

**CONTRACT OF SALE**  
**BETWEEN**  
**BRIARCREST COUNTRY CLUB CORPORATION,**  
**AS SELLER**  
**AND**  
**THE CITY OF BRYAN, TEXAS,**  
**AS BUYER**

## CONTRACT OF SALE

This Contract of Sale (this **Contract**) is between BRIARCREST COUNTRY CLUB CORPORATION, a Texas not-for-profit corporation (**Seller**) and THE CITY OF BRYAN, TEXAS, a Texas home-rule municipal corporation (**Buyer**).

### **BACKGROUND AND RECITALS**

Subject to voter approval, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, the Briarcrest Country Club facility (the **Project**) located in Bryan, Brazos County, Texas, together with the other matters to be acquired, being more particularly described as follows:

- (a) an improved tract of real property located at 1929 Country Club Drive, Bryan, Brazos County, Texas, consisting of approximately 125.7919 acres, being more particularly described on **Exhibit A** attached to this Contract (the **Real Property**), together with all of Seller's rights and privileges related to the Real Property and all of Seller's right, title and interest in all surface and subsurface water located on and under the Real Property; provided, however, the Seller shall reserve all of the oil, gas and other minerals located in and under the Real Property. Such reservation shall waive and relinquish the right to use the surface of the Real Property for the drilling, mining, exploring, storage or the development of oil, gas and other minerals in any future oil, gas and mineral lease.
- (b) all improvements, structures, and fixtures located on the Real Property (collectively, the **Improvements**), and all rights and appurtenances pertaining to the Real Property, including any interest of Seller in adjacent streets, alleys, easements, and rights-of-way, including without limitation all easements for common roadway purposes;
- (c) all Contracts (as defined in **Schedule 2.2**) entered into by Seller encumbering the Real Property as well as all licenses, permits, consents, and authorizations required for the continued operation of the Property (collectively, the **Property Contracts**);
- (d) the personal property located on the Real Property, except (i) Members' property, and (ii) personalty leased from third parties, including but not limited to all personal property used in the operation of the Briarcrest Country Club facilities, golf course, tennis shop, golf shop, restaurant, and swimming pool (the **Personal Property**);
- (e) all plans, specifications, drawings, reports, studies and other similar matters in Seller's possession (collectively, the **Plans**);
- (f) all warranties, guaranties and bonds, if any, relating to the Improvements and the Personal Property (collectively, the **Warranties**);
- (g) all materials in Seller's possession used in the continuing operation of the Improvements, including telephone numbers and exchanges, together with information (but not the software) (collectively, the **Records**).

(the Real Property, the Improvements, the Property Contracts, the Personal Property, the Plans, the Warranties, and the Records are collectively called the **Property**).

Cash in accounts receivable are specifically excluded from the definition of Property.

## **AGREEMENT**

### **ARTICLE 1 PROPERTY AND PURCHASE PRICE**

#### **Section 1.1. Agreement to Sell and Purchase.**

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property, subject to the Permitted Exceptions (defined in **Section 3.1**), on the terms of this Contract.

#### **Section 1.2. Purchase Price.**

The Purchase Price of the Property is TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), payable in immediately available federal funds at Closing, plus the Buyer's assumption of the Seller's remaining obligations on all existing equipment leases and service contracts relating to the Property.

#### **Section 1.3. Earnest Money.**

- (a) The date on which Aggieland Title Company, 3740 Copperfield Drive, Suite 101, Bryan, Texas 77802 (**Title Company**) acknowledges receipt of this Contract fully executed by Seller and Buyer (the **Effective Date**), Buyer shall deposit with Title Company (**Escrow Agent**), FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) (the **Earnest Money**) in cash on or before 2:00 p.m. CST on November 4, 2011. The Earnest Money will be applied to the Purchase Price of the Property at Closing or, at Buyer's direction, will be returned to Buyer at Closing; or, if this Contract does not close, the Earnest Money will be paid as provided in this Contract. Escrow Agent shall, promptly upon receipt, place the Earnest Money in an FDIC insured interest bearing account. All interest on the Earnest Money shall remain the property of Buyer, and such interest shall be delivered to Buyer at its request. The Earnest Money and all other deposits made by Buyer under this Contract are collectively called the **Earnest Money**.
- (b) If Buyer terminates this Contract in accordance with Buyer's rights to terminate hereunder, Buyer and Seller instruct Escrow Agent to deliver the Earnest Money to Buyer, together with any and all interest earned thereon, except TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) which sum is non-refundable and shall be paid to Seller not later than one (1) day after receipt of this Contract by the Title Company. In that case, Escrow Agent shall return the Earnest Money, except \$10,000.00, to Buyer irrespective of any subsequent demand to the contrary made by Seller, and Escrow Agent, without liability to Seller or any other party, shall follow this instruction unless restrained by order of a court. This provision shall survive the termination of the Contract.
- (c) If Buyer does not terminate the Contract during the Feasibility Period, Buyer shall deposit an additional FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) Earnest Money with the Title Company within ten (10) days after the end of the Feasibility Period. The additional \$50,000.00, along with the original \$50,000.00, shall be non-refundable unless the Seller is in default pursuant to Section 6.4 of

this Contract, in which event Buyer shall be entitled to a refund of all Earnest Money.

## ARTICLE 2 SELLER'S COVENANTS

### Section 2.1. Title Insurance.

- (a) Seller, at Seller's expense, shall cause the Title Company to furnish to Buyer at Closing a Texas Standard Form of Owner Policy of Title Insurance (the **Owner Policy**) covering the Property issued by Title Company dated as of the Closing Date, in the amount of the Purchase Price, and containing no exceptions or conditions except for the Permitted Exceptions. The cost of the issuance of the Owner Policy shall be Seller's expense, the cost of modifications, endorsements or amendments to the Owner Policy shall be Buyer's expense.
- (b) Seller, at Seller's expense, shall furnish to Buyer within ten (10) days after the Effective Date, a title insurance commitment covering the Property based upon a review of the record title issued by Title Company (the **Commitment**), together with legible and complete copies of all documents referenced as title exceptions in the Commitment (the Commitment shall be updated upon receipt of the Survey as defined in Section 2.3).
- (c) From the Effective Date through the Closing Date, Seller shall not create any encumbrances on the Property other than those listed in the Commitment or shown on the Survey or those relating to real estate taxes not yet due or payable, without the prior written consent of Buyer or as specifically provided within the terms of this Contract.

### Section 2.2. Other Information.

Seller shall deliver to Buyer within five (5) days after the Effective Date the materials listed on **Schedule 2.2.**

### Section 2.3. Survey.

Within ten (10) days after the Effective Date, Seller shall deliver to Buyer and Title Company a copy of the existing survey of the Property (the "Survey"). Buyer may, at its option, obtain and deliver to Seller and Title Company, at Buyer's sole cost and expense, a current or updated Survey, prepared by a surveyor acceptable to Buyer.

