

**04-R-0439**

(Do Not Write Above This Line)

A RESOLUTION BY COUNCILMEMBER FELICIA MOORE

AN ORDINANCE TO AUTHORIZE THE MAYOR TO NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT FOR CERTAIN CITY-OWNED PROPERTY LOCATED IN THE NORTHWEST ATLANTA REDEVELOPMENT AREA AND TAX ALLOCATION DISTRICT NUMBER THREE - PERRY/BOLTON; AND FOR OTHER PURPOSES.

**ADOPTED BY**  
**MAR 15 2004**  
**COUNCIL**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred: 03/01/04  
 Referred To: Finance Executive  
 Date Referred: \_\_\_\_\_  
 Referred To: \_\_\_\_\_  
 Date Referred: \_\_\_\_\_  
 Referred To: \_\_\_\_\_

First Reading  
 Committee: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Chair: \_\_\_\_\_  
 Referred To: \_\_\_\_\_

FINANCE EXECUTIVE  
 Date: 3/10/04  
 Chair: \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side): \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members: \_\_\_\_\_  
 Refer To: \_\_\_\_\_

Committee: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Chair: \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side): \_\_\_\_\_  
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 Members: \_\_\_\_\_  
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Committee: \_\_\_\_\_  
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 Fav, Adv, Hold (see rev. side): \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members: \_\_\_\_\_  
 Refer To: \_\_\_\_\_

FINAL COUNCIL ACTION  
 2nd     1st & 2nd     3rd  
 Consent     V Vote     RC Vote

CERTIFIED

MAR 15 2004

**CERTIFIED**  
 MAR 15 2004  
 Municipal Clerk

MAYOR'S ACTION  
**APPROVED**  
 MAR 23 2004  
 Mayor

A RESOLUTION

BY COUNCILMEMBER



**TO AUTHORIZE THE MAYOR TO NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT FOR CERTAIN CITY-OWNED PROPERTY LOCATED IN THE NORTHWEST ATLANTA REDEVELOPMENT AREA AND TAX ALLOCATION DISTRICT NUMBER THREE — PERRY/BOLTON; AND FOR OTHER PURPOSES.**

**WHEREAS**, pursuant to the Redevelopment Powers Law (O.C.G.A. § 36-44-1 et seq.), on December 2, 2002, the Council adopted Resolution 02-R-2094 (the "TAD Resolution") adopting the Northwest Atlanta Redevelopment Plan (the "Redevelopment Plan") and establishing the Northwest Atlanta Redevelopment Area (the "Redevelopment Area") and Tax Allocation District Number Three - Perry/Bolton, which resolution was approved by the Mayor on December 10, 2002; and

**WHEREAS**, the TAD Resolution contained the Council's findings that (i) the Northwest Atlanta Redevelopment Area is an economically and socially depressed area and that the under-performance and disinvestment that has occurred in the Redevelopment Area must be reversed in order to ensure the economic health of the City and (ii) the growth and development of the Redevelopment Area would not reasonably be anticipated to be developed without the approval of the Redevelopment Plan; and

**WHEREAS**, the Redevelopment Plan calls for the development of a mixed-use and mixed-income community within the Redevelopment Area, including a championship golf course (the "Golf Course"); and

**WHEREAS**, Perry Golf Course Development, LLC ("Perry Golf") has proposed to develop the Golf Course, in part, on the surface area of portions of the Redevelopment Area currently known as the Gun Club Landfill (the "Landfill"), the Gun Club Park ("Gun Club Park") and other nearby unused city-owned parcels (the "Additional Flood Plain Parcels") and more particularly described on Exhibit "A" attached hereto (the "Proposed Leased Area"); and

**WHEREAS**, the construction and operation of the Golf Course is a key component of the Redevelopment Plan; and

**WHEREAS**, Section 1-102(c)(6) of the City Charter empowers the City to dispose of City-owned property by lease; and

**WHEREAS**, Section 2-1547 of the City Code permits the lease of City-owned property so long as (i) the sale of the property is not in the best interest of the City and (ii) the property is not currently being used by the City; and

**WHEREAS**, the physical condition of the Proposed Lease Area is such that the return on any sale of the Proposed Lease Area is likely to be minimal, particularly relative to the benefits

that are expected to accrue to the Redevelopment Areas and the City as a whole as a result of the development of the Golf Course; and

**WHEREAS**, inasmuch as (i) the Landfill has been closed, the City no longer deposits waste thereupon, and it is not necessary for the City to operate and to keep in its current, undeveloped condition the surface area of the Landfill in order for the City to fulfill its continuing obligation to maintain the Landfill in accordance with applicable laws, or for any other purpose, (ii) Gun Club Park is in such a dilapidated and deteriorated condition that it is no long suitable for use as a park, the Proposed Lease Area is not currently being used by the City for any governmental purpose and (iii) the Additional Flood Plain Parcels, by virtue of their condition and location, are not currently being used by the City; and

**WHEREAS**, Perry Golf has made a proposal to the City for a ground lease of the Proposed Lease Area in accordance with the requirements of the City Code; and

**WHEREAS**, under the proposal made by Perry Golf, (i) the City would lease the Proposed Lease Area to the Atlanta Development Authority (the "ADA") and the ADA would, in turn, sublease the Proposed Lease Area, under the same terms and conditions, to Perry Golf and (ii) the City would retain certain obligations to maintain the subsurface area of the Landfill as set forth in the Proposed Lease (as hereinafter defined); and

**WHEREAS**, in recognition of the (i) inherent difficulty in generating adequate economic returns from the development and operation of golf courses, (ii) significance of the Golf Course to the success of the Redevelopment Plan and the growth and redevelopment of the Redevelopment Area, and (iii) unique costs of developing the Golf Course on the Landfill and properties adjacent to the Landfill, the terms of Perry Golf's proposal will allow the development, construction, maintenance, operation and use of the Golf Course to be feasible, thus furthering the goals of the Redevelopment Plan; and

**WHEREAS**, the Council has determined that the lease of the Proposed Lease Area is in the best interests of the City and entirely in keeping with the intent and purpose of the TAD Resolution.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES** as follows:

Section 1. The Council declares that the development of the Golf Course is an integral component of the Redevelopment Plan as adopted by the Council and will result in significant benefits to the Redevelopment Area and the City as a whole.

Section 2. The Council declares that (i) the Proposed Lease Area is not currently being used by the City and (ii) the condition of the Proposed Lease Area is such that little return could be expected from a sale of the Proposed Lease Area.

Section 3. Perry Golf has proposed to develop and operate the Golf Course under a lease agreement with the City.

Section 4. The Council declares that it is in the best interest of the City and consistent with the intent of the TAD Resolution to negotiate and enter into a lease agreement with the ADA subsequent to which the ADA will sublease the Proposed Lease Area, under the same terms and conditions, to Perry Golf.

Section 5. The Mayor is authorized to negotiate, execute and deliver a lease with the ADA, said lease to be substantially in the form attached hereto as Exhibit "B" (the "Proposed Lease").

Section 6. The Council authorizes and empowers the Mayor and her designees to take such actions and to execute for and on behalf of the City such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents which, in the reasonable judgment of the Mayor, may be necessary or desirable to effect the transaction contemplated by the Proposed Lease. Such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and/or documents shall be in such form and contain such terms and conditions as may be reasonably approved by Mayor or her designees, and the execution of such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents by the Mayor or her designees shall be conclusive evidence of any such approval; provided, however, said agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents shall be approved as to form by the City Attorney prior to execution by the Mayor or her designees.

Section 7. No agreement, instrument, certificate, affidavit, financing statement, assignment, paper or document authorized by these resolutions, including without limitation the Proposed Lease, shall be binding on the City until signed by the Mayor and delivered to the contracting party.

Section 8. All resolutions and parts of resolutions in conflict with this resolution are hereby rescinded to the extent of any such conflict.

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk, CMC

ADOPTED by the Council  
APPROVED by the Mayor

March 15, 2004  
March 23, 2004

EXHIBIT "A"

The Proposed Lease Area

[See Exhibits "A"- "F" to Proposed Lease attached hereto as Exhibit "B"]

**EXHIBIT "B"**  
**The Proposed Lease**

**GROUND LEASE FOR GOLF COURSE AGREEMENT**

**DATED           , 2004**

**BETWEEN**

**THE CITY OF ATLANTA, GEORGIA,**

**AS LESSOR**

**AND**

**THE ATLANTA DEVELOPMENT AUTHORITY**

**AS LESSEE**

**FOR A GOLF COURSE**

## GROUND LEASE FOR GOLF COURSE

**THIS GROUND LEASE FOR GOLF COURSE** (the "Lease") is made as of \_\_\_\_\_, 2004, between the City of Atlanta, a municipal corporation of the State of Georgia ("Landlord"), and the **ATLANTA DEVELOPMENT AUTHORITY**, a public body corporate and politic created and existing under and by virtue of the laws of the State of Georgia ("Tenant").

### WITNESSETH:

A. Landlord owns approximately 130 acres of real property located in Atlanta, Fulton County, Georgia, as more particularly described on Exhibit "A", Exhibit "C" and Exhibit "E" attached hereto and by this reference made a part hereof, and as depicted on the survey plat attached hereto as Exhibit "B" (as relating to Exhibit "A"), Exhibit "D" (as relating to Exhibit "C"), and Exhibit "F" (as relating to Exhibit "E"), and by this reference made a part hereof (the "Leased Premises").

B. The Leased Premises consists, in part, of the surface topsoil and landscaping, but not the subsurface, Landfill Cap (as hereinafter defined) or other impervious subsurface barrier, of a landfill operated by Landlord (the "Landfill") known as the "Gun Club Landfill." The location of the Landfill is depicted on the survey plat attached hereto as Exhibit "B". The Leased Premises also consists, in part, of abandoned/vacant flood plain parcels (the "Flood Plain Parcels"), with such parcels listed in the City of Atlanta plat books as being parcels 17-0226-0002--044, 17-0226-0002-030, 17-0250-LL-013, and 17-0250-LL-009. The location of the Flood Plain Parcels is depicted on the survey plat attached hereto as Exhibit "D". The Leased Premises also consists, in part, as part of parcels that are mostly flood plain, with much of such flood plain void of trees (the "Cleared Parcels"), with such parcels listed in the city of Atlanta plat books as being a portion of parcel 17-226-LL-1 and parcel 17-227-LL-2. The locations of the Cleared Parcels are depicted on the survey plat attached hereto as Exhibit "F".

C. Landlord no longer deposits waste upon the Landfill, and it is not necessary for the City to operate and to keep in its current, undeveloped condition the surface area of the Landfill in order for the City to fulfill its continuing obligation to maintain the Landfill in accordance with applicable laws, or for any other purpose. Additionally, the portion of the Leased Premises currently known as "Gun Club Park" is in such a dilapidated and deteriorated condition that it is no long suitable for use as a park.

