereunder (whether such deposit is made pursuant to any agreement with Landlord or at the sole instance of the purchaser), then such deposit shall be the sole recourse if such purchaser shall fail to acquire the property in accordance with such agreement (other than as a consequence of a default by Landlord under such agreement) and any failure to complete such purchase shall not constitute a default by Tenant under this Lease, which shall continue in effect in accordance with its terms except that Tenant shall have no further rights to acquire Landlord's interest in the applicable property under this Section 17.

SECTION 18  
RENTAL RESTRICTIONS AND CONDITIONS

18.1 Major Events. Tenant acknowledges that from time to time Landlord, its successors or assigns may utilize the Golf Course and Landlord's adjacent property for golfing events of regional or national significance ("Major Event"). Major Events may include, but are not limited to, golf competitions sponsored by the United States Golf Association ("USGA"), Professional Golf Association ("PGA") or Ladies Professional Golf Association ("LPGA") or comparable organizations. They may also include non-golfing events as may be mutually agreed to by the parties. Tenant agrees to implement restrictions on the use of and access to the Premises as reasonably requested by Landlord during a Major Event pursuant to the terms of this Lease.

18.02 Rental During Major Events.

(a) All hotel guests and tenants renting any accommodation from Tenant during a Major Event shall also be required to purchase admission tickets to the Event for the duration of the Event and such admission revenues shall be the property of Landlord or the sponsor of the Major Event.

(b) During any Major Event, Landlord may require Tenant, Tenant's employees, guests, and tenants of Tenant to park all vehicles off site, provided however that Landlord shall arrange or otherwise provide for offsite parking and free shuttle service to the Property at the nearest offsite parking venue reasonably available.

(c) At Landlord's request given not less than nine (9) months prior to the Major Event, Tenant shall block up to eighty-percent (80%) of its hotel rooms and villas then being rented on a less than thirty (30) day basis for rental by the sponsor of the Major Event that are available at the time of Landlord's request. Absent Landlord's written consent to a higher rental rate, those accommodations will be made available at not more than two hundred percent (200%) of the average daily room rate charged in the peak period of the prior calendar year. For purposes of this calculation, peak period shall mean the two consecutive months with the highest average daily room or rental rate.

18.03 License for Spectator Passage. During a Major Event, Tenant agrees to provide reasonable access on the perimeter of and through the Property to facilitate spectator traffic related to the Major Event. The parties agree to reasonably negotiate the nature and extent to which this is allowed prior to each Major Event and further agree that this shall not include access to the interior of Tenant's Buildings or recreation areas, provided Landlord will repair and restore any damage caused by this access.

18.04 Notice. Landlord shall give Tenant written notice of its intent to host a Major Event at least nine (9) months prior to the event.

18.05 It is acknowledged by both the Landlord and Tenant that the highest and best use for the hotel and golf villa units is daily rental rate use. As the Project matures it is both parties desire to maximize daily rate use as the primary use. It is also acknowledged by both parties that market conditions for daily and monthly rate units will fluctuate over the Term of this Lease. Flexibility

of use will create a sustainable resort that can adapt to market conditions and maximize the return and minimize the risk to both Landlord and Tenant. Accordingly, Tenant shall at all times act diligently and use all proper and reasonable efforts consistent with good business practice, in such manner as to maximize the Gross Revenue of Tenant and hence the Percentage Rent payable to Landlord. Conversion of villa units from monthly rentals to daily rate use will be based on a combination of occupancy, daily rates, net operating income, advance reservation projections and market capitalization rate differentials for hotel and monthly rentals. On September 30 of each year during the Term of this Lease, Tenant will deliver to Landlord for its approval, such approval not to be unreasonably withheld or delayed, its conversion plan for the coming year based on occupancy rate and projected value of the respective rental rates.

18.06 Joint Marketing Agreement. The Landlord and Tenant shall meet on an annual basis to develop a joint marketing agreement and budget which jointly promotes the Project and Golf Course. The agreement will include, when applicable and approved by Landlord, a proposal to be submitted to the "lodging tax advisory committee", for funds to promote tourism with respect to the Chambers Creek Properties. The agreement will identify promotional rates for the Golf Course and lodging to offer prospective clients, event promoters, tournament organizers, travel organizers, and corporate sponsors, seasonal public "Package Rates" established for golf and lodging; and such other promotions upon which the parties agree and are approved by Landlord.

