

RESOLUTION 2024-046

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING ESTABLISHED POLICY BY PROVIDING AUTHORIZATION TO PURCHASE REAL PROPERTY KNOWN AS THE PUEBLO DEL SOL COUNTRY CLUB, SIERRA VISTA ARIZONA, PARCEL #'S 105-96-001V, 105-96-002Q2, 105-97-279A2, 105-97-80902, AND 105-96-59404, LOCATED AT 2770 SAINT ANDREWS DRIVE, SIERRA VISTA, ARIZONA, 85650 AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the policy of the City to obtain Mayor and Council authorization to purchase real property; and,

WHEREAS, the Pueblo Del Sol Country Club (PDS) has been an established presence in Sierra Vista for many years providing recreational and other services to the citizens of Sierra Vista and the surrounding areas; and,

WHEREAS, the owners of PDS have made the decision to divest their interest in the property; and,

WHEREAS, the property located at 2770 Saint Andrews Drive, Sierra Vista, AZ, 85650, comprised of parcel numbers 105-96-001V and 105-96-002Q2, 105-97-279A2, 105-97-80902, and 105-96-59404 including the golf course, club house, restaurant, and bar hold potential to expand the City's ability to offer recreational opportunities as well as much needed event space; and,

WHEREAS, the purchase of PDS supports the Mayor and Council's strategic plan goals and efforts to develop Sierra Vista as a tourism destination in Southern Arizona.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The City Policy of obtaining Mayor and Council authorization to purchase real property, most recently affirmed by Resolution 2020-057, is hereby reaffirmed.


SECTION 2

The property located at 2770 Saint Andrews Drive, Sierra Vista, AZ, 85650, comprised of parcel numbers 105-96-001V and 105-96-002Q2, 105-97-279A2, 105-97-80902, and 105-96-59404 including the golf course, club house, restaurant, pool and bar are hereby approved for purchase from Castle & Cooke.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

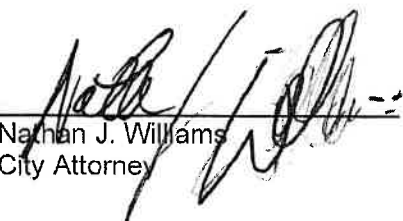
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 8th DAY OF JULY 2024.



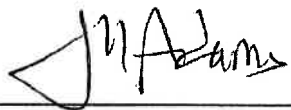
Clea McCaa II
Mayor

APPROVED AS TO FORM:

ATTEST:



Nathan J. Williams
City Attorney



Jill Adams
City Clerk

Prepared by:
Victoria Yarbrough
Assistant City Manager

VY

PURCHASE AND SALE AGREEMENT

This *Purchase and Sale Agreement* is made effective upon the full execution hereof and shall be dated as of the Agreement Date (defined in Section 1(b) below) by and among CASTLE & COOKE ARIZONA, INC., an Arizona corporation, as "Seller," and the CITY OF SIERRA VISTA, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated as ("CSV" or "Buyer").

BACKGROUND OF AGREEMENT

A. Seller is the owner of the Pueblo Del Sol Country Club ("PDSCC") in Sierra Vista, Arizona, consisting of real property generally located at 2770 St. Andrews Drive in the City of Sierra Vista, in Cochise County, Arizona, having located thereon an approximately 181 acres eighteen hole golf course with lakes, an approximately 11,000 square foot Clubhouse with pro shop, restaurant, and swimming pool, golf cart storage facility, maintenance facility and other improvements and various related easements (collectively, the "Golf Course Real Property") and related personal property, equipment, licenses, permits, contractual assets and liabilities relating to the operation of the PDSCC, and other rights used in connection with the operation and maintenance of the golf course and the related amenities (the "Golf Course Personal Property"). The Golf Course Personal Property includes two irrigation well pumping sites, including pumps and well casings.

B. Seller currently has, in connection with its prior residential developments in and around Sierra Vista, Arizona, a financial obligation in the amount of \$609,711.31 payable to CSV under Resolution 2020-074 (the "Sewer Note");

C. Buyer desires to purchase the Golf Course Real Property and the Golf Course Personal Property, and Seller desires to sell to Buyer such real property and related assets, subject to and in accordance with the terms, covenants and conditions of this Agreement.

AGREEMENT

1. **Definitions.** As used in this Agreement, the terms below shall have the following meanings unless the context requires otherwise.

(a) "Agreement." This *Purchase and Sale Agreement*, as amended or supplemented from time to time.

(b) "Agreement Date." July 8, 2024.

(c) "Assets." The Contracts, Personality, the Improvements, Intangible Property, and Real Property owned by Seller relating to, or used in connection with, the operation, construction or maintenance of the Golf Course.

(d) "Closing." The date upon which Seller shall convey title to the Assets to Buyer as set forth in Section 6.

(e) "Closing Date." September 6, 2024, or such earlier date as may be agreed to in writing by the parties.

(f) "Contracts." As listed on Exhibit C attached hereto (as may be supplemented during the feasibility period), and including but not restricted to all contracts, equipment leases, arrangements and agreements including (but not limited to) all contracts, leases, and other agreements pertaining to water supply for the Golf Course, and all golf cart leases and equipment leases, to the extent owned by Seller, which shall be assigned by Seller to Buyer, and the obligations of which will be assumed by Buyer, at Closing.

(g) "Earnest Money." Not applicable.

(h) "Escrow Agent." Pioneer Title Agency, Attention: Shauna Valdez, 2700 E. Fry Blvd, Ste A9, Sierra Vista, AZ 85635

(i) "Feasibility Expiration Date." August 8, 2024, or such earlier date as may be agreed to by the parties.

(j) "Golf Course." The Real Property and Improvements generally known as the Pueblo Del Sol Country Club.

(k) "Improvements." All buildings, fixtures, walls, fences, landscaping and other structures and improvements situated on, affixed to and/or appurtenant to the Real Property.

(l) "Intangible Property." All transferable or assignable permits, building plans and specifications, certificates, licenses (including but not limited to the Liquor License for the Golf Course), warranties and guaranties, trade names, and all other transferable intangible property, miscellaneous rights, benefits or privileges of any kind or character owned by Seller and used in conjunction with the operation of the Golf Course.

(m) "Law." Any present and future laws, statutes, codes, ordinances, orders, awards, judgments, decrees, injunctions, approvals, permits, requirements, regulations and licenses of every governmental or quasi-governmental authority or agency having jurisdiction over the Assets.

(n) "Liquor License." Any transferable license to sell and/or serve alcoholic beverages upon the Property.

(o) "Permitted Title Exceptions." The various matters that, as of the Closing, will affect title to the Real Property and have been approved (or not objected to) by Buyer as of the Feasibility Expiration Date.

(p) "Personality." The furniture, furnishings, fixtures, equipment (including office equipment), machinery, tools, supplies, and inventory, which is owned by Seller and used in conjunction with the operation of the Golf Club, as otherwise described on Exhibit B attached hereto (as may be supplemented during the feasibility period).