D. Landlord desires to lease the Leased Premises to Tenant for the development, construction, maintenance, operation and use of the Leased Premises as part of a public golf course, driving range, clubhouse and related operations (collectively, the "Golf Course"), in accordance with that certain Revitalization Agreement, dated May 22, 2002 (effective January 31, 2001), between The Housing Authority of the City of Atlanta, Georgia and Perry Homes Redevelopment, LLC (in which entity Tenant is a member) (the "Revitalization Agreement"), and Tenant desires to lease the Leased Premises from Landlord for the development, construction, maintenance, operation and use of the Golf Course, all in accordance with the terms of this Lease.

E. The Golf Course is a crucial component of the redevelopment of the former Perry Homes housing development into a mixed-use and a mixed-income community to be known as West Highlands at Perry. Because of (i) the inherent difficulty in generating adequate economic returns from the development and operation of golf courses, and (ii) the significance of the Golf Course to the redevelopment, and with acknowledgment of the unique costs of developing the Golf Course on the Landfill and properties adjacent to the Landfill, Landlord and Tenant desire to agree upon lease terms that will allow Tenant's development, construction, maintenance, operation and use of the Golf Course to be feasible.

F. Landlord and Tenant desire and intend for Landlord to continue to be responsible for all costs, obligations, and liabilities associated with maintaining the Landfill (including but not limited to all Pre-Existing Environmental Conditions, as hereinafter defined), including all governmental and regulatory responsibilities in compliance with all applicable laws, and for Tenant to be responsible for all costs, obligations and liabilities associated with construction and operation of the Golf Course on the Leased Premises. No use of the term "Leased Premises," is intended to imply any obligation or liability of Tenant with regard to the Pre-Existing Environmental Conditions nor Landlord's obligation or liability for construction or operation of the Golf Course.

G. In consideration of the mutual covenants and agreements contained in this Lease, Landlord conveys a leasehold interest in the Leased Premises to Tenant, and Tenant leases the Leased Premises from Landlord, in accordance with the terms, covenants and conditions of this Lease.

H. Simultaneously herewith, Tenant and Perry Golf Course Development, LLC, a Georgia limited liability company ("Subtenant"), will enter into a sublease ("Sublease"), a copy of said Sublease being attached hereto as Exhibit "G" and made a part of hereof by reference, pursuant to which the Subtenant assumes the obligations and duties of Lessee as hereinafter provided.

I. The foregoing recitals shall constitute a binding part of the Lease.

**THIS LEASE** is made upon the following terms and conditions:

## **SECTION 1. TERM, TERMINATION RIGHTS.**

**1.1 Term.** The term of this Lease (the "Term") shall be a period of fifty (50) years, commencing on the date hereof (the "Commencement Date"). Tenant shall have the option to renew this Lease for a second, forty-nine (49) year term by giving notice to Landlord at least 90 days in advance of the expiration of the initial term of this Lease.

**1.2 Termination Right.** Notwithstanding any other provision contained herein, upon the occurrence of any of the following events this Lease shall be terminable as follows:

(a) By Landlord, if Tenant fails to begin the permitting process for the Golf Course within three (3) months of the Commencement Date.

(b) By Tenant, if Tenant does not receive, no later than \_\_\_\_\_, the [projected tax allocation increment] in accordance with the terms of that certain [NAME/DATE OF AGREEMENT].

(c) By Tenant, if Tenant, having begun the permitting process for the permits described in Section 5.6(b) hereof no later than three (3) months following the Commencement Date, is unable to receive such permits within nine (9) months of the Commencement Date.

(d) By Tenant, if Georgia Power Company fails to grant all necessary consents, approvals and/or easements within six (6) months of the Commencement Date for the operation of the Golf Course on those portions of the Master Plan Footprint Area of the Golf Course (as depicted on Exhibit "I" attached hereto and by this reference made a part hereof) encumbered by easements in favor of Georgia Power Company.

(e) By Tenant, if Tenant is unable to obtain title insurance coverage of the Leased Premises by a licensed title insurance company on reasonable and customary terms within sixty (60) days following the later to occur of (i) Tenant's obtaining the permits described in Section 5.6(b) or (ii) the commencement of construction of the Golf Course by Tenant in accordance with Section 3.2.

(f) By Tenant, upon termination of the Sublease prior to the expiration of the term of this Lease.

In the event of the occurrence of the event described in subparagraph (a) above, Landlord shall have the right to terminate this Lease upon sixty (60) days notice by Landlord to Tenant. In the event of the occurrence of the events described in subparagraphs (b) - (e) above, Tenant shall have the right to terminate this Lease upon sixty (60) days written notice by Tenant to Landlord.

**1.3 Other Termination Rights.** In addition to the termination rights contained in Section 1.2 above, Landlord and Tenant shall have the right to terminate this Lease for cause as specifically hereinafter provided.

## **SECTION 2. RENT.**

**2.1 Base Rent.** Tenant shall pay Landlord as rent (the "Base Rent") for the Leased Premises the sum of \$1.00 per year, payable annually in advance on the Commencement Date and on each annual anniversary thereof. Landlord acknowledges and agrees that Tenant will only be obligated to pay Landlord the Base Rent specified herein and to perform the other obligations of Tenant expressly set forth in this Lease. Tenant shall be entitled to all revenues generated from the operation of the Golf Course by Tenant and its employee and agents, and Landlord acknowledges that it shall not have any right or entitlement to such revenues.

**2.2 Place and Mode of Payment.** All Base Rent and any other sums due Landlord hereunder shall be paid without notice or demand in lawful money of the United States of America at such place as Landlord may have designated in a notice to Tenant, and in the absence of such designation, at the address to which notices intended for Landlord are to be delivered in accordance with Section 18 hereof.

**2.3 No Set-Off.** Except as herein elsewhere specified and subject to the covenant of quiet enjoyment by Landlord pursuant to Section 17 hereof, the obligation of Tenant to pay Base Rent as herein specified shall be absolute and unconditional, and such rental payments shall be payable without any rights of termination, set-off, recoupment, deduction, defense or counterclaim Tenant might have against Landlord or any other person, and without abatement, suspension, deferment, diminution or reduction for any reason or as the result of any occurrence whatsoever, including any damage to or destruction of all or any part of the Leased Premises or the taking by condemnation or eminent domain of title to or the right of temporary use of a part of the Leased Premises under circumstances where the Lease remains in effect, or the failure of Landlord to perform and observe any agreement or covenant, whether expressed or implied, or any duty or liability arising out of or connected with this Lease.

**2.4 Overdue Rent.** All Base Rent and other sums required by this Lease to be paid to Landlord by Tenant shall bear interest from and after the date which is five (5) days after the due date thereof until paid at the interest rate, changing from time to time, which is three percent (3%) per annum in excess of the interest rate per annum quoted, from time to time, by Wachovia Bank, N.A. (or if at any time it ceases to make such quotations, by the then largest bank having a lending office in the City of Atlanta, Georgia as does make such quotations) as being its "Prime Rate", if such term is used by said bank, and otherwise its "Reference Rate."

### **SECTION 3. CONSTRUCTION OF GOLF COURSE; ALTERATIONS.**

**3.1 Definitions.** As used in this Lease, the term "Golf Course" shall include a public (open to the public) golf course which Tenant will develop, construct, operate and maintain located, in part, on the Leased Premises pursuant to this Lease, (although until such time as the Tenant receives the necessary permits from the appropriate Federal, State, and/or Local permitting authorities allowing Tenant to construct, and/or operate, part of the Golf Course on the Leased Premises, the Tenant will not be required to construct, and/or operate, such part of the Golf Course on the Leased Premises), together with any alterations or additions to the same made by Tenant, and any related improvements which Tenant may elect to construct, including without limitation any clubhouse, pro shop, food service facility, driving range, restaurant, banquet facility, bar or any other amenities/features that Tenant believes may be a profitable, and/or useful, and that are found at other golf courses; provided, however, that Tenant shall be under no obligation to construct such alterations, additions or related improvements. The term "Property" as used in this Lease shall mean the Leased Premises and the Golf Course. The term "Improvements" as used in this Lease shall mean all improvements constructed by Tenant on the Leased Premises in connection with its development, construction, operation and maintenance of the Golf Course.

**3.2 Construction of Golf Course.** Tenant shall, at its sole expense, develop, construct, maintain and operate the part of the Golf Course on the Leased Premises substantially in accordance with the terms and conditions of this Lease.

**3.3 Alterations.** At any time during the term of this Lease, Tenant, at its election and at its sole expense, may make structural alterations and additions to any portion of the Golf Course, without Landlord's consent, provided that: (i) the Leased Premises shall at all times be maintained in a good state of condition and repair consistent with golf courses in the State of

Georgia; (ii) the additions and alterations are constructed expeditiously with good materials in a good and workmanlike manner and in accordance with all requirements imposed by law; and (iii) the alterations and additions are constructed in such manner as in Landlord's reasonable discretion will not cause a violation of any federal, state or local regulations, or cause a danger to the public's health, safety or welfare. Landlord acknowledges and agrees that in fulfilling its obligations to construct and maintain the Golf Course Tenant may occasionally be required to make cuts through the Landfill Cap; provided, however, that no such cuts shall damage or interfere with Landlord's performance of any of its obligations with regard to the Landfill. Tenant shall give notice to the City prior to making any such alterations or additions to the Leased Premises. Landlord has the right to inspect any and all alterations and additions to the Golf Course to confirm compliance with this Lease. All alterations and additions made in accordance with this Section shall become part of the Golf Course and shall remain the property of Tenant during the term of this Lease and thereafter upon expiration or earlier termination of this Lease.

#### **SECTION 4. REPAIR AND MAINTENANCE.**

**4.1** Throughout the Term, Tenant, at its sole expense, shall keep and maintain the Leased Premises (including, but not limited to, the golf course holes, greens, fairways, irrigation systems, detention ponds and facilities, and cart paths) in a state of repair and condition comparable to similarly situated golf course facilities in the State of Georgia, taking into account the particular restrictions and circumstances inherent in the operation of a golf course located, in part, atop a landfill, and shall make all repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Property in that state of repair and condition. Landlord shall not be required to maintain, repair or rebuild all or any part of the Leased Premises except as may be necessary to bring the Landfill into compliance with all applicable Governmental Requirements and Environmental Laws; provided, however, that Landlord shall, promptly upon notice by Tenant, make any repairs, replacements or renewals necessitated by the negligence or willful misconduct of Landlord or its agents, servants or employees, and if Landlord does not make such repairs, replacements, or renewals in a reasonable and commercially practicable time, Tenant may undertake and obtain reimbursement from Landlord for any such repairs, replacements, or renewals. Tenant's obligations under this Section 4.1 shall include the repair of any damage to the approved cap of the Landfill (the "Landfill Cap") or to any other structures or facilities related to the operation of the Landfill caused by the development, construction, maintenance or operation of the Golf Course, or by the negligence or willful misconduct of Tenant or its agents, servants, employees or invitees.

**4.2** Subject to Section 4.1, throughout the Term, Landlord, at its sole expense, shall keep and maintain the Landfill in accordance with all closure and post-closure requirements of all existing or hereinafter applicable permits, and otherwise to ensure that the Landfill is in compliance with all applicable "Governmental Requirements" and "Environmental Laws" (as such terms are hereinafter defined). Without limiting the foregoing, Landlord shall install and maintain, at its sole expense, a methane extraction system (the "Gas System") on the entire Landfill that complies with all applicable Governmental Requirements and Environmental Laws. Landlord will use commercially reasonable efforts to perform any repairs, maintenance or other

work on the Landfill (including without limitation the Gas System) in such a manner as will minimize any interference with or impact upon the operation of the Golf Course.