18.07 Interim Location of Landlord's Event Tent. In order to satisfy commitments for previously scheduled events, Landlord intends to temporarily relocate the existing event tent to a mutually agreeable location in the area of the northwest corner of the Property and the proposed amphitheater. Landlord shall have the right to utilize the event tent at that site, without payment or abatement of rent, through October 1, 2019.

## SECTION 19 ADDITIONAL COVENANTS OF TENANT

19.01 Intellectual Property. Tenant covenants and agrees that all rights to use the name "Chambers Bay" in connection with the Premises or restaurant or event center or merchandise sold in connection any business operations on the Premises are the sole and exclusive rights and property of the Landlord. Tenant shall have a license to utilize the name "Chambers Bay" pursuant to Section 20.05.

19.02 Management Standard. Tenant shall operate, maintain, manage, repair and furnish the Premises and the business to be carried on therein (including, without limitation, as to matters of maintenance, repair, safety, sanitation, guest service, and employee courtesy, appearance and conduct), in at least the following standard (the "Management Standard"), to wit: the Hotel, villas, and Restaurant shall be operated and managed as a first-class resort hotel in accordance with the standards of first-class resort hotel properties in the Puget Sound area as of the date hereof, examples of which are Cedarbrook Lodge, in SeaTac, Washington and The Willows Inn, in Woodinville, Washington. Any dispute regarding the Management Standard shall be resolved by arbitration as provided in Section 16.

19.03 FF&E Reserve Account. To the extent a Leasehold Mortgagee does not require and hold a greater FF&E Reserve, Tenant shall establish a separate interest-bearing account (the “FF&E Reserve Account”) for the hotel and golf villas solely for the purpose of funding the renewal, replacement and additions of the furniture, fixtures and equipment (“FF&E”) required for the operation of the Hotel and golf Villas in accordance with the terms of this Lease from and after the Opening Date thereof.

(a) To fund the FF&E Reserve Account, Tenant shall deposit, within thirty (30) days after the end of each month during the Term of this Lease from and after such Opening Date, an amount equal to the percentage of Gross Revenues of such Hotel as set forth in the following schedule:

FISCAL YEAR	PERCENTAGE OF TOTAL REVENUES
1	1%
2 AND THEREAFTER	2%

To the extent Tenant’s operating income would result in an Operating Loss (as defined in Section 2.03) (without regard to the required FF&E Reserve Account payments) for any month, Tenant shall, within thirty (30) days after the end of each Year, deposit into the FF&E Reserve Account an amount sufficient to cause the FF&E Reserve Account to be fully funded as so required above. In addition, once the FF&E Reserve Account has accumulated a total equal to 5% of the annual Gross Revenue of the preceding year, Tenant shall have no more obligation to fund it except as may be required by any Leasehold Mortgagee.

(b) Tenant shall make expenditures from the FF&E Reserve Account for the purposes permitted hereunder as is necessary to maintain the Project in accordance with this Lease. All amounts remaining in the FF&E Reserve Account at the close of each Fiscal year shall be carried forward and retained until full used as herein provided. Within one hundred twenty (120) days after the end of each Fiscal Year, Tenant shall provide Landlord with a written statement of the balance in the FF&E Reserve Account and the amount and nature of Tenant’s expenditures from the FF&E Reserve Account since the prior statement provided by Tenant.

19.04 Tenant agrees that Landlord will retain control and ownership over all excess excavated minerals and soil (including sand and gravel) produced or generated during construction of the Project or otherwise and not incorporated into the Project, with the right to cause Tenant to relocate any materials to stockpiles adjacent to the Property. In the event Landlord elects to relocate such materials offsite of the Property to other Chamber Creek Properties, Landlord shall reimburse Tenant for any additional costs reasonably documented by Tenant and incurred in the movement of said material which is in excess of the costs Tenant would have incurred in connection with excavation and removal of the minerals and soil during excavation for the Project. In the event Landlord exercises this right, it must do so in a manner not to materially delay the progress of the Project.

