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***Lake Claire Swim Club, Inc.***

Offering Circular

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*Dated November 1, 2023*

# *Lake Claire Swim Club, Inc.*

Offering Circular

## *INTRODUCTION*

This Offering Circular and the attached exhibits constitute the plan for offering of equity and non-equity memberships (collectively "**Memberships**") in Lake Claire Swim Club, Inc., a Georgia nonprofit corporation ("**Club**"). Lake Claire Pool, LLC, a Georgia limited liability company ("**Sponsor**"), has organized the Club to acquire, own and operate certain property and facilities ("**Club Facilities**"), known as the Lake Claire Pool. The Club Facilities are currently governed by Sponsor, as the "Club Operator," pursuant to the Membership Policies of Lake Claire Pool ("**Membership Policies**"), which established the existing right to use club and issued to individuals ("**LCP Members**") non-exclusive licenses to use the Club Facilities as a member of the Lake Claire Pool upon payment of such fees as Club Operator established from time to time. As Club Operator, Sponsor is exercising its reserved right under the Membership Policies to sell or otherwise transfer all or any portion of the Club Facilities to a third party at any time upon such terms and conditions as the Club Operator determines appropriate in its sole and absolute discretion. Sponsor desires to give the current LCP Members the opportunity to convert their current non-equity, non-exclusive licenses into equity memberships of the Club. Sponsor has established the date of April 1, 2024 as the "**Conversion Date**," the date equity memberships in the Club will be issued unless the offering plan for the issuance of memberships in the Club has been previously terminated as set forth herein. Current LCP Members shall be given the opportunity to convert their licenses and obtain an equity membership until February 1, 2024. However, starting January 2, 2024, the Club will also be offering equity memberships to those individuals who were on the membership purchase waiting list to become LCP Members. Furthermore, the Club will also be offering equity memberships to individuals who were not previously LCP Members of Lake Claire Pool or on the waiting list starting April 1, 2024. **There is no guarantee a membership will be available to LCP Members after January 1, 2024.**

**In the event a total of no less than 200 LCP Members and other candidates for membership have submitted a Candidate Profile, Membership Agreement, paid the required Membership Contribution and, other than LCP Members electing to acquire an Equity Membership prior to February 1, 2024, have been approved and accepted by the Sponsor prior to March 1, 2024, Sponsor, in its sole and absolute discretion, prior to the Conversion Date, may terminate the sale of the Club Facilities to the Club contemplated by this Offering Circular and any and all exhibits attached hereto by providing notice to all such individuals prior to the Conversion Date. In such event, Sponsor shall refund all Membership Contributions paid, less any credit given for the non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies. All executed Membership Agreements shall be deemed cancelled as if never been sold or issued and no candidate shall have the right to a hearing prior to cancellation of the Membership Agreement nor shall any candidate Members have any right to have the Membership repurchased pursuant to the Bylaws (described below). In such event, the Membership Policies shall remain effective, the Club Facilities shall be operated in accordance with the provisions thereof and the LCP Memberships shall continue in effect. In the event Sponsor does not exercise its right to terminate the sale of the Club Facilities to the Club as set forth above, LCP Memberships shall terminate and the Club shall be the sole operator of the Club Facilities subject to the provisions of this Offering Circular and all of the exhibits attached hereto.**

The Club is currently authorized to issue a total of 400 Equity Memberships ("**Authorized Equity Memberships**"). The Club is also authorized to issue up to 10 Honorary Non-equity Memberships to individuals designated by the Sponsor. The Sponsor holds the sole Sponsor Membership. The rights, privileges, and preferences of the various categories of Membership are discussed in the section of this Offering Circular entitled "**Description of Memberships**" and described in more detail in the Club's Bylaws, a copy of which is attached to this Offering Circular as Exhibit A ("**Bylaws**") and the Club's rules, a copy of which is attached to this Offering Circular as Exhibit C ("**Club Rules**").