**4.3** Notwithstanding the foregoing, the parties acknowledge that it is the Landlord's primary responsibility to properly maintain a closed landfill, including but not limited to a proper Gas System. From time to time, circumstances may arise that require Landlord to perform proper maintenance and preventative measures to keep the Landfill in compliance with applicable Governmental Requirements and Environmental Laws.

## **SECTION 5. USE OF LEASED PREMISES; LAWS PERTAINING THERETO**

**5.1 Use of Leased Premises for Permitted Purposes.** Tenant shall use the Leased Premises only for the Golf Course and related uses and other authorized purposes herein specified, and shall cause the Leased Premises to be operated and managed at all times in a manner consistent with reputable business standards and policies.

**5.2 Prohibited Uses.** Tenant shall not use or occupy, nor permit or suffer, the Leased Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, nor for any business, use or purpose which would violate the terms or impair the coverage of any insurance policies, nor in any manner that would impair the environmental integrity of the Landfill Cap or damage the Gas System or other City facilities necessary to maintain the Landfill.

**5.3 Materials Brought on Premises.** Tenant shall not suffer any act to be done or any condition to exist on the Leased Premises or any portion thereof or any improvement now or hereafter erected thereon, or any article to be brought thereon, which would make void or voidable any insurance then in force on the Leased Premises.

**5.4 Covenants Against Waste and Abandonment.** Tenant covenants, subject to the provisions of this Lease, not to do or suffer any waste, or damage to (other than in connection with the construction of the Golf Course and maintenance thereof), or diminution of the value of the Leased Premises or any of the Improvements, and not to abandon the Leased Premises during the term of this Lease, unless otherwise herein expressly authorized or agreed to by Landlord.

**5.5 Compliance with Laws and Insurance Requirements.** Tenant shall, at its sole cost and expense, promptly comply with any and all laws, rules, orders, ordinances, regulations, statutes and requirements (hereinafter collectively referred to as "Governmental Requirements"), of every governmental authority applicable to or affecting the Leased Premises, including but not limited to those imposed by the United States Environmental Protection Agency or Georgia Environmental Protection Division, or the condition, equipment, maintenance, use, occupation, or operation of the Leased Premises, provided that Landlord, and not Tenant, will be responsible for compliance with such Governmental Requirements in connection with the use and operation (past, present and future) of the Landfill, or arising out of the Pre-Existing Environmental Conditions (as defined in Section 5.8). Tenant shall also comply with any and all provisions and requirements of any fire, liability or other insurance policy required to be carried by this Lease. Tenant shall at all times maintain the Leased Premises in compliance with all applicable local zoning, building and health department regulations. Tenant shall timely respond to any

violations of such regulations arising out of Tenant's operations. The failure of Tenant to timely comply with the provisions in this Section 5.5 shall be considered a default by Tenant under this Lease.

**5.6 Environmental Compliance by Tenant.** Without limiting the generality of Section 5.5, Tenant agrees as follows:

(a) Tenant shall comply with any and every federal, state, and municipal law, statute, charter, or ordinance (including without limitation, applicable safety/environmental laws, such as the Federal Resource Conservation and Recovery Act of 1986, the Federal Comprehensive Environmental Response, Compensation, and Liability Act, the Federal Emergency Planning and Community Right to Know Act, the Federal Occupational Safety and Health Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Hazardous Materials Transportation Act, the Federal Toxic Substances Control Act, the Federal Water Pollution Control Act, and the Federal Insecticide, Fungicide and Rodenticide Act), as any of the same have been amended, and any rule, regulation, binding interpretation, permit, order, court order or consent decree promulgated or issued pursuant to any of the foregoing, which pertains to, governs or otherwise regulates the protection of health, worker safety or the environment (collectively "Environmental Laws"), affecting the activities and operations conducted by Tenant in and from the Leased Premises and shall timely perform, or cause to be performed, any investigation, testing, monitoring, repair, cleanup, detoxification, preparation of any closure or other required plans, or other removal, response, or remedial action relating to (i) the presence, management, disposal, release, or threatened release, escape, seepage, or leakage or any "Hazardous Materials" (as defined in Section 5.6(b)) at, on, in, from, or under all or a portion of the Leased Premises, which were brought onto or into the Leased Premises by Tenant or in connection with the Golf Course and customarily used in construction, operation, or maintenance of similar golf courses (collectively, the "Tenant Hazardous Materials") or (ii) the migration of Tenant Hazardous Materials from the Leased Premises to any other property, or (iii) the generation, transportation, storage, or disposal of Tenant Hazardous Materials onto or from the Leased Premises; provided, however, that Tenant is not responsible for any release of Hazardous Materials situated on or about the Leased Premises on or before the date of this Lease which were not brought onto the Leased Premises by Tenant.

(b) Tenant shall obtain and maintain in force all permits, licenses, registrations, and other authorizations and approvals needed under Environmental Laws to maintain, occupy and operate the Leased Premises for the uses herein permitted and shall not conduct or authorize the generation, transportation, recycling, treatment, storage or disposal at the Leased Premises of any radioactive materials, polychlorinated biphenyls, asbestos, petroleum, including crude oil or any fraction thereof, and any pollutant, contaminant, hazardous substances, hazardous materials, toxic substances, regulated substances or wastes as now or hereafter defined or regulated as such by any applicable Environmental Law (collectively "Hazardous Materials"), except as normally incident to such Tenant's permitted use of the Leased Premises and in compliance with all applicable Environmental Laws.

(c) If the presence, release, threat of release, placement on or in the Leased Premises, or the generation, transportation, storage, treatment, or disposal at the Leased Premises, or removal from the Leased Premises, of any Tenant Hazardous Materials gives rise to

liability (including, but not limited to, a response action, remedial action, or removal action) under Environmental Laws, Tenant shall promptly notify Landlord in writing of such event, and if and to the extent Tenant is responsible therefor, as herein specified, Tenant shall (i) after consultation with Landlord with respect to the manner of such removal, take any and all remedial and removal actions required by law to clean up the Leased Premises contaminated, impacted or otherwise affected by Tenant's activities, and mitigate exposure to liability arising from the Tenant Hazardous Materials, and (ii) indemnify and hold harmless Landlord from any loss, cost, damage or expense arising therefrom or pertaining thereto.

(d) Tenant shall use, and cause its managers and agents to use, the level of care that a reasonable and prudent golf course operator would use in insuring that its occupation of the Leased Premises are in compliance with all Environmental Laws and in accordance with applicable industry standards for similar golf courses.

**5.7 Right to Contest Requirements.** Tenant shall have the right to contest the validity of any Governmental Requirements (including, but not limited to, Environmental Laws) or the application thereof to the Leased Premises, at Tenant's sole cost and expense, subject to the requirements hereinafter specified. During such contest, compliance with any such contested Governmental Requirements may be deferred by Tenant but only on the condition that the Leased Premises is not subject to loss or forfeiture by reason thereof. Any such proceedings instituted by Tenant shall be commenced as soon as is reasonably practicable after the issuance of any such contested matters and shall be prosecuted to final adjudication with reasonable dispatch. Tenant shall promptly comply with any such Governmental Requirements and compliance shall not be deferred if at any time the Leased Premises, or any part thereof, shall be in danger of being forfeited or lost or if Landlord shall be in danger of being subjected to criminal liability or penalty by reason of noncompliance therewith. Landlord agrees that it will not oppose Tenant in any such contest of Tenant if so requested to such extent as may reasonably be necessary in order for Tenant to fully prosecute such contest, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save Landlord harmless from any such costs or expenses.

**5.8 Landlord's Responsibility for Pre-existing Environmental Conditions.** Notwithstanding anything in this Section 5 to the contrary, Landlord acknowledges and agrees that Tenant and its affiliates, employees and agents have not (A) caused in any way any of the environmental conditions concerning the Leased Premises prior to the date hereof, including but not limited to any Hazardous Materials disposed of, stored, or otherwise present at the Leased Premises, and any contamination of or effect upon any land, groundwater, surface water, soil, sediments, or air therefrom (collectively, the "Pre-existing Environmental Conditions"), and (B) notwithstanding any provision to the contrary in this Lease, Tenant is not in any way responsible for or obligated to any person or entity for any liabilities, judgments, costs, fines, or expenses, including attorneys' fees, response costs, and related expenses pertaining to or arising out of any Pre-existing Environmental Conditions or the subsequent remediation thereof or any other environmental problem at the Leased Premises prior to the date hereof (including but not limited to any and all environmental and/or health and safety matters arising out of the operation (past, present or future) of the Landfill) requiring or claimed by anyone to require remediation, payment or other performance of any other obligations under any applicable Environmental

Laws or for any violation prior to or after the date hereof of any Environmental Laws by any person or entity other than Tenant or its employees or agents. Landlord hereby releases Tenant from any responsibility or liability with respect to any matters arising out of the Pre-existing Environmental Conditions, unless such responsibility or liability arises solely because the Landfill is being used as a golf course. If the presence, release, threat of release or placement on or in the Landfill of any Hazardous Materials arising out of Pre-existing Environmental Conditions gives rise to liability (including but not limited to, a response action, remedial action, or removal action) under any of the Environmental Laws, Landlord shall promptly notify Tenant in writing of such event, and Landlord shall (i) after consultation with Tenant (Tenant consent is not required) with respect to the manner of such removal or remediation, take any and all remedial and removal actions required by law to clean up and respond to the Pre-existing Environmental Conditions, and take reasonable steps to mitigate damage to the Golf Course arising out of Pre-existing Environmental Conditions, and (ii) to the extent allowed by law, Landlord shall indemnify and hold harmless Tenant, and its members, officers, employees and agents, from any loss, cause of action, liability, damage or expense arising therefrom or pertaining thereto. Landlord and Tenant further agree that in the event (y) Landlord shall fail to operate and/or maintain the Landfill (including without limitation the Gas System) in accordance with all applicable Governmental Requirements (including Environmental Laws), or (z) any governmental authority legally requires remediation activity at the Leased Premises arising out of the Pre-existing Environmental Conditions and Landlord shall fail to promptly commence and diligently prosecute, in a manner that is commercially reasonable for landfill repairs, the required remediation, then in either such event and after notice to Landlord and a reasonable time for Landlord to correct such failure, Tenant shall have the right to perform the defaulted obligation of Landlord, and all costs and expenses incurred by Tenant in connection therewith shall be paid by Landlord to Tenant upon demand, together with interest at the rate set forth in Section 2.4, above.