19.05 Sewer Extension/Lift Station. To facilitate the Project a Sewer Extension and Sewer Lift Station are required in a location and with specifications approved by Landlord (“Lift Station”). Tenant will install the required extension and Lift Station per Landlord’s specifications as part of

development of the Project. Landlord will reimburse Tenant one-half the cost of this work up to a maximum reimbursement amount of \$150,000. The Lift Station shall be on or reasonably close to the Premises and have sufficient capacity for the Project and other uses Landlord specifies. Landlord and Tenant shall mutually cooperate to complete this work by March 1, 2020. Landlord shall reimburse Tenant for one-half of the cost of this work subject to the maximum amount set forth above within 30 days of substantial completion of the Lift Station; the Lift Station shall be owned by Landlord and Tenant shall assign and Landlord shall assume its rights and obligations, if any, in the Lift Station to Landlord. Landlord is responsible for the Lift Station after its completion, including but not limited to maintenance and repair, insuring the same, and its operation.

## SECTION 20 ADDITIONAL COVENANTS OF LANDLORD

20.01. Golf Course. Landlord will cause the Golf Course to remain in operation substantially in accordance with the current standards of operation and be maintained in championship condition as currently defined provided the sport of golf and operating a Golf Course remain financially viable. For purposes of this Lease, financial viability of the Golf Course means Landlord's subsidy of operations of the Golf Course is not a materially greater percentage of Golf Course gross revenue than it is as of the Commencement Date of this Lease in Landlord's reasonable estimation. In the event Landlord fails to operate the Golf Course in accordance with the current standards or maintain the Golf Course in championship conditions, provided the Golf Course operation has remained financially viable as defined above, Tenant's Minimum Rent may be equitably adjusted to offset any actual loss in Tenant's Gross Revenue that Tenant can demonstrate as a result of the Landlord's failure to operate the Golf Course in accordance with the current standards as of the Commencement Date. Any dispute regarding the financial viability of the Golf Course or any adjustment to Minimum Rent shall be resolved by arbitration as provided in Section 16.

20.02 Utility Easement. Tenant will be required at its expense to relocate utility lines (e.g., power, water, natural gas, sewer, and telecommunications) on the Premises to the extent required in connection with construction of the Project. Landlord will grant to Tenant such utility easements across Landlord's property as are reasonably necessary to bring such utilities to the Premises. Tenant shall bring said utilities to the Premises underground. Landlord shall have sole discretion as to the location of the easements. Provided, however, in the event Landlord selects an unreasonable location that results in additional cost to the Project, because the location better serves other interests of Landlord, Landlord shall reimburse Tenant the difference in construction cost which is reasonably documented by Tenant.

20.03 No Other Hotels. For so long as Tenant continuously operates a hotel consistent with the Management Standard on the Premises, Landlord will not permit any other hotels to lease parcels or be operated on land owned by Landlord within the boundaries of the Chambers Creek Properties without approval of Tenant, which will not unreasonably be withheld.

20.04 No Other Restaurants. Prior to January 1, 2045, provided Tenant is continuously operating one or more restaurants on the Premises consistent with the Management Standard, Landlord will not permit additional restaurant(s) on property it owns within the boundaries of the Chambers

Creek Properties which are open to the public without approval of the Tenant which will not unreasonably be withheld. In addition, the Landlord shall provide the Tenant a right of first offer pursuant to the terms of Section 17.02 to construct, own and/or operate such additional restaurant(s). This restriction does not extend to snack bar and beverage service on the Golf Course or food truck or other temporary or seasonal vendors/providers within the Chambers Creek Properties or other food service operations which do not materially compete with Tenant's restaurants.

20.05 License. Provided Tenant is not in default of this Lease, Tenant shall be entitled to a license to use Landlord's rights to the name "Chambers Bay" in connection with the hotel, golf villas, resort, restaurant and resort logo'd merchandise provided such use and merchandise is consistent with the Management Standard and does not include the word "golf" or specific identification or reference to the Golf Course. Tenant will pay no additional consideration for this license (other than Percentage Rent payable in connection with sales of such merchandise) and will cooperate with Landlord in the perfection and protection of Landlord's rights to that name.