(q) "Real Property." The real property, comprised of parcels 105-96-001V1, 105-96-002Q2, 105-97-279A2, 105-97-80902, and 105-96-59404, as more particularly described on Exhibit A

attached hereto (as may be supplemented per the Title Report) together with all easements, rights of ways, water rights, privileges, permits, licenses and appurtenances pertaining thereto.

(r) "Special Warranty Deed." The instrument of conveyance in a standard form subject only to the Permitted Title Exceptions.

(s) "To the Knowledge of Seller." Whenever the phrase "to the knowledge of Seller" (or words of similar import) is used in this Agreement or in any document delivered pursuant hereto, such knowledge shall be the current actual knowledge of Richard Coffman, Senior Vice President of Seller and/or Gary Groff, the General Manager of PDSCC without any doctrine of constructive, implied or imputed knowledge from any other individual and without any obligation or duty of further investigation of inquiry (and nothing herein shall be deemed to create any personal liability of such individual).

(t) "Update Notice." In the event that, after the Agreement Date, Seller determines that any of the representations and warranties contained herein are untrue or incorrect, then Seller shall have the right to deliver written notice thereof (an "Update Notice") to Buyer. If Buyer receives such an Update Notice from Seller, and if the exceptions or qualifications to the representations and warranties stated in the Update Notice, (i) are not acceptable to Buyer in its reasonable discretion, (ii) will have a material, adverse impact on the value or future operation of the Golf Course after the Closing, and (iii) were not previously disclosed to or known by Buyer's representatives prior to the date of the Update Notice, then Buyer may refuse to consummate this transaction, but Seller shall have no liability to Buyer as a result of such qualifications and exceptions.

(u) "Water Rights." Any water rights for the Real Property owned by Seller and used in connection with the Golf Course.

2. Agreement of Purchase and Sale. At the Closing, subject to the terms, covenants and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller all of Seller's right, title and interest in and to the Assets. Buyer shall not assume any liabilities except as may be expressly assumed by Buyer in this Agreement in any Closing document. Except as otherwise expressly set forth herein or in a schedule or exhibit attached hereto, any liabilities and obligations incurred by Seller prior to Closing, including but not limited to any obligations relating to the termination or buy-out of existing contractual membership rights and/or playing privileges among the users of the Golf Course, are not assumed by Buyer and shall be paid solely by Seller. Other than as is specifically provided herein, any claims of customers of Seller arising from transactions prior to the Closing Date shall be the obligation of Seller, and Buyer is not assuming any such obligation.

3. Purchase Price.

(a) Payment of Purchase Price. The purchase price to be paid for the Assets (the "Purchase Price") shall be approximately Six Hundred Nine Thousand Seven Hundred Twenty-Six and 31/100ths Dollars (\$609,726.31), subject to adjustment as described in part (iv) below) payable as follows:

(i) Earnest Money Deposit. Not applicable.

(ii) Independent Consideration. Fifteen and no/100ths Dollars (\$15.00), in cash, cashier's check or immediately available funds shall be delivered to Escrow Agent within three (3) business days of the opening of escrow. Said consideration is independent consideration for Buyer's right

to inspect and conduct due diligence regarding the real property for the purpose of considering its purchase from Seller pursuant to this Agreement. Said consideration is independent of any other consideration or payment provided in this Agreement; provided, however, that it is applicable to the Purchase Price. Said consideration is non-refundable, is bargained for and fully earned, and shall be retained by Seller notwithstanding any other condition, provision or term of this Agreement. Buyer's duty, obligation and responsibility to deliver said consideration shall survive the termination of this Agreement.

(iii) Cash at the Closing. Not applicable, subject to Section 3(d) below.

(iv) Forgiveness of Sewer Note. In addition to the Independent consideration, the balance of the Purchaser Price shall be satisfied by the forgiveness by CSV of the entire balance owed by Seller under the Sewer Note as of the Closing Date.

(b) Accounts Payable. Subject to the provisions of Section 3(d), Seller shall be liable for, and pay when due, all accounts payable and outstanding indebtedness for all goods delivered and services provided before the Closing Date which relate to the construction, operation or maintenance of the Golf Course or the operation of the Golf Club. Seller shall indemnify and hold Buyer harmless for, from and against: (i) any and all claims, liabilities, obligations and expenses (including, without limitation, reasonable attorneys' fees) that arise out of accounts payable relating to the operation and maintenance of the Golf Course or the operation of the Golf Club prior to the Closing Date ("Seller's Accounts Payable Obligations"), including, but not limited to Seller's continuing liability following the close of escrow for refundable / partially refundable initial fees relating to existing Golf Club memberships; and (ii) any and all actions, suits, proceedings, demands, judgments and assessments or costs and expenses incident to accounts payable arising out of the business and operations of Seller before the Closing Date. Buyer shall be liable for, and pay when due, all accounts payable arising on and after the Closing Date relating to the operation and maintenance of the Golf Course and the operation of the Golf Club. Buyer shall indemnify and hold Seller harmless for, from and against: (i) any and all claims, liabilities, obligations and expenses (including, without limitation, reasonable attorneys' fees) that arise out of accounts payable relating to the operation and maintenance of the Golf Course and the operation of the Golf Club from and after the Closing Date; and (ii) any and all actions, suits, proceedings, demands, judgments and assessments or costs and expenses incident to accounts payable arising out of the business and operations of Buyer on and after the Closing Date.

(c) Accounts Receivable. Buyer acknowledges that, subsequent to the Closing, it may receive payments from persons or entities indebted to Seller in satisfaction of certain of Seller's accounts receivable. If Buyer receives or collects any payments made toward or in satisfaction of Seller's accounts receivable within one (1) year of the Closing Date, Buyer shall promptly remit such sums to Seller. Buyer shall provide Seller with regular reports, on no less than a monthly basis, of such payments received by Buyer, if any; provided that Buyer may apply all funds received to Buyer's accounts receivable before remitting funds to Seller. Seller shall be allowed reasonable access to Buyer's books to verify the accuracy of Buyer's accounting for such payments.

(d) Inventory of Supplies. The parties acknowledge that the Purchase Price has been calculated on the assumption that, as of the Closing Date, the inventory of: (i) merchandise in the pro shop; (ii) food and beverage; and (iii) fuel, fertilizer and seed at the maintenance facility (collectively, the "Supplies") would be equal to [Fifty Thousand and no/100ths Dollars (\$50,000.00)] valued at the lower of cost or estimated net realizable value. Outside of the Escrow, Buyer and Seller shall in good faith conduct an inventory of the Supplies as of the close of business on the day prior to the Closing Date and,

to the extent that the level of Supplies is more or less than \$50,000.00, Buyer and Seller shall on the Closing Date make reconciling payments as herein provided. If the Supplies exceed \$50,000.00, Buyer shall, on the Closing Date, make payment to Seller of the amount by which the value of the Supplies exceeds \$50,000.00, and, similarly, if the amount of the Supplies is less than \$50,000.00, Seller shall make a payment to Buyer or Buyer shall receive a credit equal to \$50,000.00 minus the value of the Supplies.

