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**CITY OF WALNUT CREEK  
RESOLUTION NO. 15-27**

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE FINANCING OF IMPROVEMENTS TO THE CITY'S BOUNDARY OAK GOLF COURSE CLUBHOUSE AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

**WHEREAS**, the City, working with the Public Property Financing Corporation of California (the "Corporation"), has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to provide for improvements to the City's Boundary Oak Golf Course Clubhouse and to implement a lease financing for such purposes (the "Project");

**WHEREAS**, it is in the public interest and for the public benefit that the City authorizes and directs execution of the Lease Agreement (hereinafter defined) and certain other financing documents in connection therewith; and

**WHEREAS**, the documents below specified have been filed with the City and the members of the Council, with the aid of its staff, have reviewed said documents;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WALNUT CREEK DOES RESOLVE AS FOLLOWS:**

Section 1. The Council hereby approves the financing of the Project.

Section 2. The below-enumerated documents, in the forms on file with the City Clerk, be and are hereby approved, and the Mayor, the City Manager or the Finance Director, or the designee thereof (each, a "Designated Officer"), are hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such officials, the execution thereof to be conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest to such official's signature:

(a) a letter agreement for purchase and rate lock, by and among an institutional purchaser selected following a competitive process (the "Purchaser"), the City and the Corporation, whereby the Purchaser agrees to acquire certain rights of the Corporation, including but not limited to the lease payments to be made by the City under the Lease Agreement and the rights of the Corporation under the Site and Facility Lease (hereinafter defined);

(b) a site and facility lease, by and between the City, as lessor, and the Corporation, as lessee (the "Site and Facility Lease"), pursuant to which the City will lease certain existing real property and the improvements thereon (the "Property") to the Corporation; and

(c) a lease agreement, by and between the Corporation, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Corporation will lease the Property back to the City and pursuant to which the City will agree to make semi-annual lease payments (the "Lease Payments"), so long as the term of the Lease Agreement does not extend beyond February 1, 2028. The principal amount will be determined based on a fixed interest rate and the annual payments thereunder will not be greater than \$330,000.

Section 3. The Mayor, the City Manager, the Finance Director, the City Clerk, any deputy to the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates and take all necessary future actions as may be necessary to effect the purposes of this resolution and the financing herein authorized.

Section 4. This Resolution shall take effect immediately upon its adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 7<sup>th</sup> day of April, 2015 by the following called vote:

AYES: Councilmembers: Carlston, Haskew, Silva, Wedel, Mayor Simmons

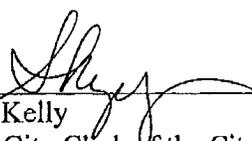
NOES: Councilmembers: None

ABSENT: Councilmembers: None



\_\_\_\_\_  
Bob Simmons  
Mayor of the City of Walnut Creek

Attest:

  
\_\_\_\_\_  
Sherry Kelly  
Acting City Clerk of the City of Walnut Creek

**I HEREBY CERTIFY** the foregoing to be a true and correct copy of Resolution No. 15-27 duly passed and adopted by the City Council of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 7<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
Sherry Kelly  
Acting City Clerk of the City of Walnut Creek

**\$3,230,000**  
**LEASE AGREEMENT**  
**dated as of May 1, 2015,**  
**by and between the**  
**Public Property Financing Corporation of California, as Sublessor,**  
**and the City of Walnut Creek, as Sublessee,**  
**assigned to Pinnacle Public Finance, Inc.**

**CERTIFICATE REGARDING CITY RESOLUTION**

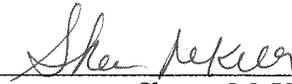
The undersigned hereby states and certifies:

(i) that the undersigned is the duly appointed and qualified Acting City Clerk of the City of Walnut Creek, a municipal corporation and general law city duly organized and existing under the laws of the State of California (the "City"), and as such, is familiar with the facts herein certified and is authorized to certify the same on behalf of the City; and

(ii) that attached hereto is a true, correct and complete copy of Resolution No. 15-27, entitled "RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE FINANCING OF IMPROVEMENTS TO THE CITY'S BOUNDARY OAK GOLF COURSE CLUBHOUSE AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO," adopted by the City Council of the City on April 7, 2015 (the "Resolution"), which Resolution has not been amended, modified, supplemented, rescinded or repealed and is in full force and effect as of the date hereof.

Dated: May 1, 2015

CITY OF WALNUT CREEK

By   
Sherry M. Kelly,  
Acting City Clerk

AFTER RECORDATION RETURN TO:

Quint & Thimmig LLP  
900 Larkspur Landing Circle, Suite 270  
Larkspur, CA 94939-1726  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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## ASSIGNMENT AGREEMENT

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For Value Received, the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA (the "Corporation") without recourse does hereby sell, assign and transfer to PINNACLE PUBLIC FINANCE, INC. and its successors and assigns (the "Assignee"), (i) all rights, title and interest in and to the Lease Agreement, dated as of May 1, 2015, in the amounts shown on Exhibit A attached hereto, a memorandum of which has been recorded concurrently herewith, by and between the Corporation, as sublessor, and the City of Walnut Creek (the "City"), as sublessee (said Lease Agreement and any supplements, amendments, annexations, extensions or renewals thereof are referred to hereinafter as the "Lease Agreement"), as well as its rights to enforce payment of Lease Payments (as defined in the Lease Agreement) when due or otherwise to protect its interests and exercise all remedies in the event of a default or termination by the City under the Lease Agreement; provided that the Corporation's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Corporation to the extent such rights accrue to the Corporation and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee, (ii) except for the Corporation's obligation under Section 4 thereof, all of its rights, title and interest in and to the Site and Facility Lease, dated as of May 1, 2015, which has been recorded concurrently herewith, by and between the City, as lessor, and the Corporation, as lessee (the "Site and Facility Lease"), and (iii) all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement. The Site and Facility Lease and the Lease Agreement delivered to the Assignee are duly executed duplicate originals that comprise the entire writing, obligation and agreement between the Corporation and the City respecting the leases made thereunder and the lease payments made therefor.

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The Assignee, hereby accepts the foregoing assignment. The above assignment is intended to be an absolute and unconditional assignment to the Assignee and is not intended as a loan by the Assignee to the Corporation. Accordingly, in the event of bankruptcy of the Corporation, the assigned property shall not be part of the Corporation's estate. However, if the above assignment is deemed to be a loan by the Assignee to the Corporation, then the Corporation shall be deemed to have granted to the Assignee, and hereby grants to the Assignee, a continuing first priority security interest in the assigned property and all proceeds thereof as collateral security for all obligations of the Corporation hereunder and all obligations

of the City under the Lease Agreement and this Assignment Agreement shall be deemed a security agreement with respect to such loan.

The Corporation represents and warrants as follows:

(1) it has made no prior sale or assignment of any interest in the Site and Facility Lease and the Lease Agreement;

(2) that the Lease Agreement and the Site and Facility Lease are genuine and in all respects are what they purport to be;

(3) that the Assignee is not liable for and does not assume responsibility for the performance of any of the covenants, agreements, duties or obligations specified in the Lease Agreement to be kept, paid or performed by the Corporation, with exception of such covenants, agreements, duties and obligations (if any) which are expressly made the responsibility of the Assignee under the Lease Agreement;

(4) that the Corporation has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement and this Assignment Agreement is a valid, binding, and enforceable obligation of the Corporation, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles;

(5) that good and marketable title to the assigned property has been duly vested in the Assignee free and clear of any liens, security interests, encumbrances or other claims other than the rights of the City under the Lease Agreement, and the Corporation has not assigned or transferred any of the assigned property or any interest in the assigned property to any party other than the Assignee;

(6) that this Assignment Agreement has been duly authorized by all necessary action on the part of the Corporation; and

(7) that the Corporation agrees that it (a) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Lease Agreement, and (b) shall not take any action that may impair the payment of Lease Payments or the validity or enforceability of the Lease Agreement.

The Corporation further represents and warrants that as of the date of this Assignment Agreement, the Lease Agreement and the Site and Facility Lease are in full force and effect and the City is not in default of any of the terms set forth therein.

By its acceptance of this Assignment Agreement, the Assignee, represents and warrants (i) the price paid in consideration for assignment of the Site and Facility Lease and the Lease Agreement is \$3,230,000; (ii) that the Assignee reasonably expect to hold their interests in the Lease Agreement for their own account and do not presently expect to sell, assign, or otherwise transfer their interests in the Lease Agreement, subject to the Assignee's right to dispose of or otherwise deal with its property (including its interest in the Lease Agreement) as it determines to be in its best interests from time to time; and (iii) that it purchased its interests in the Lease Agreement as a part of its loan portfolio and not for purposes of resale or disposition.

This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in the State of California. Any provision of this Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment Agreement.

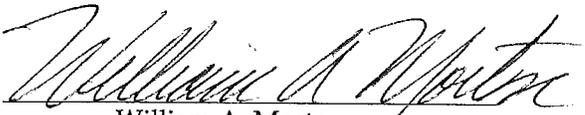
This Assignment Agreement binds and inures to the benefit of the parties and their respective successors and assigns. In the event of litigation between the Corporation and the Assignee arising under this Assignment Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees which may be those of in-house counsel, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Assignment Agreement.

The descriptions of the Site and the Facility which are the subject of the Site and Facility Lease and the Lease Agreement are set forth in Exhibits B and C attached hereto and by this reference incorporated herein.

This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of May 1, 2015

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By   
William A. Morton  
Secretary/Treasurer

ACCEPTANCE OF ASSIGNMENT:

PINNACLE PUBLIC FINANCE, INC., as  
Assignee

By \_\_\_\_\_  
Cathleen D. Jimenez  
Managing Director/Senior Vice President

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

On April 24, 2015 before me, Joseph Mina, Notary Public  
(insert name and title of the officer)

personally appeared William A. Morton  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joseph Mina (Seal)



This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in the State of California. Any provision of this Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment Agreement.

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The descriptions of the Site and the Facility which are the subject of the Site and Facility Lease and the Lease Agreement are set forth in Exhibits B and C attached hereto and by this reference incorporated herein.