20.06 Tee Times. Landlord will permit guests and users of the Project to obtain a reasonable number of priority tee times and price discounts for the Golf Course upon advance notice, discounts, and procedures to be mutually agreed. Landlord or Tenant shall be entitled to reserve preferred tee times in conjunction with room reservations or Major Events up to 330 days in advance.

20.07 Dock Facilities. Landlord will pursue grant requests and use commercially reasonable efforts to continue development of a daily use moorage dock on the waterfront of the Golf Course to the extent Landlord determines such dock is financially feasible; however, Landlord shall not be obligated to allocate any county or public funds for such a dock. If a dock or moorage is constructed and usage fees are initiated, guests of Tenant shall be entitled to a twenty percent (20%) discount on a short-term basis. Nothing in this agreement shall obligate Landlord to provide long-term moorage to Tenant or its guests.

20.08 Overflow Parking. Landlord and Tenant hereby agree to enter into a reciprocal agreement for overflow parking at special events in the form attached hereto as Exhibit G. The reciprocal agreement will include a provision for reasonable notice to the other party and a provision wherein Landlord permits Tenant to use the Environmental Services Building parking lot located on tax parcel 0220282020 as shown on Exhibit G and on other improved parking lots maintained by Landlord on the Chambers Creek Properties north of the treatment plant for overflow parking for events on the Premises for no additional Rent, upon procedures to be mutually agreed.

20.09 On-course Food and Beverage. Landlord hereby grants to Tenant the right of first opportunity subject to the terms in Section 17.02 to be concessionaire for all Golf Course on-course food and beverage beginning when the hotel Building opens for overnight guests. As long as Tenant commences as the concessionaire at opening and for so long as Tenant continues as the concessionaire, sales proceeds of all on-course food and beverage revenue will be added to the Gross Revenue as defined in Section 2.01.3. Tenant shall have the right to opt out of being the concessionaire at any point by giving written notice to Landlord. In the event Tenant opts not to

be the concessionaire at any point, it must give Landlord not less than 180 days' written notice, at which time Tenant's rights under this Section 20.09 shall terminate.

20.10. Landlord hereby grants Tenant well water rights to irrigate up to 40% of the Premises at a rate of \$.30 per 100 cubic feet of water, subject to escalation at the same rate as the Minimum Rent set forth in Section 2.02.1, if excess water is available as reasonably determined by Landlord. Both parties understand that this may be gray water. Tenant shall pay for connection to and distribution of the well water on the Premises, including the cost of any booster pump. Such rights will be properly permitted and documented as may be required by the applicable governing authority. Landlord will install a meter to monitor Tenant's water usage at its own cost. At its expense, Tenant will be required, at its expense, to alter in a manner approved by Landlord the irrigation system that serves the Golf Course in order to construct the Project and/or utilize this water on the Premises.

20.11 Landlord hereby grants Tenant the following rights and restrictions on Landlord's use of the Chambers Creek Properties owned by Landlord and the ESB:

- (a) As provided in and subject to the terms of Section 20.03, Landlord shall not permit any other Hotel on the Chambers Creek Properties;
- (b) As provided in and subject to the terms of Section 20.04, Landlord shall not permit additional restaurants open to the public on the Chambers Creek Properties;
- (c) Tenant shall have the exclusive first right, at competitive rates, to cater food and beverage at third party events at the ESB so long as the ESB is owned by Landlord. The foregoing right to cater such events shall not apply to (i) Landlord or other governmental agency sponsored events, and (ii) events sponsored by any tenant of the owner of ESB. Tenant's revenue from such catering shall be included in Gross Revenue.
- (d) Landlord shall obligate any future purchaser or any assignee, tenant, subtenant or licensee of ESB any of which is involved in the business of wedding event management or catering as a condition precedent to such sale, to require such purchaser or such assignee, tenant, subtenant or licensee to allow Tenant the right of first opportunity to provide catering (at competitive rates) for weddings occurring at the ESB. Tenant's gross revenue from such catering shall be included in Gross Revenue.
- (e) Tenant shall have the exclusive first right, at competitive rates, to cater food and beverage at third party events on Chambers Creek Properties until January 1, 2045. Landlord or other governmental agency-sponsored events and events with 30 or fewer Participants are excluded from this exclusive right. Tenant's revenue from such catering shall be included in Gross Revenue.
- (f) After January 1, 2045, Tenant shall have the status of Landlord's exclusive preferred vendor for all non-public catered events occurring on the Chambers Creek Properties and Landlord hereby grants to Tenant the Right of First Offer pursuant to Section 17.02 to operate and provide any food and beverage services to all non-public, catered events occurring on Chambers Creek Properties, except for Landlord or other governmental agency-sponsored events or events with 30 or fewer Participants. Landlord shall be paid a fee of eight percent (8%) of gross revenue from such events received by Tenant, which shall not be included in Gross Revenue for purposes of Section 2.01.3. Tenant

