

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

<b>In re:</b>	)	Chapter 11
	)	
<b>LAKEPOINT LAND, LLC,</b>	)	<b>Case No. 18-41337-bem</b>
<b>LAKEPOINT LAND III, LLC,</b>	)	
<b>LAKEPOINT LAND IV, LLC,</b>	)	<b>Jointly Administered</b>
<b>LAKEPOINT SERVICES, LLC,</b>	)	
<b>LAKEPOINT SPORTS SOUTH, LLC,</b>	)	
<b>LP HOUSING LLC, LAKEPOINT</b>	)	
<b>HOSPITALITY, LLC, and</b>	)	
<b>LAKEPOINT MERCHANDISE, LLC,</b>	)	
	)	
<b>Debtors.</b>	)	
	)	

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**DEBTORS' MOTION TO APPROVE ASSIGNMENT OF  
RIGHTS UNDER SALES CONTRACT TO LP J412, LLC**

LakePoint Land, LLC ("LPL"), LakePoint Land III, LLC ("LPL III"), LakePoint Land IV, LLC ("LPL IV"), LakePoint Services, LLC ("LP Services"), LakePoint Sports South, LLC ("LP Sports"), LP Housing LLC ("LP Housing"), LakePoint Hospitality, LLC ("LP Hospitality"), and LakePoint Merchandise, LLC ("LP Merchandise," and together with LPL, LPL III, LPL IV, LP Services, LP Sports, LP Housing, and LP Hospitality, the "Debtors"), debtors and debtors-in-possession in the above-captioned bankruptcy cases file this *Debtors' Motion to Approve Assignment of Rights Under Sales Contract to LP J412, LLC* (the "Motion") pursuant to 11 U.S.C. § 363(b), Rule 6004(f) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and applicable law, seeking authority to assign their rights under the Sales Contract (defined below) to LP J412, LLC (the "Assignee").<sup>1</sup> In support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> Assignee is an affiliate of Rimrock High Income Plus (Master) Fund, LTD, LPL's pre-petition secured lender ("Lender").

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and/or (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).

## **BACKGROUND**

2. On June 11, 2018 (the “Petition Date”) the Debtors each commenced voluntary cases (the “Bankruptcy Cases”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. The Debtors have continued in possession of their properties and have continued to operate and manage their respective businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. As of the date of this Motion, no official committee of unsecured creditors has been appointed in these Bankruptcy Cases, and no request has been made for the appointment of a trustee or examiner.

5. On the Petition Date, the Court entered an Order [Docket No. 15] directing the joint administration of the Bankruptcy Cases for procedural purposes only pursuant to Rule 1015(b) of the Bankruptcy Rules.

6. The factual background relating to the Debtors’ commencement of these Bankruptcy Cases is set forth in detail in the Declaration of Robert Zurcher Chief Financial Officer of the Debtors and Sole Manager of LakePoint Land, LLC in Support of Chapter 11 Petitions and First-Day Orders [Docket No. 5] (the “Zurcher Declaration”).

7. On July 31, 2018, the Debtors filed their *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of LakePoint Land, LLC and its Affiliated Debtors* [Docket No. 89]

(as may be amended or modified from time to time, the “Disclosure Statement”) related to their *Joint Chapter 11 Plan of Reorganization of LakePoint Land, LLC and its Affiliated Debtors dated July 31, 2018* [Docket No. 90] (as may be amended or modified from time to time, the “Plan”).

8. Prior to the Petition Date, on or about March 11, 2016, LPL sold approximately 6.544 acres of real property known as Lots 1 and 2 of Parcel J4 of the LakePoint Sporting Community, South Campus, LakePoint Parkway, City of Emerson, Bartow County, Georgia (the “Property”) to LakePoint Pavilion Center, LLC (“Seller”) as a part of a sale of approximately 22.296 acres of property, including Lots 1, 2, 4 and 5 of Parcel J4 of the LakePoint project. As part of this transaction LPL obtained a right of first refusal with respect to the Property (the “ROFR”).

9. Prior to the Petition Date, on August 16, 2018, LPL received a notice letter from the Seller dated August 16, 2018 (the “ROFR Notice”) with respect to the proposed sale of the Property by Seller to a third party. After receipt of such ROFR Notice, LPL promptly notified<sup>2</sup> Lender of the receipt and substance of the ROFR Notice. On September 13, 2018, pursuant to instructions received from Lender to exercise its rights under the ROFR, LPL sent Seller a notice exercising LPL’s right under the ROFR.

10. Pursuant to the exercised ROFR, LPL has entered into a Sales Contract with Seller dated effective as of September 27, 2018 (the “Sales Contract”), pertaining to the purchase and sale of the Property. A true and correct copy of the Sales Contract is attached to this Motion as **Exhibit A**.

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<sup>2</sup> Under LPL’s loan documents with Lender it is required to procure Lender’s consent or approval as to the exercise or non-exercise of the ROFR by LPL.

11. The “Purchase Price” of the Property under the Sales Contract is \$3.95 million. The Debtors do not currently have sufficient funds or access to sufficient funds to close under the Sales Contract and complete the purchase of the Property.

12. The Sales Contract provides for a “Feasibility Period” (as defined in the Sales Contract), that expires on October 29, 2018, and for a “Closing Date” of November 15, 2018. The Sales Contract contains other usual and customary provisions including, without limitation, provisions regarding inspection of matters of title, survey, and feasibility, and regarding closing documents and the payment of closing costs and expenses.

13. Pursuant to the Sales Contract, LPL was required to provide (and has provided) a \$10,000 “First Deposit” of earnest money to Hartman Simons & Wood LLP, as “Escrow Agent” under the Sales Contract, on or before October 4, 2018, LPL was required to provide a \$15,000 “Second Deposit” (collectively with the First Deposit, the “Deposit”), of earnest money to Escrow Agent on or before November 5, 2018.

14. LPL has the right to terminate the Sales Contract on or before the expiration of the Feasibility Period if it is not satisfied as to any of such matters. In the event of such termination by LPL, it is entitled to receive a refund of the Deposit, less \$100 of “Independent Consideration” which will be remitted by “Escrow Agent to Seller.

15. LPL has agreed to assign the Sales Contract to Assignee subject to Court approval pursuant to that certain *Assignment of Sales Contract* a true and correct copy of which is attached to the Motion as **Exhibit B** (the “Assignment”).

#### **REQUESTED RELIEF**

16. The Debtors seek to assign their rights under the Sales Contract to Assignee through the Assignment pursuant to 11 U.S.C. § 363(b) and Rule 6004(f) of the Bankruptcy

Rules. Because the Debtors are real estate developers the proposed Assignment is likely within the ordinary course of business of the Debtors; however, the Debtors are seeking Court approval of the proposed assignment in an abundance of caution and out of deference to this Court.

17. Section 363 of the Bankruptcy Code authorizes a trustee or debtor in possession “after notice and a hearing . . . [to] use, sell, or lease, other than in the ordinary course of business, property of the estate . . .” *See* 11 U.S.C. § 363(b)(1). Further, as set forth in Rule 6004(f) of the Bankruptcy Rules, a debtor may sell of property outside the ordinary course of business by either private or public sale.

18. The standard to grant sale of property outside of the ordinary course of business is the sound business judgment of the trustee or debtor in possession. *See In re Chateaugay*, 973 F.2d 141 (2d Cir. 1992); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). In this regard, the showing need not be exhaustive. Rather, a trustee or debtor in possession is “simply required to justify the proposed disposition with sound business reason.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

19. The Debtors have determined in their business judgment that the Assignment of their rights under the Sales Contract to Assignee by private sale is in the best interest of the Debtors’ bankruptcy estates and their prospective reorganized operations. First, the Property is contiguous to the Project (as such term is defined in the Zurcher Declaration) that they currently manage and used to own, and regaining access and ultimately ownership of the Property will benefit the Project. Second, the Debtors do not currently have sufficient funds or access to sufficient funds (under their Court approved DIP financing facility) to close under the Sales

Contract. Third, the Purchase Price under the Sales Contract is a fair price, and in the Debtors' business judgment it is extremely unlikely that a public sale or auction of their rights under the Sales Contract would yield any additional consideration to the Debtors. Finally, ownership of the Property by Assignee, an affiliate of the majority owner of the reorganized Debtors, will benefit the Project. Accordingly, the Debtors respectfully request that the Court enter an order approving the Assignment.

20. Because the transaction contemplated under the Sales Contract must close by November 15, 2018, cause exists to waive the 14-day stay contemplated under Rule 6004(h) of the Bankruptcy Rules, and the Debtors request that the Court waive such stay.

#### **NOTICE**

21. Notice of this Motion has been provided to the parties on the Master Service List established in these Bankruptcy Cases. In light of the nature of the relief requested in the Motion, the Debtors submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that this Court enter an order substantially in the same form as **Exhibit C**: (i) authorizing LPL to assign its rights under the Sales Contract to Assignee pursuant to the Assignment, and (ii) granting the Debtors such other and further relief as is just and proper.

Respectfully submitted this 30th day of October, 2018.