4. Contingencies. The obligation of Buyer to pay the Purchase Price to Seller and acquire the Assets, and the obligation of Seller to convey the Assets to Buyer, is contingent upon the satisfaction of each of the following conditions (each, a "Contingency") within the time periods provided.

(a) Title, Survey, Site Assessment, and Water Rights Review.

(i) Title Report. Seller agrees, within five (5) business days from the Agreement Date, to cause Buyer and Buyer's counsel to be furnished with a commitment for title insurance in Buyer's name, as well as legible copies of all matters of record referred to in the exceptions to title (the "Title Report") issued by Escrow Agent, committing to insure fee simple title to the Real Property and any insurable easements appurtenant thereto, in the amount of the Purchase Price. Upon receipt of the Title Report, Buyer shall have twelve (12) business days to examine the Title Report and inform Seller in writing of Buyer's objection to any exception contained in or title defect revealed by the Title Report. If Buyer fails to give written notice of approval or disapproval of any matters set forth in the Title Report within the twelve (12) day period described above, Buyer shall be conclusively deemed to have approved all matters set forth in the Title Report. Buyer may not object to any minor encroachments or any other matter that do not have a material adverse effect on the value of the Real Property or use of the Assets.

(ii) ALTA survey. Buyer may elect to obtain at Buyer's sole cost and expense a survey and acknowledges that Seller shall not be obligated to provide a survey in connection with this Agreement.

(iii) Amended Reports. If Escrow Agent issues any amendment to the Title Report ("Amended Report") disclosing any additional title matters or material modifications to the previously disclosed title matters, then Buyer shall be entitled to object to any such matter disclosed on the Amended Report by delivering written notice of such objection to Seller and Escrow Agent on or before five (5) business days after Escrow Agent has delivered to Buyer the Amended Report together with copies of all recorded Documents disclosed for the first time in the Amended Report. If Buyer fails to give written notice of approval or disapproval of all matters set forth in any Amended Report within the five (5) business day period described above, Buyer shall be conclusively deemed to have approved all new matters set forth in the Amended Report. Buyer may not object to any minor encroachments or any other matter that does not have a material adverse effect on the value of the Real Property or use of the Assets.

(iv) Buyer's Objection; Seller's Cure. If Buyer timely delivers written notice specifying in reasonable detail its objection to matter(s) that have a material adverse effect on the Real Property or use of the Assets contained in either the Title Report, any Amended Report, the Site Assessment, or any water rights or water supply document described in Section (v) below, Seller may, but shall not be obligated to, attempt to cure the matter(s) objected to by Buyer. If Seller elects to attempt to cure Buyer's objections, Seller shall notify Buyer of such election within five (5) days following Seller's receipt of Buyer's objection. If Seller fails to so notify Buyer within such five (5) day period, Seller shall be

deemed to have elected not to attempt to cure Buyer's objections. If at any time Seller notifies Buyer and Escrow Agent of its unwillingness, or inability, to cure such objections or fails to elect to cure such objections, then Buyer shall, within five (5) days following receipt of such notice, or within five (5) days after Seller's deemed election not to cure, as applicable, elect to either (i) waive the matters previously objected to by delivering written notice to Seller and Escrow Agent and thereafter close the transaction contemplated hereby in accordance with the terms hereof taking title subject to all such matters waived by Buyer, or (ii) terminate this Agreement as provided in Section 4(c) below. If Seller attempts to cure the matters objected to by Buyer, but Seller is unable to cure such matters to Buyer's reasonable satisfaction prior to the date that is ten (10) days prior to the Closing Date, Buyer may then elect to either (i) waive the matters previously objected to by delivering written notice to Seller and Escrow Agent and thereafter close the transaction, taking title subject to all matters waived by Buyer, or (ii) terminate this Agreement and the Escrow by written notice to Seller and Escrow Agent delivered by 5:00 p.m., Phoenix time, on the date that is five (5) days prior to the Closing Date. In all instances described above, if Buyer fails to timely notify Seller of Buyer's election to either waive its objections or close this transaction or terminate this Agreement, Buyer shall be deemed to have elected to waive its objections.

(v) Water Rights, Permits, Agreements, and Leases. Seller agrees, within five business (5) days from the Agreement Date, to provide Buyer with copies of the following documents if within Seller's possession: (1) all permits and other documents evidencing any water rights that the Seller has from the Arizona Department of Water Resources; (2) all water supply agreements the Seller has with any other party for the purpose of supplying water, including effluent, to the Golf Course; (3) any groundwater leases between Seller and any other party authorizing Seller to pump groundwater for the Golf Course; (4) any permit from any other governmental agency authorizing groundwater pumping; (5) any document evidencing the Seller's right to any other source of water for the Golf Course, including, but not limited to, effluent; (6) any written instrument evidencing the transfer of any right of the Seller to water for the Golf Course; and (7) all records of operating history of any well located on the Golf Course, water table depth of any such well, and the water pressure of any such well.

(vi) Contracts and Intangible Property. Seller agrees, within five (5) business days from the Agreement Date, to provide Buyer with copies of the Contracts and documentation evidencing and relating to the Intangible Property to be conveyed and assigned to Buyer if, and to the extent, within Seller's possession, including but not restricted to all contracts, equipment leases, arrangements and agreements including (but not limited to) all contracts, leases, and other agreements pertaining to the liquor licenses for the Golf Course, and all golf cart leases and equipment leases, to the extent owned by Seller, warranties and guaranties, trade names, and all other transferable intangible property, miscellaneous rights, benefits or privileges of any kind or character owned by Seller and used in conjunction with the operation of the Golf Course.

(b) Feasibility. Until the Feasibility Expiration Date, or until this Agreement otherwise terminates, Seller grants to Buyer, its engineers, consultants and agents, a non-exclusive license to go upon the Golf Course, at Buyer's risk, for the purpose of making appropriate inspections and conducting, at Buyer's sole cost and expense, appropriate feasibility studies with respect to the Golf Course and other Assets. Such inspections, soils tests and feasibility studies shall be performed at reasonable times and shall be conducted so as not to disrupt the operation of the Golf Course and Buyer will repair any damage resulting from Buyer's entry and tests. Seller hereby reserves the right to have a representative present at the time Buyer conducts any inspection of the Golf Course or the other Assets. Buyer shall notify Seller not less than two (2) business day in advance of making any such inspection and Seller reserves the right to request the delivery of a certificate of insurance issued by an insurance company acceptable to Seller