will provide an accounting of revenues and payment of the fee within thirty (30) days after such event.

- (g) Landlord will not develop any indoor structures designed and designated specifically as a principal use to be used for weddings, conferences, or conventions on the Chambers Creek Properties without Tenant's prior written consent, which consent will not be unreasonably withheld.
- (h) Landlord shall obligate any future purchaser or ground lessor of any of part of Chambers Creek Properties, as a condition precedent to such sale or ground lease, to the Tenant's rights and Landlord's restrictions enumerated in Sections 20.03, 20.04 and 20.11(d), for the duration of this Lease and any extension thereof.

Nothing in this Section shall restrict or apply to Landlord or other governmental agency-sponsored events on the Chambers Creek Properties, nor any temporary food services or sales at such events (such as food trucks or concession sales). In the event of any breach of any provision of this Section, Tenant's exclusive remedies shall be to obtain injunctive relief and/or recovery of Tenant's actual damages including lost profits, attorneys fee and costs in a separate proceeding brought for such purpose. In no event shall Tenant shall have any right of offset or abatement of any Rent due hereunder in connection with such action or breach.

20.12 Landlord may from time to time offer discounts on selected tee times at the Golf Course at a most favored rate. To the extent Landlord makes such "most favored rates" generally available to the public or to other businesses, it will also offer such rates to Tenant's similarly situated guests and customers. However, Tenant acknowledges Landlord may employ dynamic pricing from time to time, which may involve a more favored temporary or short term rate, which may not be offered to Tenant's guests and customers. Subject to such dynamic pricing, in no event shall any discounted Golf Course fees be granted guests of other hotels that is greater than the discount offered to Tenant's guests and customers, without Tenant's prior consent, approval of which shall not be unreasonably withheld.

20.13 Landlord hereby grants Tenant a right to temporary use from time to time of visible and prominent portions of Chambers Creek Properties, north of the Treatment Plant, for special events, including, but not limited to events taking place in the Central Meadow, outdoor lawn spaces, parking lots, the waterfront and proposed future dock area, upon procedures to be mutually agreed to not later than 60 days before the hotel's grand opening on the Property, and, unless another revenue sharing basis for such use is agreed on in writing when the procedures are mutually agreed, Tenant shall pay park usage fees normally charged to the public for such use. No later than October 31 of each year, the parties will meet to plan and coordinate events for the following calendar year. Tenant's use pursuant to this subsection is subject to Landlord or other governmental agency-sponsored events including, without limitation, Major Events.

20.14 Tenant's rights under this Section 20 are subject to (i) Tenant not then being subject to any Event of Default (as defined in Section 15) under this Lease, (ii) applicable governmental laws, rules, and regulations, and (iii) any limitations imposed by non-discriminatory public policies or procedures with respect to publicly owned property as may be in effect from time to time. Further, Tenant's rights under this Section 20 are personal to the Tenant named hereunder, and are not assignable or otherwise transferable to any other party (whether or not such party is a successor-

in-interest to the originally named Tenant) without Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

Any dispute regarding the matters within this Section 20 shall be subject to arbitration as provided in Section 16 of this Lease.

## SECTION 21 MISCELLANEOUS

21.01 No Partnership. Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.

21.02 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

21.03 Captions. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease, and shall not be used in the interpretation of any provision of this Lease.

21.04 Meaning of Terms. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

21.05 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

21.06 Severability. If any provision of this Lease (other than those relating to payment of rent) or the or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

21.07 Survival. Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.

21.08 Memorandum of Lease. The parties agree to execute and acknowledge an appropriate memorandum of this Lease for public recordation purposes, so that public notice of the existence and Term of the Lease hereof is given.