## ARTICLE 3 CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

### Section 3.1. Title Review.

- (a) Buyer has thirty (30) days after the last to be received of the Commitment, copies of the exceptions to title, and the Survey (the **Title Review Period**) to review the status of title to the Property and to object to any exception or condition contained in the Commitment or shown on the Survey by giving written notice to Seller. If Buyer does not give such notice of any objections to Seller within the Title Review Period, Buyer is deemed to approve the title as shown in the Commitment as well as matters shown on the Survey.

- (b) Seller has ten (10) days after receipt of Buyer's notice to cure (or commence and diligently prosecute the cure of) Buyer's objections; provided however, Seller shall have no duty to cure any objections by Buyer other than payment at closing of monetary liens existing against the Property. Seller will cooperate with Buyer in attempting to cure any such objection.
- (c) If Buyer gives its written notice of any objections within the Title Review Period and Seller fails, is unable, or refuses to cure any of Buyer's objections within Seller's 10-day curative period, Buyer may exercise its remedies under **Section 6.1** of this Contract. If Buyer has given its written notice of objections and there are objections that Seller has commenced to cure but is unable to do so by the Closing, Buyer may exercise its remedies under **Section 6.1** of this Contract.
- (d) All exceptions shown on the Title Commitment or the Survey that are either accepted or waived by Buyer are called the **Permitted Exceptions**.
- (e) ~~If any additional title encumbrances are discovered after Title Company's issuance of the Commitment, Buyer has the same rights concerning objections to the additional title encumbrances as are provided above in this **Section 3.1**.~~

**Section 3.2. Feasibility Period.**

- (a) Buyer may, for any reason whatsoever, or for no reason at all, in Buyer's sole discretion, terminate this Contract at any time on or prior to 5:00 p.m., Bryan, Texas time on the date that is sixty (60) days after the Effective Date (the **Feasibility Period**) by providing written notice thereof to Seller.
- (b) Upon any such termination, the Earnest Money (less \$10,000.00 as independent consideration for the grant of this option which was delivered to Seller in consideration for Seller's execution and delivery hereof) shall be returned to Buyer and the parties shall have no further liabilities hereunder except for those which specifically survive the termination of this Contract.
- (c) Between the Effective Date and the earlier of the termination of the Contract and the Closing Date, Seller grants to Buyer, its agents, contractors, and employees a license, exercisable upon prior notice to Seller, to enter the Property, including during normal business hours, to make all studies and inspections deemed necessary or desirable by Buyer.
- (d) Buyer shall perform, and shall cause its agents, employees, and contractors to perform, all inspections and reviews of the Property so as to minimize any damage, loss, cost, or expense to, or claims against Seller or the Property. Notwithstanding the termination or expiration of this Contract by either party, Buyer shall repair any damage or remove any lien claims caused by or attributable to Buyer's inspections, such covenant to survive termination or expiration of the Contract.
- (e) During the Feasibility Period, Buyer may review all Service Contracts, management contracts, equipment leases, and other contracts affecting the Property.

- (f) To the extent permitted by law, Buyer shall indemnify and hold Seller harmless from any lien, damage, loss, cost, or expense to (including reasonable attorneys' fees), or claims against such persons or entities or the Property caused by Buyer's entry onto the Property. Buyer shall promptly restore or repair any damage to the Property caused by or attributable to Buyer's inspections, such obligation to survive the termination or expiration of this Contract. This provision shall survive the Closing or the termination of this Contract.
- (g) During the Feasibility Period, the Seller authorizes the Buyer to contact and meet with Billy Casper Golf, LLC regarding the management and operation of the Property. Seller agrees to instruct Billy Casper Golf, LLC to provide to Buyer a copy of all leases and service contracts regarding the Property. Seller also agrees to have Billy Casper Golf, LLC provide to Buyer a listing of all weddings, banquets, and recurring meetings that are to be assigned under Section 8.17 herein.

**ARTICLE 4**  
**SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 4.1. Seller's Representations and Warranties.**

Seller represents and warrants to Buyer, which representations and warranties are also deemed to be made on and shall survive the Closing Date:

- (a) ~~There are no leases on the Property except the existing oil, gas and mineral lease.~~
- (b) There is no action, suit or proceeding pending or, to the best of Seller's knowledge, threatened, against or affecting Seller or the Property or any portion thereof or any of the Property Contracts or relating to or arising out of the ownership, management or operation of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, except those set forth on a list of pending or threatened litigation delivered to Buyer contemporaneously with the execution of this Contract.
- (c) Seller has no knowledge of any assessments for public improvements made against the Property which remain unpaid, and Seller has no knowledge of any plans by Governmental Authorities to implement any such assessments prior to the Closing Date.
- (d) There is no pending or threatened condemnation or similar proceeding or special assessment (inclusive of assessments for street widening, repair, or improvement) affecting the Property.
- (e) To Seller's knowledge, the Property is not in violation in any material respect of any federal, state, county, or city statute, ordinance, code, rule, or regulation of stating that any investigation has commenced or is contemplated regarding any violation.
- (f) To Seller's knowledge, there are no underground storage tanks located in, on or under the Property.

- (g) The officers of Seller executing this Contract and the documents and instruments to be executed by Seller in connection with this transaction have been duly authorized to execute the documents and instruments to be executed by Seller in connection with this transaction.
- (h) Seller has not received any notices from any insurance company or Governmental Authorities of any defects or inadequacies in the Property or any part thereof which would materially and adversely affect the insurability of the Property or cause an increase in the premiums for the insurance therefor.

The terms **Governmental Authority and Governmental Authorities** mean the United States of America, the state, county and city where the Property is located, and any other political subdivision in which the Property is located or which exercises jurisdiction over the Property or the construction of improvements on the Property, and any agency, department, commission, board, bureau, property owners association, utility district, flood control district, improvement district, or similar district, or other instrumentality of any of them.

~~Section 4.2. Seller's Covenants. Seller shall:~~

- (a) Maintain in force all existing, fire and extended coverage insurance upon each Property and general liability insurance until Closing.
- (b) Continue to operate and maintain the Property as currently operated and maintained and keep the Property in reasonably the same condition and repair as it currently exists until Closing, except for normal wear and tear and any casualty or condemnation, and Seller shall not remove any fixtures, equipment, furnishings and other personalty from the Improvements without replacing it with comparable items in good working order;
- (c) Subject to the prorations set forth in this Contract, cause all non-contested trade accounts and costs and expenses of operation and maintenance of the Property incurred prior to the Closing to be promptly paid when due.
- (d) Excepting bookings for weddings, banquets and golf tournaments, not enter into any new contracts that cannot be canceled by Buyer, without additional cost, at Closing, such cancellation to be effective no longer than 30 days thereafter, or enter into any other contracts related to the Property whereby Seller or an affiliate receives any pre-paid or up-front consideration, without the prior written consent of Buyer, which consent shall not to be unreasonably withheld. After the expiration of the Feasibility Period, Seller shall obtain Buyer's approval of any new bookings or contracts for weddings, banquets, meetings and golf tournaments.
- (e) Except for matters related to the health, safety or welfare of the members, employees and guests, not make any material alterations in the Property without the prior written consent of Buyer.
- (f) Obtain such written consents and approvals as may be required in order to permit Seller to perform Seller's obligations under this Contract.
- (g) At Closing, terminate all employment agreements or employment arrangements for employees of Seller (it being expressly understood that all employee related

costs and expenses relating to the time period prior to Closing shall be borne by Seller and that such obligation shall survive Closing). Additionally, during the Closing process, Seller shall cause the Billy Casper Golf, LLC management personnel to reasonably cooperate with Buyer during inspections and to provide Buyer with information on the operation of the Property.