certifying that Buyer, or its agents, is covered by a commercial general liability insurance policy in the amount of \$2,000,000 naming Seller as an additional insured. Notwithstanding anything herein to the contrary, Buyer shall not conduct any physically invasive testing of the Golf Course (including, without limitation, soils tests, "Phase II" environmental assessments, or the taking of core samples from the Improvements or Real Property) without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion. Should Seller consent to such physically invasive testing, Buyer shall provide proof of insurance and disclosure of Buyer's scope of work requirements for such inspections. In making any inspection, Buyer shall treat, and shall cause any agent, contractor, employee and representative of Buyer to treat, all information obtained by Buyer (or such other person) as strictly confidential. Buyer shall indemnify, defend and hold Seller harmless for, from and against all claims and liabilities (including reasonable attorneys' fees, costs and expenses) arising out of any personal injury, physical damage to property or mechanics' or material men's liens which may be asserted against Seller or the Real Property as a result of any such entry, inspection, test and study conducted by Buyer, its engineers, consultants and agents. Notwithstanding any provision of this Agreement to the contrary, this indemnity shall survive the Closing and any termination of this Agreement and shall be a continuing obligation of Buyer and its successors and assigns. To assist Buyer with its feasibility study, Seller shall permit Buyer, prior to the Feasibility Expiration Date, to inspect at Seller's office such other documents, reports and materials in Seller's possession pertaining to the Assets, including (but not limited to) all income, expenses and other financial books and records relating to the operation of the Golf Course for the past two years, so long as Buyer executes a confidentiality and non-disclosure agreement in a form reasonably approved by Seller. Seller shall within five(5) days of the date of this Agreement provide copies of the Contracts set forth on Exhibit C, together with copies of all warranties, guaranties, Insurance policies, property tax and assessment records and notices, contracts, agreements and permits relating to the Assets that are in Seller's possession. Buyer acknowledges and agrees that the foregoing deliveries, and any other documents, reports and materials in Seller's possession made available to Buyer, are provided on an "as is" basis, and that except for the specific representations, warranties and covenants of Seller contained herein, Seller makes no representations or warranties of any kind regarding the accuracy, completeness or suitability of such documents, reports and materials. If Buyer, in its sole and absolute discretion, disapproves of the results of its investigation and inspections, it may terminate this Agreement by giving written notice of its election to terminate this Agreement to Seller and Escrow Agent on or before the Feasibility Expiration Date and shall return all such feasibility information to Seller. If Buyer does not, on or before the Feasibility Expiration Date, provide such written notice of its election to terminate the Agreement, then Buyer's right to terminate the Agreement as provided in this Section 4(b) shall terminate.

During the feasibility period CSV has the right to terminate the Agreement as provided in A.R.S. § 19-101.

(c) Termination of Agreement. If either Buyer or Seller is granted the right to terminate this Agreement, such party may exercise such right by delivering written notice to the other party and to Escrow Agent indicating both its election to terminate and the specific provision pursuant to which it is making that election. Upon Escrow Agent's receipt of such notice, this Agreement shall terminate and, except as otherwise provided in this Agreement, neither party shall have any further obligations or liabilities under this Agreement. Upon termination of this Agreement, Buyer shall, within five (5) days of such termination, promptly return to Seller all reports, surveys, studies and other documents and information delivered to Buyer pertaining to the Assets and the Survey and Site Assessment, if either of the same was prepared.

5. **Title Insurance.** At the Closing, Seller shall cause Escrow Agent to deliver to Buyer a "standard" coverage owner's policy of title insurance, or at Buyer's election an "extended" coverage policy, or an unconditional commitment to issue such policy, issued by Escrow Agent or its principal insuring title to the Real Property in Buyer, the policy to be subject to the usual printed exclusions, exceptions, conditions and stipulations set forth in the printed form policy and only such additional matters approved or deemed approved by Buyer in accordance with the provisions of Section 4(a) and the other provisions of this Agreement (the "Permitted Title Exceptions"). Seller shall only be responsible for paying the portion of the premium that relates to "standard" owner's coverage and Buyer shall be responsible for all additional premiums and any costs associated with any endorsements required by Buyer or its lender.

6. **The Escrow.**

(a) **Escrow.** Buyer and Seller shall establish an Escrow with Escrow Agent to facilitate the consummation of the transaction contemplated by this Agreement.

(b) **Closing.** The Closing of the transaction contemplated and required by this Agreement shall occur on or before the Closing Date, or at such other time and location as the parties may mutually agree in writing. All income generated from, and expenses incurred in connection with, the operation of the Golf Course up to and including the Closing Date shall belong to, and be paid by, Seller, as the case may be.

(c) **Action at the Closing by Seller.** On the Closing Date, and as a condition to Buyer's obligations under Section 6, Seller shall deliver or cause to be delivered to the Escrow Agent for the account of Buyer (if not otherwise delivered prior thereto) all of the following instruments dated as of the Closing Date, fully executed and, if appropriate, acknowledged:

- (i) The Special Warranty Deed, subject to the Permitted Title Exceptions;
- (ii) An Affidavit of Non-Foreign Person in the form established by the Internal Revenue Service;
- (iii) The Bill of Sale for the Golf Course Personal Property substantially in the form of Exhibit D;
- (iv) Assignment and Assumption of Contracts and Rights to Intangible Property substantially in the form of Exhibit E assigning to Buyer all of Seller's right, title and interest in and to the contracts in effect as of the Closing Date and pursuant to which Buyer assumes all such contracts;
- (v) A settlement statement signed by Seller which is reasonably acceptable to the Seller and accurately reflects the payments, credits, and prorations required herein (together with the settlement statement signed by the Buyer, the "Settlement Statement");
- (vi) Such other funds, instruments or documents as may be reasonably necessary in Buyer's discretion to fulfill the covenants and obligations to be performed by Seller pursuant to this Agreement and to effectively

convey to Buyer the Assets free and clear of all liens and claims other than those listed as Permitted Title Exceptions; and

- (vii) Evidence of Seller's authority under its organizational documents to consummate this transaction.

(d) Action at the Closing by Buyer. On the Closing Date, and as a condition to Seller's obligations hereunder, Buyer shall deliver or cause to be delivered to Escrow Agent for the account of Seller (if not otherwise delivered prior thereto) all of the following, and with respect to any instruments or documents referred to below, all such items shall be dated as of the Closing, fully executed by Buyer and, if appropriate, acknowledged:

- (i) By no later than 11:00 a.m., all documents proving the forgiveness by CSV of the Sewer Note effective upon the closing;
- (ii) The Assignment and Assumption of Contracts and Rights to Intangible Property;
- (iii) The Settlement Statement signed by Buyer which is reasonably acceptable to Buyer and accurately reflects the payments, credits, and prorations required herein;
- (iv) Written evidence that this Agreement and the transactions contemplated herein have been authorized and approved by all necessary organization action of Buyer; and
- (v) Such other funds, instruments or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Buyer pursuant to this Agreement.

(e) Commissions. No commissions are due or owed by either party in this matter. Buyer is responsible for any fees or services it incurs. Seller is responsible for any fees or services it incurs. Seller and Buyer warrant, each to the other, that they have not dealt with any finder, broker, or realtor in connection with this Agreement other than those specifically referenced herein and Buyer shall and does hereby indemnify Seller against and agrees to hold Seller harmless from, any claim, demand, or suit for any brokerage commission, finder's fee or similar charge that is the result of Buyer's actions with respect to the execution of this Agreement. This obligation shall survive Closing.

(f) Closing Costs. The escrow fee payable to Escrow Agent in respect to the conveyance and transfer of the Assets to Buyer shall be shared equally by the parties. All other fees, recording costs, charges or expenses incidental to the sale, transfer and assignment of the Assets to Buyer shall, except as otherwise herein expressly provided, be paid according to custom for real estate transactions consummated in Cochise County, Arizona, as determined by Escrow Agent.