The Membership Contribution for an Equity Membership issued to an LCP Member prior to February 1, 2024 shall be \$10,000 less a credit for the non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies, which, until such date, shall be equal to \$3,500 regardless of the amount actually paid. The

Membership Contribution for an Equity Membership issued to an LCP Member, if available, between February 1, 2024 and March 31, 2024, shall be \$10,000 with no credit given for any of the non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies. Beginning April 1, 2024, the Membership Contribution for an Equity Membership issued to an LCP Member shall be equal to the amount being charged to non-LCP Members on such date and shall be subject to approval and availability.

The Membership Contribution for an Equity Membership issued to an individual currently on the membership purchase waiting list to become LCP Members between January 2, 2024 and March 31, 2024 shall be equal to \$10,000. Beginning April 1, 2024, the Membership Contribution to obtain an Equity Membership shall be equal to the amount being charged to non-LCP Members on such date and shall be subject to approval and availability.

All Memberships, other than a membership issued to an LCP Member prior to January 1, 2024, are subject to eligibility, availability, approval, and payment of the requisite Membership Contribution, if applicable, as set forth in the section of this Offering Circular entitled "**SELECTION FOR MEMBERSHIP.**" The procedures to acquire Membership are set forth in the section of this Offering Circular entitled "**SUMMARY OF OFFERING AND APPLICATION PROCEDURES.**"

The date of this Offering Circular is November 1, 2023.

THE CLUB IS OFFERING MEMBERSHIPS TO PROVIDE MEMBERS WITH SOCIAL AND RECREATIONAL OPPORTUNITIES IN A MEMBER-OWNED CLUB. THE CLUB IS ORGANIZED AS A NONPROFIT CORPORATION AND MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT. NO PERSON ACQUIRING A MEMBERSHIP SHOULD EXPECT TO DERIVE ANY ECONOMIC BENEFIT FROM THE PURCHASE OF A MEMBERSHIP.

MEMBERSHIPS MAY NOT BE TRANSFERRED, PLEDGED, OR ASSIGNED EXCEPT AS SPECIFICALLY PROVIDED IN THE BYLAWS. ALTHOUGH CERTAIN MEMBERSHIPS MAY BE ELIGIBLE FOR REPURCHASE BY THE CLUB UNDER SPECIFIED CONDITIONS AS SET FORTH IN THE BYLAWS, THE CLUB IS NOT OBLIGATED TO REPURCHASE ANY OF THOSE MEMBERSHIPS UNLESS AND UNTIL AN CANDIDATE FOR SUCH CLASS OF MEMBERSHIP HAS BEEN APPROVED AND HAS PAID THE APPLICABLE MEMBERSHIP CONTRIBUTION THEN BEING CHARGED BY THE CLUB, AND THEN REPURCHASE IS SUBJECT TO THE CONDITIONS, PRIORITIES AND WAITING LISTS SET FORTH IN THE BYLAWS. THERE IS NO GUARANTEE THAT THE CLUB WILL REPURCHASE ANY MEMBERSHIP.

THE MEMBERSHIP CONTRIBUTION FOR MEMBERSHIPS IS ESTABLISHED BY THE SPONSOR UNTIL THE INITIAL SALE OF ALL AUTHORIZED EQUITY MEMBERSHIPS TO PERSONS OTHER THAN THE SPONSOR OR AFFILIATES OF THE SPONSOR, AND THEREAFTER BY THE CLUB'S BOARD OF DIRECTORS. THE PRICE AT WHICH MEMBERSHIPS ARE OFFERED MAY VARY FROM TIME TO TIME AND MAY BE HIGHER OR LOWER THAN THAT CURRENTLY SET FORTH IN THIS OFFERING CIRCULAR. THERE IS NO REPRESENTATION OR GUARANTEE THAT THE MEMBERSHIP CONTRIBUTION CHARGED FOR MEMBERSHIP REFLECTS THE TRUE VALUE OF THE MEMBERSHIP OR THAT A MEMBER WILL BE ABLE TO RECOUP THE ORIGINAL MEMBERSHIP CONTRIBUTION UPON RESIGNATION OF HIS OR HER MEMBERSHIP.