- (h) Withdraw the Property from active marketing and Seller will not accept any additional offers to acquire the Property during the duration of this Contract.

## **ARTICLE 5 CLOSING**

### Section 5.1. Closing.

- (a) The **Closing** of this Contract will take place in Title Company's offices commencing at 10:00 a.m., Bryan, Texas time, one hundred five (105) days after the effective date of this Contract (the **Closing Date**).
- (b) At Closing, Buyer shall deliver:
  - (1) To the Title Company, in cash, by wire transfer, or in other immediately available federal funds, the Purchase Price, less any prorated items that Buyer is to be credited at closing.
- (c) At Closing, Seller shall deliver to Buyer:
  - (1) a Special Warranty Deed (the **Deed**) in form attached as Exhibit C, duly executed and acknowledged by Seller, containing no exceptions or conditions except the Permitted Exceptions for the Property;
  - (2) the Owner Policy of Title Insurance;
  - (3) a Bill of Sale ("Bill of Sale") in form attached as Exhibit D, duly executed by Seller, conveying all Personal Property;
  - (4) an IRC Section 1445 Certification, duly executed by Seller;
  - (5) an assignment of any trade, assumed or fictitious name used in connection with the operation of the Property (together with a termination of Seller's rights therein) in form attached as Exhibit B;
  - (6) possession of the Property, subject to the Permitted Exceptions;
  - (7) originals of the following if they are in Seller's possession or subject to Seller's control:
    - (A) Property Contracts, licenses, occupancy agreements, and other agreements executed by Seller affecting the Property;
    - (B) all Plans and Warranties;
    - (C) the Service Contracts, if any, then in effect; and



- (D) all keys to the Property.
- (d) Notwithstanding the forms of the closing documents attached to this Contract, Seller and Buyer agree that they will be conformed, as necessary, in order to comply with applicable law. Additionally, Seller and Buyer shall execute and deliver to the appropriate parties any additional documents and instruments that, in the reasonable opinion of Buyer's counsel, Seller's counsel, and the Title Company are necessary to consummate the transaction.

Section 5.2. Prorations.

- (a) Ad valorem taxes (whether for real estate or personal property) against the Property will be prorated at Closing as of the Closing Date (Buyer to pay Closing Date taxes) based on the tax bills for the tax year of the Closing or notices of assessment received by Seller or of which it has knowledge. Seller shall pay to Buyer at Closing (or credit the Purchase Price) the portion of the taxes on the Property from the beginning of the current tax year to the Closing Date. Seller shall pay all taxes and assessments for prior years. If Closing occurs before that year's tax bills are available, the proration will be based on the previous year's tax rate and the Purchase Price; provided, after the taxes for the year in which the Closing occurs are finally assessed, upon written demand, Buyer shall refund to Seller any amount overpaid by Seller or Seller shall pay to Buyer the amount of any deficiency in the proration.
- (b) The term "ad valorem taxes" includes regular annual assessments payable to any property owners association, but does not include rollback or deferred taxes that are payable because of change in ownership or land use, general or special assessments that can be paid in lump sum, or any special assessments or assessments for street widening, repair, or improvement, all of which Seller shall pay at Closing.
- (c) All revenue and expenses of the Property (other than as set forth above), including, but not limited to, Service Contract income or up front fees actually collected (whether prepaid or not), utility charges and other operating expenses shall be prorated at the Closing, effective as of the Closing Date (Buyer to receive income and be liable for expenses on and after the Closing Date). If such charges and expenses are unavailable on the Closing Date, a readjustment shall be made within 10 days following the availability of accurate bills and figures, such provision to survive Closing. Any consideration previously paid to Seller in connection with any Property Contracts shall be prorated over the term of such Property Contracts with any sums therefore payable to Buyer being paid by Seller to Buyer at the Closing.
- (d) Buyer shall pay for all recording fees associated with recording the closing documents other than Seller's release of any existing liens not assumed by Buyer.
- (e) All closing costs other than as specified above, or as may be specifically allocated elsewhere in this Contract, will be paid by the party incurring such costs, and each party shall pay its own attorneys' fees except in the event of litigation.

- (f) The obligations of this **Section 5.2** shall survive Closing.

**ARTICLE 6  
TERMINATION, DEFAULTS, AND REMEDIES**

**Section 6.1. Termination Due to Title Defects.**

If Buyer timely gives notice of objections and Seller does not cure all title objections within the time period specified in **Section 3.1** of this Contract, then Buyer may, as its sole and exclusive remedy, waiving all other remedies, either:

- (a) terminate this Contract by notice to Seller within fifteen (15) days after the last day of Seller's 10-day curative period, in which event Escrow Agent shall return the Earnest Money (less the \$10,000.00 non-refundable portion) to Buyer and the parties have no further rights, liabilities, or obligations under this Contract except as specifically set forth herein; or
- (b) ~~waive the objections and accept Seller's title as shown in the Title Commitment and Survey, to the extent cured, if at all.~~

If Seller does not timely receive written notice of Buyer's election to terminate this Contract, then Buyer is deemed to accept Seller's title as shown in the Title Commitment and Survey.

**Section 6.2. Termination Due to Inspection.**

If Seller receives notice from Buyer of its termination of this Contract on or before 5:00 P.M. on the last day of the Feasibility Period as provided in Section 3.2, then:

- (a) this Contract terminates as of the time and date of such notice;
- (b) Escrow Agent shall return the Earnest Money to Buyer, except \$10,000.00 shall be paid to Seller; and
- (c) the parties have no further rights, liabilities, and obligations under this Contract except as specifically set forth herein.

**Section 6.3. Termination Due to Seller's Representations and Warranties.**

If Buyer discovers that any of the representations and warranties in **Section 4.1** are intentionally or knowingly inaccurate or false in any material respect prior to the Closing, Buyer's sole and exclusive remedy, waiving all other remedies, shall be either to:

- (a) terminate this Contract by giving notice to Seller prior to the Closing Date; or
- (b) waive that representation and warranty in its entirety and proceed to the Closing.

If Buyer provides evidence of Seller's intentional or knowingly inaccurate representations and terminates this Contract under this **Section 6.3**, then Escrow Agent shall return all of the Earnest Money held by it to Buyer, Seller shall return the non-refundable portion of the Earnest Money, and the parties shall have no further rights, liabilities, or obligations under this Contract except as specifically set forth herein.