ARNALL GOLDEN GREGORY LLP

/s/ Sean C. Kulka

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Debtors in Possession*

## **EXHIBIT A**



## **SALES CONTRACT**

**THIS SALES CONTRACT** (“**Contract**”) is made and entered into as of the Effective Date (as hereinafter defined in Section 31) by and between **LAKEPOINT PAVILION CENTER, LLC**, a Georgia limited liability company (“**Seller**”), and **LAKEPOINT LAND, LLC**, a Georgia limited liability company (“**Purchaser**”).

### **W I T N E S S E T H:**

**WHEREAS**, Seller is the owner of the Property (as hereinafter defined in Section 1); and

**WHEREAS**, Seller desires to sell the Property, and Purchaser desires to purchase the Property from Seller.

**NOW, THEREFORE**, in consideration of the agreements contained herein, the Deposit (as hereinafter defined in Section 2.1), the Independent Consideration (as hereinafter defined in Section 22.1) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Property and Master Declaration.**

1.1 Property. Subject to the terms and conditions set forth in this Contract, Seller agrees to sell, and Purchaser agrees to purchase from Seller, approximately 6.544 acres of land generally known as Lot 1 and Lot 2 of Parcel J4, LakePoint Sporting Community, South Campus, LakePoint Parkway, City of Emerson, Bartow County, Georgia as more particularly described on Exhibit A, together with all rights, members, and appurtenances thereto and together with all improvements located thereon (the “**Property**”).

1.2 Declaration of Easements, Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center. Purchaser acknowledges and agrees that the Property is subject to that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center affecting the Property is recorded at Deed Book 2488, Page 871-998, Bartow County deed records; as amended by that certain First Amendment to Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center, recorded at Deed Book 2488, Pages 871-998; and by that certain Second Amendment to Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center, recorded at Deed Book 2684, Page 585-598 (as now or hereafter amended, the “**Master Declaration**”).

#### **2. Earnest Money.**

2.1 Deposit. Purchaser shall deposit with Hartman Simons & Wood LLP, 6400 Powers Ferry Road, NW, Suite 400, Atlanta, Georgia 30339, Attn: Yvette Fallone-Tietje, Esq. (the “**Escrow Agent**”) (i) the sum of **TEN THOUSAND AND NO/100 DOLLARS**

(\$10,000.00) constituting the initial earnest money deposit (the “**First Deposit**”), no later than five (5) Business Days (as hereinafter defined in Section 32) after the Effective Date (as hereinafter defined in Section 31), and (ii) the sum of **FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00)** within five (5) Business Days of the expiration of the Feasibility Period (the “**Second Deposit**”). The First Deposit and Second Deposit shall collectively be known as the “**Deposit**”. The Deposit shall be refundable to Purchaser during the Feasibility Period (as hereinafter defined in Section 4.1) as set forth in Section 4.5 hereof. After expiration of the Feasibility Period, the Deposit shall become non-refundable to Purchaser, except as otherwise expressly provided to the contrary in Sections 7.1, 7.3, 7.4, 11, 12.6 or 16.2 of this Contract.

2.2 General. The Deposit shall be held by Escrow Agent pursuant to this Contract in a non-interest bearing account at a federally insured banking institution. In the event the sale contemplated hereby is not closed, the Deposit shall be distributed as provided in this Contract. The Deposit shall be a credit to the Purchase Price (as hereinafter defined in Section 3) at Closing (as hereinafter defined in Section 9).

3. Purchase Price. The purchase price (the “**Purchase Price**”) of the Property shall be **THREE MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,950,000.00)**. The Purchase Price, as adjusted as a result of any prorations or adjustments provided for under this Contract, shall be payable at Closing in cash or by federal reserve check, wire transfer or other immediately available funds.

4. Property Inspections.

4.1. Feasibility Period. Subject to the terms and conditions of this Contract, Purchaser and Purchaser’s agents, consultants and contractors shall have until 5:00 p.m. Eastern Standard Time on the date that is thirty (30) days after the Effective Date (said period is referred to herein as the “**Feasibility Period**”) in which to enter upon the Property to do the following: (a) conduct a so-called “Phase 1” investigation and inspection of the Property, at Purchaser’s sole cost and expense, to satisfy itself as to the environmental condition of the Property; and (b) to satisfy itself with respect to only the following title and survey matters in accordance with Section 7 hereof: (i) that that certain sewerline easement granted by Seller to the City of Emerson, Georgia, dated September 14, 2016 (the “**Sewer Easement**”), as recorded on September 20, 2016, in Deed Book 2863 Page 796, Bartow County records of the Clerk of the Superior Court, is located as depicted on the recorded Sewer Easement; (ii) that there are no new title exceptions other than as listed on the Stewart Title Commitment No. 1271.0125(O)(Mayfair J4 Lots 1 and 2) dated 1/10/18, as issued to Mayfair Street Partners, LLC; and (iii) Buyer will order a new survey to confirm exact location of Sewer Easement, the absence of encroachments, and the boundary lines of the Property (for purposes of this Contract the items discussed in clauses (a) and (b) hereof shall be referred to as the “**Property Inspection Matters**”). Purchaser acknowledges and agrees that the results of the Property Inspection Matters are the only matters that Purchaser can object to and terminate this Contract under Section 4.5 below in the event that Purchaser is not satisfied with such Property Inspection Matter.

4.2. Property Information. Seller shall provide Purchaser with copies of the following due diligence materials within five (5) Business Days after the Effective Date hereof to the extent said materials exist and are in Seller's actual possession (collectively, the "**Property Information**"):

- a. A copy of the Master Declaration;
- b. A copy of the Phase I Environmental Site Assessment Report for the Property, if any;
- c. A copy of the geotechnical report for the Property, if any;
- d. An existing survey of the Property, if any; and
- e. Seller's existing title policy (with the financial information redacted).

Purchaser acknowledges that the Property Information is proprietary and confidential and will be delivered to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. Purchaser shall not use the Property Information for any purpose other than as set forth in the preceding sentence. Purchaser shall not disclose, and shall cause the Permitted Outside Parties (as hereinafter defined) not to disclose, the contents of any of the Property Information or the contents of any reports, surveys, engineering plans, permits, drawings, investigations, tests and other written documents obtained by Purchaser with respect to the Property (collectively, the "**Purchaser's Due Diligence Materials**"), to any person other than (i) to those persons who are responsible for determining the feasibility of or assisting Purchaser in connection with Purchaser's acquisition of the Property, including without limitation third-party consultants and attorneys, (ii) to Purchaser's lenders and their representatives, consultants and attorneys for the transaction contemplated hereunder, or (iii) to Purchaser's equity investors for the transaction contemplated hereunder (collectively, (i), (ii) and (iii) are collectively referred to herein as the "**Permitted Outside Parties**"). In permitting Purchaser to review the Property Information or any other information, Seller has not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created. Purchaser acknowledges that Seller does not make any representations or warranty of whatever nature regarding the truth, accuracy, validity, completeness, usefulness, suitability or any other aspect of the Property Information, and Seller expressly disclaims any such representation and warranty. Purchaser acknowledges that the Property Information was prepared by third parties and was not prepared by or independently verified by Seller. In no event shall Seller be obligated to deliver or make available to Purchaser any of Seller's internal memoranda or attorney-client privileged materials with respect to the Property. By accepting the Property Information, Purchaser agrees to release Seller from any liability that Purchaser may incur as a result of Purchaser's reliance on the Property Information. In the event Purchaser fails to purchase the Property for any reason, all the Property Information shall be returned to Seller, and Purchaser shall provide Seller without charge copies of the Purchaser's Due Diligence Materials. Additionally, Purchaser agrees to assign the Purchaser's Due Diligence Materials to Seller upon Seller's request at no cost or

expense to Seller. The provisions of this paragraph shall survive the Closing or any Termination (as hereinafter defined in Section 22.1) of this Contract.

4.3. Insurance; Indemnity and Restoration. The rights granted in this Section 4 shall be exercised after Purchaser has delivered to Seller a certificate of commercial general liability insurance with at least One Million Dollars of coverage per occurrence and in form and substance adequate to insure against all liability of Purchaser and its agents, representatives, employees, contractors or consultants, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and said insurance shall also include contractual liability coverage with respect to Purchaser's indemnification obligations under this Agreement. Seller and Seller's lender, if any, shall be named as additional insureds on such insurance. Purchaser hereby covenants and agrees to indemnify, defend and hold harmless Seller from any and all loss, liability, costs, claims, demands, damages, actions, causes of actions, and suits arising out of or in any manner related to the exercise by Purchaser or Purchaser's agents, consultants and contractors of Purchaser's rights under this paragraph, which obligation shall survive the Closing or any Termination of this Contract. It being understood, however, that the availability of such insurance shall not serve to limit or define the scope of Purchaser's indemnification obligations under this Contract in any manner whatsoever. Purchaser's insurance coverage shall be primary to, and shall not see contribution from, any other insurance available to Seller. Purchaser shall promptly restore any of the Property damaged or disturbed as a result of Purchaser's exercise of its rights under this Section 4, which obligation shall survive Termination of this Contract.