21.09 Amendment. This Lease may be amended only in writing, signed by both Landlord and Tenant.

21.10 Commissions. Each party hereto shall save and hold the other harmless from any and all claims, demands or requests by real estate brokers, agents or finders with whom such party may have dealt in connection with this Lease, for compensation or reimbursement of any sort on account of this Lease.

21.11 Notices. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, or by any Leasehold Mortgagee to either party shall be in writing and may be given personally or may be delivered by depositing the same in the United States mails, certified, registered or equivalent, return receipt requested, postage prepaid, properly addressed, and sent to the following addresses:

Landlord:	PIERCE COUNTY _____ _____ _____
Tenant:	CHAMBERS BAY DEVELOPMENT, LLC _____ _____ _____

or to such other address as either party may from time to time designate by written notice to the other or to any Mortgagee. Notices given hereunder shall be effective upon actual receipt by the party to whom directed, if delivered personally, or will be deemed received and effective three days after mailing if deposited in the United States mail, or when sent insured, when delivered according to any tracking receipt evidencing the same. If any notice required hereunder falls on a weekend or holiday, the due date will roll over to the next business day.

21.12 Attorneys' Fees. In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach thereof, or in any proceeding to recover possession of the Premises, the substantially prevailing party shall be entitled to recover from the other party as a part of the substantially prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered. In the event of any foreclosure or other proceeding pursuant to any Leasehold Mortgage or other lien against the Property or the Leasehold Estate incurred by Tenant, Landlord shall be entitled to recover from Tenant hereunder Landlord's costs and attorneys' fees reasonably incurred in the protection of Landlord's interests hereunder, whether or not Landlord is made a party to such proceeding. Such fees shall be paid to Landlord notwithstanding Landlord's election to be represented by the Prosecuting Attorney.

21.13 Interest. Except as otherwise specifically provided herein, any amounts due one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement accrues at Prime Rate shown in the Wall Street Journal, plus three percent (3%) applicable at that time; provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law without the creation of liability for penalties or rights of offset or

defenses. For purposes of interest calculations, the due date of amounts or the date the right to reimbursement accrues shall be deemed the date that it originally was owing but may have been disputed, as distinguished from the date of final settlement or the making of a judicial or arbitration award. In the event the Prime Rate as currently published in the Wall Street Journal ceases to be published, Landlord shall select a replacement rate or index generally recognized as a replacement for the Prime Rate.

21.14 Governing Law. This Lease shall be construed according to and governed by the laws of the state of Washington.

21.15 Reference Date of Lease. For reference purposes, the date of this Lease shall be the date on the first page hereof, irrespective of the date Landlord or Tenant actually executes this Lease.

21.16 Heirs and Assigns. All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective permitted successors and assigns.

21.17 Entire Agreement. This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the leasing, use and occupancy of the Property and Premises and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

21.18 Force Majeure. Whenever Tenant shall be required by the terms of this Lease or by law to perform any contract, act, work, labor or services, or to discharge any lien against the Premises, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, Tenant shall not be deemed to be in default hereunder and Landlord shall not enforce or exercise any of its rights under this Lease, if and so long as non-performance or default hereunder shall be caused by strikes, nonavailability of materials, war or national defense preemptions, governmental restrictions, acts of God or other similar causes beyond the reasonable control of Tenant after the exercise of due diligence; provided, however, that, notwithstanding any of the provisions of the foregoing, Tenant shall defend and indemnify Landlord in every case, and provided further that lack of funds and general economic conditions in no event shall excuse Tenant's payment or performance hereunder. Promptly following the cessation of such causes, Tenant shall resume such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinabove specified.

21.19 Landlord's Approvals. Consents and approvals by Landlord provided for in this Lease shall not be unreasonably withheld or delayed unless otherwise provided. Any request for a consent or approval shall be made by Tenant in writing to Landlord, and shall include all documents and other materials reasonably necessary for Landlord to evaluate the request. Consents and approvals shall be deemed given unless Landlord shall notify Tenant in writing within ten (10) business days (unless a different time period is expressly provided for in this Lease) of the written request as required under this Section 21.19. If Landlord does not consent to or approve the matter requested by Tenant, the written notice provided by Landlord shall state in reasonable detail the reason for

such disapproval or denial. All consents and approvals by Landlord under this Lease shall be given by the County Executive or his or her designee.