STATEMENTS CONTAINED IN THIS OFFERING CIRCULAR AS TO THE CONTENTS OF ANY EXHIBIT OR OTHER DOCUMENT MAY NOT BE COMPLETE AND, IN EACH CASE, THE REFERENCED DOCUMENT SHOULD BE CONSULTED FOR MORE INFORMATION. PROSPECTIVE MEMBERS SHOULD READ THIS OFFERING CIRCULAR AND ALL EXHIBITS IN THEIR ENTIRETY PRIOR TO ANY PURCHASE OF A MEMBERSHIP, PARTICULARLY THE INFORMATION CONTAINED IN THE SECTION ENTITLED "RISK FACTORS AND OTHER IMPORTANT CONSIDERATIONS."

No dealer, salesman, or any other person has been authorized to give any information or to make any representations other than those contained in this Offering Circular in connection with the offer contained in this Offering Circular, and, if given or made, such information or representations must not be relied upon as having been authorized by the Club. This Offering Circular does not constitute an offer to sell or the solicitation of any offer to buy any Membership by any person in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this Offering Circular nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Club since the date hereof. This Offering Circular has been prepared solely for information purposes in connection with the offer and sale of Memberships in the Club and shall not be reproduced, used, or relied upon for any other purpose.

If there are conflicts among the provisions of Georgia law, the Articles of Incorporation (described herein), the Bylaws, the Transfer Agreement (described herein) and this Offering Circular, the provisions of Georgia law, the Transfer Agreement, the Articles, the Bylaws, and these Offering Circular (in that order) shall prevail.

*SUMMARY OF OFFERING AND APPLICATION PROCEDURES*

**AVAILABILITY OF  
MEMBERSHIP**

All Memberships are subject to eligibility, availability, and approval. At present, the Club is authorized to issue a maximum of 400 Equity Memberships.

In addition, up to 10 Honorary Memberships may be issued by the Club.

**CAREFULLY REVIEW  
ALL DOCUMENTS**

This Offering Circular contains a summary of the Membership opportunities being offered by the Club and is qualified by the definitive information set forth in the attached exhibits. Every person who desires to purchase a Membership in the Club should carefully read this Offering Circular and all of the attached exhibits and should consider seeking professional advice to evaluate these documents and the rights, responsibilities and risks involved in acquiring a Membership.

**PROCEDURES TO  
ACQUIRE MEMBERSHIP**

Persons who are invited to be considered for Membership (and those current LCP Members) must complete and sign a Candidate Profile and a Membership Agreement in the form provided by the Club and deliver them to the Club along with confirmation that either an automated clearing house transfer (ACH) or a credit card payment payable to Lake Claire Swim Club, Inc., in U.S. funds for the Membership Contribution of the Membership, or such portion thereof as is required by the Membership Agreement, has been made by the deadline stated in the invitation.

**CONTACT US**

Should you have any questions concerning Membership opportunities in the Club or the terms of this offering, please contact:

Lake Claire Swim Club, Inc.  
info@lakeclairepool.com

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## EXHIBITS

A	Articles of Incorporation and Bylaws of Lake Claire Swim Club, Inc. ....	(PDF Page 25)
B	Agreement for Transfer of Assets.....	(PDF Page 66)
	Exhibit A – Legal Description.....	(PDF Page 82)
	Exhibit B – Ground Lease.....	(PDF Page 83)
	Exhibit C – Transfer Agreement .....	(PDF Page 108)
	Exhibit D – Bill of Sale.....	(PDF Page 113)
C	Club Rules.....	(PDF Page 115)
D	Forms of Candidate Profile and Membership Agreement .....	(PDF Page 125)
E	Schedule of Dues, Fees, and Charges.....	(PDF Page 124)
F	Projected Operating Budget.....	(PDF Page 135)

## *THE CLUB AND CLUB FACILITIES*

### **INCORPORATION AND PURPOSE**

The Club was incorporated as a Georgia nonprofit corporation on October 25, 2023, to acquire, own and operate the swim and ancillary facilities exclusively for the pleasure and recreation of its Members and to promote fellowship and social intercourse among its Members. The Club will also acquire all leases or use rights granting Members access to those portions of the Club Facilities that will not be owned by the Club. Copies of the Club's Articles of Incorporation and Bylaws are attached as Exhibit A to this Offering Circular. The classes, categories, qualifications, rights, and privileges of Membership are set forth in the Club's Bylaws. The Club's principal offices are located at 3300 Marjan Drive, Atlanta, Georgia 30340.