4.4. General Provisions. In connection with any entry by Purchaser, or Purchaser's agents, representatives, employees, contractors or consultants onto the Property, Purchaser shall give Seller reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith (a) during normal business hours; (b) to the greatest extent possible, conduct such inspections in such a manner as to minimize any interference with Seller's business and the business of Seller's tenants at the Property or surrounding area; (c) conduct all inspections and tests in compliance with all applicable laws; (d) so as to not damage any part of the Property or any personal property owned or held by any tenant or any third party; (e) conduct all inspections in a manner reasonably acceptable to Seller; (f) not injure or otherwise cause bodily harm to Seller or Seller's agents, guests, invitees, contractors and employees or any tenants or their guests or invitees; (g) promptly pay when due the costs of all inspections, tests, investigations, and studies done with regard to the Property; (h) not permit any liens to attach to the Property by reason of the exercise of Purchaser's rights hereunder and, if any such liens so attach, will cause them to be promptly removed and/or bonded; (i) promptly repair any damage to the Property resulting directly or indirectly from any such inspections, tests, investigations or studies strictly in accordance with all requirements of applicable law; and (j) not reveal or disclose any information obtained concerning the Property to anyone other than Permitted Outside Parties in accordance with the confidentiality standards set forth in Section 4.2. Without limiting the foregoing, prior to any entry to perform any on-site testing, including but not limited to any air sampling, borings, drillings or other samplings, Purchaser shall give Seller Notice thereof, including the identity of the company or persons who will perform such testing and the proposed scope and methodology of the testing. Seller shall approve or disapprove, in Seller's sole discretion, the proposed testing within three (3) Business Days after receipt of such notice. If Seller fails to respond within such three (3) Business Day period, Seller



shall be deemed to have disapproved the proposed testing. If Purchaser or its agents, representatives, employees, contractors or consultants take any sample from the Property in connection with any such approved testing, Purchaser shall provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. Purchaser shall permit Seller or its representative to be present to observe any testing or other inspection or due diligence review performed on or at the Property. Upon the request of Seller, Purchaser shall promptly deliver to Seller copies of Purchaser's Due Diligence Materials at no cost or expense to Seller.

4.5. Termination During Feasibility Period. If Purchaser is not satisfied with the Property Inspection Matters, Purchaser may, at its sole discretion, elect to Terminate this Contract by delivering Notice to Seller prior to the expiration of the Feasibility Period, whereupon Escrow Agent shall return to Purchaser the Deposit (less the Independent Consideration) paid hereunder, and this Contract shall Terminate and Seller and Purchaser shall be relieved of any further obligations hereunder which do not expressly survive Termination pursuant to the provisions of this Contract. If Purchaser does not provide Seller with a timely Notice of Termination of this Contract on or before the expiration of the Feasibility Period, then Purchaser shall be deemed to be satisfied with the Property Inspection Matters, and the Deposit shall become non-refundable to Purchaser, except as otherwise expressly provided to the contrary in Sections 7.1, 7.3, 7.4, 11, 12.6 or 16.2 of this Contract.

5. Permitting Period and Purchaser Approvals.

5.1 Permitting Period. [INTENTINALLY OMITTED]

5.2 Termination During Permitting Period. [INTENTINALLY OMITTED]

6. Closing Costs and Prorations.

6.1. Closing Costs. Seller shall pay any transfers taxes required to be paid on and with respect to the Deed (as hereinafter defined in Section 7.1 hereof). Purchaser shall pay all premiums and title search charges for the Title Commitment and/or Title Policy (as hereinafter defined in Section 7.1) to be issued with respect to the Property, which Title Policy shall be in the amount of the Purchase Price, as well as all title charges incurred with respect to any loan policy, any endorsements to the Title Policy or any loan policy and any additional coverage which may be requested by Purchaser. Purchaser shall pay for the recording of the Deed, the cost of any Survey procured by Purchaser, and all costs incurred in connection with any due diligence investigations conducted by or on behalf of Purchaser, any closing costs charged by the Title Company, and any reasonable fees charged by the Escrow Agent. Seller and Purchaser shall each bear its own attorneys' fees with respect to Closing, subject to the provisions of Section 26 hereof. All other costs shall be borne by the party which incurs same.

6.2. Proration of Taxes. Ad valorem taxes assessed against the Property for the year in which the Closing occurs shall be prorated as of the day of Closing. If the proration

is not based on the actual tax bill for the year of Closing, the proration shall be based upon the tax bill for the immediately preceding year taking into account the maximum discount rate. In the event that the actual taxes for the year of Closing are different from the tax figure used for the tax proration at Closing, Seller and Purchaser agree to make an adjustment between themselves taking into account the maximum discount rate applicable with any deficiency being paid on demand by the other party. All additional or increases in ad valorem taxes after Closing due to the development or change in use of the Property by Purchaser shall be the responsibility and obligation of Purchaser. This agreement to adjust the tax proration shall survive Closing.

6.3. Proration of Special Assessments. Seller shall pay all special assessments which are either pending or confirmed on the Property for the period prior to and as of the Effective Date. Purchaser shall be responsible for all special assessments attributable the Property as of and after the Effective Date. With respect to any special assessments against the Property which are payable in periodic installments, Seller shall be responsible for the payment of all periodic installments due and payable as of the Effective Date, and Purchaser shall be responsible for the payment of all periodic installments which become due and payable after the Effective Date.

6.4. Reimbursement of Pursuit Costs. [INTENTINALLY OMITTED]

6.5. Survival. The provisions of this Section 6 shall survive Closing.

7. Title.

7.1. Title Objections. Within thirty (30) days after the Effective Date, Purchaser shall obtain, at its expense, a title insurance commitment (the "**Title Commitment**") for an owner's title insurance policy (the "**Title Policy**") issued by Specialized Title Services, Inc. (the "**Title Company**"), together with legible copies of all recorded items and documents referred to therein, and shall deliver a copy of the same to Seller. Seller shall convey title to the Property by limited warranty deed ("**Deed**") subject to (i) all taxes for the year in which the Closing occurs and subsequent years not yet due and payable, (ii) zoning ordinances affecting the Property, (iii) all matters shown by the Survey, if a Survey is procured by Purchaser, or all matters which would be shown by current accurate survey and inspection of the Property if Purchaser does not procure a Survey (provided, however, if a Survey error occurs Purchaser agrees (which agreement shall survive Closing) that it will not be a breach of Seller's warranties of title if the Deed lists as the only matters of Survey the same matters as are reflected on Purchaser's Survey), (iv) all matters of record as reflected on the Title Commitment, including, without limitation, the terms and conditions set forth in the Master Declaration, and (v) any matters caused by Purchaser or Purchaser's agents, employees, contractors consultants and representatives (the foregoing items (i) – (v) being hereinafter referred to collectively as the "**Permitted Title Exceptions**"); provided, however, that nothing in this sentence shall limit Purchaser's rights as set forth in the remainder of this Section 7. Notwithstanding anything to the contrary contained herein, in no event shall Purchaser be permitted to object to the terms and conditions set forth in the Master Declaration. By accepting the Deed, Purchaser shall be deemed to have assumed all of Seller's obligations under the Permitted Title Exceptions relating to the Property. The Property shall not be subject to any mortgage, deed of trust, security

agreement, judgment, lien or claim of lien, or any other title exception or defect that is monetary in nature and caused by Seller (collectively, the "**Monetary Cure Items**"), Seller hereby agreeing to pay and satisfy of record any such Monetary Cure Items prior to or at the Closing at Seller's expense, but the parties acknowledge and agree that Seller may use the sales proceeds in connection therewith. As to any other title exceptions or defects not covered by the preceding sentence which are a part of the Property Inspection Matters (and which are not caused by Purchaser or Purchaser's agents, employees, contractors, consultants and representatives), Purchaser shall have until the expiration of the Feasibility Period in which to examine title to the Property and to give Seller Notice of any objections thereto ("**Title Objections**"). If Purchaser fails to give Seller Notice of any Title Objections prior to the expiration of the Feasibility Period, then Purchaser shall have waived the right to object to same, and shall have agreed to accept title subject to the Permitted Title Exceptions. If Purchaser does give Seller Notice of such Title Objections prior to the expiration of the Feasibility Period, then Seller shall have the option, but not the obligation, of satisfying such objections, and shall have until the date of Closing in which to do so. If Seller is unable to satisfy such objections, or elects not to satisfy such objections, Purchaser shall then have the choice of accepting the Property, subject to such matters without deduction from the Purchase Price, or declining to accept the Property, in which case the Deposit (less the Independent Consideration) paid by Purchaser shall be returned to Purchaser by the Escrow Agent, and this Contract shall Terminate, and the parties shall have no further rights or duties under this Contract except as otherwise expressly provided herein. Seller shall within five (5) Business Days of receipt of Purchaser's Title Objections provide Notice to Purchaser that Seller has elected not to satisfy some or all of Purchaser's objections to the Permitted Title Exceptions. If Seller gives such Notice, Purchaser shall have five (5) Business Days from receipt thereof in which to elect to accept the Property subject to such matters without deduction from the Purchase Price, or to decline to accept the Property in which event the Deposit (less the Independent Consideration) paid by Purchaser shall be returned to Purchaser by the Escrow Agent, and this Contract shall Terminate, and the parties shall have no further rights or duties under this Contract except as otherwise expressly provided herein. If Purchaser fails to give Seller Notice of Purchaser's election by the end of said five (5) Business Day period, then Purchaser shall be deemed to have elected to accept the Property subject to such matters without deduction from the Purchase Price; provided, if Purchaser then fails to close the transaction contemplated hereby Purchaser's Deposit shall be at risk for Purchaser's failure to close in accordance with Section 16.1 below.