For purposes of this Section 6.3, "material respect" shall relate to a misrepresentation that results in actual damage or loss to Buyer that would reasonably be expected to exceed \$10,000.00.

**Section 6.4. Buyer's Remedies.**

(a) If Seller is not otherwise in default and:

- (1) at Closing, Seller is unable to convey title to Buyer as provided in **Section 2.1** or **Section 5.1** of this Contract and Buyer does not waive any defect in title and accept Seller's title as Seller is able to convey it;
- (2) condemnation proceedings are initiated against all or any portion of the Property which, if successful, would have a material, adverse impact on the operation or economics of the Project;
- (3) a Major Casualty (defined in **Section 7.3**) occurs with respect to the Property; or
- (4) a lienholder on the Property requires Seller to apply insurance proceeds or condemnation awards other than as required in **Article 7**,

then Buyer may, as its sole and exclusive remedy, waiving all other remedies, terminate this Contract by giving written notice thereof to Seller, and Escrow Agent shall return all of the Earnest Money (less the \$10,000.00 non-refundable portion) to Buyer and the parties have no further rights, liabilities, or obligations under this Contract except as specifically set forth herein.

(b) If:

- (1) Seller fails to comply in all material respects with any covenant or is otherwise in material default under this Contract, or
- (2) Seller fails or refuses to close this Contract for any reason except the termination of this Contract pursuant to any applicable provision of this Contract or Seller fails to perform any material covenant under this Contract,

then Buyer may, as its sole and exclusive remedy, waiving all other remedies (i) terminate this Contract by giving written notice thereof to Seller and Escrow Agent shall return all of the Earnest Money (less the \$10,000.00 non-refundable portion) to Buyer and the parties shall have no further rights, liabilities or obligations under this Contract except as specifically set forth herein, or (ii) sue for specific performance.

**Section 6.5. Seller's Remedies.**

If Buyer fails or refuses to close this Contract for any reason, except the termination of this Contract under any applicable provision of this Contract, then Seller may, as its sole and exclusive remedy, waiving all other remedies, terminate this Contract, in which case Escrow Agent shall pay the Earnest Money to Seller and the parties have no further rights, liabilities, or obligations under this Contract except as specifically set forth herein. The parties agree that

Seller's damages are difficult to ascertain and that the Earnest Money is a fair approximation of Seller's damages.

## **ARTICLE 7 CASUALTY; CONDEMNATION**

### Section 7.1. Casualty Loss.

If any part of the property is destroyed by fire, flood, or other act of God after the effective date of this Contract but before Closing, the Seller must restore the Property to its previous condition prior to Closing. If, through no fault of Seller, it is not practicable to restore the Property, the Buyer may:

- (a) Extend the time for restoration by up to thirty (30) days, provided that restoration has already commenced, and the contractor performing the restoration agrees that the restoration can be completed in that time; or
- (b) Accept at Closing the assignment of any insurance proceeds the Seller is entitled to, either in cash or in writing, accompanied by the insurer's consent to the assignment, and a reduction of the Purchase Price by the amount of any deductible under the policy.

### Section 7.2. Estimate.

The value of the damage to the Improvements, for the purposes of this **Article 7**, equals the estimate of the value of the damage to the Improvements that is given by an adjuster retained by Seller's insurance company or by another method agreed to by Buyer and Seller.

### Section 7.3. Major Casualty.

Major Casualty shall be defined as damages to the Improvements that are in excess of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00).

## **ARTICLE 8 MISCELLANEOUS**

### Section 8.1. Notices.

All notices, requests, approvals, and other communications delivered under this Contract must be in writing and are effective:

- (a) upon hand delivery to the other parties at the addresses listed below in this Section 8.1; or
- (b) in the case of delivery by registered or certified U.S. mail, postage prepaid, or by private or overnight courier, upon receipt, or upon refusal to accept delivery (such refusal being evidenced by the U.S. Postal Services return receipt or similar advice from the courier company); or
- (c) in the case of delivery by facsimile, on the business day sent and the sending telecopier generates a written confirmation of sending;

in each instance addressed to Buyer or Seller, as the case may be, at the following addresses, or to any other address either party may designate by notice to the other party:

Seller: Briarcrest Country Club Corporation  
P. O. Box 3818  
Bryan, Texas 77805-3818  
Attention: Randy Flasowski, President  
Telephone: (979) 776-0133  
Direct Line: (979) 691-2534  
Telecopy: (979) 691-2608  
E-Mail: rflasowski@farmersagent.com

With copy to: Bruchez, Goss, Thornton, Meronoff &  
Hawthorne, PC  
4343 Carter Creek Parkway, Ste. 100  
Bryan, Texas 77802  
Attention: William S. Thornton, Jr.  
Telephone: (979) 268-4343  
Telecopy: (979) 268-5323  
E-Mail: bthornton@brucez.com

Buyer: The City of Bryan, Texas  
300 S. Texas Avenue  
Bryan, Texas 77803  
Attention: Janis K. Hampton  
Telephone: (979) 224-5151  
Telecopy: (979) 209-5160  
E-Mail: jhampton@bryantx.gov

With a copy to: Jay Don Watson  
2100 East Villa Maria, Suite 102  
Bryan, Texas 77802  
Telephone: (979) 703-4044  
Telecopy: (979) 703-7994  
E-Mail: jwatson@watsonlawyers.com

Title Company/  
Escrow Agent: Aggieland Title Company  
3740 Copperfield Drive, Suite 101  
Bryan, Texas 77802  
Attention: \_\_\_\_\_  
Phone: (979) 731-8400  
Telecopy: (979) 731-8408  
E-Mail: \_\_\_\_\_

Section 8.2. Performance.

Time is of the essence in the performance of this Contract.

Section 8.3. Binding Effect.

This Contract is binding upon and inures to the benefit of the successors and assigns of the parties.

Section 8.4. Entire Agreement.

This Contract embodies the complete agreement between the parties and cannot be varied except by written agreement of the parties.

Section 8.5. Survival.

As to any of the provisions of this Contract pertaining to a period of time following Closing, such provisions survive Closing and the delivery of the documents provided for in **Section 6.1** hereof and are not merged in those documents.

Section 8.6. Headings.

Section headings or captions are used in this Contract for convenience only and do not limit or otherwise affect the meaning of any provision of this Contract.

Section 8.7. Holidays, Etc.

Whenever any time limit or date provided herein falls on a Saturday, Sunday, or legal holiday under the laws of the State of Texas then that date is extended to the next day that is not a Saturday, Sunday, or legal holiday. The term **business day** as used in this Contract means any day that is not a Saturday, Sunday, or legal holiday under the laws of the State of Texas.

Section 8.8. Attorneys' Fees.

If there is litigation concerning the interpretation or enforcement of this Contract, the prevailing party is entitled to recover from the losing party its attorneys' fees, court costs and expenses, whether at the trial or any appellate level. This provision survives the Closing of this Contract.