This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated as of May 1, 2015

PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA

By \_\_\_\_\_  
William A. Morton  
Secretary/Treasurer

ACCEPTANCE OF ASSIGNMENT:

PINNACLE PUBLIC FINANCE, INC., as Assignee

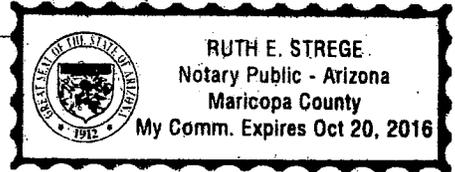
By \_\_\_\_\_  
*Cathleen D. Jimenez*  
Cathleen D. Jimenez  
Managing Director/Senior Vice President

State of Arizona        )  
                                  )  
County of Maricopa    )

Subscribed and sworn before me this 24<sup>th</sup> day of April, 2015.

NOTARY PUBLIC        *Ruth E. Strega*  
                                  Ruth E Strega

My commission expires \_\_\_\_\_ October 20, 2016



**EXHIBIT A**

**SCHEDULE OF LEASE PAYMENTS**

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment	Annual Lease Payment
2/1/2016	\$ 18,753	\$ 56,202.00	74,955.00	\$ 74,955.00
8/1/2016	63,092	37,250.47	100,342.47	—
2/1/2017	63,094	36,518.60	99,612.60	199,955.07
8/1/2017	77,641	35,786.71	113,427.71	—
2/1/2018	77,641	34,886.07	112,527.07	225,954.78
8/1/2018	131,756	33,985.44	165,741.44	—
2/1/2019	131,756	32,457.07	164,213.07	329,954.51
8/1/2019	134,831	30,928.70	165,759.70	—
2/1/2020	134,831	29,364.66	164,195.66	329,955.36
8/1/2020	137,977	27,800.62	165,777.62	—
2/1/2021	137,977	26,200.08	164,177.08	329,954.70
8/1/2021	141,197	24,599.55	165,796.55	—
2/1/2022	141,197	22,961.67	164,158.67	329,955.22
8/1/2022	144,491	21,323.78	165,814.78	—
2/1/2023	144,492	19,647.69	164,139.69	329,954.47
8/1/2023	147,863	17,971.58	165,834.58	—
2/1/2024	147,864	16,256.37	164,120.37	329,954.95
8/1/2024	151,314	14,541.15	165,855.15	—
2/1/2025	151,314	12,785.90	164,099.90	329,955.05
8/1/2025	154,845	11,030.66	165,875.66	—
2/1/2026	154,845	9,234.46	164,079.46	329,955.12
8/1/2026	158,459	7,438.26	165,897.26	—
2/1/2027	158,458	5,600.13	164,058.13	329,955.39
8/1/2027	162,156	3,762.02	165,918.02	—
2/1/2028	162,156	1,881.01	164,037.01	329,955.03
Totals	<u>\$3,230,000</u>	<u>\$570,414.65</u>	<u>\$3,800,414.65</u>	<u>\$3,800,414.65</u>

(1) The interest component of the Lease Payments shall be calculated based on an interest rate of 2.32% per annum.

## EXHIBIT B

### DESCRIPTION OF THE SITE

All that certain real property situated in Contra Costa County, State of California, described as follows:

Part of the Rancho Canada Del Hambre, Southern Part, described as follows:

Beginning on the west line of Locust Street, formerly School Street, at the northeast corner of Block 6, as shown on the map of Additional Survey of Walnut Creek, filed June 16, 1877, in Book A of Maps, page 13, in the office of the County Recorder of Contra Costa County, thence from said point of beginning North 19° 13' West along the west line of said street 164.6 feet to the south line Block 18 as shown on the map of Stow's Addition, filed October 28, 1893, in Book C of Maps, page 68, in the office of the County Recorder of Contra Costa County, thence West, along said south line, 280.00 feet to the east line of North California Boulevard, formerly Granger Street, thence South along said east line, 164.6 feet to the northwest corner of Block 6 above referred to, thence East along the north line of said Block, 280 feet to the point of beginning.

EXCEPTING THEREFROM: The interest of the City of Walnut Creek, in and to that strip of land described in the deed from Clark T. Anderson, et ux, to said City, dated August 3, 1951, recorded September 13, 1951, in Book 1820 of Official Records, page 166.

APN 178-180-007-1

## EXHIBIT C

### DESCRIPTION OF THE FACILITY

The Facility consists of City's North Locust Parking Garage complex, located on the Site at 1601 Locust Street, Walnut Creek, next to the Leshner Center for the Arts. The approximately 218,455 square foot Facility was built in 1984 and contains 664 parking spaces. The Facility includes retail uses on the street level.

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**LEASE AGREEMENT**

**Dated as of May 1, 2015**

**by and between the**

**PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, as Sublessor**

**and the**

**CITY OF WALNUT CREEK, as Sublessee**

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EXHIBIT A DESCRIPTION OF THE SITE  
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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement"), dated as of May 1, 2015, is by and between the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, a nonprofit, public benefit corporation organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the CITY OF WALNUT CREEK, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California, as lessee (the "City");

### WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of May 1, 2015 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in Contra Costa County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Corporation, all for the purpose of enabling the City to finance improvements to the City's Boundary Oak Golf Course Clubhouse;

WHEREAS, the Corporation proposes to lease the Property back to the City pursuant to this Lease Agreement and to assign all of its rights, title and interest in, to and under this Lease Agreement, including its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the City and its rights under the Site and Facility Lease, to Pinnacle Public Finance, Inc. (the "Assignee"), pursuant to that certain assignment agreement, dated as of May 1, 2015, by and between the Corporation and the Assignee; and

WHEREAS, the City and the Corporation have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$3,230,000 for the purpose of implementing the financing transactions described above.

### AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS; RULES OF INTERPRETATION

Section 1.1. Definitions. All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Lease Agreement.

*"Additional Payments"* means the amounts specified as such in Section 4.3(b) of this Lease Agreement.

*"Applicable Environmental Laws"* means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sections 1251 *et seq.*; the Clean Air Act, 42 USC Sections 7401 *et seq.*; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 *et seq.*; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code Sections 25300 *et seq.*; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 *et seq.*; the Air Resources Act, California Health & Safety Code Sections 3900 *et seq.*; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 *et seq.*; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

*"Applicable Law"* means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all Governmental Authorities, (ii) Applicable Environmental Laws, (iii) applicable seismic building code requirements at the time of construction, and (iv) orders, decisions, judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

*"Assigned Rights"* means all of the Corporation's rights under the Lease as lessor of the Property (excepting only the Corporation's rights under Sections 5.11, 7.3 and 8.4 of the Lease Agreement) and as lessee of the Property under the Site and Facility Lease, as more particularly described in the Assignment Agreement, that are assigned and transferred by the Corporation to the initial Assignee pursuant to the Assignment Agreement.

*"Assignee"* means initially, Pinnacle Public Finance, Inc., as assignee of all rights, title and interests of the Corporation hereunder, and (b) any other entity to whom the rights of the Corporation hereunder are assigned, including subsequent assignees of the Assignee.

*"Assignment Agreement"* means the Assignment Agreement, dated as of May 1, 2015, by and between the Corporation, as assignor, and the Assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

*"Business Day"* means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

*"Closing Date"* means the date this Lease Agreement or a memorandum thereof is recorded in the office of the County Recorder of the County of Contra Costa.

*"Contract"* means any indenture, trust agreement, contract, agreement (other than this Lease Agreement), other contractual restriction, lease, mortgage or instrument.

*"Corporation"* means the Public Property Financing Corporation of California, a nonprofit, public benefit corporation, organized and existing under the laws of the State.

*"Corporation Representative"* means the President, the Vice President, the Executive Director or the Treasurer or the designee of any such official, or any other person authorized by resolution of the Corporation delivered to the Assignee to act on behalf of the Corporation under or with respect to the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

*"City"* means the City of Walnut Creek, a municipal corporation and general law city organized and existing under the laws of the State.

*"City Council"* means the City Council of the City.

*"City Representative"* means the Mayor, the City Manager, the Finance Director, or the designee of any such official, or any other person authorized by resolution delivered to the Corporation and the Assignee to act on behalf of the City under or with respect to the Site and Facility Lease and this Lease Agreement.

*"Event of Default"* means any of the events of default as defined in Section 8.1.

*"Facility"* means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to the Lease Agreement.

*"Federal Securities"* means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

*"Fiscal Year"* means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

*"Governmental Authority"* means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, city or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

*"Hazardous Substance"* means, unless permitted by law, any substance that shall, at any time, be listed as "hazardous" or "toxic" in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without

limitation, raw materials, building components, the products of any manufacturing, or other activities on the Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 *et seq.*).

*"Lease Agreement"* means this Lease Agreement, dated as of May 1, 2015, between the Corporation and the City.

*"Lease Payment Date"* means February 1 and August 1 in each year, commencing February 1, 2016, and continuing to and including the date on which the Lease Payments are paid in full.

*"Lease Payments"* means all payments required to be paid by the City under Section 4.3, including any prepayment thereof under Sections 9.2 or 9.3.

*"Material Adverse Effect"* means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under this Lease Agreement on a timely basis, (c) the validity or enforceability of this Lease Agreement, or (d) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

*"Material Litigation"* means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority that, (a) if determined adversely to the City, may have a Material Adverse Effect, (b) seeks to restrain or enjoin any of the transactions contemplated by this Lease Agreement, or (c) may adversely affect (i) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (ii) the ability of the City to perform its obligations under this Lease Agreement.

*"Net Proceeds"* means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

*"Permitted Encumbrances"* means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site and Facility Lease, this Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property issued as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Property for its intended purposes.

*"Project"* means improvements to the City's Boundary Oak Golf Course Clubhouse to be financed from the proceeds of the Lease Agreement from the Assignee.

*"Property"* means, collectively, the Site and the Facility.

*"Rental Period"* means each period during the Term of the Lease commencing on and including February 2 in each year and extending to and including the next succeeding February 1. The first Rental Period begins on the Closing Date and ends on February 1, 2016.

*"Site"* means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to the Lease Agreement.

*"Site and Facility Lease"* means the Site and Facility Lease, dated as of May 1, 2015, by and between the City, as lessor, and the Corporation, as lessee, together with any duly authorized and executed amendments thereto.

*"Special Counsel"* means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

*"State"* means the State of California.

*"Tax Code"* means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

*"Taxable Rate"* means an interest rate equal to 3.57% per annum.

*"Term of this Lease Agreement"* or *"Term"* means the time during which this Lease Agreement is in effect, as provided in Section 4.2.

#### Section 1.2. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.1. Covenants, Representations and Warranties of the City. The City makes the following covenants, representations and warranties to the Corporation as of the date of the execution and delivery of this Lease Agreement:

(a) *Due Organization and Existence*. The City is a municipal corporation and general law city, organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery by the City of the Site and Facility Lease and this Lease Agreement.