7.2. No Further Encumbrances. Seller hereby covenants and agrees not to further encumber title to the Property between the Effective Date of this Contract and the Closing in any manner which would materially and adversely affect Purchaser's Intended Use of the Property.

7.3. Additional Title Matters Caused by Seller. Purchaser shall have the continuing right up to Closing to object to defects to title to the Property which first appear of record after the Effective Date of this Contract. If Purchaser gives Seller Notice of such defects and if such defects were caused by Seller and materially adversely affect Purchaser's Intended Use of the Property, Seller shall correct such defects and shall have until the date of Closing to do so. If Seller shall fail to correct the such defects by the date of Closing, then Purchaser shall have the choice of (i) accepting the Property with such defects after deduction from the Purchase

Price otherwise payable hereunder of the costs of correction of such defects which can be corrected by the payment of money; (ii) postponing Closing for not more than thirty (30) days until such defects are corrected; or (iii) declining to accept the Property with such defects, such choice to be exercised by Notice to Seller given no later than 5:00 p.m. Eastern Daylight Time on the date of Closing. Should Purchaser elect to postpone Closing under (ii) above and should, at the end of said thirty (30) day postponement period, such defects remain uncorrected, Purchaser shall have the further choice of options (i) and (iii) set forth above in this Section 7.3, such choice to be exercised by Notice to Seller within five (5) days following the end of such postponement period. If at any time Purchaser fails to timely notify Seller of Purchaser's election, Purchaser shall be deemed to have elected option (i). If Purchaser shall decline to accept the Property subject to such defects, then this Contract shall, at Purchaser's option, Terminate, the Deposit (less the Independent Consideration) paid by Purchaser shall be returned to Purchaser by the Escrow Agent, and the parties shall have no further rights or duties under this Contract except as otherwise expressly provided herein.

7.4. Additional Title Matters Not Caused by Seller. If Purchaser gives Seller Notice of any defects to title to the Property which first appear of record after the Effective Date of this Contract and if such defects were not caused by Seller or do not materially adversely affect Purchaser's Intended Use of the Property, Seller shall have the option, but not the obligation, to correct any such defects, and shall have until ten (10) days prior to the date of Closing to do so. If Seller receives Notice of any such defects at any time when there are less than ten (10) days before the Closing, at Seller's option the Closing shall be extended for a period of fifteen (15) days. If Seller is unable to correct such defects by such date, or elects not to correct same, Seller shall so notify Purchaser, and Purchaser shall then have the choice of (i) accepting the Property with such defects without deduction from the Purchase Price, or (ii) declining to accept the Property with such defects, such choice to be exercised by Notice to Seller given on or before the fifth (5th) day before the date of Closing. If Purchaser fails to give Notice to Seller timely of Purchaser's election, Purchaser shall be deemed to have elected option (i). If Purchaser shall decline to so accept the Property subject to such defects, then this Contract shall, at Purchaser's option, Terminate, and the parties shall have no further rights or duties under this Contract except as otherwise expressly provided herein, and the Deposit (less the Independent Consideration) paid by Purchaser shall be returned to Purchaser by the Escrow Agent.

8. Survey. Purchaser, at Purchaser's sole cost and expense, shall obtain a survey of the Property (the "Survey") during the Feasibility Period for Seller's review and approval. No later than five (5) Business Days prior to the expiration of the Feasibility Period, Purchaser shall provide a copy of the Survey to Seller and Seller's counsel for review and approval. The Survey (i) shall be prepared by Technical Survey Services, (ii) shall meet the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys prepared by the American Land Title Association, (iii) shall depict all plottable matters shown on Schedule B-II of the Title Commitment, and (iv) shall be certified to Seller, Seller's counsel, Purchaser, Purchaser's counsel and Title Company. The Survey shall otherwise be in such form sufficient for the Title Company to remove the standard survey and rights of parties in possession exceptions from the Title Commitment. In the event that the Survey reveals any Property Inspection Matters that are not satisfactory to Purchaser, including in the event that the Survey reveals that the Sewer



Easement is not located as depicted on the recorded Sewer Easement, then Purchaser shall have the right to provide Notice to Seller of Purchaser's objections to such Property Inspection Matters during the Feasibility Period in accordance with the terms and provisions governing title defects under Section 7 above.

9. **Closing Matters.** The closing or settlement ("Closing") of the transaction contemplated hereby shall occur on or before November 15, 2018. Closing shall be held at 10:00 a.m. at the offices of Title Company as a "mail away" closing, without the need for personal attendance at Closing by either representatives of Seller or Purchaser. At Closing, all of the terms and conditions of this Contract shall be deemed to have been satisfied and merged into the Deed and shall not survive the Closing, except as otherwise specifically set forth in this Contract.

10. **Broker and Broker's Commission.** Seller and Purchaser each represent and warrant to the other that they have dealt with no broker in connection with the transaction contemplated by this Contract and that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby, and each agrees to and does hereby indemnify, defend and hold the other harmless against the payment of any commission to any other person or entity claiming by, through or under Seller or Purchaser, as applicable. This indemnification shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims. This Section 10 shall survive Closing or Termination.

11. **Eminent Domain.** If, after the Effective Date and prior to Closing, Seller receives notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Property or any portion thereof, Seller shall immediately give Notice thereof to Purchaser. Purchaser shall elect within five (5) Business Days by delivering Notice to Seller either (i) to Terminate this Contract, in which event the Deposit (less the Independent Consideration) paid by Purchaser shall be returned to Purchaser by the Escrow Agent, or (ii) to close the transaction contemplated hereby in accordance with its terms but subject to such proceedings, in which event the Purchase Price shall not be reduced but Seller shall assign to Purchaser Seller's rights in any condemnation award or proceeds attributable to the Property. If Purchaser does not give timely Notice to Seller, Purchaser shall be deemed to have elected to close the transaction contemplated hereby in accordance with clause (ii) above.

12. **Seller's Representations and Warranties.**

12.1 **Representations.** Subject to the disclosures contained in **Schedule 1** attached hereto and made a part hereof (the "**Disclosure Items**"), matters contained in the Property Information, any matters of public record where the Property is located, and matters in Purchaser's Due Diligence Materials, Seller hereby makes the following representations and warranties with respect to the Property to Seller's actual knowledge as of the Effective Date. Notwithstanding anything to the contrary contained herein or in any Other Documents (as hereinafter defined in Section 34), Seller shall have no liability with respect to the Disclosure Items.

a. Good Standing. Seller is a limited liability company organized, existing and in good standing under the laws of its State of Georgia and has the requisite power and authority to enter into and close pursuant to the terms of this Contract.

b. Due Authorization. The execution and delivery of this Contract and the consummation of the transaction contemplated hereby have been duly authorized by all necessary parties and no other proceedings on the part of Seller are necessary in order to permit it to consummate the transaction contemplated hereby.

c. Non-Foreign Status. Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated pursuant thereto, and Purchaser has no obligation to withhold and pay over to the Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the Regulations issued under said Section).

d. Litigation. Seller has no actual knowledge of receipt of written notice of any actual pending or threatened litigation by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property.

12.2 Seller's Knowledge. Wherever in this Contract there is any reference to the "actual knowledge" of Seller or to any "notice" having been "received" by Seller, in any variation of such references, such references: (i) shall mean only the actual current knowledge of, or notice actually received personally by, W. Neal Freeman, without any duty of inquiry or investigation at the relevant time; (ii) shall not mean or include any imputed or constructive knowledge of W. Neal Freeman, or any notice constructively received by W. Neal Freeman; and (iii) shall not be deemed to imply that W. Neal Freeman or any other person or entity has undertaken, or has any duty or obligation to undertake, any investigation or inquiry with respect to the subject matter thereof. Notwithstanding anything to the contrary contained in this Contract, W. Neal Freeman shall have no personal liability hereunder.

12.3 Survival Period. The representations and warranties of Seller set forth in Section 12.1 are hereinafter individually referred to as a "**Seller's Representation**" and collectively as the "**Seller's Representations.**" Seller's Representations (1) shall be true in all material respects as of the date of Closing, subject in each case to (A) any Exception Matters (as defined below), and (B) other matters expressly permitted in this Contract or otherwise specifically approved in writing; and (2) shall survive the Closing for a period of six (6) months (the "**Survival Period**"), subject to the terms, conditions and limitations provided in this Contract, including without limitation, the provisions of Sections 17 and 34 hereof. Any claim which Purchaser may have against Seller for a breach of any Seller's Representation, whether such breach is known or unknown, which is not specifically asserted by Notice to Seller within the Survival Period, shall not be valid or effective, and Seller shall have no liability with respect thereto.

12.4 Exception Matters. As used herein, the term "**Exception Matter**" shall refer to a matter which would make a Seller's Representation untrue or incorrect and which is disclosed in the Property Information, Purchaser's Due Diligence Materials, is a matter of public

record, or is otherwise discovered by Purchaser or Purchaser is deemed to know of such matter before the Closing. To the extent that Purchaser actually knows or is deemed to know prior to the expiration of the Feasibility Period that any of the Seller's Representations are inaccurate, untrue or incorrect in any way, such Seller's Representations shall be deemed modified to reflect Purchaser's actual knowledge or deemed knowledge, subject to Purchaser's right to terminate this Contract as set forth in Section 4.5 above.