The Club does not contemplate distribution of gains, profits, or dividends to any of its Members. However, upon any sale or dissolution or winding up of the Club, after payment of all its debts and obligations or after adequate provision for payment has been made, the remaining assets of the Club, if any, will be distributed to the Equity Members in accordance with the Club's Bylaws, but only to the extent that such a distribution does not adversely affect the tax-exempt status of the Club, if the Club has elected to be tax-exempt and has received all applicable rulings or determinations from governmental agencies required for establishing such tax-exempt status. See "**RISK FACTORS AND OTHER CONSIDERATIONS - Tax Status of the Club.**"

### **DESCRIPTION AND CONSTRUCTION OF CLUB FACILITIES**

The Club Facilities to be owned by the Club include:

- Swimming pool with diving board and "kiddies' area";
- Men's and women's locker room facilities;
- Guard shack, pump room, storage room;
- Lifeguard towers;
- Gazebos; and
- Miscellaneous pool maintenance facilities.

The Club Facilities to which the Club holds access and use rights for the benefit of the Club's Members and are not owned by the Club include:

- A 50-year ground lease which terminates on December 31, 2074, on which the Club Facilities are constructed ("**Ground Lease**").

Pursuant to the Agreement for Transfer of Assets between the Club and the Sponsor, a copy of which is attached as Exhibit B to this Offering Plan ("**Transfer Agreement**"), the Sponsor agreed to construct various Club Facilities and to transfer them to the Club on or before the Turnover Date (as defined below under the heading "**Relationship with Sponsor**"). The Transfer Agreement provides that the Sponsor may, in its sole discretion, expand the Club Facilities to include additional facilities. The number, size, scope and nature of the Club Facilities are subject to change in the sole discretion of the Sponsor until the Turnover Date.

The Club Facilities listed earlier in this section are complete and available for use.



The Sponsor has funded the costs of constructing the Club Facilities and will convey the Club Facilities to the Club in exchange for certain rights set forth in the Transfer Agreement, as described below under the section of this Offering Circular entitled "Relationship with Sponsor," including the right to certain income from Membership sales and operations.

#### **TRANSFER OF CLUB FACILITIES TO CLUB**

Subject to the terms and conditions of the Transfer Agreement, the Sponsor agreed to transfer or assign (as applicable and subject to obtaining any required consents or approvals of governmental authorities or other third parties) all of the Club Facilities to the Club, in one or more transfers, not later than the Turnover Date. Prior to the Turnover Date, the Sponsor will complete the transfer of all of the Sponsor's right, title, and interest in:

- the Club Facilities;
- the Ground Lease;
- all furniture and furnishings, equipment, fixtures, machinery, inventories, supplies and other items of personal property owned and transferable by the Sponsor, which are located on or in the Club Facilities and used in connection with the operation of the Club Facilities, to be specifically identified by the Sponsor. To the extent that an affiliate of the Sponsor owns such property, the Sponsor shall cause the affiliate to convey to the Club all of the affiliate's right, title, and interest in such property on or before the Turnover Date;
- any and all leases or financing agreements held by the Sponsor or its affiliates on maintenance equipment and general office systems used in connection with the Club Facilities;
- all rights, powers, privileges, duties and obligations of the Sponsor or its affiliates pursuant to operating contracts and agreements (including, without limitation, leases of machinery and equipment) relating to the operation or maintenance of the Club Facilities;
- all assignable licenses or permits in the name of the Sponsor or its affiliates relating to the operation or maintenance of the Club Facilities;
- an amount equal to (i) all dues paid by members prior to the Turnover Date prorated from the Turnover Date until September 1 of such year of the Turnover Date; less (ii) all amounts prepaid by Sponsor for service and equipment contracts or agreements which provide a benefit to the Club after the Turnover Date. Club shall treat such amounts as "prepaid" items and will be solely responsible for their administration and shall credit such dues and credits to the appropriate members; and
- such rights and interests in any additional facilities provided or constructed by the Sponsor from and after the date hereof as the Sponsor shall determine in its sole discretion.