(g) Prorations.

(i) Taxes and Assessments. Seller shall pay, prior to delinquency, all real estate taxes, personal property taxes and installments of assessments by any governmental authority in

respect of the Real Property and other Assets pertaining only to Seller's period of ownership. At the Closing, Escrow Agent shall prorate all real and personal property taxes and assessments as of the Closing Date, Buyer shall receive a credit for all current installments of real property taxes and assessments levied against the Real Property that are accrued and unpaid as of the Closing Date, and Buyer shall assume the obligation to thereafter pay all such taxes and assessments affecting the Assets. Escrow Agent shall prorate on the basis of the most current information available to Escrow Agent or as agreed by Seller and Buyer. In the event the Real Property has been assessed for property tax purposes at such rates as would result in reassessment based upon the change in land usage or ownership of the Real Property on or after the Closing Date, Buyer hereby agrees to pay all such taxes and to indemnify and save Seller harmless from and against all liability for such taxes.

(ii) Utility and Maintenance Charges. Seller shall pay all unpaid charges for water, electricity, gas, trash removal, telephone or other utility services which are furnished to or in connection with the Golf Course up to and including the Closing Date. Not less than three (3) business days prior to Closing Date, Seller and Buyer shall notify and instruct the suppliers of the utility services to the Golf Club to read the meters for such services as of the morning of the Closing Date and to render to Seller a final statement for all charges for utility services furnished to the Golf Course up to and including the Closing Date. If the final meter readings cannot be obtained, Buyer and Seller shall prorate such charges based upon the particular utility companies' billing for the immediately preceding billing period determined on a per diem basis based on the actual number of days in the billing period. Buyer shall receive a credit for the allocated amount of such charges applicable to the period prior up to and including the Closing Date, and on or after the Closing Date, Buyer shall be responsible for, and shall pay, all billings received from the utility company for the current and future billing periods.

(iii) Additional Adjustments. The following Prorations and adjustments shall occur at the Closing, but will be handled between the parties outside the Escrow:

- (1) All petty cash, credit card receipts and cash in cash registers and vending machines located at the Golf Course as of close of business on the Closing Date shall remain the property of Seller, including, without limitation and cash held in bank accounts and monies held by any management company on behalf of Seller.
- (2) All amounts of advance bookings, gift certificates and deposits, as described on Exhibit F and also as received by Seller prior to the Closing Date, shall be credited to Buyer.
- (3) All receipts and expenses from food and beverage operations to the close of business on the day prior to the Closing Date shall belong to, and be paid by, Seller.
- (4) All prepaid expenses, including, without limitation, annual permit and inspection fees, and fees for licenses transferred to Buyer at the Closing shall be credited to Seller.
- (5) All accrued membership dues which are unpaid, all accounts receivable and all credit card claims as of close of business on the day prior to the Closing Date shall remain the property of Seller and, to the extent Buyer

receives any payments on accounts thereof, Buyer shall immediately remit such amounts to Seller subject to Section 3(c) above.

- (6) All accounts payable owing as of close of business on the day prior to the Closing Date shall be paid by Seller except for any accounts payable relating to goods and services (including advertising) for which orders have been placed but, as of the day prior to the Closing Date, such goods and services have not yet been delivered or provided. Buyer shall be solely responsible for, and shall promptly pay when due, all invoices for goods and services that were ordered prior to the Closing Date which goods are delivered, and which services are rendered (including the publication of any advertising) on or after the Closing Date; provided that Seller has disclosed such accounts payable in writing to Buyer.
- (7) In accordance with the provisions of Section 3(d), Buyer and Seller shall, outside of the Escrow, make all necessary adjustments to account for the actual inventory of Supplies existing as of close of business on the day preceding the Closing Date.
- (8) All payroll expenses and other costs associated with the employment of any of Seller's employees at the Golf Course, if any (collectively, "Payroll Expenses") beginning with the date of the Closing shall be charged to, and paid by, Buyer. All Payroll Expenses prior to the date of Closing are the responsibility of Seller.
- (9) All obligations under the Contracts shall be prorated as applicable between the parties as of the Closing Date and in addition, Buyer shall replace as necessary any bonds, deposits or prepayments related to any of the Contracts.

7. **Possession.** Immediately following funding of the Purchase Price and completion of the Closing, Seller shall, outside of Escrow, deliver possession of the Assets (specifically including all then-existing pro shop and food and beverage inventory) to Buyer as of the Closing Date subject to the Permitted Title Exceptions and Seller's rights granted by Buyer pursuant to this Agreement. The parties agree that, except as otherwise set forth herein, no adjustments shall be made between the parties after the Closing to account for any variations in the amount of Supplies. Notwithstanding anything to the contrary contained in this Agreement, Seller shall continue to operate the Golf Course up to and including the Closing Date.

8. **Continuing Maintenance and Operation of the Golf Course.** Up to and including the Closing Date, subject to normal wear and tear and casualty damage, Seller shall:

(a) cause the Golf Course to be maintained and operated in accordance with its current standards and consistent with its past operating procedures, maintain present services, keep the Golf Course and every portion thereof in working order, maintain sufficient inventories of supplies, food and beverage and pro shop merchandise for the proper management, maintenance and operation of the Golf Course, and continue to accept reservations and group bookings for dates on or after the Closing

Date at no less than 90% of the current rates therefor, as of the Agreement Date, unless consented to by Buyer;

(b) not sell or otherwise dispose of any significant items of Personality (other than in connection with the ordinary course of the operation or maintenance of the Golf Course) unless replaced with an item of like value and utility;

(c) not enter into any new material service, maintenance, operating, repair, equipment lease, employment, management, leasing, advertising or similar contract or agreement relating to the operation or maintenance of the Golf Course, except for those entered into in the ordinary course of business and which are cancelable upon not more than thirty (30) days prior notice or cancelable in the event of a sale of the Golf Course;

(d) Maintain in full force and effect all liability and casualty insurance currently in effect;

(e) not undertake any program of capital improvements, replacements or alterations of the Golf Course, or any portion thereof, except for repairs, maintenance and replacements undertaken in the ordinary course of business; and

(f) Not enter into any new Memberships that exceed one (1) year in duration, without Buyer's consent.

Attached hereto as Exhibit F is a true, complete and correct list of all advance bookings and the amount of each deposit received by Seller in connection therewith for all events scheduled to occur on or after the Closing Date as well as all prepaid and deferred monthly member dues. Seller shall have no responsibility to Buyer with respect to any failure to perform of the person or entity who may have made any advance reservation or group booking, and Seller makes no representation whatsoever concerning any such person or entity, including, without limitation, the financial condition of any such party, except as to the truth, completeness and accuracy of Exhibit F. At Closing, Buyer agrees to accept and assume the terms and conditions of each such advance booking, agrees to perform all of Seller's obligations in connection therewith, and to indemnify, defend and hold Seller harmless for, from and against any and all loss, liability, claims, damages and costs (including attorneys' fees) suffered or incurred by Seller as a result of Buyer's failure to comply with the terms and conditions of each such advance booking.