12.5 Deemed to Know. As used in this Section 12, the terms "**deemed to know**" (or words of similar import) shall have the following meaning: Purchaser shall be "**deemed to know**" any fact, circumstance or information or shall have "**deemed knowledge**" of the same to the extent (a) Purchaser has actual knowledge of a particular fact or circumstance or information that is contrary to any Seller's Representation or (b) this Contract, any of the Other Documents executed by Seller at Closing, the Property Information, any matter of public record, or any of Purchaser's Due Diligence Materials discloses a particular fact or circumstance or contains information which is contrary to any Seller's Representation.

12.6 Material Exception Matter after Expiration of Feasibility Period. If Purchaser first obtains knowledge of any Material Exception Matter (as hereinafter defined in Section 12.7) after the expiration of the Feasibility Period and prior to Closing and such Material Exception Matter was not contained in the Property Information, is not in the public records, and was not otherwise actually discovered by Purchaser and Purchaser is not "deemed to know" of said Material Exception Matter before the expiration of the Feasibility Period and was not caused by Purchaser or Purchaser's agents, representatives, employees, contractors or consultants, Purchaser's sole and exclusive remedy shall be to Terminate this Contract on the basis thereof, upon Notice to Seller within the earlier of (a) five (5) Business Days following Purchaser's discovery of such Material Exception Matter or (b) the Closing, whichever occurs first, in which event the Deposit (less the Independent Consideration) shall be returned to Purchaser by the Escrow Agent to the extent paid by Purchaser, unless within five (5) Business Days after receipt of such notice, Seller notifies Purchaser in writing that Seller elects to attempt to cure or remedy such Material Exception Matter, in which event there shall be no return of the Deposit unless and until Seller is unable to so cure or remedy within the time period set forth below. Seller shall be entitled to extend the date of Closing for up to fifteen (15) Business Days in order to attempt to cure or remedy a Material Exception Matter. Purchaser's failure to give timely notice of such Material Exception Matter shall be deemed a waiver by Purchaser of such Material Exception Matter, and Seller shall have no liability with respect thereto. Seller shall have no obligation to cure or remedy any Exception Matter, even if Seller has notified Purchaser of Seller's election to attempt to cure or remedy any Exception Matter, and Seller shall have no liability whatsoever to Purchaser with respect to any Exception Matters. Upon any Termination of this Contract pursuant to this Section 12.6, neither party shall have any further rights nor obligations hereunder, except for those provisions of this Contract that are expressly provided herein to survive Termination. If Purchaser obtains knowledge of any Exception Matter or Purchaser is deemed to know of any Exception Matter before the Closing, but nonetheless elects to proceed with the acquisition of the Property or is obligated to proceed with the acquisition of the Property, Seller shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, covenant, representation or warranty contained in this Contract or in any of the Other Documents.

12.7 Definition of Material Exception Matter. As used in this Section 12, the term "**Material Exception Matter**" shall mean an Exception Matter that would have a negative impact on the value of the Property in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00).

13. **Purchaser's Representations and Warranties.**

13.1 Representations. Purchaser represents and warrants as of the Effective Date that:

a. Good Standing. Purchaser is a limited liability company validly existing and in good standing under the laws of the State of Georgia. Purchaser now has, and at Closing Purchaser will have, the requisite power and authority to enter into and perform the terms of this Contract.

b. Due Authorization. The execution and delivery of this Contract by Purchaser and the consummation of the transaction contemplated hereby have been duly authorized by all necessary parties, and no other proceedings on the part of Purchaser are or at Closing will be necessary in order to permit it to consummate the transaction contemplated hereby. This Contract has been duly executed and delivered by Purchaser and is a legal, valid, and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

c. Anti-Terrorism. Purchaser is not and shall not become a person or entity with whom Seller is restricted from doing business under regulations of the U.S. Office of Foreign Asset Control of the U.S. Department of the Treasury, including but not limited to, Executive Order No. 13224 dated September 24, 2001 Blocking Land and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism or under other governmental action.

13.2 Survival. Each of the representations and warranties contained in this Section 13 shall be deemed remade by Purchaser, and shall be true in all material respects, as of the day of Closing, and shall survive Closing for the Survival Period.

14. Notice. Any notice, communication, request, reply or advice (collectively, "**Notice**") provided for or permitted by this Contract to be made or accepted by either party must be in writing. Notice shall be given or served by depositing the same in the United States mail, postage paid, registered or certified, with return receipt requested or by hand delivering the same to such party, or an agent of such party, or by delivery by overnight courier such as Federal Express, or by delivery by fax or email transmission. Each Notice shall be effective upon being so delivered in the case of hand delivery, upon being so deposited in the case of deposit with the United States mail or with an overnight courier or upon transmission if sent by fax or email, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof which, in the case of delivery by mail, shall be as evidenced by the return receipt, in the case of delivery by a nationally recognized overnight courier service, shall be evidenced by confirmation

of delivery from the overnight courier service, and in the case of delivery by fax or email, on the date the Notice was confirmed sent by the sending apparatus. Rejection or other refusal by the addressee to accept or the inability of any party attempting hand delivery or, in the case of attempted delivery by mail or overnight courier service, failure by any party to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Seller: LakePoint Pavilion Center LLC  
959 Middle Fork Trail  
Suwanee, GA 30024  
Attn: Neal Freeman  
Phone: (406) 626-1958  
Email: [neal@sportscommunityconsultants.com](mailto:neal@sportscommunityconsultants.com)

With a copy to: Hartman Simons & Wood LLP  
6400 Powers Ferry Road, NW, Suite 400  
Atlanta, Georgia 30339  
Attention: Yvette Fallone-Tietje, Esq.  
Phone: (678) 528-4446  
Email: [yvette.fallone@hartmansimons.com](mailto:yvette.fallone@hartmansimons.com)

To Purchaser: LakePoint Land, LLC  
755 Highway 293  
Emerson, Georgia 30137  
Attention: Bob Zurcher  
Phone: (404) 263-0467  
Email: [BobZurcher@LakePointSports.com](mailto:BobZurcher@LakePointSports.com)

With a copy to: Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street  
Suite 2100  
Atlanta, Georgia 30363-1031  
Attention: Philip G. Skinner, Esq.  
Phone: (404) 873-8798  
Email: [philip.skinner@agg.com](mailto:philip.skinner@agg.com)

With a copy to  
Escrow Agent: Hartman Simons & Wood LLP  
6400 Powers Ferry Road, NW, Suite 400  
Atlanta, Georgia 30339  
Attention: Yvette Fallone-Tietje, Esq.  
Phone: (678) 528-4446  
Email: [yvette.fallone@hartmansimons.com](mailto:yvette.fallone@hartmansimons.com)



The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written Notice to the other party.

15. **Closing.**

15.1 **Closing Documents.** On or before the Closing, Seller shall execute and deliver to the Title Company in escrow the following documents: (i) the Deed, (ii) a closing statement (the "**Closing Statement**"), (iii) an affidavit of title with respect to the Property in form reasonably satisfactory to Seller and Title Company to issue title insurance without exception for mechanic's, materialmen's or other statutory liens or for the rights of parties in possession, (iv) an affidavit in the form prescribed by Treasury Regulation 1.1445-2 stating Seller's taxpayer identification number, and confirming that Seller is not a foreign person within the purview of 26 U.S.C. Section 1445 and the regulations issued thereunder, and (v) an affidavit pursuant to O.C.G.A. §48-7-128. On or before the Closing, Purchaser shall execute and deliver to the Title Company in escrow the following: (i) the Closing Statement, (ii) an affidavit in form sufficient to clear any broker's lien under O.C.G.A. §44-14-600, et. seq., and (iii) the Purchase Price, less the Deposit, plus or minus applicable prorations provided for herein. Purchaser or its assignee may use the Property for any other lawful use that is not in conflict with or that is prohibited by the Master Declaration. At Closing, the parties shall also deliver to the Title Company appropriate evidence to establish the authority of such party to enter into and close the transaction contemplated herein and any other documents reasonably necessary to complete and evidence the transaction contemplated hereby. Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Title Company to immediately record and deliver the documents described above to the appropriate parties and make disbursements in accordance with the Closing Statement. If Closing does not occur, the Title Company shall return the items delivered to it to the party depositing same.

16. **Default and Remedies.**

16.1 **Purchaser's Default.** If Purchaser fails or refuses to perform its obligations under this Contract, and such failure continues for five (5) Business Days following Notice thereof from Seller (except for Purchaser's failure to Close or Purchaser's failure to deliver the Deposit, for which there shall be no curative period), then Seller shall, as its sole and exclusive remedy, Terminate the Contract by Notice to Purchaser, in which event Seller shall receive the Deposit as full liquidated damages pursuant to O.C.G.A. § 13-6-7, and the parties shall have no further obligations hereunder, except for those which survive Termination. In view of the difficulty of accurately estimating Seller's actual damages in the event of a default hereunder by Purchaser, and in recognition that it is impossible more precisely to estimate the damages to be suffered by Seller upon a default by Purchaser, the parties have agreed that the amount of the entire Deposit shall be paid to Seller not as a penalty, but as full liquidated damages, and that such amount constitutes a good faith and reasonable estimate of the potential damages arising from a default by Purchaser hereunder.