Section 8.9. Governing Law.

The laws of the jurisdiction in which the Property is located govern this Contract.

Section 8.10. Severability.

If any of the provisions contained in this Contract is unenforceable in any respect, the remainder of this Contract will, nevertheless, remain enforceable.

Section 8.11. Rule of Construction.

Each party and its counsel have reviewed and revised this Contract. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party may not be employed in the interpretation of this Contract or any amendments, schedules, or exhibits hereto.

Section 8.12. Counterparts.

This Contract may be executed in one or more counterparts. Each counterpart is an original and proof of this Contract may be made without more than one counterpart.

Section 8.13. Time Extensions.

If Seller does not provide the Commitment or the other due diligence material to Buyer within the respective time frames set forth in Sections 2.1, 2.2 and 2.3, the time periods for Seller to provide those items are extended until Seller provides each of the items to Buyer and the expiration date of the Feasibility Period and the Closing Date are automatically extended for like periods of time. Notwithstanding the above language, the Closing Date shall not be extended past February 17, 2012 at 5:00 p.m. Bryan, Texas time.


Section 8.14. Additional Provisions and/or Notices.

Notwithstanding any language contained herein, in the event either Proposition No. One on The City of Bryan, Texas Parkland Disposition Election, which reads as set forth below, or Proposition No. One on the Non-Binding Referendum, do not receive voter approval in Buyer's municipal election to be held in November, 2011, the Buyer may terminate the Contract during the Feasibility Period and receive a refund of all of the Earnest Money, except the \$10,000.00 previously paid to Seller, and the Contract shall terminate. The language that will appear on the November, 2011 ballot is as follows:

PARKLAND DISPOSITION ELECTION:

Proposition No. One:

Shall the City of Bryan be authorized to dispose of, or eliminate the parkland designation to allow uses other than recreational uses, on approximate 117 acres of land currently utilized as the Travis B. Bryan Municipal Golf <sup>course</sup> located at 206 West Villa Maria Road between South College Avenue and Finfeather Road, being part of Lot 1, Block 1, Country Club Lake Edition, Bryan, Brazos County, Texas.

*and all of Lot 2,* 


Yes

No

NON-BINDING REFERENDUM:

Proposition No. One:

Should <sup>the</sup> City of Bryan purchase Briarcrest Country Club and make the golf course open to the public in Proposition No. One above is approved by the voters?

 <sup>if</sup>  
Yes  
No *Number 5-*

Section 8.15. Acceptance:

In the event the Seller has not returned an executed copy of this Contract to the Buyer by 4:00 p.m. CST on November 3, 2011, the offer to purchase contained herein shall terminate.

Section 8.16. Buyer Acknowledgment of Existence of Prior Oil Well Site on the Real Property.

Buyer expressly acknowledges that Seller has disclosed, and Buyer was previously aware of, the existence of a drilling and production surface location for oil and gas between the tenth (10<sup>th</sup>) and eleventh (11<sup>th</sup>) fairways on the golf course portion of the Real Property. Furthermore, Buyer acknowledges that oil and gas pipelines existed, and continue to exist, in connection with former production of oil and gas from the Real Property and other wells on other properties within the City of Bryan, Texas, in the vicinity of the Real Property.

Section 8.17. Buyer's Assumption of Contracts for Weddings, Banquets and Tournaments.

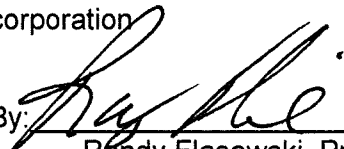
Notwithstanding anything in this Contract to the contrary, Buyer shall expressly assume the obligations of Seller under the Leases and all contracts of Seller relating to use of the Property, and services connected therewith, for all weddings, banquets, meetings and golf tournaments contracted by Seller with third parties prior to the effective date of this Contract. Buyer shall cooperate with Billy Casper Golf, LLC to provide use of the Property (and services related thereto) in a manner customary for such activities from the date of closing until such contracts and commitments are fulfilled with such third parties. Buyer assumes the obligations of the Seller under all such contracts and commitments from the date of closing. At closing, Seller and Buyer shall execute the Assumption of Leases and Contracts in form attached as Exhibit E. After the expiration of the Feasibility Period, Seller shall obtain Buyer's approval on all new contracts or bookings related to the Property or its use, including weddings, banquets, meetings and tournaments. In the event the Seller's Management Agreement is terminated or not continued by the Buyer, the Buyer shall pay any termination or cancellation fees payable by the Seller as a result of such termination or cancellation.



EXECUTED by Seller on this the 3<sup>rd</sup> day of November, 2011.

**SELLER**

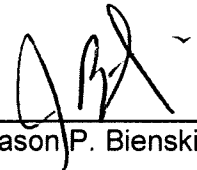
**BRIARCREST COUNTRY CLUB CORPORATION**, a Texas not-for-profit corporation

By:   
Randy Flasowski, President

EXECUTED by Buyer on this 3 day of November, 2011.

**BUYER**

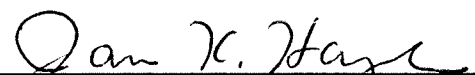
**THE CITY OF BRYAN, TEXAS**, a Texas home-rule municipal corporation

By:   
Jason P. Bienski, Mayor

ATTEST:

  
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

  
Janis K. Hampton, City Attorney

EXECUTED by Listing Broker on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**LISTING BROKER**

**FAIRWAY ADVISORS, LLC**, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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The undersigned acknowledges receipt of the Contract on \_\_\_\_\_, 2011.

AGGIELAND TITLE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 2.2

### MATERIALS TO BE DELIVERED

1. A list, and copies, of all existing service contracts, maintenance contracts, management agreements, and leasing agreements (the **Service Contracts**) affecting the Property.
2. Copies of all management contracts and/or consulting contracts affecting the Property.
3. Copies of all warranties and guarantees in Seller's possession and which are related to the Improvements, fixtures or the Personal Property for the Property.
4. Copies of all termite and pest control reports affecting the Property, if available.
5. Copies of all insurance policies currently in place on the Property and any reports of deficiencies by an insurance company within the last two years.
6. ~~If in Seller's control or possession, copies of governmental permits, certificates of occupancy, certificates of substantial completion, alarm registrations, pool permits, elevator permits, building permits and inspections and other permits or licenses for the operation of the Property which are in Seller's possession.~~
7. An inventory (total number and type) of the items of Personal Property owned by Seller.
8. If available, copies of all actual capital expenditures for the three (3) years prior to the Effective Date.
9. A listing of all pending or threatened litigation against Seller or the management company with respect to claims regarding or related to the Property.
10. A copy of the existing survey.

## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL PROPERTY

#### TRACT ONE:

Being all of that certain tract or parcel of land, lying and being situated in the JOHN AUSTIN LEAGUE, Abstract No. 2, Bryan, Brazos County, Texas, and being comprised of the following tracts: Being a part of the first tract (28.151 acres) and the second tract (9.454 acres) conveyed from Warren Harmon and Associates to the Briarcrest Country Club by Deed recorded in Volume 282, Page 548, save and except the 1.547 acre tract described in Volume 934, Page 91 and the 0.067 acre tract and the 0.164 acre tract, both being described in Volume 392, Page 818 of the Deed Records of Brazos County, Texas; being part of the 218.0 acre tract conveyed to the Briarcrest Country Club from F. T. Cole and wife, Mamie Cole, by Deed recorded in Volume 175, Page 437 of the Deed Records of Brazos County, Texas; being all of the First (0.042 acres), Second (0.015 acres) and Third (0.154 acres) Tracts conveyed from Classic Incorporated to the Briarcrest Country Club by Deed recorded in Volume 392, Page 814 of the Deed Records of Brazos County, Texas; and being all of Tract Two (0.5376 acres) conveyed to the Briarcrest Country Club from Richard H. Harrison, III, et al, by Deed recorded in Volume 934, Page 177 of the Deed Records of Brazos County, Texas, and being more particularly described as follows:

BEGINNING: at an iron rod at the south corner of Lot 1, Block 1 of Briarcrest Estates, Section One, same being in the north right-of-way line of Briarcrest Drive;

THENCE: S 41° 55' 37" W - 52.88 feet along said north right-of-way line to an iron rod for corner;

THENCE: N 49° 16' 25" W - 651.31 feet to an iron rod for corner;

THENCE: S 43° 16' 44" W - 552.35 feet and S 68° 28' 20" W - 48.99 feet to an iron rod being the south corner of Lot 1, Block 4, Briarcrest Estates, Section Two (Revised) and being the south corner of the Briarcrest Country Club tract;

THENCE: N 06° 57' 39" W - 258.43 feet along the east line of said Lot 1 to an iron rod for corner;

THENCE: 123.03 feet along a curve to the right with a radius of 145.00 feet, a central angle of 48° 36' 59" and whose chord bears N 72° 16' 25" W - 119.38 feet to an iron rod for corner;

THENCE: N 47° 57' 39" W - 175.00 feet along the northeast line of Lots 3 and 4, Block 4 of said Briarcrest Estates, Section Two (Revised) to an iron rod for corner;

THENCE: N 20° 10' 49" W - 290.56 feet and N 09° 50' 29" E - 344.45 feet and the east line of said Block 4 to an iron rod for corner;

THENCE: 737.41 feet along a curve to the left with a radius of 175.00 feet and a central angle of 241° 25' 54" and whose chord bears N 80° 27' 11" W - 300.90 feet to an iron rod for corner;

THENCE: S 10° 08' 57" W - 164.62 feet and N 47° 01' 59" W - 287.23 feet to an iron rod for corner, same being the north corner of Lot 24 of said Block 4;

THENCE: N 21° 51' 03" E - 148.52 feet and N 03° 19' 44" W - 148.52 feet to an iron rod for corner being the northeast corner of Lot 28 of said Block 4;

THENCE: N 40° 51' 27" E - 443.00 feet to an iron rod for corner being the south corner of Lot 1, Block 1 of Briarcrest Estates, Section Five;

THENCE: N 34° 13' 05" E - 162.07 feet and N 29° 14' 03" E - 150.06 feet to an iron rod being the southwest corner of Lot 10 of said Block 1;

THENCE: S 62° 19' 23" E - 50.00 feet to an iron rod for corner;

THENCE: 511.15 feet along a curve to the left with a radius of 175.00 feet and a central angle of 167° 21' 05" and whose chord bears N 39° 53' 09" E - 347.87 feet to an iron rod for corner;

THENCE: N 62° 19' 23" W - 111.27 feet to an iron rod for corner;

THENCE: 72.78 feet along a curve to the left with a radius of 175.00 feet and a central angle of 23° 49' 43" and whose chord bears S 87° 13' 23" W - 72.26 feet to an iron rod being the northwest corner of Lot 18 of said Block 1;

THENCE: N 66° 26' 45" W - 242.97 feet to an iron rod being the northwest corner of Lot 23, Block 1 of Briarcrest Estates, Section Five;

THENCE: N 49° 01' 37" W - 339.26 feet and N 26° 03' 46" W - 379.00 feet to an iron rod being the north corner of Briarcrest Estates, Section Five;

THENCE: N 46° 36' 00" W - 736.39 feet to an iron rod being the northeast corner of the Briarcrest Country Club tract;

THENCE: N 41° 01' 11" E - 216.38 feet, N 50° 09' 15" E - 96.88 feet, and N 89° 28' 17" E - 467.52 feet to an iron rod for corner;

THENCE: S 23° 38' 31" E - 1027.89 feet to an iron rod being the southwest corner of Lot 61 of Briarcrest Valley, Phase Three;

THENCE: S 51° 41' 19" E - 558.97 feet, S 85° 48' 33" E - 184.52 feet, and N 63° 43' 33" E - 241.91 feet along the south line of Reserve Tract No. 1 of Briarcrest Valley, Phase Three to an iron rod for corner;

THENCE: N 41° 39' 16" E - 574.13 feet to an iron rod being the east corner of Lot 11 of Briarcrest Valley, Phase Two;

THENCE: N 06° 54' 52" W - 225.28 feet to an iron rod being the northeast corner of Lot 10;

THENCE: N 55° 31' 41" W - 564.17 feet to an iron rod being in the northeast line of Lot 4;

THENCE: N 43° 33' 24" W - 220.09 feet to an iron rod being the north corner of Lot 2, Briarcrest Valley, Phase Two; same being the south corner of Lot 4, Block 3, Briarcrest Valley, Phase One;

THENCE: N 24° 24' 45" E - 359.99 feet to an iron rod being in the southwest line of Lot 2, Block 2, Briarcrest Valley, Phase One;

THENCE: S 55° 31' 36" E - 1325.27 feet to an iron rod being the west corner of Lot 106, Block 2, Briarcrest Estates, Section Three;

THENCE: S 35° 48' 19" E - 481.04 feet to an iron rod being the southwest corner of Lot 98 of said Block 2;

THENCE: S 88° 32' 52" W - 290.00 feet, S 79° 17' 44" W - 191.98 feet, S 39° 00' 03" W - 250.00 feet, and S 02° 32' 37" W - 235.00 feet to an iron rod being the southwest corner of Lot 63, Block 2 of Briarcrest Estates, Section One;

THENCE: S 31° 57' 23" E - 172.00 feet and S 66° 57' 23" E - 172.00 feet to an iron rod for corner;

THENCE: N 88° 34' 07" E - 787.43 feet to an iron rod being the south corner of Lot 53 of said Block 2;

THENCE: S 24° 40' 53" E - 117.00 feet and S 47° 41' 39" E - 63.00 feet to an iron rod being the southwest corner of Lot 49 of said Block 2;

THENCE: S 42° 20' 46" W - 1087.50 feet to an iron rod being the north corner of Lot 15 of said Block 2;

THENCE: N 00° 27' 32" E - 305.00 feet to an iron rod being the north corner of Lot 29 of said Block 2;

THENCE: N 80° 55' 13" W - 175.00 feet to an iron rod being the north corner of Lot 28 of said Block 2;

THENCE: S 63° 20' 44" W - 295.06 feet and S 40° 38' 44" W - 350 feet to an iron rod being the west corner of Lot 11 of said Block 2;

THENCE: S 04° 48' 37" E - 630.03 feet to an iron rod being the north corner of Lot 3 of said Block 2;

THENCE: S 41° 26' 50" W - 310.00 feet to an iron rod being the west corner of Lot 1 of said Block 2;

THENCE: S 48° 17' 24" E - 339.70 feet to the POINT OF BEGINNING; and containing 122.756 acres of land, more or less.