(b) *Due Execution*. The representative of the City executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the City Council.

(c) *Valid, Binding and Enforceable Obligations*. The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) *No Conflicts*. The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or this Lease Agreement or the financial condition, assets, properties or operations of the City.

(e) *Consents and Approvals*. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation*. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the City or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a Material Adverse Effect upon the consummation of the transactions contemplated by or the validity of the Site and Facility Lease and this Lease Agreement or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other

Governmental Authority, which default might have consequences that would have a Material Adverse Effect on the consummation of the transactions contemplated by this Lease Agreement, or the financial condition, assets, properties or operations of the City.

(g) *Sufficient Funds*. The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) *No Defaults*. To the best of its knowledge, the City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) *Fee Title*. The City is the owner in fee of title to the Property. No lien or encumbrance on the Property materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) *Use of the Property*. During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.

(k) *Change in Financial Condition*. The City has experienced no material change in its financial condition since June 30, 2014.

(l) *Hazardous Substances*. The Property is free of all Hazardous Substances, and the City is in full compliance with all Applicable Environmental Laws.

(m) *Flooding Risk*. The Property is not located in a 100-year flood zone and, to the City's best knowledge, has never been subject to material damage from flooding.

(n) *Value of Property*. The value of the Property (real property replacement cost) is not less than \$20,000,000.

(o) *Essential to City Operations*. The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

(p) *Financial Statements*. The statement of financial position of the City as of June 30, 2014, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the indebtedness of the City.

(q) *No Material Adverse Change*. Since the most current date of the information, financial or otherwise, supplied by the City to the Assignee:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the City which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The City has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The City has not (A) incurred any material indebtedness, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the City's business and not past due, or (B) guaranteed the indebtedness of any other person.

(r) *Accuracy of Information.* All information, reports and other papers and data furnished by the City to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee's reliance thereon in entering into the transactions contemplated by this Lease Agreement. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(s) *Facility.* The Facility complies with all applicable restrictive covenants, zoning ordinances, building laws and other Applicable Laws (including without limitation, the Americans with Disabilities Act, as amended).

Section 2.2. Covenants, Representations and Warranties of the Corporation. The Corporation makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of this Lease Agreement:

(a) *Due Organization and Existence.* The Corporation is a nonprofit, public benefit corporation, duly organized and existing under the laws of the State, has full legal right, power and authority to enter into the Site and Facility Lease, this Lease Agreement and the Assignment Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery by the Corporation of the Site and Facility Lease, this Lease Agreement and the Assignment Agreement.

(b) *Due Execution.* The representative of the Corporation executing the Site and Facility Lease, this Lease Agreement and the Assignment Agreement is fully authorized to execute the same under official action taken by the Board of Directors of the Corporation.

(c) *Valid, Binding and Enforceable Obligations.* The Site and Facility Lease, this Lease Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Site and Facility Lease, this Lease Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease, this Lease Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the Corporation or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease, this Lease Agreement or the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.

## ARTICLE III

### DEPOSIT AND APPLICATION OF FUNDS

Section 3.1. Deposit of and Application of Funds. On the Closing Date, from the amounts paid by the Assignee, the Corporation shall cause (a) the amount of \$3,156,000.00 to be transferred to the City and applied to the financing of the Project. Such amounts shall be derived from amounts paid by the Assignee under the Assignment Agreement. In addition, a portion of the amounts paid by the Assignee under the Assignment Agreement shall be applied to pay financing costs of the transaction in the amount of \$74,000.00.

## ARTICLE IV

### LEASE OF PROPERTY; LEASE PAYMENTS

#### Section 4.1. Sublease of Property by the Corporation Back to the City.

(a) The Corporation hereby subleases the Property to the City, and the City hereby subleases the Property from the Corporation, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the City to the Corporation pursuant to the Site and Facility Lease shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.2. Term. The Term of this Lease Agreement commences on the Closing Date and ends on February 1, 2028, or the date on which all of the Lease Payments have been paid in full pursuant to the terms of this Lease Agreement. If on February 1, 2028, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed ten (10) years. The provisions of this Section 4.2 are subject to the provisions of Section 6.1 relating to the taking in eminent domain of the Property or any portion thereof.

#### Section 4.3. Lease Payments.

(a) *Obligation to Pay.* Subject to the provisions of Sections 6.1 and 6.3 and the provisions of Article IX, the City agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the amounts specified in Exhibit C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C; *provided, however,* that if any Lease Payment Date is not a Business Day, such Lease Payment shall be due on the next succeeding Business Day. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest components of the Lease Payments have been calculated based on an interest rate of 2.32% per annum, on the basis of a 360-day year of twelve 30-day months. Upon the occurrence of an Event of Taxability (as hereafter defined), the interest component of Lease Payments shall be at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the Assignee for federal income tax purposes and the City will pay such additional amount as will result in Assignee receiving the interest component at the Taxable Rate.

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For purposes of this Section 4.3, "Event of Taxability" means a determination that the interest component is includible for federal income tax purposes in the gross income of the Assignee due to the City's action or failure to take any action.

(b) *Additional Payments.* In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special

assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Corporation therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Corporation shall notify the City that, in the opinion of Special Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof;

(iii) any other reasonable fees, costs or expenses incurred by the Corporation in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Corporation associated with any assignment made by the Assignee; and

(iv) any amounts required to be paid as rebate to the United States .

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Corporation to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) *Effect of Prepayment.* If the City prepays the Lease Payments in part but not in whole under Section 9.3, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) *Rate on Overdue Payments.* If the City fails to make any of the payments required in this Section 4.3, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of 5% per annum or any lesser maximum legal rate.

(e) *Fair Rental Value.* The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.1, 6.3 and 9.1. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) *Allocation of Lease Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Corporation, or Assignee as the Corporation's assignee, and the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) *Assignment Agreement.* The City understands and agrees that all Lease Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement executed concurrently herewith, and the City hereby consents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee, all payments payable by the City under this Section 4.3 and all amounts payable by the City under Article IX. Lease Payments shall be paid to the Assignee (or to its assignees as directed pursuant to Section 7.4 hereof) as follows:

Bank Name:	BankUnited Miami Lakes, FL
Bank Contact:	Bryce Landess Phone: 305-698-4145
ABA:	267090594
Account#:	070-9006985
Account Name:	Pinnacle Public Finance, Inc. 8377 East Hartford Drive, Suite 115 Scottsdale, AZ 85255
Reference:	City of Walnut Creek, CA

Section 4.4. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Corporation will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation and the Assignee have the right to inspect the Property as provided in Sections 5.12(c) and 7.2.

Section 4.5. Title. At all times during the Term of this Lease Agreement, the City shall hold title to the Property, including all additions which comprise fixtures, repairs,

replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.2.

Upon the termination of this Lease Agreement (other than under Section 8.2(b) hereof), all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer.

Section 4.6. Release of Excess Property. The City may, at any time and from time to time, release any portion of the Property (the "Released Property") from the Lease, with the prior written consent of the Assignee, which consent shall be at the Assignee's sole discretion, and upon satisfaction of all of the following requirements which are conditions precedent to such release:

(a) The City shall certify to the Corporation and the Assignee that no Event of Default has occurred and is continuing, and no event giving rise to an abatement of Lease Payments under Section 6.3 has occurred or is continuing with respect to the Property to be remaining following release of the Released Property;

(b) The City shall file with the Corporation and the Assignee, and cause to be recorded in the office of the Contra Costa County Recorder, amendments to the Site and Facility Lease and to this Lease Agreement which deletes the Released Property from the description of the Property;

(c) The City shall file with the Corporation and the Assignee a written certificate of the City stating the City's determination that the estimated value of the real property which will remain leased under this Lease Agreement following such release is at least equal to the remaining principal components of the Lease Payments and upon request of the Assignee, the City shall provide to the Assignee additional information and documents to evidence the value of the remaining portion of the Property;

(d) The City shall file with the Corporation and the Assignee a written certificate of the City stating the City's determination that the estimated fair rental value, for each remaining Rental Period and in the aggregate, of the Property remaining after release of the Released Property is at least equal to the remaining Lease Payments for each remaining Rental Period and in the aggregate; and

(e) The City shall file with the Corporation and the Assignee such other information, documents and instruments as the Corporation or the Assignee shall reasonably request, including (if requested by the Assignee) evidence of the insurable value of the Property to be remaining following release of the Released Property, indicating that such value is in excess of the then unpaid principal component of the Lease Payments and such endorsements to the title policy delivered on the Closing Date.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Corporation and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement of record against the Released Property.

Section 4.7. Substitution of Property After Uninsured Casualty.

(a) In the event of damage or destruction of the Property due to earthquake or other uninsured casualty for which rental interruption insurance is not available or in the event that following the condemnation of all or a portion of the Property the fair rental value of the Property remaining after such condemnation is less than the remaining Lease Payments due under this Lease Agreement, the City shall substitute under the Site and Facility Lease and this Lease Agreement one or more parcels of unimpaired and unencumbered real property, the fair rental value of which, for each remaining Rental Period and in the aggregate, shall be at least equal to the remaining Lease Payments hereunder.

(b) If for any reason the City is unable to so substitute real property for the Property with a fair rental value at least equal to the remaining Lease Payments hereunder, the City shall use its best efforts to obtain other financing in an amount necessary to prepay the principal component of the Lease Payments not supported by the fair rental value of the substituted property, if any.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease Agreement.

The City will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation. The City shall promptly notify the Assignee of any tax, assessment, utility or other charge it elects to contest.

Section 5.2. Modification of Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 5.3. Public Liability Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the City, the Assignee and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000

per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Assignee. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.4. Casualty Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.5. Rental Interruption Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the City. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 5.6. Worker's Compensation Insurance. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

Section 5.7. Recordation Hereof; Title Insurance. On or before the Closing Date, the City shall, at its expense, (a) cause this Lease Agreement, the Site and Facility Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Special Counsel, to be recorded in the office of the Contra Costa County Recorder with respect to the Property, and (b) obtain a CLTA title insurance policy insuring the Assignee's interests in the leasehold estate established under the Site and Facility Lease and hereunder in the Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Lease Payments. The City will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.8. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.3, 5.4 and 5.5 and provided by third party insurance carriers shall name the City and the Assignee as insured parties and the Assignee as loss payees and shall include a lender's loss payable endorsement for the benefit of the Assignee. In the case of coverage pursuant to Section 5.3, the Corporation and the Assignee shall be added as an additional insureds. Prior to the Closing Date, the City will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Assignee of such fact.