9. **Assignment.** Buyer shall not transfer or assign its interest in this Agreement without Seller's prior written consent, which may be withheld in Seller's sole and absolute judgment and discretion, except that Buyer may assign its interest in this Agreement to an entity that is wholly owned or controlled by Buyer. An assignment allowed under this Section shall not relieve the assignor from its obligations under this Agreement. Any purported assignment in violation of this Section shall be null and void and shall vest no rights in the purported assignee.

10. **Representations, Warranties and Covenants of Buyer.** Buyer acknowledges, represents and warrants to Seller that the following are true as of the Agreement Date and will be true as of the Closing Date, and, in entering into this Agreement, Seller is relying upon, the following:

(a) Due Organization, Etc. Buyer is duly organized, validly existing and in good standing under the laws of the state of its organization, and it is qualified to do business in the State of

Arizona. Buyer has taken all necessary action to authorize the transaction contemplated by this Agreement, Buyer's execution and delivery of this Agreement and all documents required herein, and its performance hereunder. The individual representative executing this Agreement on behalf of Buyer has been duly authorized by Buyer to sign this Agreement. Buyer's execution and delivery of this Agreement, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan agreement or similar document to which Buyer is a party or by which Buyer is bound. Buyer further represents that it is not a partner or joint venture with Seller in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and each contract, instrument and document contemplated hereby, voluntarily and solely for its own profit and benefit.

(b) No Litigation. There is no litigation, investigation or proceeding pending or, to the best of Buyer's knowledge, contemplated or threatened against Buyer which would impair or adversely affect Buyer's ability to perform its obligations under this Agreement, any instrument or document related thereto, or any agreement, instrument or document which is proposed for Buyer to execute in conjunction with the Closing.

11. Representations, Warranties and Covenants of Seller. Seller acknowledges, represents and warrants to Buyer that the following are true as of the Agreement Date and will be true as of the Closing Date, and acknowledges that, in entering into this Agreement, Buyer is relying upon, the following:

(a) Due Organization, Etc. Seller is duly organized, validly existing and is qualified to do business in the State of Arizona. The transactions contemplated by this Agreement and the execution and delivery of this Agreement and of all documents required herein, and its performance hereunder, have been duly authorized by Seller and Seller has the necessary power and authority to convey, or cause to be conveyed, the Assets to Buyer. The individual officers executing this Agreement on behalf of Seller has been duly authorized by Seller to sign this Agreement. The execution and delivery of this Agreement and any other document required herein and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan, or similar documents to which Seller is a party or by which Seller, the Real Property or Assets is bound.

(b) Contracts. All service contracts affecting the Golf Course as of the date of this Agreement are identified in Exhibit D and have been delivered to Buyer, and to Seller's knowledge, Seller is not in default under any of such Contracts. Seller will not enter into any other service contract affecting the Golf Course that will survive Closing without the prior written consent of Buyer.

(c) No Condemnation. To Seller's knowledge, there are no existing, pending or anticipated condemnation or similar proceedings against or involving the Real Property.

(d) Hazardous Materials. Seller does not have any actual knowledge of the existence of any Hazardous Material (herein defined), except such cleaning supplies, gardening and landscaping materials in such quantities as are used in the ordinary course of the operation and maintenance of the Golf Course, being located on the Real Property or in the Improvements or Assets, nor has Seller received any notice of any kind relating to any Hazardous Material being located thereon or therein. The term "Hazardous Material" means any hazardous or toxic substances, materials, chemicals, or wastes in any form and in any concentration that is or becomes, prior to Closing, regulated by the United States or any state or local government authority having jurisdiction over the Real Property, and includes, without

limitation, "hazardous materials," "hazardous substances," "toxic substances," "oil," "petroleum," "pollutants," or "solid waste" as those terms are defined in the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980*, as amended by *Superfund Amendments and Reauthorization Act of 1986*, the *Hazardous Materials Transportation Act*, the *Resources Conservation and Recovery Act of 1976*, the *Clean Water Act*, the *Federal Water Pollution Control Act*, the *Federal Environmental Pesticides Act*, all as amended, and all rules and regulations applicable to each.

(e) Taxes. To Seller's knowledge, there are no taxes due and owing on account of Seller's operation of the Golf Course for unemployment compensation, withholding tax, social security tax, sales tax, personal property tax, franchise tax, income tax, and all other taxes of any nature, that will not be paid prior to Closing or paid in the ordinary course of business as they become due.

(f) Laws and Regulations. To Seller's knowledge, Seller is not in default or in violation of any law, regulation, court order, or order of any federal, state, municipal, or other government department, board, bureau, or instrumentality, wherever located, that would materially adversely affect the Golf Course or Assets.

(g) Charges. To Seller's knowledge, Seller has paid any and all payroll, sales and other taxes, license fees, and other charges levied, assessed or imposed upon the Golf Course and any of the property of the Seller, except those which are not yet due and payable. All taxes, franchises, and contribution and other charges required to be paid to governmental agencies by Seller with respect to its operation through the Closing Date will be paid as they become due.

(h) Default. Seller is not in default under any agreement, lease, security agreement, or other material agreement, contract, or instrument to which it is bound, which default would affect the consummation of this Agreement or the material value of the Assets, and is not in default with respect to any order, writ, injunction, or decree of any court or any federal, state, or municipal governmental authority, or the like.

(i) Employees, Labor Matters, etc. There are no labor disputes currently subject to any grievance procedure, arbitration or litigation or, to the knowledge of Seller, threatened with respect to any employee of Seller.

(j) Permits. Seller will within five (5) business days of the date of this Agreement, provide Buyer access to, or copies of, all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained from governmental authorities reasonably necessary to operate the Golf Course ("Transferred Permits"). To Seller's knowledge, the Transferred Permits shall be valid and in full force and effect. All fees and charges with respect to such Transferred Permits as of the date hereof and as of the Closing Date have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Transferred Permit.

(k) Membership and Passholder Rights. Effective on or before the Closing, Seller shall terminate all of the existing member rights. The refunding of all amounts collected by Seller prior to the Closing Date from the public for memberships, passes, discounts, benefits, and other future golf, swimming, cart fee and range play obligations (collectively, the "Memberships") shall be the sole responsibility of Seller.

(l) No Litigation. To Seller's knowledge, there is no litigation, investigation or proceeding pending or, to the knowledge of Seller, contemplated or threatened against Seller, the Real Property or other Assets which would impair or adversely affect in any material fashion Seller's ability to perform its obligations under this Agreement or under any other contract, instrument or document related hereto.

(m) Foreign Person. Seller is not a Foreign Person as such term is defined under the Internal Revenue Code §1445.

(n) Agreements. To Seller's knowledge, except as may be disclosed in the Title Report or any Amended Report, there are no leases, tenancies, parties in possession, options or rights of first refusal, recorded or unrecorded, affecting the Real Property.