In addition, if such failure by Landlord materially disrupts or prevents Tenant from operating the Golf Course, as reasonably determined by Tenant, Landlord acknowledges and agrees that Tenant shall have the right to terminate this Lease by providing Landlord with sixty (60) days' prior written notice. In the event Tenant elects to terminate the Lease as provided above, the obligations of Tenant and Landlord under this Lease shall accrue through the date of termination. In addition, in the event Tenant elects to terminate the Lease as provided above, Landlord shall reimburse Tenant for Tenant's costs and expenses incurred in constructing and bringing into operation the Golf Course, with such repayment to include the repayment by Landlord to Tenant of all operating losses incurred by Tenant relating to the operation of the Golf Course (the "Termination Repayment"). Upon payment by Landlord of the Termination Repayment, the parties shall have no further obligations under this Lease except for such obligations which survive termination of this Lease. The provisions of this Section 5.8 and the obligations of the parties hereunder shall survive any termination of this Lease.

**5.9 Names and Signs.** Tenant shall have the right, in its discretion, to select the names by which the Leased Premises and the Golf Course shall be generally known. Tenant shall have the right to install and maintain such signs or insignias on the Leased Premises and Golf Course as it may find necessary, useful or desirable, subject to the same complying with all applicable Governmental Requirements, including but not limited to the City of Atlanta sign ordinance, as may be amended from time to time.

**5.10 Subsurface and Other Conditions.** Tenant acknowledges that Hazardous Materials may be located at the Landfill, and that Tenant shall, prior to commencing construction of the Golf Course, submit to Landlord for review and approval its plans and specifications for such work detailing the manner in which Tenant intends to address any Hazardous Materials discovered by Tenant during the course of construction. Landlord and Tenant acknowledge and agree that Tenant will not be responsible for the removal, remediation, or disposal of any Hazardous Materials from the Landfill; provided, however, that Tenant shall have the right to remove any such Hazardous Materials in connection with its development, construction, operation and/or maintenance of the Golf Course, so long as (i) Tenant does so at its sole cost, expense, and liability, and causes any such Hazardous Materials to be delivered to a landfill that is permitted under applicable Governmental Requirements and Environmental Laws to receive such Hazardous Materials, (ii) Tenant repairs any damage to the Landfill and/or the Landfill Cap occasioned by such removal, and (iii) provided that Tenant complies with all Environmental Laws, including but not limited to any applicable requirements imposed by the United States Environmental Protection Agency or Georgia Environmental Protection Division.

**5.11 Survival.** The agreements, covenants and obligations of Landlord and Tenant under Sections 5.6 and 5.8 of this Lease shall survive any termination of this Lease, whether by default or expiration of the Term of this Lease, indefinitely, provided, however, that Tenant's performance of any of its obligations hereunder shall be limited to amounts paid or duties performed by the Subtenant pursuant to the Sublease.

## **SECTION 6. [INTENTIONALLY OMITTED]**

## **SECTION 7. TAXES, ASSESSMENTS AND OTHER CHARGES.**

**7.1 Landlord to Pay Real Estate Taxes.** Landlord agrees to pay before delinquency all real estate taxes and assessments, whether general or special, ordinary or extraordinary, assessed, levied or imposed at any time during the Term by any governmental authority upon or against the Leased Premises relating or applicable to operation of the Leased Premises as a Landfill, including any certified agricultural use recoupment tax payable as a result of the prior use of the Leased Premises. Tenant shall be responsible for any Real Estate Taxes relating or applicable to use of the Leased Premises as a Golf Course. Proof of timely payment of such taxes and assessments shall be delivered promptly to Tenant upon Tenant's written request therefor.

**7.2 Tenant to Pay Income and Sales Taxes.** Tenant acknowledges and agrees that it will be responsible for payment of all income and sales taxes associated with the ownership and operation of the Golf Course.

## **SECTION 8. UTILITIES.**

Tenant, at its sole cost and expense (including all costs for extension and connection with such utilities), shall obtain and promptly pay for all utility services furnished to or consumed on the Property in connection with the development, construction, operation and maintenance of the Golf Course, including, but not limited to, electricity, gas, water, sewer, heat, telephone, garbage collection, and all charges related to any of these services. Landlord, at its sole cost and expense,

shall obtain and promptly pay for all utility services furnished to or consumed on the Property in connection with the maintenance and operation of the Landfill including but not limited to the utility costs associated with the Gas System and any other monitoring or remediation associated with the Landfill.

## **SECTION 9. RISK MANAGEMENT AND ALLOCATION.**

**9.1 Required Liability Insurance.** Tenant will maintain, at Tenant's sole expense, a policy or policies of comprehensive public liability insurance, naming the City of Atlanta as an additional insured, with coverage of not less than \$500,000.00 for injury to or death of one person, \$1,000,000.00 for injury or death or more than one person in any single occurrence, and \$500,000.00 for any single occurrence of property damage. Tenant shall carry automobile liability coverage on any corporate or personal vehicles in the amount of \$500,000.00. Nothing in this paragraph is intended to imply any obligation on the part of Tenant to carry pollution legal liability coverage or any other insurance coverage relating to the Pre-Existing Environmental Conditions or any other liability related to environmental matters whatsoever.

### **9.2 Intentionally Deleted.**

**9.3 Indemnification by Tenant.** Except as otherwise expressly provided in Sections 5.6, 5.8 and 9.4 hereof and in any other provisions of this Lease, and to the extent not prohibited by law, Tenant agrees that it shall be liable for all property damage, including damage to the Landfill (except to the extent caused by acts or omissions of Landlord and assumed as a Liability of Landlord pursuant to Subsection 9.4 of this Lease), and any bodily injury associated with the development, construction, operation, maintenance, and use of the Golf Course. Tenant agrees to hold Landlord, its agents, servants and employees harmless and to indemnify each of them against claims and liabilities, including reasonable attorneys' fees, for injuries to all persons and damage to or theft, misappropriation or loss of property occurring in or about the Leased Premises arising from (i) the development, construction, operation, maintenance, and use of the Golf Course, (ii) Tenant's occupancy of the Leased Premises or the conduct of its business therefrom, or (iii) any activity, work, or thing done, permitted or suffered by Tenant, its agents or employees in or about the Leased Premises. The foregoing indemnity shall not include any claims or liabilities arising solely from the negligence or willful misconduct of Landlord, its agents, servants, employees or contractors. Landlord expressly acknowledges and agrees that Tenant is not indemnifying or holding Landlord or any other party harmless for any Pre-existing Environmental Conditions, and that Landlord shall remain responsible for all Pre-existing Environmental Conditions that do not result solely from use of the Landfill as a golf course, in accordance with Section 5.8 of this Lease.

**9.4 Liability of Landlord.** Except as otherwise expressly provided in Section 9.3 hereof and in any other provisions of this Lease, and to the extent not prohibited by law, Landlord agrees that it shall be liable for all bodily injury and property damage (including off-site contamination and damage to the Golf Course, except such property damage to the Golf Course that occurs not as a result of the fault of Landlord but instead results unavoidably from the construction of a golf course on a landfill) arising from (i) Preexisting Environmental Conditions, (ii) Landlord's operation and maintenance of the Landfill (including without limitation the Gas System), (iii) Landlord's failure to operate and/or maintain the Landfill

(including without limitation the Gas System) in accordance with all applicable Governmental Requirements and Environmental Laws, (iv) Landlord's failure to promptly commence and diligently prosecute, in a commercially reasonable manner, any required remediation of any Pre-existing Environmental Conditions, and (v) any activity, work, or thing done, permitted or suffered by Landlord, its agents, servants, employees or contractors in or about the Landfill or elsewhere on the Leased Premises .

## **SECTION 10. FIRE AND CASUALTY INSURANCE.**

Tenant at its sole expense shall keep the Leased Premises insured against loss by fire and all of the risks and perils usually covered by an extended coverage endorsement to a policy of fire insurance upon property comparable to the Leased Premises in its use as part of a golf course, including vandalism and malicious mischief endorsements, in an amount equal to the insurable value of the insurable Improvements constructed by Tenant on the Leased Premises. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord shall be named as an additional insured under such policy. However, Landlord waives all rights and disclaims any interest in any insurance adjustments and settlements with respect to damage solely to the Golf Course.

## **SECTION 11. CONDEMNATION AND CASUALTY.**

**11.1 Casualty.** If the portion of the Leased Premises shall be damaged or rendered wholly or partially untenantable by fire or other casualty during the Term, Base Rent shall abate during such period, and Tenant shall promptly rebuild or repair such part of the Leased Premises as part of the Golf Course to substantially its former condition with (and to the extent of) the proceeds of insurance at Tenant's sole cost. Any such rebuilding or repair shall be in compliance with all applicable Government Requirements, and shall also maintain the integrity of the Landfill Cap.

**11.2 Condemnation.** If the portion of the Golf Course located on the Leased Premises shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("Condemning Authority") having the power of eminent domain, or is sold under threat of the exercise of that power (any such taking or sale, a "Taking"), this Lease shall continue and there shall not be any abatement of the Base Rent. Any award or compensation paid on account of any taking or sale described in this Section 11.2 shall be paid to Tenant according to the value of the Golf Course and Landlord to the value, if any, of the Landfill. In the event the condemnation proceedings result in a taking of a material portion of the Leased Premises (i.e., one or more golf holes), Landlord and Tenant agree that the obligations of the parties under this Lease shall be equitably adjusted, and if Tenant is not satisfied with the equitable adjustment, Tenant shall have the right to terminate this Lease upon written notice to Landlord. Landlord agrees that it will not oppose Tenant in any contest of a pending or threatened Taking undertaken by Tenant, if requested to do so by Tenant, to such extent as may reasonably be necessary in order for Tenant to fully prosecute such contest, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save Landlord harmless from any such costs or expenses.

**SECTION 12. [INTENTIONALLY OMITTED]**

**SECTION 13. TENANT'S DEFAULTS; REMEDIES.**

**13.1 Default.** Any of the following events shall constitute an "Event of Default" by Tenant hereunder: (a) Tenant fails to make punctual payment of the Base Rent or any other amount to be paid under this Lease by Tenant, and the failure continues for 30 days after Tenant's receipt of written notice thereof from Landlord; (b) Tenant fails to perform or observe any other covenant or condition to be performed or complied with by Tenant under this Lease, and the failure continues for 30 days after Tenant's receipt of written notice thereof from Landlord; or, if the default complained of is of such a nature that it cannot reasonably be completely cured or remedied within such 30-day period, Tenant fails to diligently commence to cure the default during the 30-day period, or does not thereafter, with reasonable diligence and in good faith, proceed to remedy or cure the default; (c) Tenant files or there is filed against Tenant a petition in bankruptcy or a petition or answer seeking reorganization under the Federal Bankruptcy Code or any other applicable statute which is not dismissed within 60 days; or (d) an order is entered adjudicating Tenant a bankrupt or approving an involuntary petition seeking a reorganization of Tenant under the Federal Bankruptcy Code or any other applicable statute or appointing a receiver, trustee or conservator for all or any substantial part of the property of Tenant, and the order is not vacated or stayed within 60 days of entry.

**13.2 Landlord's Rights Upon Event of Default.** Upon the occurrence of an Event of Default, Landlord may, at its option, not earlier than sixty (60) days after such occurrence, but in any event only during the continuance of the Event of Default: (i) file and maintain a suit in a court of competent jurisdiction against Tenant claiming monetary damages, if any, resulting from such Event of Default, or (ii) seek appropriate injunctive relief. Landlord and Tenant acknowledge and agree that the foregoing remedies shall be the sole and exclusive remedies available to Landlord upon the occurrence of an Event of Default, and Landlord hereby waives any and all other remedies at law or in equity for an Event of Default, including without limitation any right to terminate this Lease.