Section 5.9. Installation of City's Personal Property. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Corporation has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Assignee do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Assignee provides its prior written approval, which approval shall be at Assignee's sole discretion. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City will reimburse the Assignee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the City fails to perform any of its obligations under this Article V, the Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.3(d).

Section 5.12. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances.* The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Assignee.* The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the City will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Assignee.

(c) *Access for Inspection.* The City will permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.13. City Consent to Assignment Agreement. The Corporation's rights under this Lease Agreement (excluding the right to receive notices, the right to reimbursement of costs and to indemnification), including the right to receive and enforce payment of the Lease Payments, and the Site and Facility Lease, are being assigned to the Assignee pursuant to the Assignment Agreement. The City hereby consents to such assignment and to any additional assignment of such rights by the Assignee or its assignees. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Assignee or its assignees to protect their interests in the Property and in this Lease Agreement.

## ARTICLE VI

### EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Assignee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

#### Section 6.2. Application of Net Proceeds.

##### (a) *From Insurance Award*.

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund with the Assignee designated as the "Insurance and Condemnation Fund."

(ii) Within ninety (90) days following the date of such deposit, the City shall determine and notify the Corporation and the Assignee in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.3 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.3 of this Lease Agreement; *provided, however*, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, and all other costs related to such prepayments pursuant to Section 9.3 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; *provided further, however*, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a City Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above and the City certifies to the Assignee that such repair or replacement can be completed within 24 months, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Assignee, at its sole discretion.

(b) *From Eminent Domain Award.* If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Corporation and the Assignee, and the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(ii) If the City has given written notice to the Corporation and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Corporation and the Assignee, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Corporation and the Assignee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(iv) In making any determination under this Section 6.2(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Corporation and the Assignee. Any such determination by the City shall be final.

(c) *From Title Insurance.* The Net Proceeds from a title insurance award shall be deposited by the City in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.3 of this Lease Agreement.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the

Property or any portion thereof to the extent to be agreed upon by the City and the Assignee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a City Representative to the Corporation and the Assignee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

## ARTICLE VII

### OTHER COVENANTS OF THE CITY

Section 7.1. Disclaimer of Warranties. THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Corporation liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Property by the City.

Section 7.2. Access to the Property; Grant and Conveyance of Right of Entry. The City agrees that the Corporation, and the Corporation's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The City further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Corporation, for the use, benefit and enjoyment of the Corporation, its successors and assigns in interest to the Property, including the Assignee, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.3. Release and Indemnification Covenants. The City hereby indemnifies the Corporation, the Assignee and their respective directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City or the City's employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the clean-up of any Hazardous Substances or toxic wastes from the Property, or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Corporation, the Assignee, or their respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding

the full payment of all obligations under this Lease or the termination of the Term of this Lease for any reason. The City and the Corporation each agree to promptly give notice to each other and the Assignee of any claim or liability hereby indemnified against following learning thereof.

#### Section 7.4. Assignment by the Corporation.

(a) The Corporation has assigned and transferred the Assigned Rights to the Assignee pursuant to the Assignment. The City hereby consents to such assignment and transfer. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under Section 4.3 and all amounts payable by the City under Article IX. Whenever in this Lease any reference is made to the Corporation and such reference concerns any Assigned Rights, such reference shall be deemed to refer to the Assignee.

(b) The Assigned Rights, and all proceeds therefrom, may be further assigned and reassigned in whole or in part to one or more assignees or subassignees by an Assignee, without the necessity of obtaining the consent of the City; provided, that any such assignment, transfer or conveyance (i) shall be made only to (A) affiliates of the Assignee or (B) banks, insurance companies or similar financial institutions or their affiliates, including participation agreements with such entities that are purchasing the Assigned Rights (or any interest therein) for their own account with no present intention to resell or distribute the Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require the City to make Lease Payments, send notices or otherwise deal with respect to matters arising under this Lease with or to more than one trustee, owner, servicer or other fiduciary or agent (herein referred to as the "Lease Servicer") and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single Lease Servicer to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies on behalf of such owners upon the occurrence of an Event of Default hereunder. The Corporation (including the initial Assignee pursuant to the Assignment) and the City hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 7.4 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(c) No assignment, transfer or conveyance permitted by this Section 7.4 that changes the Assignee or its payment instructions or mailing address shall be effective until the City shall have received a written notice of assignment that discloses the name, payment instructions and address of each such Assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests evidencing interests in the Assigned Rights (the Lease Servicer"), it shall thereafter be sufficient that the City receives notice of the name, payment instructions and address of such bank or trust company that acts as the Lease Servicer. During the Lease Term, the City shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with section 149 of the Tax Code. The City shall retain all such notices as a register of all Assignees and shall make all payments to the Assignee or Lease Servicer designated in such register. The City shall not have the right to, and shall not, assert against the initial Assignee or any subsequent Assignee any claim, counterclaim or other right that the City may have against the Corporation. If an Assignee notifies the City of its intent to assign the Assigned Rights (or any interest therein) to a different Lease Servicer, the City agrees that it shall execute and deliver to the requesting

Assignee a notice and acknowledgment of assignment in form reasonably required by such Assignee within five (5) business days after its receipt of such request.

Section 7.5. Assignment and Subleasing by the City. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the City. In addition to any leases or subleases currently in effect, the City may sublease the Property, or any portion thereof, with the prior written consent of the Assignee, at the Assignee's sole discretion, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Assignee a true and complete copy of such sublease.

(c) No such sublease by the City may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The City shall furnish the Corporation and the Assignee with a written opinion of Special Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property and any subleases relating to the retail space of the Property shall not require the consent of the Assignee.

Section 7.6 Amendment of Lease Agreement.

(a) *Substitution of Property*. The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other property (the "Substitute Property") for the Property, provided that the City shall satisfy all of the following requirements (to the extent applicable) which are hereby declared to be conditions precedent to such substitution:

(i) the City shall file with the Corporation and the Assignee an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such substitute site and deletes therefrom the description of the former Site;

(ii) the City shall file with the Corporation and the Assignee an amended Exhibit A to this Lease Agreement which adds thereto a description of such substitute site and deletes therefrom the description of the former Site;

(iii) the City shall file with the Corporation and the Assignee an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such substitute facility and deletes therefrom the description of the former Facility;

(iv) the City shall file with the Corporation and the Assignee an amended Exhibit B to this Lease Agreement which adds thereto a description of such substitute facility and deletes therefrom the description of the former Facility;

(v) The City shall certify in writing to the Corporation and the Assignee that the Substitute Property serves the purposes of the City, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the City is permitted to lease under the laws of the State;

(vi) The City delivers to the Corporation and the Assignee evidence (which may be insurance values or any other reasonable basis of valuation and need not require an appraisal) that the value of the Property following such substitution is equal to or greater than the unpaid principal amount of this Lease Agreement;

(vii) The Substitute Property shall not cause the City to violate any of its covenants, representations and warranties made herein;

(viii) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which adds thereto a description of the substitute Site and deletes therefrom the description of the former Site;

(ix) The City shall certify that the Substitute Property is essential to the City as was the former Property; and

(x) The Assignee has received an environmental survey or surveys with respect to the Substitute Property, and other documents that the Assignee may reasonably require; provided, however, that if the environmental studies have recommended that remedial actions be taken with respect to the Substitute Property so that it will be in compliance with Applicable Environmental Laws, the Corporation, at the direction of the Assignee, does not have an obligation or duty to accept the Substitute Property until such time as the remedial action has been completed and the Assignee has received assurances to its satisfaction that the Substitute Property is in compliance with Applicable Environmental Laws.

(c) *Generally.* The City and the Corporation may at any time amend or modify any of the provisions of this Lease Agreement, but only (i) with the prior written consent of the Assignee, or (ii) without the consent of the Assignee, but only if such amendment or modification is for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City contained in this Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or in any other respect whatsoever as the City and the Corporation may deem necessary or desirable, provided that, in the opinion of Special Counsel, such modifications or amendments will not materially adversely affect the interests of the Assignee; or

(iii) to amend any provision thereof relating to the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest with respect to the Lease Agreement under the Code, in the opinion of Special Counsel.

Section 7.7. Tax Covenants.

(a) *Generally.* The City will not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income of the Assignee for federal income tax purposes and will deliver a tax certificate on the Closing Date.

(b) *Private Activity Bond Limitation.* The City will ensure that the proceeds of the Lease Payments are not so used as to cause the City's obligations hereunder to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(c) *Federal Guarantee Prohibition.* The City will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) *No Arbitrage.* The City will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Lease Payments to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) *Arbitrage Rebate.* The City will take any and all actions necessary to assure compliance with Section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

Section 7.8. Financial Statements; Budgets; Other Information. Within two hundred ten (210) days following the end of each Fiscal Year of the City during the Term of this Lease Agreement, the City will provide the Corporation and the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include the City's Comprehensive Annual Financial Report ("CAFR"), including such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. Within sixty (60) days following adoption, the City will provide the Assignee with a copy of its annual budget. The City hereby agrees to provide the Assignee with such other information as may be reasonably requested by the Assignee.

Section 7.9. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of its operations in accordance with GASB, in which complete and correct entries shall be made of all transactions relating to the City. Said books and records shall at all reasonable times be subject to the inspection of the Assignee upon 72 hours' prior notice.

Section 7.10. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations, regulations or Applicable Laws now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board, commission or Governmental Authority having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a municipal corporation and general law city, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 7.11. Notices. During the Term of this Lease Agreement, the City shall provide to the Assignee:

(a) immediate notice by telephone or other electronic means, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Lease Agreement, together with a detailed statement by a City Representative of the steps being taken by the City to cure the effect of such Event of Default.

(b) prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority.

(c) with reasonable promptness, such other information respecting the City, and the operations, affairs and financial condition of the City as the Assignee may from time to time reasonably request.

(d) Notices of filings with the Municipal Securities Regulatory Board's EMMA system, other than regular annual filings.

(e) Notice of an event that could cause a Material Adverse Effect.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Any one or more of the following events constitutes an Event of Default hereunder:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Assignee. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Corporation and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted.

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Assignee or any affiliate of the Assignee, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$500,000.

(f) Any default by the City to observe any covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease.

(g) Any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the City.

(h) The City abandons any part of the Property.