(o) Improvements in Good Condition and Repair. To Seller's knowledge, the plumbing, lighting, air conditioning, heating, doors, roof, equipment, furniture and fixtures on the Property and used in conjunction with the Golf Course and clubhouse will be in normal operating condition on the Closing Date. Notwithstanding any provision to the contrary, Buyer shall be precluded from bringing suit for a failure of this representation and warranty unless aggregate liability of Seller for such failure exceeds \$25,000.

(p) No Undisclosed Assessments. To Seller's knowledge, there are no taxes, assessments (special, general or otherwise) or bonds of any nature affecting the Real Property or other Assets, or any portion thereof, except as disclosed in the Title Report. Seller has no understanding or agreement with any taxing authority respecting the imposition or deferment of any taxes or assessments respecting the Real Property or other Assets. To Seller's knowledge, there are no pending resolutions of intention passed or proposed by any governmental authority proposing to create an improvement district or otherwise impose a lien that would affect the Real Property. To Seller's knowledge, there are no agreements with or in favor of any governmental authority and no special conditions have been imposed by any governmental authority (other than compliance with laws of general application) upon the Golf Course, the Improvements and/or the Real Property.

(q) No Violations. To Seller's knowledge, the Improvements comply in all material respects with all Laws governing or regulating the use, construction and operation thereof, and comply with all of Seller's insurance requirements. Seller has received no written notice, and Seller has no knowledge, of any current violations of any Laws in connection with the Assets. To Seller's knowledge, the Golf Course and the Improvements are located above the high-water elevation of any 100-year flood plain.

(r) Mechanics' and Materialmen's Liens. To Seller's knowledge, as of Closing, there will be no mechanics' or materialmen's liens against the Golf Course, nor any conditions existing as a result of Seller's actions which, with the passage of time, may result in the imposition of mechanics' or materialmen's liens.

Unless a longer time period is specifically referenced herein, the representations and warranties of Seller and Buyer set forth herein shall, subject to the delivery of an Update Notice, survive the Closing of the transaction contemplated in this Agreement and the delivery of the Special Warranty Deed from Seller to Buyer for a period of twelve (12) months from and after the Closing Date, and Buyer must commence an action against Seller for breach of any such representations or warranties within twelve (12) months after the Closing Date. Any such claim which Buyer may have which is not so commenced within the twelve

(12) month period after the Closing Date shall be null, void, unenforceable or ineffective, and Seller shall have no liability with respect thereto. To the extent that Buyer knows or is deemed to know prior to the expiration of the Feasibility Expiration Date that Seller's warranties set forth herein are inaccurate, untrue, or incorrect in any way, such representations and warranties shall be deemed modified to reflect Buyer's knowledge or deemed knowledge, as the case may be.

Prior to Closing, Buyer shall have inspected the Assets to the extent Buyer deems necessary or desirable. Except as otherwise specifically set forth herein, Buyer acknowledges and agrees that, Seller has not made, does not make and specifically negates and disclaims any and all representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Golf Course, the Golf Club, or the Assets, including but not limited to: (a) the value, nature, quality or condition of the Golf Course, including without limitation the water, soil, geology and all structures located thereon; (b) the income to be derived from the Assets; (c) the suitability of the Golf Course for any and all activities and uses which Buyer may conduct thereon; (d) the compliance of or by the Golf Course or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Golf Course; (f) the ability to construct improvements on the Golf Course or the ability to obtain building permits; (g) the conformity of the Golf Course to current or future applicable zoning or building requirements; and (h) any other matter with respect to the Assets, and specifically, that Seller has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including without limitation the presence of any asbestos, petroleum and petroleum by-products, urea formaldehyde foam insulation, polychlorinated biphenyls, radon, any and all substances now or hereafter designated as Hazardous Materials, hazardous waste, toxic substances, solid waste, toxic pollutant, or pollutant as defined by any environmental laws, and any substance now or hereafter regulated by any environmental laws. Buyer further acknowledges and agrees that, except for the specific representations and warranties made by Seller herein, (a) the sale of the Property as provided for herein is made on an "AS IS" "WHERE-IS" condition and basis with all faults, and (b) Buyer has not, and will not, rely on any statement, representation or other information provided by Seller or its agents to Buyer or its agents in making its decision to purchase the Assets and otherwise close the transactions provided for in this Agreement. Buyer and anyone claiming by, through or under Buyer hereby fully and irrevocably releases Seller, its employees, officers, directors, representatives and agents from any and all claims that it may now have or hereafter acquire against Seller, its employees, officers, directors, representatives and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any defects, errors, omissions or other conditions, including environmental matters affecting the Golf Course, the Real Property or any portion thereof, unless specifically warranted by Seller hereunder. Unless Seller and Buyer specifically agree otherwise in writing, it is understood and agreed that the Purchase Price has been adjusted to reflect that the Assets are sold by Seller and purchased by Buyer subject to the foregoing.

12. **Attorneys' Fees.** In the event it becomes necessary for either Buyer or Seller to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including, without limitation, reasonable attorneys' fees at both trial and appellate levels and regardless of whether suit is actually brought.

13. **Notices.** All notices or other communications required or provided to be sent by either party or Escrow Agent shall be in writing and shall be sent by: (i) United States Postal Service, postage prepaid, certified, return receipt requested; (ii) any nationally known overnight delivery services such as Federal Express; (iii) courier; (iv) email transmission with proof of receipt; or (v) in person. All notices shall be deemed to have been given forty-eight (48) hours following deposit in the United States Postal Service, or upon receipt if sent by overnight delivery service, courier, or email transmission or personally delivered. All notices shall be addressed to the party at the address below:

If to Buyer: City of Sierra Vista,
Attn: City Manager
1011 N. Coronado Drive
Sierra Vista, AZ 85635

with a copy to: City of Sierra Vista,
Attn: City Attorney
1011 N. Coronado Drive
Sierra Vista, AZ 85635
Email: Nathan.Williams@SIERRAVISTAAZ.GOV

If to Seller: Castle & Cooke Arizona Inc.
4100 Canyon De Flores
Sierra Vista, AZ 85650
Email: rcoffman@castlecooke.com

with a copy to: Law Office of Christopher Finberg, P.C.
Attn: Chris Finberg
5100 California Avenue, Suite 105
Bakersfield, CA 93309
Email: chris@finberg-law.com

Any address or name specified above may be changed by notice given by the addressee to the other party in accordance with this Section. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party. Any notice to Escrow Agent shall be sent to the address set forth in Section 1(h) above.

14. **Seller's Remedies.** If Buyer shall breach any of the terms or provisions of this Agreement or otherwise default hereunder prior to the Closing, Seller may terminate this Agreement and seek all remedies available at law and equity.

15. **Buyer's Remedies.** If Seller breaches any of the terms or provisions of this Agreement or otherwise defaults hereunder prior to the Closing, Buyer may either (i) terminate this Agreement by written notice to Seller and Escrow Agent and thereafter neither party shall have any further obligation or liability to the other; (ii) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; or (iii) upon complete tender to Escrow Agent of Buyer's performance required hereunder, Buyer may, within 60 days of the Closing Date, institute all proceedings necessary to

specifically enforce the terms of this Agreement and cause title to the Real Property and Assets to be conveyed to Buyer, Buyer hereby specifically waiving its right to seek damages.