**13.3 Default by Landlord.** If Landlord fails to perform or observe any covenant or condition to be performed or complied with by Landlord under this Lease, and the failure continues for 30 days after Landlord's receipt of written notice thereof from Tenant, or, if the default complained of is of such a nature that it cannot reasonably be completely cured or remedied within such 30-day period, Landlord fails to diligently commence to cure the default during the 30-day period, or does not thereafter, with reasonable diligence and in good faith, proceed to remedy or cure the default, then Tenant shall be entitled to (i) perform the obligation in default for the account of and at the expense of Landlord (but Tenant shall have no obligation to do so), and all amounts incurred by Tenant to fulfill such obligation of Landlord shall bear interest at the rate of twelve percent (12%) per annum from the date such amounts are incurred until paid, or (ii) avail itself of any and all remedies available at law or in equity by reason of such default.

**SECTION 14. SURRENDER.**

At the expiration or earlier termination of the Term, Tenant shall yield the Leased Premises to Landlord in good order and repair. All Improvements associated with the Golf Course shall at all times remain the property of Tenant, and upon the expiration or earlier termination of this Lease, Tenant may remove any of such Improvements, together with its trade fixtures, equipment, machinery, furniture, furnishings and other personal property, from the Leased Premises provided that Tenant repairs any damage which results to the Lease Premises from such removal and makes the necessary provisions so that the removal of such Improvements and other property will not damage the Landfill or the Landfill Cap and will not cause any non-compliance with applicable Governmental Requirements (including Environmental Laws). In the event Tenant fails to so remove those items, the items shall be deemed abandoned and shall be the property of Landlord. On or before the expiration or termination of this Lease, Tenant shall cause any mortgages, liens or encumbrances created by, through or under Tenant to be fully released and discharged. Any liquor permits, or other operational permits obtained by Tenant for the Leased Premises, shall remain the property of Tenant upon expiration or earlier termination of the Term and may be separately transferred by Tenant.

## **SECTION 15. ASSIGNMENTS AND SUBLEASES; FINANCING PROVISIONS.**

### **15.1 Assignments and Subleases.**

(a) Tenant shall have the right, without Landlord's approval, but with notice to Landlord, to sublease or license, and to permit such sublessee or licensee to further sublease or license, all or any portion of the Leased Premises to any third party. In the event of any sublease, Landlord shall, at the request of Tenant, or such sublessee, notify such sublessee of any default by Tenant under this Lease and permit such sublessee to cure such default within the same cure periods provided to Tenant. Landlord hereby acknowledges that Tenant will enter into the Sublease with Subtenant. Tenant shall not assign this Lease without the approval of Landlord, such approval not to be unreasonably withheld or delayed. Any assignment shall not nullify this provision, and all later assignments shall be made likewise only after the prior written consent of Landlord is obtained in each instance. Tenant covenants and agrees to provide Landlord with an executed counterpart of any sublease or assignment permitted hereunder within ten (10) days following execution thereof.

(b) Upon the execution and delivery of the Sublease simultaneously herewith, the Subtenant will have assumed all rights, obligations and duties of Tenant under this Lease, and notwithstanding anything to the contrary contained within this Lease, Landlord hereby agrees that it shall look solely to the Subtenant for the performance thereof for so long as the Sublease remains in effect so that Tenant shall not have any obligation, duty or liability under this Lease, including, without limitation, Sections 1, 2, 3, 4.1, 5, 9.3 and 11, the Sublease, or other sub-leases or licenses, other than assisting Landlord in the enforcement of rights under the respective documents. Following execution and delivery of the Sublease, the Authority shall, upon the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed, have the right to assign any of its remaining interest herein, as such interest is described in the preceding sentence, to a third-party; provided, however, that in no event may the terms or conditions of such assignment in any way amend, modify or impair the validity or any individual terms of this Lease, including, without limitation, Section 1.1 hereof.

## **15.2 Mortgage of Fee.**

It is understood by Landlord that the Improvements constructed by Tenant may be financed by one or more construction, development, gap, standby, permanent and/or like kind loans. Accordingly, Tenant shall have the right, at any time and from time to time during the Term, to encumber this Lease, the leasehold estate created by this Lease and all Improvements on the Leased Premises, by mortgages, deeds to secure debt and other security instruments (each, a "Mortgage") and refinance any of such loans, and Landlord specifically covenants and agrees that Landlord's fee simple estate in the Leased Premises and Landlord's interest under this Lease are and shall be subject and subordinate to the lien and security interest created by any first in priority Mortgage. It is the intention of Landlord that the subordination provisions of this Section 15.2 shall be self-operative and that no further instrument or instruments shall be required to effect the subordination of Landlord's fee simple interest in the Leased Premises and Landlord's interest in the leasehold estate created by this Lease, but Landlord agrees to join in the execution of each such Mortgage and to execute such other documents as may be reasonably required by the holder of each such Mortgage in order to confirm and evidence such subordination. It is specifically understood and agreed that in no event shall Landlord have any personal liability with respect to any loan obtained by Tenant in connection with the Leased Premises, that Landlord shall not be required to join in the execution of any note evidencing any such loan and that the holder of any note evidencing any such loan shall have no claim against Landlord for any amount owing by Tenant with respect to such loan and no right to sue Landlord for damages in the event of Tenant's failure to repay such loan.

## **15.3 Mortgage of Leasehold.**

(a) **Applicability of Section 15.3.** The provisions of this Section 15.3 shall be applicable to and shall govern in the case of any loan secured by a Mortgage which by its terms does not encumber Landlord's fee simple estate in the Leased Premises and Landlord's interest in the leasehold estate created by this Lease. The holder of any such Mortgage is hereinafter referred to as a "Leasehold Mortgagee".

(b) **Leasehold Mortgagees' Right to Notice.** Landlord hereby expressly agrees to use its best efforts to promptly give to each Leasehold Mortgagee notice of each default by Tenant hereunder, of the occurrence of an Event of Default and of Landlord's election to exercise its remedies under Section 13, above, each such notice to consist of a duplicate copy of such notice sent to Tenant pursuant to Section 13, above, or with respect to an Event of Default, a written statement to such Leasehold Mortgagee that an Event of Default has occurred; provided, however, that Landlord shall be obligated to forward such notices only to such Leasehold Mortgagees as have notified Landlord, in writing, of the execution and delivery of the Mortgages held by them and of the address to which such notices are to be mailed. Landlord agrees that it shall take no action prejudicial to the interest of such Leasehold Mortgagees, unless and until Landlord has given notice as herein required and the right to cure as hereinafter provided. Tenant shall use its best efforts to notify Landlord of the existence of such Leasehold Mortgagees.

(c) **No Cancellation, Rejection, Surrender, Amendment or Modification.** No cancellation, rejection, surrender, amendment or modification (other than by expiration of the

Term) of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee. Without limiting the generality of the foregoing, no rejection of this Lease by Tenant or by a trustee in bankruptcy for Tenant shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee.

(d) **Default Notice; Rights to Cure Defaults.** Landlord shall, on serving Tenant with any notice of any default under this Lease, simultaneously serve a copy of such notice upon each Leasehold Mortgagee. No such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee in the manner specified herein. From and after the date such notice has been given to a Leasehold Mortgagee, each such Leasehold Mortgagee shall have the same period, after its receipt of such notice, for remedying any default or causing the same to be remedied, as is given to Tenant after the giving of such notice to Tenant, plus an additional period of thirty (30) days thereafter, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of the Leasehold Mortgagee as if the same had been performed by Tenant. Tenant hereby authorizes each Leasehold Mortgagee to take any such action that such Leasehold Mortgagee deems necessary to cure any such default and does hereby authorize entry upon the Leased Premises by each such Leasehold Mortgagee for the purpose of curing such defaults.

(e) **Procedure on Default.**

(i) In the event that Landlord notifies any Leasehold Mortgagee of a default or Event of Default by Tenant hereunder, such Leasehold Mortgagee shall have the right, which right shall be exercised, if at all, within fifteen (15) days after such Leasehold Mortgagee is notified of such default or Event of Default, to postpone Landlord's exercise of any remedies therefor for a period of not more than six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period, (i) pay or cause to be paid any Base Rent and other payments and charges as the same become due and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (A) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Leased Premises provided that such lien, charge or encumbrance is junior in priority to the lien of the Mortgage held by such Leasehold Mortgagee and does not effect Landlord's fee simple interest in the Leased Premises, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, and (ii) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(ii) If at the end of such six (6) month period such Leasehold Mortgagee is complying with subsection 15.3(e)(i) and such Leasehold Mortgagee is prohibited by any process or injunction issued by any court of competent jurisdiction or by reason of any action in any court of competent jurisdiction from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the exercise of Landlord's remedies for the Event of Default shall be further postponed and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds in good faith and with

due diligence to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means. Nothing in this subsection 15.3(e)(ii), however, shall be construed to extend this Lease beyond the original Term, nor to require a Leasehold Mortgagee to continue foreclosure proceedings after an Event of Default has been cured. In the event that such Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(iii) In the event that a Leasehold Mortgagee complies with this Section 15.3 then, upon the acquisition of Tenant's right, title and interest herein by such Leasehold Mortgagee or its designee, or, subject to the provisions of Section 15.1, any other purchaser or assignee at a foreclosure sale or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(iv) The granting of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, and any conveyance of the leasehold estate created hereby from Tenant to a Leasehold Mortgagee by foreclosure or otherwise, shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created requiring the assumption of the obligations of Tenant hereunder, but such purchaser or assignee of this Lease and of the leasehold estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such leasehold estate. Upon such conveyance, Landlord shall recognize such Leasehold Mortgagee, or any other purchaser or assignee, as Tenant hereunder. From and after the date of such sale or assignment, the holder of any Mortgage then existing or thereafter placed on the leasehold estate hereby created shall be considered a Leasehold Mortgagee as contemplated by this Lease, and the Leasehold Mortgagee thereunder shall be entitled to receive the benefit of any and all provisions of this Lease intended for the benefit of a Leasehold Mortgagee, subject to the obligations and duties of the Leasehold Mortgagee under this Lease.