Section 8.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted

hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise any one or more of the following remedies:

(a) *Enforcement of Payments Without Termination.* If the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property, or, if the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in Contra Costa County for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Property upon demand of the Corporation for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Corporation in excess of the sum of Lease Payments plus costs and expenses incurred by the Corporation for its services in re-leasing the Property shall be paid to the City.

(b) *Termination of Lease.* If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site and Facility Lease. If the Corporation terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease Agreement. The City covenants and agrees that no

surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(c) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) *Remedies under the Site and Facility Lease.* If an Event of Default occurs and continues hereunder, the Corporation may exercise its rights under the Site and Facility Lease.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.4. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party (including the Assignee) the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.6. Assignee to Exercise Rights. Such rights and remedies as are given to the Corporation under this Article VIII have been assigned by the Corporation to the Assignee, to which assignment the City hereby consents.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

Section 9.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Assignee or a fiduciary reasonably satisfactory to the Assignee, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Assignee, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Assignee and addressed and delivered to the Assignee), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.3(a) or when due on any optional prepayment date under Section 9.2, as the City instructs at the time of said deposit; *provided, however*, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Assignee an opinion of Special Counsel (in form and substance acceptable to the Assignee) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the Assignee for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.3, and (iii) under Section 4.5, the Corporation's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Corporation. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Assignee. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.3 hereof to the extent payable from the funds held by the Assignee or the fiduciary as described in the first sentence of this Section 9.1.

Section 9.2. Optional Prepayment. The City may not prepay the principal component of the Lease Payments prior to February 1, 2021. The City may prepay the principal component of the Lease Payments in whole but not in part, on any date on and after February 1, 2021, upon at least 30 days' notice to the Assignee, at a prepayment amount equal to the principal amount of Lease Payments to be prepaid, together with accrued interest to the date fixed for prepayment, without premium.

Section 9.3. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the City on any date, together with any accrued and unpaid interest, and any other costs related to such prepayment, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.2. The City and the Corporation hereby agree that such proceeds, to the extent remaining after payment of

any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.3.

ARTICLE X

MISCELLANEOUS

Section 10.1. Notices. Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the City and the Assignee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:

City of Walnut Creek  
1666 North Main Street  
Walnut Creek, CA 94596  
Attention: City Manager  
Phone: (925) 943-5812  
Fax: (925) 256-3599  
nordhoff@walnut-creek.org

If to the Corporation:

Public Property Financing Corporation of California  
2945 Townsgate Road, Suite 200  
Westlake Village, CA 91361  
Attention: Secretary/Treasurer  
Phone: (805) 267-7141  
Fax: (805) 267-7142  
bmorton@munifinance.com

If to the Assignee:

Pinnacle Public Finance, Inc.  
8377 East Hartford Drive, Suite 115  
Scottsdale, AZ 85225  
Phone: (480) 419-3634  
Attention: Vice President, Operations Manager  
mkrahenbuhl@ppf-inc.com

Section 10.2. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon the Corporation, the City and their respective successors and assigns.

Section 10.3. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.4. Net-net-net Lease. This Lease Agreement is a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.5. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended to be so or for carrying out the expressed intention of this Lease Agreement.

Section 10.6. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.7. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.8. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

IN WITNESS WHEREOF, the Corporation and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By   
William A. Morton  
Secretary/Treasurer

CITY OF WALNUT CREEK

By \_\_\_\_\_  
Kenneth A. Nordhoff  
City Manager

Attest:

\_\_\_\_\_  
Sherry M. Kelly  
Acting City Clerk

IN WITNESS WHEREOF, the Corporation and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA

By \_\_\_\_\_  
William A. Morton  
Secretary/Treasurer

CITY OF WALNUT CREEK

By Kenneth A. Nordhoff  
Kenneth A. Nordhoff  
City Manager

Attest:

Sherry M. Kelly  
Sherry M. Kelly  
Acting City Clerk



## EXHIBIT A

### DESCRIPTION OF THE SITE

All that certain real property situated in Contra Costa County, State of California, described as follows:

Part of the Rancho Canada Del Hambre, Southern Part, described as follows:

Beginning on the west line of Locust Street, formerly School Street, at the northeast corner of Block 6, as shown on the map of Additional Survey of Walnut Creek, filed June 16, 1877, in Book A of Maps, page 13, in the office of the County Recorder of Contra Costa County, thence from said point of beginning North 19° 13' West along the west line of said street 164.6 feet to the south line Block 18 as shown on the map of Stow's Addition, filed October 28, 1893, in Book C of Maps, page 68, in the office of the County Recorder of Contra Costa County, thence West, along said south line, 280.00 feet to the east line of North California Boulevard, formerly Granger Street, thence South along said east line, 164.6 feet to the northwest corner of Block 6 above referred to, thence East along the north line of said Block, 280 feet to the point of beginning.

EXCEPTING THEREFROM: The interest of the City of Walnut Creek, in and to that strip of land described in the deed from Clark T. Anderson, et ux, to said City, dated August 3, 1951, recorded September 13, 1951, in Book 1820 of Official Records, page 166.

APN 178-180-007-1

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

The Facility consists of the City's North Locust Parking Garage complex, located on the Site at 1601 Locust Street, Walnut Creek, next to the Leshner Center for the Arts. The approximately 218,455 square foot Facility was built in 1984 and contains 664 parking spaces. The Facility includes retail uses on the street level.

## EXHIBIT C

### SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment	Annual Lease Payment
2/1/2016	\$ 18,753	\$ 56,202.00	74,955.00	\$ 74,955.00
8/1/2016	63,092	37,250.47	100,342.47	—
2/1/2017	63,094	36,518.60	99,612.60	199,955.07
8/1/2017	77,641	35,786.71	113,427.71	—
2/1/2018	77,641	34,886.07	112,527.07	225,954.78
8/1/2018	131,756	33,985.44	165,741.44	—
2/1/2019	131,756	32,457.07	164,213.07	329,954.51
8/1/2019	134,831	30,928.70	165,759.70	—
2/1/2020	134,831	29,364.66	164,195.66	329,955.36
8/1/2020	137,977	27,800.62	165,777.62	—
2/1/2021	137,977	26,200.08	164,177.08	329,954.70
8/1/2021	141,197	24,599.55	165,796.55	—
2/1/2022	141,197	22,961.67	164,158.67	329,955.22
8/1/2022	144,491	21,323.78	165,814.78	—
2/1/2023	144,492	19,647.69	164,139.69	329,954.47
8/1/2023	147,863	17,971.58	165,834.58	—
2/1/2024	147,864	16,256.37	164,120.37	329,954.95
8/1/2024	151,314	14,541.15	165,855.15	—
2/1/2025	151,314	12,785.90	164,099.90	329,955.05
8/1/2025	154,845	11,030.66	165,875.66	—
2/1/2026	154,845	9,234.46	164,079.46	329,955.12
8/1/2026	158,459	7,438.26	165,897.26	—
2/1/2027	158,458	5,600.13	164,058.13	329,955.39
8/1/2027	162,156	3,762.02	165,918.02	—
2/1/2028	162,156	1,881.01	164,037.01	329,955.03
Totals	<u>\$3,230,000</u>	<u>\$570,414.65</u>	<u>\$3,800,414.65</u>	<u>\$3,800,414.65</u>

(1) The interest component of the Lease Payments shall be calculated based on an interest rate of 2.32% per annum.

Quint & Thimmig LLP

02/19/15  
02/26/15  
03/13/15  
04/09/15  
04/14/15

LETTER AGREEMENT FOR PURCHASE AND RATE LOCK

April 21, 2015

City of Walnut Creek  
1666 North Main Street  
Walnut Creek, CA 94596  
Attention: Administrative Services Director

Public Property Financing Corporation of California  
2945 Townsgate Road, Suite 200  
Westlake Village, CA 91361  
Attention: Secretary/Treasurer

Re: \$3,230,000 Lease Agreement, dated as of May 1, 2015, by and between the Public Property Financing Corporation of California and the City of Walnut Creek, assigned to Pinnacle Public Finance, Inc.

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Ladies and Gentlemen:

The undersigned, Pinnacle Public Finance, Inc. (the "Purchaser"), offers, upon the following terms, to acquire (i) the rights, title and interest of the Public Property Financing Corporation of California (the "Corporation") under the Lease Agreement (hereinafter defined), including its rights to receive Lease Payments to be made by the City of Walnut Creek (the "City") under the Lease Agreement, dated as of May 1, 2015 (the "Lease Agreement"), by and between the City and the Corporation; provided that the Corporation's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Corporation to the extent such rights accrue to the Corporation and shall have been assigned to the Purchaser, as assignee, to the extent such rights accrue to the Purchaser, by entering into an assignment agreement, dated as of May 1, 2015 (the "Assignment Agreement"), with the Corporation, and (ii) except for the Corporation's obligation under Section 4 thereof, the rights, title and interest of the Corporation under the Site and Facility Lease, dated as of May 1, 2015 (the "Site and Facility Lease"), by and between the City and the Corporation.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease Agreement.

1. *Purchase and Purchase Price; Terms of Corporation's Obligations.* The City and the Corporation agree to execute and deliver the Site and Facility Lease and the Lease Agreement, and the Purchaser agrees to purchase the Corporation's rights, title and interest under the Lease Agreement, as described more specifically above and in the Assignment Agreement, at an aggregate purchase price of \$3,230,000. The Lease Payments under the Lease Agreement and the interest rates applicable thereto shall be as shown in Exhibit A hereto.

The City acknowledges that:

(a) The Purchaser is acting in this transaction solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, municipal securities underwriter, placement agent, or municipal advisor;

(b) The Purchaser has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City (including to any financial advisor or placement agent engaged by the City) with respect to the structuring of the financing or the execution and delivery of the Lease Agreement;

(c) The Purchaser has no fiduciary duty pursuant to section 15B of the Securities Exchange Act of 1934, as amended, to the City with respect to the transactions relating to the structuring of the financing or the execution and delivery of the Lease Agreement and the discussions, undertakings, and procedures leading thereto;

(d) Each of the City, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the lease financing transaction from its financial, legal, and other advisors (and not the Purchaser or its affiliates) to the extent that the City, its financial advisor or its placement agent (if any) desires to, should, or needs to obtain such advice;

(e) The Purchaser has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the City's financial advisor or placement agent (if any), or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the City's financial advisor or placement agent, with respect to any such matters; and

(f) the transaction between the City and the Purchaser is an arm's length, commercial transaction in which the Purchaser is acting and has acted solely as a principal and for its own interest, and the Purchaser has not made recommendations to the City with respect to the transactions relating to the Lease Agreement.