21.20 Escalation. The dollar amounts stated in Sections 4.13, 6.03.2, 7.03, and 8.01.2; and any other amounts specifically referring to this Section 21.20, shall be adjusted at the beginning of the sixth (6<sup>th</sup>) year of the Term and every fifth (5<sup>th</sup>) Anniversary Date thereafter (“Anniversary Date”) during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following-described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest date prior to the date hereof. The index figures shall be the Consumer Price Index published by the US Department of Labor, Bureau of Labor Statistics (Seattle area, All Items, Reference Base 1982-1984=100) (the “Index”). In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if the Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the Index and/or a conversion factor shall cease to be published, then, for the purposes of this Lease, there shall be substituted for the Index such other index as Landlord shall reasonably specify, and if Tenant shall not agree, such substitute Index shall be determined by Arbitration in accordance with Section 16 of this Lease, wherein the Arbitrators shall select a reasonable substitute index.

[Signatures on following page]

IN WITNESS WHEREOF, Landlord and 'Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

PIERCE COUNTY, a Washington political subdivision

By: \_\_\_\_\_  
Bruce F. Dammeier, County Executive

TENANT:

CHAMBERS BAY PROPERTIES, LLC,  
a Washington limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WASHINGTON |  
COUNTY OF PIERCE | ss.

I certify that I know or have satisfactory evidence that Bruce F. Dammeier is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the County Executive of Pierce County, a Washington political subdivision, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the state of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss.

COUNTY OF PIERCE

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Chambers Bay Properties, LLC, a Washington limited liability company, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the state of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

Exhibit A  
GROUND LEASE  
LEGAL DESCRIPTION OF PROPERTY  
AND GRAPHIC DEPICTION

Exhibit B

GROUND LEASE TITLE EXCEPTIONS

## Exhibit C

### PROPERTY VALUE CRITERIA

Whenever this Lese requires a valuation of property, the appraiser or party making the valuation shall consider the following requirements as to definition and procedure:

(1) Fair market value shall be defined as the most probable price which the subject property would sell to a knowledgeable buyer on a given date if placed on the market for a reasonable length of time by a well- informed seller assuming:

(a) Cash to seller or cash plus debt owed or assumed by the buyer where appropriate;

(b) The appropriate exposure on the market has occurred prior to the date of sale;

(c) The existence of leases and subleases of commercially acceptable terms with commercially acceptable rents; and

(a) The buyer is a ready willing and able buyer and the buyer is not an affiliate of Seller, moreover, that the transaction is an arms-length sale and not a short sale, bankruptcy sale or fire sale, or otherwise discounted due to reasons that are not market driven.

(2) When using the market comparison approach, the appraiser must document each comparable sale as to the seller, buyer, public record, plot plan and photograph as well as existing encumbrances, terms of sale, and seller motivation. All calculations necessary to adjust prices comprised of cash and debt to cash equivalences shall be documented and explained as well as any and all adjustments that relate the comparable price to the subject property as well as any and all adjustments that are necessary to relate the comparable price to the subject property must be itemized and explained so that a reviewer may repeat the mathematical adjustments required.

(3) The income approach must use discounted cash flow from a 10-year forecast in which all major leases or other sources of income are detailed individually and minor leases are classified into groups as appropriate. The assumptions for roll-over vacancies, absorptions, and expense projections must be detailed and itemized in a manner which fully states income and creates a balance sheet.

(4) Each appraiser shall supply a cost approach in addition to an income approach appraisal. If the cost approach is not used in the final valuation, then a discussion of why the cost approach was not used shall be included in any opinion of value.

Exhibit D

ENVIRONMENTAL AND SOILS REPORTS

Exhibit E

BOUNDARIES OF CHAMBERS BAY PROPERTIES

Exhibit F  
GROUND LEASE  
LOCATION OF OUTDOOR AMENITIES AND PUBLIC PLAZA

Exhibit G  
OVERFLOW PARKING AGREEMENT