**TRACT TWO:**

All that certain tract or parcel of land lying and being situated in the JOHN AUSTIN LEAGUE, A-2, and being in the City of Bryan, Brazos County, Texas, and being the remainder of that certain tract conveyed to T & T Implement Company by Stuart Cole by Deed dated December 29, 1972, and being described as follows:

BEGINNING at an iron pipe found marking the north corner of an 11.25 acre tract described in Volume "W", Page 579, same being the east corner of a tract of land now or formerly owned by Thurmond and Guest, same being an interior corner of this tract;

THENCE: S 43° 56.1' W along the fence line between said 11.25 acre tract and the Thurmond and Guest tract for a distance of 214.7 feet to an iron rod for corner in the northeast right-of-way line of East 29th Street;

THENCE: S 63° 29.3' E along said northeast right-of-way line of East 29th Street for a distance of 405.4 feet to the northwest right-of-way line of Briarcrest Drive and corner;

THENCE: N 44° 32.7' E along said northeast right-of-way line of Briarcrest Drive for a distance of 769.0 feet and corner at a common corner with Briarcrest Country Club;

THENCE: N 47° 13.7' W along a common line with said Briarcrest Country Club for a distance of 656.7 feet to an iron rod for corner;

THENCE: S 45° 06.4' W along the fence line marking a common line with this tract and a tract now or formerly owned by Briarcrest Country Club for a distance of 553.78 feet to an angle point;

THENCE: S 70° 15.7' W continuing along the abovementioned line for a distance of 119.2 feet to an iron rod for corner;

THENCE: S 45° 44.3' E along the fence line marking a common line with this tract and the beforementioned Guest and Thurmond tract for a distance of 325.7 feet to the PLACE OF BEGINNING, containing 11.556 acres of land, more or less.

**SAVE AND EXCEPT THEREFROM FOUR (4) TRACTS DESCRIBED AS FOLLOWS:**

(1) All of Lot Number One (1), Block "A", T&T SUBDIVISION, PHASE 1, an addition to the City of Bryan, Brazos County, Texas, as shown on the Plat recorded in Volume 648, Page 251 of the Official Records of Brazos County, Texas;

(2) All of Lot Number One (1), SAFEWAY ADDITION NO. 1, an addition to the City of Bryan, Brazos County, Texas, as shown on the Plat recorded in Volume 368, Page 893, Deed Records of Brazos County, Texas;

(3) Being all that certain tract or parcel of land lying and being situated in the JOHN AUSTIN LEAGUE, A-2, in the City of Bryan, Brazos County, Texas, and being 1.0783 acre tract of land conveyed to the City of Bryan, Texas by Briarcrest Country Club Corporation by Deed recorded in Volume 2991, Page 322 of the Official Records of Brazos County, Texas, and more particularly described as follows:

BEGINNING at a 5/8" iron rod found at the south corner of this property, also being the east corner of the Ken Martin's Steakhouse tract, as recorded in Volume 753, Page 423 of the Official Records of Brazos County, Texas, now being the south corner of this tract;

THENCE: N 46° 02' 58" W a distance of 167.26 feet along the common line between this tract and said Martin tract to a 5/8" iron rod found at the north corner of the said Martin tract, also being the east corner of the Stafford Town Homes as recorded in Volume 495, Page 344 of the Deed Records of Brazos County, Texas;

~~THENCE: N 46° 02' 58" W a distance of 159.44 feet along the common line between this tract and the Stafford Town Homes to a 5/8" iron rod set for the west corner of this tract;~~

THENCE: N 70° 15' 42" E a distance of 55.78 feet along the common line between this tract and the end of Camelot Drive to a 5/8" iron rod set for the interior north corner of this tract, also being the south corner of the Helen Pugh tract as recorded in Volume 2116, Page 268, Official Records of Brazos County, Texas;

THENCE: S 46° 02' 58" E a distance of 52.11 feet across the original Briarcrest tract to a 5/8" iron rod set for the interior south corner of this tract;

THENCE: N 44° 06' 28" E a distance of 125.00 feet across the said Briarcrest tract to a 5/8" iron rod set for the north corner of this tract;

THENCE: S 46° 02' 58" E a distance of 250.00 feet cutting across said Briarcrest tract to a 5/8" iron rod set for the east corner of this tract, on the southeast line of the original Briarcrest tract, also being the northwest line of Lot 1 of the Safeway Addition No. 1, as recorded in Volume 368, Page 893 of the Deed Records of Brazos County, Texas;

THENCE: S 44° 06' 28" W a distance of 175.00 feet along the common line between this tract and the said Lot 1 of Safeway Addition, to the PLACE OF BEGINNING, containing 46,970 square feet or 1.0783 acres of land, more or less.

(4) Being all that certain 0.056 acre tract or parcel of land lying and being situated in the JOHN AUSTIN LEAGUE, Abstract No. A-2, and being part of the unplatted portion of the 125.85 acre Briarcrest Estates Section 5 as depicted by plat recorded in Volume 401, Page 585 of the Deed Records of Brazos County, Texas, said 0.056 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at the north common lot corner of Lot 14 and Lot 15, Block 1 of said Briarcrest Estates No. 5;

THENCE S 59° 05' 00" E - 25.00 feet across said 125.85 acre tract to a point for corner;



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THENCE S 14° 05' 00" E - 106.07 feet continuing across said tract to a point for corner;

THENCE S 30° 55' 00" W - 83.64 feet across said tract to a point for corner;

THENCE N 59° 05' 00" W - 7.12 feet through the said tract to the east common lot corner of Lot 14 and Lot 13, Block 1 of said Briarcrest Estates Section 5 and being the beginning of a non-tangent curve to the left;

THENCE 193.54 feet along the arc of said curve (Curve Data: Central angle = 63° 22' 02"; radius = 175.00 feet; tangent = 108.01 feet; the chord bears N 00° 34' 07" E - 183.83 feet) to the PLACE OF BEGINNING, and containing 0.056 acres of land, more or less; and being the same property conveyed by Frank Thurmond, Jr. and wife, Bettie B. Thurmond, in Deed recorded in Volume 9078, Page 289, Official Records of Brazos County, Texas.