2. *Use of Funds.* The purchase price paid by the Purchaser shall be used by the Corporation to pay the City an advance rental of \$3,230,000, pursuant to Section 4 of the Site and Facility Lease. The City shall use such advance rental payment received from the Corporation to (a) finance improvements to the City's Boundary Oak Golf Course Clubhouse (the "Project"), and (b) pay the costs related to the preparation, execution and delivery of the Lease Agreement, the Site and Facility Lease and the Assignment Agreement.

3. *Disposition of Proceeds.*

(a) On May 1, 2015, or at such other time or on such earlier or later date as the Purchaser, the Corporation and the City mutually agree upon (the "Closing Date"), the Purchaser shall transfer, via wire transfer, to the City the amount of \$3,156,000.00 to be deposited in a segregated fund and applied to finance the Project. Wire information will be provided prior to the Closing Date.

(b) On the Closing Date, the Purchaser shall transfer, via wire transfer the total amount of \$74,000.00 to the following payees for payment of the costs of the financing transaction, to be allocated as follows:

(i) to Quint & Thimmig LLP, as bond counsel, \$25,000.00 (wire information to be provided prior to the Closing Date);

(ii) to Wulff Hansen & Co., as financial advisor, \$19,500.00 (invoice with wire information to be provided prior to the Closing Date);

(iii) to Southwest Securities, Inc., as placement agent, \$5,000.00 (invoice with wire information to be provided prior to the Closing Date);

(iv) to Public Property Financing Corporation of California, as lessor, \$2,500.00 (wire information to be provided prior to the Closing Date);

(v) to Parker & Covert LLP, as counsel to the Corporation, \$1,500.00;

(vi) to Chapman and Cutler LLP, as a counsel to the Purchaser, \$15,000.00 (wire information to be provided prior to the Closing Date);

(vii) to Stewart Title Guaranty Company, as title insurer, \$4,362.50 (wire information to be provided prior to the Closing Date);

(viii) to the City, \$1,137.50, to be applied to the payment of the fee of the California Debt and Investment Advisory Commission, to City's costs of the transaction, additional costs of the Project or applied to make the first Lease Payment. Wire instructions to be provided prior to the Closing Date.

4. *Closing.* At 8:00 A.M. California Time, on the Closing Date, the City will deliver (or cause to be delivered) the Site and Facility Lease and the Lease Agreement executed by the City and the Corporation, and the Assignment Agreement executed by the Corporation and the Purchaser, and the Purchaser will pay the purchase price for the Corporation's rights, title and interest in the Site and Facility Lease and the Lease Agreement as set forth in Section 1 hereof in federal or other immediately available funds.

5. *Representations and Warranties of the City.* The City represents and warrants to the Purchaser that:

(a) The City is a municipal corporation and general law city organized and existing under the Constitution and the laws of the State of California (the "State"), and has all necessary power and authority to enter into and perform its duties under this Agreement and the Site and Facility Lease and the Lease Agreement (collectively, the "City Documents").

(b) To the best knowledge of the City, neither the execution and delivery of the City Documents, or the execution of this Agreement, and compliance with the provisions on the City's part contained therein, nor the consummation of any other of the transactions herein and therein contemplated, nor the fulfillment of the terms hereof and thereof, materially conflicts with or constitutes a material breach of or default under nor materially contravenes any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in the security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the City under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the City Documents.

(c) The City Documents have been duly authorized by the City, and, assuming due authorization, execution and delivery by the other parties thereto, will constitute legal, valid

and binding agreements of the City enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if sought and by the limitations on legal remedies imposed on actions against cities in the State of California.

(d) There is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory agency having jurisdiction over the City required for the execution and delivery of the City Documents or the consummation by the City of the other transactions contemplated by the City Documents.

(e) To the best knowledge of the City, there is, and on the Closing Date (as hereinafter defined) there will be, no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the City to restrain or enjoin the payments to be made pursuant to the Lease Agreement, or in any way contesting or affecting the validity of the City Documents or the authority of the City to approve this Agreement, or enter into the City Documents or contesting the powers of the City to enter into or perform its obligations under any of the foregoing or in any way contesting the powers of the City in connection with any action contemplated by this Agreement or to restrain or enjoin the payment of Lease Payments, nor is there any basis for any such action, suit, proceeding or investigation.

(f) By official action of the City prior to or concurrently with the execution hereof, the City has duly authorized and approved the execution and delivery of, and the performance by the City of the obligations on its part contained in the City Documents and the consummation by it of all other transactions contemplated by this Agreement.

(g) The City is not in breach of or default under any material applicable law or administrative regulation of the State of California or the United States or any material applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject and in connection with which the City is obligated to make payments from its own funds, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument the consequence of which could be to materially and adversely affect the performance of the City under the City Documents.

(h) The City will deliver all opinions, certificates, letters and other instruments and documents reasonably required by the Purchaser and this Agreement.

(i) Any certificate of the City delivered to the Purchaser shall be deemed a representation and warranty by the City to the Purchaser as to the statements made therein.

(j) The financial statements of, and other financial information regarding the City delivered to the Purchaser fairly present the financial position and results of the operations of the City as of the dates and for the periods therein set forth and the audited financial statements have been prepared in accordance with generally accepted accounting principles consistently applied.

(l) Between the date of this Agreement and the date of Closing Date, the City will not, without the prior written consent of the Purchaser, offer or issue any certificates, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, secured by a lien on the City's general fund.

(m) The City acknowledges that Purchaser will treat the acquisition of the Corporation's rights in the Lease Agreement as a loan and not a security.

6. *Representations and Warranties of the Corporation.* The Corporation represents, warrants, covenants and agrees with the Purchaser as follows:

(a) The Corporation is a nonprofit, public benefit corporation organized and existing under the constitution and laws of the State of California and the Board of Directors of the Corporation, by adoption of a resolution of the Board of Directors of the Corporation (the "Corporation Resolution"), has duly approved the execution and delivery of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, and the Corporation has full right, power and authority to execute, deliver and perform its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement and to carry out and consummate the transactions contemplated by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(b) The Corporation has, on or before the date hereof, duly adopted the Corporation Resolution and taken all action necessary to be taken by it prior to such date for (i) the execution and delivery of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement and performance of its obligations thereunder, and (ii) the carrying out of, giving effect to, consummating and performing the transactions and obligations contemplated to be performed by it by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, provided that no representation is made with respect to compliance with the securities or "Blue Sky" laws of the various states of the United States, and the Resolution has not been amended, modified or repealed and is in full force and effect on the date hereof.

(c) The execution and delivery by the Corporation of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, the compliance by it with the terms, conditions or provisions hereof and thereof, and the consummation on its part of the transactions herein and therein contemplated do not and will not, in any respect material for the performance by the Corporation of its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, conflict with or constitute a breach of or a default under nor contravene any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Corporation is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation under any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, deed of trust, resolution, agreement or other instrument in any respect material to the performance by the Corporation of its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, except as provided in the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(d) Except as may be required under Blue Sky or other securities laws of any state, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the Corporation required for the consummation by the Corporation of the transactions contemplated by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, which has not been duly obtained or made on or prior to the date hereof.

(e) There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending against or, to the best knowledge of the Corporation, threatened against or affecting the Corporation wherein an unfavorable decision, ruling or finding would adversely affect (i) the validity or enforceability of, or the authority or ability of the Corporation

to perform its obligations under, the Site and Facility Lease, the Lease Agreement and the Assignment Agreement or (B) the transactions contemplated to be performed by it under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(f) The Corporation covenants that it will not take any action which would cause interest payable with respect to the Lease Agreement to become includable in gross income for federal income tax purposes or subject to State of California personal income taxes.

(g) Any certificate of the Corporation delivered to the Purchaser in connection with the transactions contemplated by this Letter Agreement for Purchase shall be deemed a representation by the Corporation to the Purchaser as to the statements made therein.

(i) All representations and warranties of the Corporation in the Site and Facility Lease and the Lease Agreement are true and correct as of the date hereof.

*7. Conditions Precedent to the Closing.* Other conditions precedent to the Closing are:

(a) The delivery by the City of a certified copy of (i) the resolution of the City Council authorizing the execution and delivery by the City of the Site and Facility Lease and the Lease Agreement, together with an incumbency certificate of the City, and (ii) the resolution of the Board of Directors of the Corporation authorizing the execution and delivery by the Corporation of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, together with an incumbency certificate of the Corporation;

(b) The delivery by the City of the fully executed Site and Facility Lease, Lease Agreement and Assignment Agreement in form and substance acceptable to the Purchaser;

(c) The execution and delivery by the City of an Internal Revenue Service Form 8038-G in a form acceptable to Special Counsel and the Purchaser;

(d) Delivery of a legal opinion addressed to the City, with a reliance letter to the Purchaser, dated the Closing Date, of Quint & Thimmig LLP, as Special Counsel, with respect to (i) the validity and enforceability of the Lease Agreement, the Site and Facility Lease, and the Assignment Agreement by and against the City and the Corporation (as applicable), (ii) the tax-exempt status of the interest component of the Lease Payments, and (iii) such other matters as may be requested by the Purchaser in form and substance acceptable to the Purchaser;

(e) Delivery of a legal opinion addressed to the City and the Purchaser, dated the Closing Date, of the City Attorney, with respect to the validity and enforceability of the Lease and the Site and Facility Lease by and against the City and otherwise in form and substance reasonable acceptable to the Purchaser;

(f) Delivery of a legal opinion addressed to the Corporation and the Purchaser, dated the Closing Date, of counsel to the Corporation, with respect to the validity and enforceability of the Lease, the Site and Facility Lease and the Assignment by and against the Corporation and otherwise in form and substance reasonable acceptable to the Purchaser;

(g) The delivery of a certificate dated the Closing Date and signed by the City Manager, or such other officer of the City as the City Council may approve, to the effect that:

(i) to the best knowledge of the City, there are no actions or proceedings against the City pending and notice of which has been served on the City or threatened that materially adversely affect the City's ability to pay the Lease Payments or to perform its obligations under the Site and Facility Lease and Lease Agreement;

(ii) the representations and warranties of the City contained in this agreement and the Lease Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and

(iii) the City acknowledges receipt from the Purchaser, on behalf of the Corporation, of the advance rental payment specified in Section 4 of the Site and Facility Lease;

(h) The delivery of a certificate dated the Closing Date and signed by the Executive Director, or such other officer of the Corporation as the Board of Directors of the Corporation may approve, to the effect that:

(i) to the best knowledge of the Corporation, there are no actions or proceedings against the Corporation pending and notice of which has been served on the Corporation or threatened that materially adversely affect the Corporation's ability to perform its obligations under the Site and Facility Lease, Lease Agreement and the Assignment Agreement, and

(ii) the representations and warranties of the Corporation contained in this Letter Agreement for Purchase and the Lease Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date;

(i) The delivery by the City of a title policy for the property that is the subject of the Site and Facility Lease and Lease Agreement in form acceptable to the Purchaser;

(j) The execution and delivery by the City of a certificate as to arbitrage; and

(k) The delivery by the Purchaser of an investor letter in form and substance as attached hereto as Exhibit B.