16.2 Seller's Default. If Seller fails or refuses to perform its obligations hereunder (any breach of Seller's Representations shall be handled in accordance with Section 12), and such failure continues for five (5) Business Days following Notice thereof from Purchaser to Seller (except for Seller's failure to Close, for which there shall be no curative period), then Purchaser shall have the right to (i) Terminate this Contract by Notice to Seller, in which event the Deposit (less the Independent Consideration) shall be refunded to Purchaser by the Escrow Agent to the extent paid by Purchaser, and neither Seller nor Purchaser shall have any further rights or obligations hereunder, except for those obligations which survive Termination, or (ii) seek specific performance of Seller's obligations to convey the Property to the Purchaser in accordance with the terms of this Contract; provided, however, that Purchaser shall only be entitled to such remedy if such suit for specific performance is filed within ten (10) Business Days after the scheduled date of Closing and further provided that the remedy of specific performance shall only be available to Purchaser upon Purchaser's full satisfaction of each of Purchaser's obligations under this Contract, including without limitation, delivering sufficient proof to the Title Company and Seller that Purchaser was ready, willing and able to close this transaction as of the date scheduled for Closing. If Purchaser has not filed suit for specific performance within said 10-Business Day period, then Purchaser shall be deemed to have elected to Terminate this Contract pursuant to (i) above. The option selected (or deemed selected) by Purchaser shall be Purchaser's sole and exclusive remedy, and in no event shall Purchaser be entitled to sue Seller or any of Seller's members for damages. In no event, including the provisions above, or after Closing, shall Seller be liable to Purchaser for any consequential, indirect, punitive, treble, exemplary, or speculative damages. Purchaser acknowledges that Purchaser's agreements in this Section 16.2 are a material inducement for Seller to enter into this Contract and without which Seller would not have entered into this Contract.

16.3 Survival. Nothing in Section 16 shall limit Purchaser's indemnification obligations under this Contract or Purchaser's restoration obligation in Section 4.3 of this Contract. The provisions of this Section 16 shall survive Closing or Termination of this Contract.

**17. AS-IS/WHERE IS. EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 12.1 OF THIS CONTRACT, THE PROPERTY IS BEING SOLD AND CONVEYED TO PURCHASER "AS IS/WHERE IS" AND "WITH ALL FAULTS". EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 12.1 OF THIS CONTRACT, SELLER HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING OR RELATING TO: THE CONDITION OF THE PROPERTY, THE IMPROVEMENTS LOCATED THEREON, OR THE PERSONALTY; THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE; THE SUSCEPTIBILITY TO FLOODING OF THE PROPERTY; THE VALUE OR MARKETABILITY OF THE PROPERTY; THE LAYOUT OR LEASABLE SQUARE FOOTAGE OF THE PROPERTY; THE PROJECTED INCOME OR EXPENSES OF THE PROPERTY; THE ZONING CLASSIFICATION, OR USE AND OCCUPANCY RESTRICTIONS, APPLICABLE TO THE PROPERTY; THE CURRENT MANNER OF OPERATION OF THE PROPERTY; THE COMPLIANCE OF THE PROPERTY WITH**

ENVIRONMENTAL LAWS, AND LAWS AND REGULATIONS RELATING TO HAZARDOUS SUBSTANCES, TOXIC WASTES AND UNDERGROUND STORAGE TANKS; AND ALL MATTERS AFFECTING OR RELATING TO THE PROPERTY. PURCHASER ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY SELLER, OR BY ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT SELLER.

BY PROCEEDING WITH THE ACQUISITION OF THE PROPERTY FOLLOWING THE FEASIBILITY PERIOD, PURCHASER AGREES THAT IT WILL BE CONFIRMING THAT IT HAS INVESTIGATED TO ITS SATISFACTION ALL MATTERS CONCERNING THE PROPERTY THAT ARE RELEVANT TO PURCHASER AND THAT PURCHASER IS ACQUIRING THE PROPERTY IN AN "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION. IN AGREEING TO PURCHASE THE PROPERTY "AS IS/WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, PURCHASER ACKNOWLEDGES AND REPRESENTS THAT IT HAS FACTORED THE "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION OF THE PROPERTY INTO THE PURCHASE PRICE PURCHASER HAS HEREBY AGREED TO PAY FOR THE PROPERTY. FROM AND AFTER THE CLOSING, PURCHASER AGREES TO WAIVE, AND DOES HEREBY WAIVE, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND OTHER LIABILITIES OF OR AGAINST SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY IN VIOLATION OF FEDERAL, STATE OR OTHER APPLICABLE LAW. THE TERMS AND COVENANTS OF THIS SECTION 17 SHALL SURVIVE THE CLOSING AND SHALL NOT BE MERGED INTO THE DEED CONVEYING THE PROPERTY TO PURCHASER.

18. **Time of Essence.** Time is of the essence of this Contract.

19. **Entire Agreement.** This Contract, together with the exhibits and schedules hereto, contains all representations, warranties and covenants made by Purchaser and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Contract together with the exhibits and schedules hereto. This Contract may be amended or modified only by a written instrument signed by Purchaser and Seller.

20. **Interpretation.** The section headings are inserted for convenience only and are in no way intended to interpret, define, or limit the scope or content of this Contract or any provision hereof. If Purchaser is made up of more than one person or entity, then all such persons and entities shall be included jointly and severally, even though the defined term for such party is used in the singular in this Contract. Unless the context of this Contract clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) "or" has the inclusive meaning frequently identified with the phrase "and/or" and (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to." Should any provisions of this Contract require judicial interpretation, it is agreed



that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

21. **Possession.** Seller shall deliver actual possession of Property at Closing, subject to the Permitted Title Exceptions.

22. **Survival and Termination.**

22.1 **Termination.** “**Terminate**” or “**Termination**” shall mean the termination of this Contract pursuant to a right to do so provided herein. Upon Termination, the Deposit shall be disbursed as provided herein, and the parties shall have no further rights or duties under this Contract except as expressly provided herein. Contemporaneously with the execution of this Contract, Purchaser hereby delivers to Seller and Seller hereby acknowledges the receipt of the sum of \$100.00 (the “**Independent Consideration**”), which amount the parties bargained for and agreed to as consideration for the Seller’s grant to Purchaser of Purchaser’s right to purchase the Property pursuant to the terms hereof and for Seller’s execution, delivery and performance of this Contract. The Independent Consideration is in addition to and independent of any other consideration or payment provided in this Contract, and the Independent Consideration is non-refundable under any circumstances, and shall be retained by Seller notwithstanding any other provisions of this Contract. Notwithstanding any Termination, all indemnifications contained in this Contract shall survive such Termination.

22.2 **Survive Closing or Termination.** The provisions of Section 4.3 of this Contract, the disbursement of the Deposit, the indemnifications contained herein, and this Section 22 shall survive Closing or Termination.

22.3 **No Survival.** Except as set forth in the preceding subparagraph or as otherwise expressly set forth in this Contract, the provisions of this Contract shall not survive Closing or Termination.

23. **Applicable Law.** This Contract shall be construed and interpreted in accordance with the laws of the State in which the Property is located.

24. **Successors, Assigns, and Assignment.** This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Purchaser may not assign its rights or obligations under this Contract without Seller’s prior written consent, which consent may be withheld in Seller’s sole and absolute discretion; provided, however, Purchaser may assign its rights and obligations under this Contract without Seller’s consent to any entity that is in control of, controlled by or under common control with Purchaser or LP Investments I, LLC; and Purchaser must provide Notice to Seller of any permitted assignment at least five (5) Business Days prior to the date of Closing. No assignment shall release or relieve the assignor hereunder. Furthermore, after any permitted assignment, Seller shall be free to deal with such assignee with respect to this Contract (including, without limitation, entering into any

amendments or modifications of this Contract), and Purchaser shall be bound by any such dealings, including, without limitation, any modifications or amendments of this Contract.

25. **Exhibits.** The exhibits referred to in and attached to this Contract are incorporated herein in full by reference.

26. **Legal Fees.** In the event that any party finds it necessary to employ an attorney to enforce any provision of this Contract, the prevailing party will be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in connection therewith (including costs of collection), at both trial and appellate levels, including bankruptcy proceedings, in addition to any other remedies to which such party may be entitled. The requirement to pay the prevailing party's reasonable attorneys' fees and costs will survive any Termination of or Closing under this Contract.

27. **Counterpart Execution.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile or electronically transmitted signatures on this Contract and on any amendment thereto shall be effective as originals.

28. **Offer, Acceptance and Contract.** This document shall constitute an offer by the Seller or Purchaser, as applicable, who executes this Contract first. This offer is open for acceptance by the other party until five (5) Business Days after the date it was executed by the first party. Each party agrees to immediately provide to the other party a complete counterpart of this Contract when signed. If this offer is so accepted, it shall become a binding contract.

29. **Severability.** The invalidity or unenforceability of a particular provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.

30. **Waiver.** Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Contract.

31. **Effective Date.** The "Effective Date" shall be the date upon which the last of the Seller or Purchaser executes this Contract as indicated beneath their respective signature blocks.

32. **Computation of Time.** Should any time period provided in this Contract expire on a Saturday, Sunday or legal holiday, such time period shall automatically be extended to the next Business Day. The term "**Business Day(s)**" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in the State in which the Property is located are authorized by law to be closed.