**(f) New Lease.**

(i) As set forth in Section 13.2, above, it is the intention of the parties that this Lease shall not be terminable by reason of an Event of Default by Tenant hereunder. Notwithstanding such intention, in the event that this Lease is terminated for any reason whatsoever, including, without limitation, as a result of the rejection of this Lease by Tenant's trustee in bankruptcy pursuant to 11 U.S.C. §365 or any equivalent provision of law, Landlord shall provide each Leasehold Mortgagee with written notice that the Lease has been so terminated, and Landlord shall enter into a new lease (hereinafter referred to as the "New Lease") of the Leased Premises with any Leasehold Mortgagee or its designee for the remainder of the Term with the same covenants, conditions and agreements (excluding any requirements which have been satisfied by Tenant prior to termination) as are contained herein, subject only to (i) the conditions of title as the Leased Premises are subject to on the date of the execution of the original Lease, (ii) the right, if any, of any parties then in possession of any part of the Leased Premises, and (iii) the lien and encumbrance of any security instrument encumbering Landlord's fee simple interest in the Leased Premises pursuant to subsection 15.3(f)(iii), below, (but which

security instrument shall remain subject and subordinate to the New Lease) upon receipt by Landlord of a written request from such Leasehold Mortgagee on or before sixty (60) days after the date of Landlord's notice of termination given pursuant to this subsection 12.3(f)(i) and thereafter, the tenant under the New Lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease. The obligations of Landlord to enter into a New Lease shall be subject to the following conditions:

(1) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Landlord shall have incurred by reason of Tenant's default and such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or any other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow the tenant named therein as an offset against the sums otherwise due under this subsection 15.3(f)(i), an amount equal to the net income derived by Landlord from the Leased Premises during the period from the date of termination of this Lease to the date of beginning of the term of such New Lease;

(2) Such Leasehold Mortgagee or its designees shall agree to cure any defaults of Tenant under the terminated Lease of which Landlord shall have notified Leasehold Mortgagee; and

(3) The tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such tenant has ownership of the leasehold estate hereby created.

(ii) The new tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such person has an ownership of the leasehold estate created by such New Lease.

(iii) Landlord shall have the right, without the consent of Tenant, at all times to encumber Landlord's fee simple interest in the Leased Premises and Landlord's interest in this Lease, provided that each such security instrument placed on the Leased Premises by Landlord shall by its terms be subject and subordinate to this Lease, to the right, title and interest of Tenant in the Leased Premises, and to the rights and interests of any Leasehold Mortgagee hereunder in this Lease (including, without limitation, the right of any Leasehold Mortgagee to enter into a New Lease) and the interest of Tenant in the leasehold estate hereby created. Upon the request of Tenant or any Leasehold Mortgagee, Landlord shall obtain (at Tenant's sole cost and expense) an agreement in recordable form in which the holder of the mortgage on Landlord's fee simple interest in the Leased Premises and Landlord's interest in this Lease acknowledges that such mortgage is subordinate to this Lease and to the rights of Tenant and such Leasehold Mortgagee as set forth above.

(iv) The new tenant under such New Lease shall, upon entering into such New Lease, acquire all of the right, title and interest of Tenant in and to any and all subleases of all or any part of the Leased Premises and the Improvements and upon the request

of such new tenant, Tenant shall execute, acknowledge and deliver to such new tenant an assignment in recordable form evidencing such conveyance.

**15.4 Limited Liability of Leasehold Mortgagee.** For so long as any Leasehold Mortgagee or its designee is the owner of the leasehold estate hereby created, Landlord shall look solely to the interest of such Leasehold Mortgagee or its designee in the Leased Premises and the Improvements in the event of the breach or default by such Leasehold Mortgagee or its designee under the terms of this Lease, and Landlord hereby agrees that any judgment or decree to enforce the obligations of such Leasehold Mortgagee or its designee shall be enforceable only to the extent of the interest of such Leasehold Mortgagee or its designee in the Leased Premises and the Improvements, and any such judgment shall not be subject to execution on nor be a lien on, any assets of such Leasehold Mortgagee or its designee other than the Leased Premises and the Improvements.

**15.5 No Merger.** So long as any Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Leased Premises and the leasehold estate of Tenant herein created shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant, or by a third party, by purchase or otherwise.

**15.6 Notices.** Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to this Section 15, and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 18 of this Lease. Such notices, demands and requests shall be given in the manner described in Section 18 of this Lease and shall in all respects be governed by the provisions of that section.

**15.7 Subordination of Landlord's Lien.** Landlord does hereby subordinate any and all liens or claims of liens against Tenant, the Leased Premises, the Improvements and all other trade fixtures and equipment of Tenant located on the Leased Premises, arising from this Lease or the relationship of Landlord and Tenant to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing.

**15.8 Separate Agreement.** Landlord shall, on request in connection with the financing or refinancing of Tenant's leasehold interest in the Leased Premises, execute, acknowledge and deliver to a Leasehold Mortgagee an agreement, prepared at the sole cost and expense of Tenant, in form satisfactory to the Leasehold Mortgagee and Landlord among Landlord, Tenant and the Leasehold Mortgagee, agreeing to all the provisions of this Section 15. In addition, Tenant shall reimburse Landlord for any reasonable attorneys' fees and expenses actually incurred in reviewing such agreement.

**SECTION 16. [INTENTIONALLY OMITTED].**

**SECTION 17. QUIET ENJOYMENT AND TITLE.**

So long as Tenant pays the rent and performs Tenant's covenants as set forth in this Lease, Tenant shall peacefully and quietly hold the Leased Premises throughout the Term free from hindrance or molestation by Landlord and others claiming by, through, or under Landlord,

but subject, however, to the terms of this Lease and in particular Landlord's duty to fulfill its responsibilities to monitor, maintain, and repair the Landfill in accordance with all Governmental Requirements and Environmental Laws.

**SECTION 18. NOTICES.**

**18.1 Notice Procedure.** Any notice required or permitted to be given to a party under the provisions of this Lease shall be in writing and shall be deemed given if mailed by certified or registered United States mail, postage prepaid, return receipt requested, addressed as follows:

Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Tenant: Atlanta Development Authority  
86 Pryor Street  
Suite 300  
Atlanta, GA 30303  
Attn: President

**18.2 Change of Address.** Either party may, from time to time, change its notice address by written notice to the other party at its then-current mailing address, in accordance with the provisions of this Section.

**SECTION 19. WAIVER OF COVENANTS.**

No waiver of any condition or covenant of this Lease shall be deemed to imply or constitute a further waiver of the same or any other like condition or covenant.

**SECTION 20. ESTOPPEL CERTIFICATE.**

When needed by either party in connection with mortgage financing or sale of the Leased Premises or the Golf Course, the other party shall execute an estoppel certificate to evidence (a) the existence or non-existence of any default under this Lease, any amendment to this Lease, or any prepayment of rentals, and (b) such other facts with respect to this Lease as may be reasonably required.

**SECTION 21. RECORDING OF LEASE.**

The parties acknowledge and agree that a Memorandum of this Lease shall be submitted for recording in Fulton County, Georgia.

**SECTION 22. ZONING AND PERMITS.**

Tenant shall, at its sole expense, secure all approvals and permits necessary for the development, construction, operation and maintenance of the Golf Course. Landlord will

support and cooperate with Tenant's efforts to obtain such approvals and permits to the extent permitted by law, including without limitation and to the extent permitted by law, (i) providing necessary documents and information to Tenant and any permitting authorities, (ii) joining in applications for building permits and certificates of occupancy, and all other applications for licenses, permits and approvals necessary for the development, construction, operation and maintenance of the Golf Course for which the signature of Landlord or the owner is required by applicable law, (iii) attending meetings with Tenant and any permitting authorities to discuss such approvals and permits, and (iv) otherwise advocating the issuance of all such approvals and permits.

### **SECTION 23. EASEMENTS.**

Upon request of Tenant, Landlord will make or join in grants of easements on or across the Leased Premises and other property owned by Landlord adjacent to the Leased Premises for construction, ingress/egress, electric, gas, telephone, water, sewer and other public utilities and facilities reasonably necessary or convenient for the construction or operation of the Golf Course, including, without limitation, cuts through the Landfill Cap, provided, however, that no activities of Tenant shall damage or interfere with Landlord's performance of any of its obligations with regard to the Landfill (including, without limitation, construction and operation of the Gas System).

### **SECTION 24. CONDITION OF LEASED PREMISES.**

**24.1 Warranty Respecting Condition of Leased Premises.** Landlord hereby warrants, represents, and covenants to Tenant that: (i) as of the date hereof, the Leased Premises comply with all applicable zoning and use requirements and restrictions, (ii) to Landlord's knowledge there is no Governmental Requirement or other condition which would prevent Tenant from obtaining all zoning approvals and/or variances, licenses, permits and other approvals required from all governmental authorities or from private parties to facilitate the operation of the Leased Premises for the purposes herein specified, and (iii) Landlord has no knowledge of any federal, state or county or municipal plans to change the highway or road system in the vicinity of the Leased Premises, of any threatened or pending condemnation proceeding involving the Leased Premises, or of any plans for improvements which would result in a special assessment against the Leased Premises. Landlord covenants and agrees that it will cooperate with Tenant in the application for and pursuit of any zoning approvals and/or variances, licenses, permits and other approvals which may be necessary to facilitate the development, construction, operation and maintenance of the Leased Premises for the purposes contemplated herein.

**24.2 Condition of Leased Premises when Term of Lease Commences.** Except as otherwise expressly provided in Sections 5.6, 5.8 and 24.1 or in any other provisions of this Lease, the Leased Premises are being leased in their presently existing "as is" condition, and no promise of Landlord to alter, remodel or improve the Leased Premises has been made by Landlord, and except as otherwise expressly provided in this Lease, no representation by Landlord or its agents respecting the condition of the Leased Premises has been made to Tenant or relied upon by Tenant. Notwithstanding the foregoing, Landlord hereby covenants and agrees that it shall, at its sole cost and expense and on or before \_\_\_\_\_, 200\_, complete the

construction of the Gas System and cause the Landfill and the Gas System to comply with all applicable Governmental Requirements and Environmental Laws.

#### **SECTION 25. NET LEASE.**

Except as otherwise expressly provided in this Lease, this Lease is a "net" lease. Tenant shall pay all Base Rent and all other charges due under this Lease without notice or demand and free from any charges, taxes, assessments, impositions, claims, damages, expenses, deductions, set-offs, counterclaims, abatements, suspensions or defenses of any kind. It is the intention of the parties that the obligations of Tenant shall be separate and independent covenants, that the Base Rent and all other charges payable by Tenant shall continue to be payable in all events, and that the obligations of Tenant shall continue unaffected unless the requirement to pay or perform the same shall have been terminated or modified pursuant to an express provision of this Lease. Except as otherwise expressly provided in this Lease, Tenant shall pay and be responsible to Landlord for all costs, expenses, obligations, liabilities and acts necessary to and for the proper use, operation, maintenance, care and occupancy of the Golf Course on the Leased Premises. Tenant waives all rights now or in the future conferred by law to quit, terminate or surrender this Lease or the Leased Premises or to any abatement, suspension, deferment or reduction of the rent or any other charges and under this Lease, except as otherwise expressly provided in this Lease.

#### **SECTION 26. WAIVER.**

No waiver of any condition or covenant of this Lease shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of either party of any right or remedy in law or otherwise.

#### **SECTION 27. BINDING EFFECT.**

This Lease and the covenants and agreements of the parties shall be binding upon and inure to the benefit of Landlord and Tenant and their successors and assigns.

#### **SECTION 28. PARTIAL INVALIDITY.**

In the event any clause, term or condition of this Lease shall be determined to be illegal or unenforceable under any applicable governmental laws, orders, rules or regulations, this Lease shall remain in full force and effect as to all other terms, conditions and provisions.