16. **Exhibits.** The lack of one or more exhibits at the time of execution hereof shall not affect the enforceability of this Agreement. Buyer shall have the right to object, in Buyer's reasonable discretion and in accordance with the notice provisions hereof, to the terms of any of the exhibits within five (5) business days of Seller's notice to Buyer of its proposed exhibit, which notice shall be in accordance with the terms of this Agreement. If such exhibits are not revised to Buyer's satisfaction, Buyer may elect to cancel this Agreement pursuant to Section 4(c) hereof. If Buyer does not object in a timely manner, Buyer shall be deemed to have approved the exhibits.

17. **Damage, Casualty and Condemnation.**

(a) **Condemnation.** If prior to the Closing there shall occur any proposed taking ("Taking") of the Real Property (or any part thereof) by eminent domain, Buyer shall have the right and option to terminate this Agreement in accordance with Section 4(c) by giving Seller written notice to such effect within ten (10) days after written notice from Seller of any such occurrence or occurrences. If Buyer does not exercise its right of termination, then this Agreement shall remain in full force and effect, the Purchase Price shall not be abated and Seller shall assign all right, title and interest in and to the condemnation award (and deliver any portion of that award received from time to time by Seller) to Buyer at Closing.

(b) **Damage and Casualty.**

(i) If prior to Closing there shall occur any damage or destruction to the Improvements by fire or other casualty that shall not have been restored to its pre-existing condition and the cost to restore the Improvements (as determined pursuant to Section 17(b)(iii) below) shall exceed ten percent (10%) of the Purchase Price, Buyer shall have the right to terminate this Agreement within fifteen (15) days after receipt of the determination of the cost to restore. If Buyer does not exercise its right to terminate this Agreement, then the Agreement shall remain in full force and effect, and Buyer shall be entitled to all of the insurance proceeds arising from that casualty.

(ii) If prior to Closing there shall occur any damage or destruction to the Improvements by fire or other casualty and the cost to restore the Improvements (as determined pursuant to Section 17(b)(iii) below) shall be less than ten percent (10%) of the Purchase Price, then this Agreement shall remain in full force and effect, the Purchase Price shall be abated by the cost to restore and Seller shall be entitled to all of the insurance proceeds arising from that casualty.

(iii) The cost to restore the Improvements to a condition having the design, specifications and equipment of the Improvements at the time of the casualty shall be determined by obtaining a fixed price bid for that work by a contractor having at least five years' experience in the construction of the damaged portion of the Improvements, selected by Seller and approved by Buyer (such approval not to be unreasonably withheld or delayed).

(iv) The Closing shall be adjourned for a reasonable time (not to exceed thirty (30) days) as may be required to obtain the information and make the decisions described above.

(v) This Section 17 is an express provision with respect to destruction and eminent domain and is intended to supersede any applicable statute regarding risk of loss.

18. Modification of Agreement. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

19. Further Instruments. Each party, promptly upon the request of the other or upon the request of the Escrow Agent, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions hereof.

20. Entire Contract. This Agreement constitutes the entire contract between the parties with regard to the purchase and sale of the Assets. All terms and conditions contained in any other writings previously executed by the parties and all other discussions, understandings or agreements regarding the Assets and the subject matter hereof shall be deemed to be superseded hereby.

21. Inurement and Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto. Buyer shall have the right to assign its rights, interests and obligations under this Agreement to its affiliates or a partnership, Limited Liability Company, corporation, or other entity formed by Buyer and, provided the assignee assumes all of the obligations of Buyer hereunder, Buyer shall be released from any future liability or obligation hereunder upon such assignment. Otherwise, neither party shall have the right to assign this Agreement or any interest herein without the prior written consent of the other party.

22. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and venue for any dispute shall be in the courts sitting in Cochise County, Arizona.

23. Descriptive Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions hereof.

24. Time of the Essence. Time is of the essence of this Agreement.

25. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement, intended or otherwise.

26. Time Periods. In the event the time for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

27. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

28. **Interpretation.** In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" and "party" include corporation, partnership, individual, firm, trust, or association wherever the context so requires.

29. **Counterparts and Facsimile Signatures.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Facsimile or electronic signatures by a party shall be binding upon that party and shall have the same force and effect as an original signature by such party.

30. **Recordation.** This Agreement shall not be recorded.

31. **No Personal Liability.** Buyer acknowledges that this Agreement is entered into by a corporation, as Seller, and Buyer agrees that no individual officer, manager, employee, director, agent, or other representative of Seller shall have any personal liability under this Agreement, or any document executed in connection with the transactions contemplated by this Agreement.

EXHIBITS

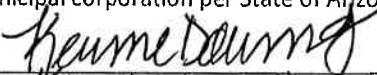
- A Legal Description of the Real Property
- B List of Golf Course Personal Property
- C List of Contracts (including all contracts, leases, and other agreements pertaining to the Golf Course)
- D Form of Bill of Sale
- E Form of Assignment and Assumption of Contracts and Intangible Rights
- F List of Advance Bookings and Deposits

(Signature pages follow)

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

BUYER:

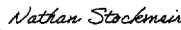
THE CITY OF SIERRA VISTA,
a municipal corporation per State of Arizona laws

By: 
Name: Kennie Downing
Title: Chief Procurement Officer


Date of Execution: 7-8-2024

SELLER:

CASTLE & COOKE ARIZONA, INC.,
an Arizona corporation

By: 
Nathan Stockmeir
President

Date: 07/09/2024


By: 
Richard Coffman
Senior Vice President

Date: 07/09/2024

ESCROW AGENT ACCEPTANCE

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement.

PIONEER TITLE AGENCY

By: 
Shauna Valdez
Escrow Officer

Date: 7-15-2024

EXHIBIT A

Description of the Real Property

<u>Parcel numbers</u>	<u>General Description*</u>	
105-96-001V1	PDS Golf	PDS Golf Course
105-96-002Q2	PDS Golf	PDS Golf Course, club house
105-97-279A2	PDS Golf	Bulk - Drainage Easement (Golf Course Drainage)
105-97-80902	PDS Golf	Lots 177-179 that are WH CC Ph2C Golf 13th
105-96-59404	PDS Golf	NWNW of Sec 13, north of 15th green

* As may be supplemented per the Title Report, together with all easements, rights of ways, water rights, privileges, permits, licenses and appurtenances pertaining thereto

EXHIBIT B

List of Golf Course Personal Property

[to be finalized prior to the Feasibility Expiration Date]

EXHIBIT C

List of Contracts

(including all contracts, leases, and other agreements pertaining to the Golf Course)

[to be finalized prior to the Feasibility Expiration Date]

EXHIBIT D

Form of Bill of Sale

[to be finalized prior to the Feasibility Expiration Date]

EXHIBIT E

Form of Assignment and Assumption of Contracts and Intangible Rights

[to be finalized prior to the Feasibility Expiration Date]

EXHIBIT F

List of Advance Bookings and Deposits

[to be finalized prior to the Feasibility Expiration Date]