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## EXHIBIT B

### ASSIGNMENT OF LEASES, SERVICE CONTRACTS, SECURITY DEPOSITS AND WARRANTIES

This Assignment of Leases, Service Contracts, Security Deposits and Warranties (this Assignment) is made as of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, (Grantor), and \_\_\_\_\_ (Grantee).

#### ASSIGNMENT

1. Assignment.

Grantor GRANTS, SELLS, and CONVEYS to Grantee, subject to the Permitted Exceptions (defined below), all of Grantor's interest in the following described properties, rights, and estates that are located on, affixed to, or used in connection with the real property (the **Real Property**) described on Exhibit A attached to this Assignment (the **Property**):

- a. all leases and guarantees for leases, if any, related to the Real Property;
- b. all applications, contracts, vending agreements, other leases, lease commission agreements, service contracts, maintenance contracts, assignable licenses, occupancy agreements, or assignable permits with respect to the Real Property listed on **Exhibit B** to this Assignment (the **Contracts**), and the rents, issues, profits from the Contracts, if any, on the day of and after the Closing Date;
- c. any and all security deposits, wedding deposits, banquet deposits, golf outing deposits, utility deposits, and other deposits and security deposit accounts maintained as of the Closing Date with respect to the Leases or the Real Property (the **Deposits**);
- d. all bonds, warranties and guaranties applicable to or covering any part of the improvements, personalty or equipment situated on the Property.

TO HAVE AND TO HOLD the Property to Grantee, its successors and assigns forever, Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the Property, subject to the Permitted Encumbrances and the warranties, covenants, and conditions in this Assignment, to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof by, through or under Grantor, but not otherwise.

2. Assumption.

Grantee assumes and agrees to perform all terms, covenants, and conditions of the Leases and the Contracts, on the part of the lessor or on the part of the Grantor, as the case may be, therein required to be performed arising on or after the date of this Assignment. Grantee also assumes and agrees to hold and pay (or otherwise apply) the Deposits to the persons entitled to them.

3. Indemnities.

Grantor shall indemnify, defend, and hold Grantee harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or

asserted against Grantee arising out of or related to the Property for acts or omissions of Grantor occurring prior to the date of this Assignment.

Grantee shall indemnify, defend, and hold Grantor harmless from any and all liabilities, claims, demands, damages, and causes of actions that may now or hereafter be made or asserted against Grantor arising out of or related to the Property for acts or omissions occurring on or after the date of this Assignment.

DATED EFFECTIVE as of the first date above written.

**GRANTOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Exhibit A**  
Description of Real Property

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## EXHIBIT C

### SPECIAL WARRANTY DEED

This Special Warranty Deed (this **Deed**) is made as of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ (Grantor) to \_\_\_\_\_ (Grantee).

For and in consideration of the sum of Ten and No/100 Dollars and other valuable consideration to Grantor paid by the Grantee, the receipt of which are acknowledged, Grantor and Grantee agree as follows:

1. Conveyance and Warranty of Title.

Grantor GRANTS, SELLS, and CONVEYS to Grantee, subject to the Permitted Exceptions (defined below), all of the real property (the **Property**) more particularly described on Exhibit A attached hereto and made a part hereof for all purposes together with all improvements, structures and fixtures located thereon as well as all of Grantor's rights to appurtenances, easements, rights of way, adjacent streets and alleys, strips and gores, as well as all of Grantor's surface and subsurface water rights in the Property;

SAVE AND EXCEPT, and there is hereby reserved unto Grantor, Grantor's successors and assigns, any and all of the oil, gas and other minerals in and under and that may be produced from the herein described real property; **PROVIDED, HOWEVER**, as to the mineral interest owned by the Grantor and except as may be provided in instruments currently of record (i.e. oil and gas leases, easements, ratifications and amendments), there shall be no right of ingress or egress to the surface of the premises at any time for the purpose of mining, drilling, exploring, operating and developing said lands for oil, gas and other minerals and removing the same therefrom, or for the purposes of using such property for the storage or transportation of oil, gas and other minerals. Nothing herein shall prohibit the Grantor or Grantor's successors and assigns from pooling or permitting slant drilling under said premises to develop and produce the oil, gas and minerals owned by Grantor and Grantor's successors and assigns. Grantor makes no representation as to any oil, gas and minerals not owned by Grantor.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging, to Grantee, its successors and assigns, forever; and Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through and under Grantor, but not otherwise.

2. Permitted Exceptions.

This Deed is made, and is accepted by Grantee, subject to the restrictions, easements, covenants, encumbrances, and liens described on **Exhibit B** attached hereto and incorporated herein by reference for all purposes (the **Permitted Exceptions**).

3. Taxes and Assessments.

Grantee, by accepting delivery of this Deed, has assumed and agreed to pay the taxes and assessments for the current year. Grantee's, acceptance of delivery of this Deed is evidenced by its recordation.

EXECUTED as of the date first above written.

**GRANTOR:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_, by  
of \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

[Stamped Notary Seal]

**GRANTEE'S ADDRESS:**

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**Exhibit A**

Real Property Description

**Exhibit B**

Permitted Exceptions

[To be Attached]



**EXHIBIT D**

**BILL OF SALE**

This Bill of Sale is made as of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
(Grantor) to \_\_\_\_\_ (Grantee).

Grantor GRANTS, SELLS, and CONVEYS to Grantee, all equipment, furniture, fittings, fixtures, and articles of personal property owned by Grantor and located on the real property described on **Exhibit A** attached to this Bill of Sale specifically including, but not limited to that property, more particularly described in **Exhibit B** attached to this Bill of Sale (such equipment, furniture, fittings, fixtures, and articles of personal property are referred to collectively as the **Personal Property**).

TO HAVE AND TO HOLD the Personal Property, subject to the Permitted Exceptions, to Grantee, its successors and assigns forever; and Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Personal Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Personal Property or any part thereof by, through or under Grantor, but not otherwise.

Grantor makes no representation or warranty relative to the condition of the Personal Property. By acceptance hereof, Grantee acquires the Personal Property "as is," "where is," and "with all faults."

EXECUTED as of the date first above written.

**GRANTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Exhibit A**

Real Property Description

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**Exhibit B**

Description of Personal Property

EXHIBIT E

IRC SECTION 1445 CERTIFICATE

SUBJECT  
PROPERTY: See Exhibit A attached to this Certificate

SELLER: \_\_\_\_\_

BUYER: \_\_\_\_\_

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Buyer that the withholding of tax is not required upon the disposition of a U.S. real property interest by Seller, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's U.S. employer identification number is \_\_\_\_\_; and
3. Seller's office address is: \_\_\_\_\_

\_\_\_\_\_

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Seller.

EXECUTED as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF

§  
§  
§

COUNTY OF

This instrument was acknowledged before me on \_\_\_\_\_, 200\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ general partner of \_\_\_\_\_, a \_\_\_\_\_, on  
behalf of the \_\_\_\_\_ and partnership.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

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**Exhibit A**

Real Property Description

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