#### **SECTION 29. OPTION TO PURCHASE.**

Tenant shall have the option to purchase Landlord's fee interest in the Leased Premises at any time during the Term by giving written notice (the "Purchase Option Notice") to Landlord of such election. The Purchase Option Notice shall specify a date for the closing of the purchase and sale of Landlord's fee interest, which shall be not less than ninety (90) days following the date of the Purchase Option Notice. In such event, the purchase price for the fee interest in the Demised Premises shall be the sum of \$100.00. Said purchase price shall be paid at closing by certified funds or wire transfer. From and after the date of such closing, Tenant shall be responsible for (i) all Pre-existing Environmental Conditions, (ii) all known on-site and off-site

contamination associated with such Pre-existing Environmental Conditions, and (iii) maintaining the Landfill in compliance with all applicable Governmental Requirements, including without limitation all applicable Environmental Laws.

**SECTION 30. GOVERNING LAW.**

This Lease shall be governed by and construed in accordance with the laws of the State of Georgia, and any action or proceeding shall be commenced in a court of competent jurisdiction in Fulton County, Georgia.

**SECTION 31. HEADINGS, MEANING OF WORDS, ENTIRE AGREEMENT.**

The headings used in this Lease are inserted for convenience and are not to be considered in the construction of the provisions of this Lease. This Lease and the Revitalization Agreement constitute the entire agreement of the parties and may be amended or modified only in writing signed by the other party, and all prior agreements or understandings between the parties, either oral or written, are superseded by this Lease and the Revitalization Agreement. This Lease and the Revitalization Agreement are to be construed as complimentary documents of equal priority.

**SECTION 32. TIME.**

Time is of the essence under this Lease.

**SECTION 33. BROKERS.**

Landlord and Tenant each represent and warrant to the other that they have dealt with no brokers in connection with this Lease. Tenant agrees to indemnify and hold harmless Landlord from and against any and all damages and expenses (including reasonable attorney's fees and expenses actually incurred) arising or incurred by Landlord by reason of any claim by any broker, agent, finder or other person based upon any agreement made or alleged to have been made by Tenant in connection with this Lease.

**SECTION 34. OTHER COVENANTS.**

**34.1 Trees.** Tenant will not plant any trees on the Landfill without the prior written approval of Landlord, which approval shall not be withheld provided that the planting of such trees does not violate any applicable Governmental Requirement or Environmental Law, including the City of Atlanta tree ordinance and will not damage the Landfill Cap or other structures or facilities related to the operation of the Landfill.

**34.2 Promotion of Golf Course.** Landlord agrees to promote and facilitate the successful development and operation of the Golf Course.

**34.3 Nighttime Security.** Tenant agrees to use commercially reasonable efforts to secure the Landfill from public access and vandalism during nighttime hours. Tenant shall provide adequate 24-hour security to protect the Golf Course.

**SECTION 35. MODIFICATIONS.**

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this Lease.

*[signatures appear on following page]*

**IN WITNESS WHEREOF**, Landlord and Tenant have executed and sealed this Lease as of the date first above written.

Signed and acknowledged in the presence of:

**LANDLORD:**

THE CITY OF ATLANTA,

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

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

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

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_

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

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

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_  
[Notarial Seal]

Approved As to Form:

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

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

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

**TENANT:**

ATLANTA DEVELOPMENT AUTHORITY,  
a public body corporate and politic

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

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

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

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_

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

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

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_  
[Notarial Seal]

**EXHIBIT A**

**[Legal Description of Gun Club Landfill]**

**DESCRIPTION TO BE INSERTED PRIOR TO EXECUTION**

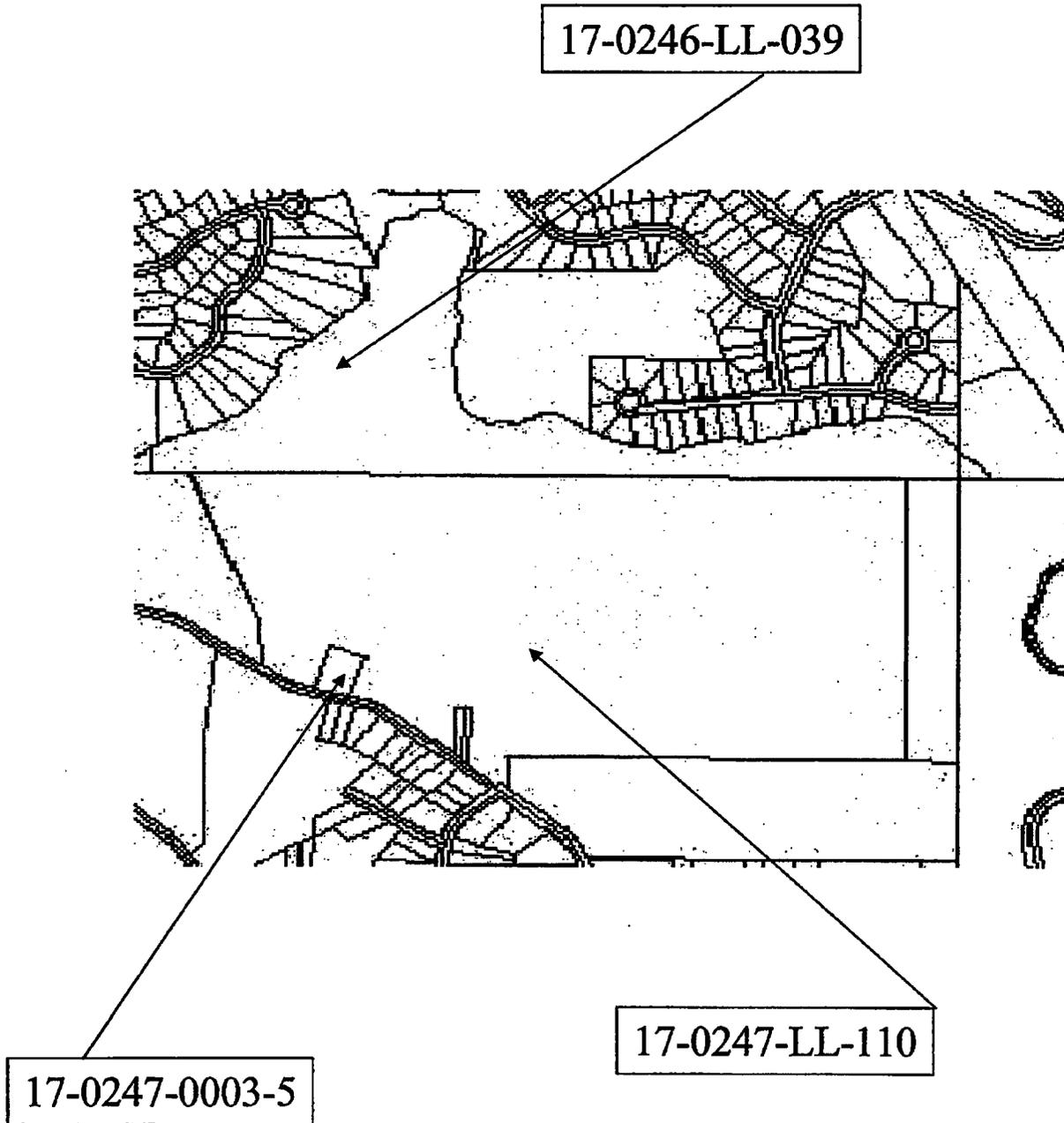
**EXHIBIT B**

**[Survey Plat depicting Gun Club Landfill]**

**SEE ATTACHED**

# Exhibit B

## “Gun Club Landfill Parcels”



**EXHIBIT C**

**[Legal Description of Flood Plain Parcels]**

**LEGAL DESCRIPTION TO BE INSERTED PRIOR TO EXECUTION**

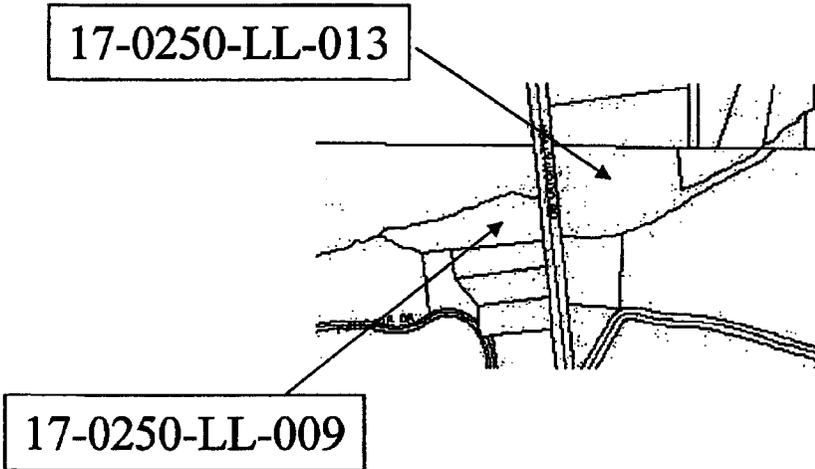
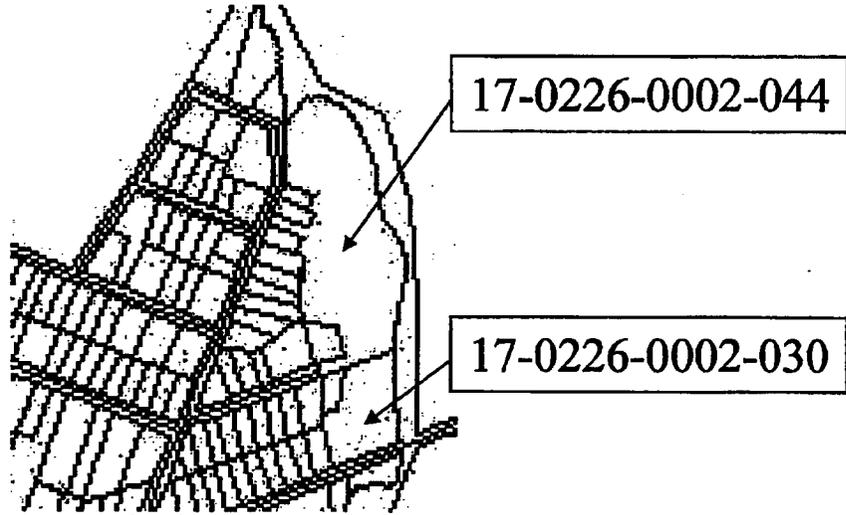
**EXHIBIT D**