33. **Escrow Provisions.**

33.1 **Escrow Agent.** It is agreed that the duties of Escrow Agent are purely ministerial in nature, and that Escrow Agent shall incur no liability whatever except for willful misconduct or gross negligence so long as Escrow Agent has acted in good faith. Seller and Purchaser release Escrow Agent from any act done or omitted to be done by Escrow Agent in good faith in the performance of Escrow Agent's duties hereunder. Purchaser shall pay at Closing all fees charged by Escrow Agent for serving in such capacity.

33.2 **General.** Escrow Agent shall be under no responsibility in respect to any of the moneys deposited with it other than faithfully to follow the instructions herein contained. Escrow Agent may consult with counsel and shall be fully protected in any actions taken in good faith, in accordance with the advice of counsel. Escrow Agent shall not be required to defend any legal proceedings which may be instituted against the escrow instructions unless requested to do so by Seller and Purchaser and indemnified to the satisfaction of Escrow Agent against the cost and expense of such defense. Escrow Agent shall not be required to institute legal proceedings of any kind. Escrow Agent shall have no responsibility for the genuineness or validity of any document or other item deposited with Escrow Agent, and shall be fully protected in acting in accordance with any written instructions given to Escrow Agent hereunder and believed by Escrow Agent to have been signed by the proper parties.

33.3 **Stakeholder.** Escrow Agent assumes no liability under this Contract except that of a stakeholder. If there is any dispute as to whether Escrow Agent is obligated to deliver the escrow moneys, or as to whom that sum is to be delivered, Escrow Agent shall not be obligated to make any delivery of the sum, but in such event may hold the sum until receipt by Escrow Agent of any authorization in writing signed by all the persons having an interest in such dispute, directing the disposition of the sum, or in the absence of such authorization until the determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given, or proceedings for such determination are not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding to deliver the Deposit to the registry of a court of competent jurisdiction pending such determination. Upon making delivery of the moneys in the manner provided for in this Contract, Escrow Agent shall have no further liability in its capacity as Escrow Agent in this matter. Purchaser and Seller hereby agree to indemnify and hold harmless Escrow Agent from all costs and expenses, including without limitation reasonable attorneys' fees and costs actually incurred by Escrow Agent in connection with any legal action taken by Escrow Agent, in such capacity, hereunder.

33.4 **Disputes.** In the event a dispute arises between Seller and Purchaser sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction, all money or property in its possession under this Contract, and shall thereupon be discharged from all further duties and liabilities under this Contract as Escrow Agent. All attorneys' fees and costs and expenses of the Escrow Agent incurred in connection with such interpleader shall be assessed against the party that is not awarded the Deposit in the event that the Deposit is interpleaded or if

the Deposit is distributed in part to both parties, then in the inverse proportion of such distribution.

33.5 No Conflict. Seller and Purchaser acknowledge and agree that Escrow Agent is the law firm representing Seller with regard to this Contract and the transaction which is the subject hereof, and hereby waive any claim against Escrow Agent based upon a conflict of interest as a result of Escrow Agent serving in such dual capacities. Purchaser further agrees that Escrow Agent shall be permitted to represent Seller in all aspects of this Contract and the subject transaction, including, without limitation, any dispute with respect to the Deposit.

33.6 Receipt of Deposit. Escrow Agent has executed this Contract to confirm that Escrow Agent is holding (drafts are subject to collection) the Deposit, and Escrow Agent will hold the Deposit in escrow pursuant to the provisions of this Contract.

33.7 Survival. This Section 33 shall survive the Closing and any Termination of this Contract.

34. Limitation on Liability. Purchaser expressly agrees that the obligations and liabilities of Seller under this Contract and any Other Documents shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller. Notwithstanding anything to the contrary, after Closing Seller's liability, if any, arising in connection with the Property, Seller's Representations, this Contract, any document referenced herein or executed in connection herewith (collectively, the "**Other Documents**") shall be limited the Seller's interest in the Property and the proceeds therefrom. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of Seller's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns. The provisions of this Section 34 shall survive Closing or any Termination of this Contract.

35. WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN CONNECTION WITH ANY LAWSUIT, ACTION, OR PROCEEDING BASED ON OR ARISING OUT OF THIS CONTRACT OR ANY TRANSACTION CONTEMPLATED HEREBY. THIS SECTION 35 SHALL SURVIVE CLOSING AND ANY TERMINATION OF THIS CONTRACT.

36. Impact Fees/Tap Fees. After Closing Purchaser agrees to pay any "impact fees" relating to the Property and charged by the governmental authorities in the area where the Property is located related to the development of the Property for the Intended Use. Additionally, Purchaser shall be responsible to pay any tap fees, connection charges, connection hook-up or similar fees with respect to all utilities that will service the Property. The provisions of this Section 36 shall survive the Closing and shall not be merged into the Deed conveying the Property to Purchaser.


37. **1031 Exchange**. Each party reserves the right to have the Closing treated for its purposes as a like-kind exchange (whether simultaneous or deferred) qualifying for treatment under §1031 of the Internal Revenue Code (an “**Exchange**”). Each party agrees that, upon the request of the other, it shall cooperate in the treatment of this transaction as an Exchange so long as such cooperation is at no cost to, and results in no liability against, the cooperating party. Neither party warrants to the other that the sale or purchase will qualify for treatment as an Exchange, and this Contract is not conditioned on either party’s qualifying for such treatment. Additionally, (i) the date of Closing hereunder will not thereby be delayed by said Exchange, (ii) the cooperating party shall not assume any personal liability in connection with a request by the other party to cooperate with said Exchange, (iii) the exchanging party shall not be released from its obligations under this Contract if the exchanging party's Exchange fails for any reason, and the exchanging party shall remain obligated under this Contract, (iv) the cooperating party shall not be required to acquire title to any other real property (other than the Property), and (v) the exchanging party shall indemnify, defend and hold the cooperating party harmless from and against all expenses, losses, costs (including, without limitation, reasonable attorneys' fees), damages and claims resulting from the exchanging party's Exchange or attempted Exchange, which obligation shall survive Termination or Closing.

**[Remainder of page is intentionally blank. Signatures on following pages.]**

**IN WITNESS WHEREOF**, the parties have set their hands and seals hereto as of the day and year indicated next to their signatures.

**PURCHASER:**

**LAKEPOINT LAND, LLC**, a Georgia limited liability company

By:  (Seal)

Name: Robert Zurcher

Title: Manager and CFO

Date signed by Purchaser:

Sept. 27, 2018

**SELLER:**

**LAKEPOINT PAVILION CENTER LLC**, a Georgia  
limited liability company

By: LakePoint Sports Development Group, LLC,  
a Georgia limited liability company, its Manager

By:  (Seal)  
W. Neal Freeman, Manager

Date signed by Seller:  
SEPTEMBER 27, 2018



**ESCROW AGENT:**

**HARTMAN SIMON & WOOD LLP**

By: 

Name: ROBERT SIMONS

Title: 12/1/18 PARTNER

Date signed by Escrow Agent:

10/2/18, 2018



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**Lakepoint Sports Pavilion  
Parcel J4  
Lot 1**

All that tract or parcel of land lying and being in Land Lot 971 of the 4th District, 3rd Section, City of Emerson, Bartow County, Georgia and being more particularly described as follows:

To reach the True Point of Beginning, commence at the southeastern most mitered point of the intersection of the northerly Right of Way of Stars Way (90' R/W) and the easterly Right of Way of Lakepoint Parkway (Variable R/W), thence running along said miter North 17° 02' 47" West a distance of 27.91 feet to a point; thence running along said Right of Way of Lakepoint Parkway along a curve to the left an arc length of 356.17 feet, (said curve having a radius of 761.00 feet, with a chord bearing of North 14° 36' 02" East, and a chord length of 352.92 feet) to the TRUE POINT OF BEGINNING, from point thus established and continuing along said Right of Way of Lakepoint Parkway along a curve to the left an arc length of 180.05 feet, (said curve having a radius of 761.00 feet, with a chord bearing of North 05° 35' 08" West, and a chord length of 179.63 feet) to a point; thence North 12° 21' 49" West a distance of 3.87 feet to a point; thence leaving said Right of Way and running along a curve to the right an arc length of 42.33 feet, (said curve having a radius of 37.50 feet, with a chord bearing of North 47° 10' 00" East, and a chord length of 40.12 feet) to a point; thence North 79° 30' 17" East a distance of 128.05 feet to a point; thence North 77° 13' 18" East a distance of 179.34 feet to a point; thence running along a curve to the right an arc length of 55.01 feet, (said curve having a radius of 87.50 feet, with a chord bearing of South 84° 46' 06" East, and a chord length of 54.11 feet) to a point; thence South 66° 45' 30" East a distance of 160.04 feet to a point; thence South 23° 14' 30" West a distance of 390.50 feet to a point; thence North 66° 45' 30" West a distance of 390.45 feet to the TRUE POINT OF BEGINNING. Said tract contains 3.419 acres (148,926 Square Feet).