(l) Such other documents as may be reasonably requested by the Purchaser.

Each of the documents described in this Section 7 shall be delivered to the Purchaser in PDF form no later than Noon California time on the business day prior to the Closing Date.

8. *Events Permitting the Purchaser to Terminate.* The Purchaser may terminate its obligation to purchase the Corporation's rights, title and interest under the Site and Facility Lease and the Lease Agreement before the Closing Date if any of the following occurs:

(a) any legislative, executive or regulatory action (including the introduction of legislation) or any court decision that, in the judgment of the Purchaser, casts sufficient doubt on the legality of or the tax-exempt status of the interest component of obligations such as those represented by the Lease Agreement and the Lease Payments so as to materially impair the marketability or to materially reduce the market price of such obligations, in the reasonable opinion of the Purchaser;

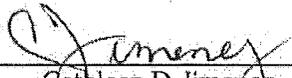
(b) any action by the Securities and Exchange Commission or a court that would require registration of the Lease Agreement under the Securities Act of 1933, as amended;

(c) any event occurs or becomes known that has a material adverse effect on the financial condition of the City or on the ability of the City or the Corporation to perform under the Site and Facility Lease, the Lease Agreement or the Assignment Agreement; or

(d) any of the representations or warranties of the City made in this Letter Agreement for Purchase are determined by the Purchaser to be untrue or materially inaccurate.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Letter Agreement for Purchase by their officers thereunto duly authorized as of the day and year first above written.

PINNACLE PUBLIC FINANCE, INC.

By   
Cathleen D. Jimenez  
Managing Director / Senior Vice President

The foregoing is hereby agreed to and accepted as of the date first above written:

CITY OF WALNUT CREEK

By \_\_\_\_\_  
Ken Nordhoff  
City Manager

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By \_\_\_\_\_  
William A. Morton  
Secretary/Treasurer

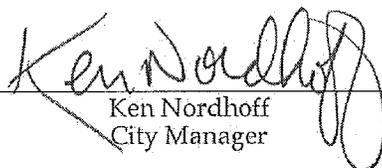
IN WITNESS WHEREOF, the parties hereto have executed and entered into this Letter Agreement for Purchase by their officers thereunto duly authorized as of the day and year first above written.

PINNACLE PUBLIC FINANCE, INC.

By \_\_\_\_\_  
Cathleen D. Jimenez  
Managing Director/Senior Vice President

The foregoing is hereby agreed to and accepted as of the date first above written:

CITY OF WALNUT CREEK

By  \_\_\_\_\_  
Ken Nordhoff  
City Manager

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By \_\_\_\_\_  
William A. Morton  
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IN WITNESS WHEREOF, the parties hereto have executed and entered into this Letter Agreement for Purchase by their officers thereunto duly authorized as of the day and year first above written.

PINNACLE PUBLIC FINANCE, INC.

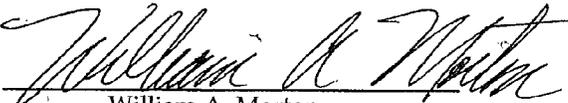
By \_\_\_\_\_  
Cathleen D. Jimenez  
Managing Director/Senior Vice President

The foregoing is hereby agreed to and accepted as of the date first above written:

CITY OF WALNUT CREEK

By \_\_\_\_\_  
Ken Nordhoff  
City Manager

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By  \_\_\_\_\_  
William A. Morton  
Secretary/Treasurer

**EXHIBIT A**  
**SCHEDULE OF LEASE PAYMENTS**

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment	Annual Lease Payment
2/1/2016	\$ 18,753	\$ 56,202.00	74,955.00	\$ 74,955.00
8/1/2016	63,092	37,250.47	100,342.47	—
2/1/2017	63,094	36,518.60	99,612.60	199,955.07
8/1/2017	77,641	35,786.71	113,427.71	—
2/1/2018	77,641	34,886.07	112,527.07	225,954.78
8/1/2018	131,756	33,985.44	165,741.44	—
2/1/2019	131,756	32,457.07	164,213.07	329,954.51
8/1/2019	134,831	30,928.70	165,759.70	—
2/1/2020	134,831	29,364.66	164,195.66	329,955.36
8/1/2020	137,977	27,800.62	165,777.62	—
2/1/2021	137,977	26,200.08	164,177.08	329,954.70
8/1/2021	141,197	24,599.55	165,796.55	—
2/1/2022	141,197	22,961.67	164,158.67	329,955.22
8/1/2022	144,491	21,323.78	165,814.78	—
2/1/2023	144,492	19,647.69	164,139.69	329,954.47
8/1/2023	147,863	17,971.58	165,834.58	—
2/1/2024	147,864	16,256.37	164,120.37	329,954.95
8/1/2024	151,314	14,541.15	165,855.15	—
2/1/2025	151,314	12,785.90	164,099.90	329,955.05
8/1/2025	154,845	11,030.66	165,875.66	—
2/1/2026	154,845	9,234.46	164,079.46	329,955.12
8/1/2026	158,459	7,438.26	165,897.26	—
2/1/2027	158,458	5,600.13	164,058.13	329,955.39
8/1/2027	162,156	3,762.02	165,918.02	—
2/1/2028	162,156	1,881.01	164,037.01	329,955.03
Totals	<u>\$3,230,000</u>	<u>\$570,414.65</u>	<u>\$3,800,414.65</u>	<u>\$3,800,414.65</u>

(1) The interest component of the Lease Payments shall be calculated based on an interest rate of 2.32% per annum.

## EXHIBIT B

### FORM OF PURCHASER'S LETTER

City of Walnut Creek  
1666 North Main Street  
Walnut Creek, CA 94596  
Attention: Administrative Services Director

Public Property Financing Corporation of California  
2945 Townsgate Road, Suite 200  
Westlake Village, CA 91361  
Attention: Secretary/Treasurer

Re: \$3,230,000 Lease Agreement, dated as of May 1, 2015, by and between the Public Property Financing Corporation of California and the City of Walnut Creek, assigned to Pinnacle Public Finance, Inc.

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Ladies and Gentlemen:

The undersigned, Pinnacle Public Finance, Inc. (the "Purchaser"), has agreed to acquire the rights, title and interest of the Public Property Financing Corporation of California (the "Corporation") under the Lease Agreement, dated as of May 1, 2015 (the "Lease Agreement"), by and between the City of Walnut Creek (the "City") and the Corporation, including its rights to receive lease payments to be made by the City under the Lease Agreement. In connection with such purchase, the Purchaser hereby agrees and certifies to the Corporation and the City that:

(a) The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations of a nature similar to the Lease Agreement to be able to evaluate the risks and merits of the investment represented by the purchase of the rights, title and interest of the Corporation under the Lease Agreement.

(b) The Purchaser is acquiring the rights, title and interest of the Corporation under the Lease Agreement for its own account and not with a view to, or for sale in connection with, any distribution thereof or any part thereof. The Purchaser has not offered to sell, solicited offers to buy, or agreed to sell the rights, title and interest of the Corporation under the Lease Agreement or any part thereof, and the Purchaser has no current intention of reselling or otherwise disposing of such rights, title and interest under the Lease Agreement *provided, however*, such representation shall not preclude the Purchaser from transferring or selling of the rights, title and interest under the Lease Agreement in accordance with the Lease Agreement. The Purchaser is not acting in a broker-dealer capacity in connection with its purchase of the rights, title and interest of the Corporation under the Lease Agreement.

(c) As a sophisticated investor, the Purchaser has made its own credit inquiry and analysis with respect to the City and the Lease Agreement and has made an independent credit decision based upon such inquiry and analysis and in reliance on the truth, accuracy, and completeness of the representations and warranties of the City set forth in the Lease Agreement and in the information set forth in any materials submitted to the Purchaser by the City. The City has furnished to the Purchaser all the information which the Purchaser, as a reasonable investor, has requested of the City as a result of the Purchaser having attached significance

thereto in making its investment decision with respect to the Lease Agreement, and the Purchaser has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the City and the Lease Agreement. The Purchaser is able and willing to bear the economic risk of the purchase and ownership of the rights, title and interest of the Corporation under the Lease Agreement.

(d) The Purchaser understands that the Lease Agreement has not been registered under the United States Securities Act of 1933 or under any state securities laws. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Lease Agreement by it, and further acknowledges that any current exemption from registration of the Lease Agreement does not affect or diminish such requirements.

(e) The Purchaser has authority to purchase the rights, title and interest of the Corporation under the Lease Agreement and to execute any instruments and documents required to be executed by the Purchaser in connection with the purchase of the rights, title and interest of the Corporation under the Lease Agreement. The undersigned is a duly appointed, qualified, and acting officer of the Purchaser and is authorized to cause the Purchaser to make the representations and warranties contained herein on behalf of the Purchaser.

(f) The Purchaser acknowledges that rights, title and interest of the Corporation under the Lease Agreement are transferable with certain requirements, as described in the Lease Agreement.

(g) The Purchaser acknowledges that the Lease Agreement is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the City has not undertaken to provide any continuing disclosure with respect to the Lease Agreement but that the City has agreed to provide other ongoing information to the Purchaser.

(h) The Purchaser intends to treat the acquisition of the Corporation's rights in the Lease Agreement as a loan.

PINNACLE PUBLIC FINANCE, INC.