**[Survey Plat depicting Flood Plain Parcels]**

**SEE ATTACHED**

# Exhibit D

## “Flood Plain Parcels”



**EXHIBIT E**

**[Legal Description of Cleared Parcels]**

**LEGAL DESCRIPTION TO BE INSERTED PRIOR TO EXECUTION**

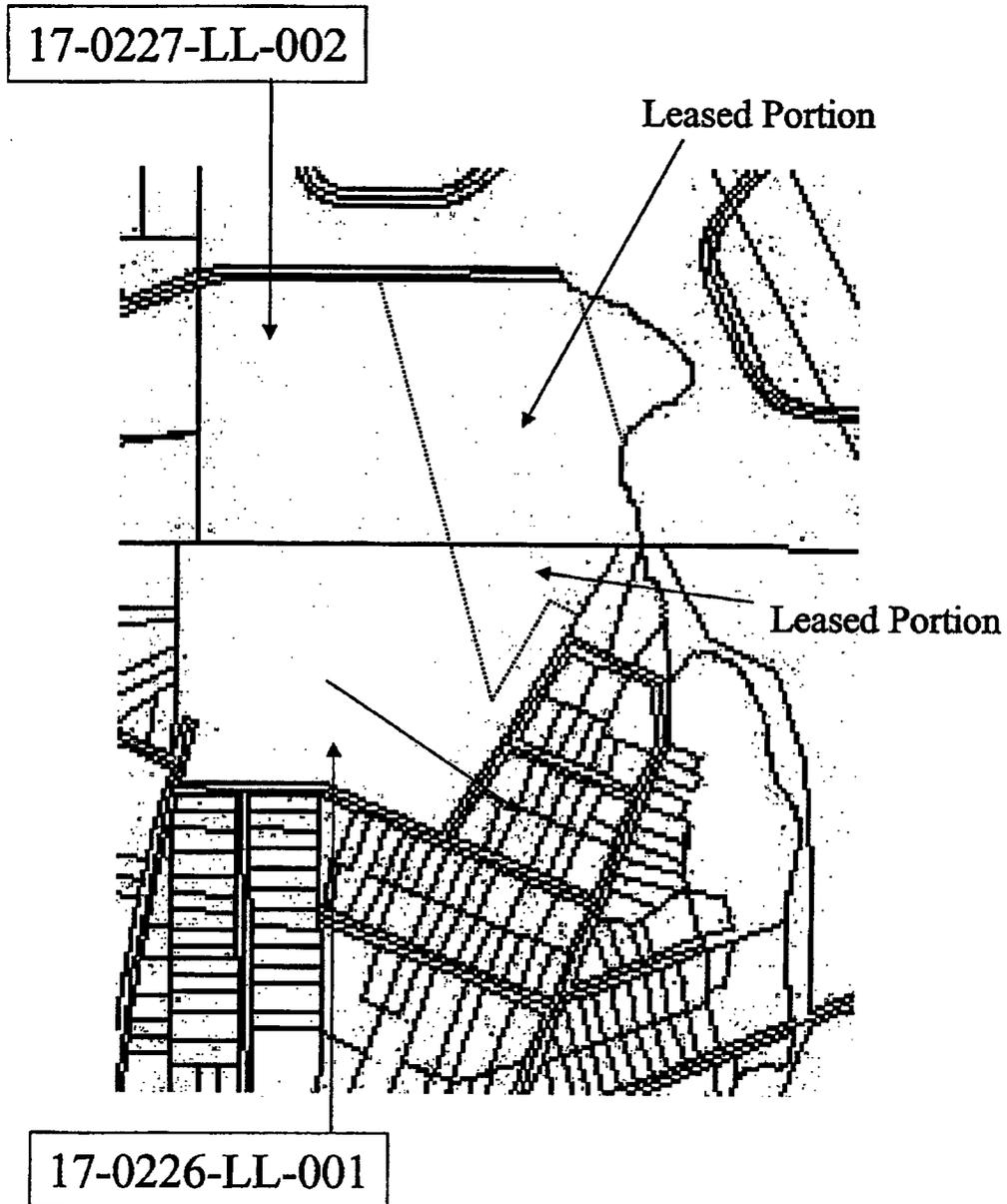
**EXHIBIT F**

**[Survey Plat depicting Cleared Parcels]**

**SEE ATTACHED**

# Exhibit F

## “Cleared Parcels of Gun Club Park”



**EXHIBIT G**

**SUBLEASE**

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT ("Sublease") is made as of \_\_\_\_\_, 2004 between the **ATLANTA DEVELOPMENT AUTHORITY**, a public body corporate and politic created and existing under the laws of the State of Georgia (the "Authority") as sublessor, and **PERRY GOLF COURSE DEVELOPMENT, LLC**, a Georgia limited liability company (the "Subtenant"), as sublessee.

**BACKGROUND**

The Authority is the lessee under that certain Ground Lease for Golf Course Agreement (the "Prime Lease") of even date herewith from the City of Atlanta, Georgia ("City") as lessor, a copy of which Prime Lease is attached hereto as Exhibit A and incorporated herein in full by this reference. The terms defined in the Prime Lease shall, when used herein, have the meaning given to them in the Prime Lease.

By this Sublease, the Authority is subleasing to the Subtenant its entire interest under the Prime Lease. It is the intent of the parties by the Sublease to put the Subtenant in substantially the same position as if it were the lessee under the Prime Lease. It is the intention of the parties that the Subtenant will assume all rights and obligations of the Authority under the Prime Lease.

The Subtenant will then construct and maintain the Golf Course (as defined in the Prime Lease) as provided in the Prime Lease and may subsequently sub-sublease or sub-license all or any portion of the Leased Premises (as defined in the Prime Lease) for the operation of the Golf Course and/or the provision of certain services in connection with the Golf Course as provided in the Prime Lease.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Subtenant hereby agree as follows:

1. The Authority hereby subleases to the Subtenant its entire interest under the Prime Lease for the entire Term thereof and the Subtenant hereby assumes all of the rights, obligations and liabilities of the Authority under the Prime Lease including, without limitation, the Authority's obligations under Sections 1, 2, 3, 4.1, 5, 9.3 and 11. The Subtenant hereby acknowledges the terms and provisions of the Prime Lease and agrees to observe and perform the same.

2. The Authority acknowledges and agrees that the Subtenant has the right to assign this Sublease or further sublease or license all or any portion of the Leased Premises to any third party. In the event of any such assignment of this Sublease by the Subtenant as permitted above and the assumption by such assignee of the obligations of the Subtenant under this Sublease, then the Subtenant shall be released and relieved from any liability under this Sublease accruing after such assignment. In the event of any sublease, the Authority shall, at the request of the Subtenant, or such sublessee, notify such sublessee of any default by the Subtenant under this Sublease and permit such sublessee to cure such default within the same cure periods provided to the Authority in Section 13 of the Prime Lease. The Subtenant covenants and agrees to provide the City and the Authority with an executed counterpart of any sublease or assignment permitted hereunder within ten (10) days following execution thereof.

3. The Authority acknowledges and agrees that any approval or consent of the City, which is required to be obtained under the Prime Lease in connection with any alterations, additions or improvements on the Leased Premises as set forth in the Prime Lease, shall be sufficient under this Sublease and shall be binding on the Authority. No separate approval or consent from the Authority shall be required in connection with such alterations, additions or improvements on the Leased Premises.

4. Upon the execution and delivery of the Prime Lease and Sublease, the Authority shall not have any substantive obligation or any liability under said documents; instead, the Authority shall be a conduit between the City and the Subtenant, with its sole obligation being to cooperate and assist in the enforcement of the parties' respective rights and duties. The parties agree that performance shall occur directly between the Subtenant and the City.

5. The Authority shall not knowingly cause or permit a default under or termination of the Prime Lease, subject to the Subtenant's performance of its respective duties under the Sublease.

6. The Subtenant shall have the right to exercise any rights of the Authority under the Prime Lease, including, without limitation, any right to terminate the Prime Lease or purchase the Leased Premises as described therein. Upon any termination of the Prime Lease, this Sublease shall terminate. In addition, any amounts payable to the Authority under the Prime Lease shall be paid to the Subtenant.

7. Notices shall be given as provided in the Prime Lease (including simultaneous copies to the City), with the Subtenant's address being as follows:

Perry Golf Course Development, LLC  
3414 Peachtree Road, NE  
Suite 850  
Atlanta, Georgia 30326

Attn: Mr. Chip Drury

With a copy to: McKenna Long & Aldridge, LLP  
303 Peachtree Street, NE  
Suite 5300  
Atlanta, Georgia 30308  
Attn: R. Todd Silliman, Esq.

8. The parties hereto acknowledge and agree that Subtenant shall reimburse the Authority, within ninety (90) days of the date hereof, for the reasonable actual out-of-pocket costs and expenses (including reasonable attorneys fees) incurred by the Authority in the negotiation and performance of this Sublease; provided, however, that in recognition of the elimination of any substantive obligation or liability of the Authority under both the Prime Lease and hereunder (as set forth in Sections 1 and 4 hereof), said costs and expenses shall in no event exceed Fifteen Thousand and No/100 Dollars (\$15,000.00).

Subtenant agrees to indemnify, defend and hold harmless the Authority from and against any and all losses, liabilities, suits, actions, damages, penalties, costs and expenses (including reasonable attorney's fees) resulting from claims by third parties arising solely from either (i) Tenant's breach of any of its obligations hereunder or (ii) the construction and operation of the Golf Course (as defined in the Prime Lease). The parties hereto acknowledge and agree that Subtenant shall have no indemnification obligation with regard to any claims concerning the Pre-Existing Environmental Conditions or compliance of the Landfill with applicable laws, or any other obligations of Landlord under the Lease. The provisions of this Paragraph 8 shall survive the termination of this Sublease or the Prime Lease.

Additionally, Subtenant agrees that the Authority shall be named as an additional insured to those insurance policies required to be maintained pursuant to Section 9.1 of the Prime Lease.

9. This Sublease shall be binding upon the parties hereto and their respective successors and assigns.

*(Signatures on next page.)*

IN WITNESS WHEREOF, the parties have executed this agreement under seal as of the day and year set forth above.

**ATLANTA DEVELOPMENT AUTHORITY**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_  
[Notarial Seal]

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

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]

**PERRY GOLF COURSE DEVELOPMENT,  
LLC**

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_  
[Notarial Seal]

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

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CORPORATE SEAL]

EXHIBIT A  
TO SUBLEASE AGREEMENT  
[PRIME LEASE]

**EXHIBIT H**

**DELETED**

**EXHIBIT I**  
**MASTER PLAN FOOTPRINT**

*West Highlands Golf Club Layout*



Section 4. The Council declares that it is in the best interest of the City and consistent with the intent of the TAD Resolution to negotiate and enter into a lease agreement with the ADA subsequent to which the ADA will sublease the Proposed Lease Area, under the same terms and conditions, to Perry Golf.

Section 5. The Mayor is authorized to negotiate, execute and deliver a lease with the ADA, said lease to be substantially in the form attached hereto as Exhibit "B" (the "Proposed Lease").

Section 6. The Council authorizes and empowers the Mayor and her designees to take such actions and to execute for and on behalf of the City such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents which, in the reasonable judgment of the Mayor, may be necessary or desirable to effect the transaction contemplated by the Proposed Lease. Such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and/or documents shall be in such form and contain such terms and conditions as may be reasonably approved by Mayor or her designees, and the execution of such other agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents by the Mayor or her designees shall be conclusive evidence of any such approval; provided, however, said agreements, instruments, certificates, affidavits, financing statements, assignments, papers and documents shall be approved as to form by the City Attorney prior to execution by the Mayor or her designees.

Section 7. No agreement, instrument, certificate, affidavit, financing statement, assignment, paper or document authorized by these resolutions, including without limitation the Proposed Lease, shall be binding on the City until signed by the Mayor and delivered to the contracting party.

Section 8. All resolutions and parts of resolutions in conflict with this resolution are hereby rescinded to the extent of any such conflict.