**TOGETHER WITH:**

**Parcel J4  
Lot 2**

All that tract or parcel of land lying and being in Land Lot 971 of the 4th District, 3rd Section, City of Emerson, Bartow County, Georgia and being more particularly described as follows:

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*[Continued on following page.]*

of 109.33 feet to a point; thence running along a curve to the right an arc length of 197.13 feet, (said curve having a radius of 905.00 feet, with a chord bearing of North 69° 04' 08" West, and a chord length of 196.74 feet) to a point; thence North 62° 49' 44" West a distance of 59.32 feet to the TRUE POINT OF BEGINNING. Said tract contains 3.125 Acres (136,106 Square Feet).

Further together with easement rights contained in that certain Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center by LakePoint Land, LLC, a Georgia limited liability company, dated as of August 16, 2011, filed for record August 18, 2011 at 12:51 p.m., recorded in Deed Book 2488, Page 871, Records of Bartow County, Georgia; as amended by First Amendment to Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center, dated August 21, 2012, filed for record August 23, 2012 at 1:15 p.m., recorded in Deed Book 2554, Page 846, aforesaid Records; as affected by Joinder and Consent Re: Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center by LakePoint Land IV, LLC, with consent of LakePoint Land, LLC, dated as of September 30, 2013, filed for record October 4, 2013 at 11:32 a.m., recorded in Deed Book 2648, Page 350, aforesaid Records; as modified by Modification to Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center by LakePoint Land, LLC, a Georgia limited liability company, dated as of October 2, 2013, filed for record October 4, 2013 at 11:32 a.m., recorded in Deed Book 2648, Page 394, aforesaid Records; as assigned by Collateral Assignment of Declarant's Rights from LakePoint Land, LLC, a Georgia limited liability company, to Rimrock High Income Plus (Master) Fund, Ltd., dated October 2, 2013, filed for record October 4, 2013 at 11:32 a.m., recorded in Deed Book 2648, Page 788, aforesaid Records; as further assigned by Collateral Assignment of Property Owners' Rights from LakePoint Land, LLC, a Georgia limited liability company, LakePoint Land II, LLC, a Georgia limited liability company, LakePoint Land III, LLC, a Georgia limited liability company, and LakePoint Land IV, LLC, a Georgia limited liability company, to Rimrock High Income Plus (Master) Fund, Ltd., dated October 2, 2013, filed for record October 4, 2013 at 11:32 a.m., recorded in Deed Book 2648, Page 855, aforesaid Records; as further amended by Second Amendment to Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for LakePoint Sporting Community & Town Center by LakePoint Land, LLC, a Georgia limited liability company, dated as of April 23, 2014, filed for record May 2, 2014 at 4:39 p.m., recorded in Deed Book 2684, Page 585, aforesaid Records; as re-filed for record May 28, 2014 at 2:46 p.m., re-recorded in Deed Book 2688, Page 91, aforesaid Records; as further affected Declaration of Submission of Property to Master Declaration, by LakePoint Ridgeline Partners, LLC, a Georgia limited liability company, and Lakepoint Land, LLC, a Georgia limited liability company, dated as of October 3, 2014, filed for record October 10, 2014 at 11:10 a.m., recorded in Deed Book 2721, Page 53, aforesaid Records; as further affected by Subordination Agreement by LakePoint Land, LLC, a Georgia limited liability company, dated December 11, 2013, filed for record January 5, 2016 at 11:43 a.m., recorded in Deed Book 2808, Page 226, aforesaid Records.

## **EXHIBIT B**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), is made and entered into as of the date last executed and dated below, by and between LAKEPOINT LAND, LLC, a limited liability company (hereinafter referred to as "Assignor"), and LP J412, LLC, a Delaware limited liability company (hereinafter referred to as "Assignee").

### WITNESSETH:

WHEREAS, Assignor desires to assign, transfer and convey to Assignee, and Assignee desires to accept same and to assume from Assignor all of Assignor's rights, interests and obligations with respect to the "Assigned Contract" (as defined below) in accordance with the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises, the agreements set forth herein, and of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Assignment by Assignor. Effective as of the date of "Bankruptcy Court Approval" (as defined below) (the "Effective Date"), Assignor hereby grants, transfers, conveys and assigns to Assignee, and its successors and assigns, all right, title, interest, executory duties and obligations of Assignor as "Purchaser" under that certain Sales Contract dated effective as of September 27, 2018 (the "Assigned Contract"), pertaining to that certain real property consisting of approximately 6.544 acres of land generally known as Lot 1 and Lot 2 of Parcel J4, LakePoint Sporting Community, South Campus, City of Emerson, Bartow County, Georgia, as more particularly described on Exhibit A attached hereto, and any earnest money deposits related thereto.

2. Assumption by Assignee. As of the Effective Date, Assignee hereby (a) accepts the foregoing assignment, transfer and conveyance by Assignor and (b) assumes all of Assignor's obligations under the Assigned Contract and agrees to fulfill, keep, perform and observe each and every condition and covenant contained in the Assigned Contract which is required to be fulfilled, observed, kept and performed by the Purchaser under the Assigned Contract.

3. Further Assurances. Each of the Assignee and the Assignor shall execute such additional documents and instruments and take such further action as may be reasonably required or desirable to carry out the provisions hereof.

4. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6. Headings. The Section headings herein have been inserted for convenience or reference only, and are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

7. Amendments. This Agreement may be amended, extended, superseded, canceled, renewed, or the terms hereof may be waived, only by a written instrument signed by the parties, or, in the case of a waiver, by the party waiving compliance.

8. Successors and Assigns. The terms and provisions hereof shall be binding upon and inure to the benefit of Assignor and Assignee, and the heirs, executors, representatives, administrators, successors and assigns of Assignor and Assignee.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State where the Premises is located.


10. Bankruptcy Court Approval. This Agreement and the obligations of Assignor under this Agreement are subject to the approval of THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ROME DIVISION, in that certain Chapter 11 Case No. 18-41337-bem (Jointly Administered), in which Assignor herein is a "Debtor" party (the "Bankruptcy Court Approval").

*[Signature page follows]*

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed under seal as of the day and year first written.

ASSIGNOR:

LAKEPOINT LAND, LLC, a Georgia limited liability company

By: 

Name: Robert Zurcher

Its: Manager and CFO

Date executed: October 30, 2018

{SIGNATURES CONTINUE ON FOLLOWING PAGE}



ASSIGNEE:

LP J412, LLC, a Delaware limited liability  
company

By: Robert De Leon

Name: Robert De Leon

Its: Assistant Secretary

Date executed: October 29, 2018

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**Lakepoint Sports Pavilion  
Parcel J4  
Lot 1**

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**TOGETHER WITH:**

**Parcel J4  
Lot 2**

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[Continued on following page.]



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## **EXHIBIT C**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>LAKEPOINT LAND, LLC,</b>	)	<b>Case No. 18-41337-bem</b>
<b>LAKEPOINT LAND III, LLC,</b>	)	
<b>LAKEPOINT LAND IV, LLC,</b>	)	<b>Jointly Administered</b>
<b>LAKEPOINT SERVICES, LLC,</b>	)	
<b>LAKEPOINT SPORTS SOUTH, LLC,</b>	)	
<b>LP HOUSING LLC, LAKEPOINT</b>	)	
<b>HOSPITALITY, LLC, and</b>	)	
<b>LAKEPOINT MERCHANDISE, LLC,</b>	)	
	)	
<b>Debtors.</b>	)	

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**ORDER APPROVING DEBTORS' MOTION TO APPROVE ASSIGNMENT OF  
RIGHTS UNDER SALES CONTRACT TO LP INVESTMENTS I, LLC**

This matter came on for hearing on November \_\_\_\_, 2018 on (the "Hearing") *Debtors' Motion to Approve Assignment of Rights under Sales Contract to LP Investments I, LLC* [Docket No. \_\_\_\_] (the "Motion") filed by LakePoint Land, LLC ("LPL"), LakePoint Land III, LLC ("LPL III"), LakePoint Land IV, LLC ("LPL IV"), LakePoint Services, LLC ("LP Services"), LakePoint Sports South, LLC ("LP Sports"), LP Housing LLC ("LP Housing"), LakePoint Hospitality, LLC ("LP Hospitality"), and LakePoint Merchandise, LLC ("LP Merchandise," and together with LPL, LPL III, LPL IV, LP Services, LP Sports,

LP Housing, and LP Hospitality, the “Debtors”). All capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Motion.

The Court has considered the Motion. It appears that the Court has jurisdiction over the Motion and this proceeding; that this is a core proceeding; that notice of the Motion has been given to the parties on the Master Service List established in these Bankruptcy Cases; that no further notice of the Motion is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their bankruptcy estates, and their creditors; that no creditor or party in interest filed an objection to the Motion or appeared at the Hearing in opposition to the Motion; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion is GRANTED and the Assignment is APPROVED.
2. Pursuant to 11 U.S.C. § 363(b) and Rule 6004(f) of the Bankruptcy Rules, LPL is authorized to enter into and consummate the transaction contemplated by the Assignment and assign the Sales Contract to Assignee.
3. The 14-day stay contemplated under Rule 6004(h) of the Bankruptcy Rules is waived.
4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.
5. Counsel for the Debtors is directed to serve or cause a copy of this Order to be served on all parties on the Master Service List within three (3) days of the entry of this Order and file a certificate of service with the Clerk of the Court.

**\*\*\* END OF ORDER \*\*\***

Prepared and presented by:

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