By \_\_\_\_\_  
Cathleen D. Jimenez  
Managing Director/Senior Vice President

#2015-0628

AFTER RECORDATION PLEASE RETURN TO:

Quint & Thimmig LLP  
900 Larkspur Landing Circle, Suite 270  
Larkspur, CA 94939-1726  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**SITE AND FACILITY LEASE**

**Dated as of May 1, 2015**

**by and between the**

**CITY OF WALNUT CREEK, as Lessor**

**and the**

**PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, as Lessee**

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## SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated as of May 1, 2015, is by and between the CITY OF WALNUT CREEK, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the PUBLIC PROPERTY FINANCING CORPORATION OF CALIFORNIA, a nonprofit, public benefit corporation organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as lessee;

### WITNESSETH:

WHEREAS, pursuant to this Site and Facility Lease, the City proposes to lease those certain parcels of real property situated in Contra Costa County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Corporation, all for the purpose of enabling the financing of improvements to the City's Boundary Oak Golf Course Clubhouse ;

WHEREAS, the Corporation proposes to lease the Property back to the City pursuant to that certain Lease Agreement, dated as of May 1, 2015, a memorandum of which is recorded concurrently herewith (the "Lease Agreement") and to assign all of its rights, title and interest in, to and under this Site and Facility Lease and the Lease Agreement, including its right to receive lease payments under the Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under the Lease Agreement in the event of a default thereunder by the City, to Pinnacle Public Finance, Inc. (the "Assignee"), pursuant to that certain assignment agreement, dated as of May 1, 2015, by and between the Corporation and the Assignee (the "Assignment Agreement"), and recorded concurrently herewith;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site and Facility Lease. The City hereby leases to the Corporation and the Corporation hereby leases from the City, on the terms and conditions hereinafter set forth, the Property.

Section 3. Term. The term of this Site and Facility Lease shall commence on the date of recordation of this Site and Facility Lease in the Office of the County Recorder of the County of Contra Costa, State of California, and shall end on February 1, 2028, unless such term is extended or sooner terminated as hereinafter provided. If, on February 1, 2028, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than February 1, 2038. If, prior to February 1, 2028, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

Section 4. Advance Rental Payment. The City agrees to lease the Property to the Corporation in consideration of the payment by the Corporation of an advance rental payment of \$3,230,000. The City and the Corporation agree that by reason of the assignment of the Lease

Payments to the Assignee under and pursuant to the Assignment Agreement, the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 5. Purpose. The Corporation shall use the Property solely for the purpose of leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; *provided, however*, that in the event of default by the City under the Lease Agreement, the Corporation and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. City's Interest in the Property. The City covenants that it is the owner in fee of the Property.

Section 7. City's Representations and Certifications to the Corporation and the Assignee. The City hereby certifies and represents, warrants, covenants and agrees as follows:

(a) This Site and Facility Lease is in full force and effect, and there have been no amendments, modifications, changes or additions since its execution.

(b) To the best of the City's knowledge, the City is not and will not be, in any respect, in default under the terms and provisions of this Site and Facility Lease. Further, to the best of the City's knowledge, the City knows of no event which would, currently or with the passage of time or giving of notice, or both, constitute a default under the terms of this Site and Facility Lease by either the Corporation or the City.

(c) The City has not currently encumbered its fee interest in the Property to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments, except for this Site and Facility Lease and the Lease Agreement which is being recorded concurrently herewith and Permitted Encumbrances (as defined in the Lease Agreement).

(d) The City acknowledges hereby consents to the Lease Agreement.

(e) Upon the Event of Default under the Lease Agreement, the City will standstill and allow the Corporation or the Assignee to pursue any and all remedies available to the Corporation or Assignee under either this Site and Facility Lease or the Lease Agreement.

(f) Except for the rental payment referenced in Section 4, no additional rent is or will be due under this Site and Facility Lease by the Corporation through the term of this Site and Facility Lease and the Corporation has satisfied all of its obligations under this Site and Facility Lease.

(g) During the term of the Site and Facility Lease, the City will not consent to any amendment, modification or termination of this Site and Facility Lease without the prior written consent of the Assignee.

(h) During the term of this Site and Facility Lease, the City will not encumber its interest in the Site without the prior written consent of the Assignee.

(i) The City acknowledges that this Site and Facility Lease cannot be terminated by the City for any reason, except according to Section 3.

(j) Notwithstanding any Site and Facility Lease provisions to the contrary, policies of fire, casualty, and extended coverage insurance shall be carried and maintained by the City in

accordance with the terms of the Lease Agreement covering the building or buildings constructed on the Site, with a loss payable clause to Assignee.

Section 8. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Corporation may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement and the Assignment Agreement, without the written consent of the City and the Assignee. The City consents to the assignment of the Corporation's interest in this Site and Facility Lease to the Assignee. If the City is in default under the Lease Agreement, the Assignee (including their successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, subject to this Site and Facility Lease.

Section 9. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 10. Termination. The Corporation agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

Section 11. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Corporation, the City may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the City will continue to pay the Lease Payments to the Assignee.

In the event of the occurrence of an Event of Default under the Lease Agreement or a breach or default of the certifications and representations, warranties and covenants of the City contained in Section 7, the Corporation and/or the Assignee may (i) exercise the remedies provided in the Lease Agreement, (ii) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (iii) exercise all options provided herein.

Section 12. Quiet Enjoyment. The Corporation, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 13. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Corporation are solely liabilities of the Corporation and the City hereby releases each and every Board member, director, officer, employee and agent of the Corporation of and from any personal or individual liability under this Site and Facility Lease. No Board member, director, officer, employee or agent of the Corporation shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Corporation hereunder.

Section 14. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Corporation's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the City in accordance with the Lease Agreement.

Section 15. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Corporation shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Corporation or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City. The City hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Property through the eminent domain powers of the City. However, the City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 16. Use of the Proceeds. The City and the Corporation hereby agree that the lease to the Corporation of the City's right and interest in the Property pursuant to Section 2 serves the public purposes of the City.

Section 17. Attorneys' Fees, Costs and Expenses. In any civil action or proceeding arising from or relating to this Site and Facility Lease or a party's performance under this Site and Facility Lease, the prevailing party shall be awarded its reasonable attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

Section 18. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 20. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the City and the Corporation and their respective successors and assigns. The Assignee are hereby made third party beneficiaries hereunder with all rights of a third party beneficiary.

Section 21. Amendment. This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

Section 21. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 22. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 23. No Merger. Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the City to the Property under this Site and Facility Lease and the City's leasehold interest therein under the Lease Agreement.

Section 24. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

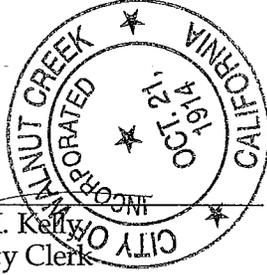
IN WITNESS WHEREOF, the City and the Corporation have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF WALNUT CREEK

By Kenneth A. Nordhoff  
Kenneth A. Nordhoff  
City Manager

Attest:

Sherry M. Kelly  
Sherry M. Kelly  
Acting City Clerk



PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By \_\_\_\_\_  
William A. Morton  
Secretary/Treasurer

IN WITNESS WHEREOF, the City and the Corporation have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

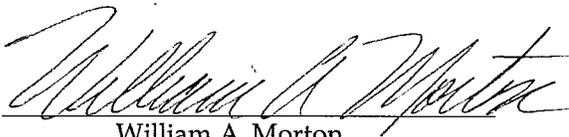
CITY OF WALNUT CREEK

By \_\_\_\_\_  
Kenneth A. Nordhoff  
City Manager

Attest:

\_\_\_\_\_  
Sherry M. Kelly  
Acting City Clerk

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By   
William A. Morton  
Secretary/Treasurer

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa )

On APRIL 27, 2015 before me, ZANETA W. LUNA, NOTARY PUBLIC  
(insert name and title of the officer)

personally appeared Kenneth A. Nordhoff  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

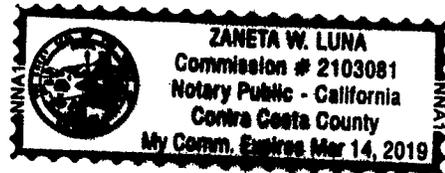
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

ZW Luna

(Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles )

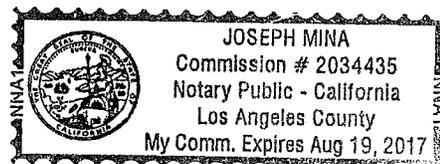
On April 24, 2015 before me, Joseph Mina, Notary Public  
(insert name and title of the officer)

personally appeared William A. Morton  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joseph Mina (Seal)



## EXHIBIT A

### DESCRIPTION OF THE SITE

All that certain real property situated in Contra Costa County, State of California, described as follows:

Part of the Rancho Canada Del Hambre, Southern Part, described as follows:

Beginning on the west line of Locust Street, formerly School Street, at the northeast corner of Block 6, as shown on the map of Additional Survey of Walnut Creek, filed June 16, 1877, in Book A of Maps, page 13, in the office of the County Recorder of Contra Costa County, thence from said point of beginning North 19° 13' West along the west line of said street 164.6 feet to the south line Block 18 as shown on the map of Stow's Addition, filed October 28, 1893, in Book C of Maps, page 68, in the office of the County Recorder of Contra Costa County, thence West, along said south line, 280.00 feet to the east line of North California Boulevard, formerly Granger Street, thence South along said east line, 164.6 feet to the northwest corner of Block 6 above referred to, thence East along the north line of said Block, 280 feet to the point of beginning.

EXCEPTING THEREFROM: The interest of the City of Walnut Creek, in and to that strip of land described in the deed from Clark T. Anderson, et ux, to said City, dated August 3, 1951, recorded September 13, 1951, in Book 1820 of Official Records, page 166.

APN 178-180-007-1

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

The Facility consists of City's North Locust Parking Garage complex, located on the Site at 1601 Locust Street, Walnut Creek, next to the Leshner Center for the Arts. The approximately 218,455 square foot Facility was built in 1984 and contains 664 parking spaces. The Facility includes retail uses on the street level.

**CERTIFICATE OF ACCEPTANCE OF SITE AND FACILITY LEASE**

This is to certify that the interest in real property conveyed by the Site and Facility Lease, dated as of May 1, 2015, from the City of Walnut Creek, as lessor, to Public Property Financing Corporation of California (the "Corporation"), as lessee, is hereby accepted by the undersigned officer on behalf of the Corporation, pursuant to authority conferred by resolution of the Board of Directors of the Corporation adopted on February 24, 2015, and the lessee consents to recordation thereof by its duly authorized officer.

Dated as of May 1, 2015

PUBLIC PROPERTY FINANCING  
CORPORATION OF CALIFORNIA

By   
William A. Morton,  
*Secretary/Treasurer*