Pursuant to the Transfer Agreement, the Sponsor will transfer the Club Facilities in their "as is" condition on the Transfer Date, free and clear of any monetary liens or encumbrances except those securing (a) any lease obligations relating to maintenance equipment and general office systems; (b) a working capital loan to Sponsor which, as of the Turnover Date, shall secure no more than the value of net realizable receivables, inventories and supplies on hand plus any prepayments under contracts or leases for the benefit of the Club, if any; and (c) a mortgage, deed to secure debt, collateral security agreement or similar instrument securing the Sponsor's right to sums payable pursuant to the Transfer Agreement, including, without limitation, the proceeds from the initial sale of all unissued Authorized Equity Memberships and Non-equity Memberships to persons other than the Sponsor or affiliates of the Sponsor and to receive and retain all membership dues, fees and other charges due from or incurred by the Members including the proceeds from the resale of all Memberships and Membership upgrades and all reinstatement fees and reissuance fees due for reinstatement or reissuance of

Memberships until the Turnover Date; provided, however, any outstanding obligations of Members as of the Turnover Date shall be paid to Sponsor regardless of the date of collection. The Club shall assume and fulfill all obligations under any leases, operating contracts, licenses and permits relating to the operation or maintenance of the property transferred.

The conveyance of the Club Facilities will be made subject to various matters of record, including standard title exceptions and easements and other obligations or restrictions which the Sponsor granted or imposed in connection with the development of the Club Facilities and taxes and assessments not delinquent (including without limitation any and all bonds or assessments imposed on the Club Facilities.

An owner's policy of title insurance will be issued to the Club in connection with the transfer of the Club Facilities.

In determining whether or not the "initial sale of all Authorized Equity Memberships" has occurred, as set forth in the Bylaws and used in this Offering Circular, an Equity Membership shall not be deemed to have been initially sold unless and until the Member issued such Equity Membership has paid a Membership Contribution and is entitled to receive a refund of such amounts paid in accordance with the Bylaws.

#### **RELATIONSHIP WITH SPONSOR**

Pursuant to the Transfer Agreement, the Sponsor committed to provide the necessary land to which Sponsor shall retain fee simple title for construction of the Club Facilities, to cause the Club Facilities to be constructed at the Sponsor's expense, and to complete and convey certain of the Club Facilities to the Club on or before the Turnover Date, and to fund all cumulative net operating deficits of the Club until the Turnover Date, which shall occur within 180 days after the first of the following to occur:

- the initial issuance to third parties of three hundred seventy-five (375) Equity Memberships; or
- the Sponsor's election at any time after the initial issuance to third parties of three hundred 300 (300) Equity Memberships, provided the Club has achieved a positive cash flow.

In consideration for Sponsor's commitments under the Transfer Agreement, the Sponsor has various rights as set forth in the Transfer Agreement. Among those rights are:

(a) the sole and exclusive right, until the Turnover Date, to:

(i) appoint the members of the Club's Board of Directors;

(ii) initially establish and thereafter increase or decrease the amount of all periodic dues, fees and other charges payable by Members prior to the Turnover Date, including any separate charges to be made by the Club for individual services to Members, subject to receipt of any necessary regulatory approvals and subject to the limitations set forth in the section of this Offering Circular entitled "**MEMBERSHIP RIGHTS, PRIVILEGES, AND OBLIGATIONS – Fees, Dues and Assessments**";

(iii) receive (A) all Membership dues, fees and other charges due or incurred by Members through the Turnover Date including the proceeds from the resale of all Memberships and Membership upgrades and all reinstatement fees and reissuance fees due for reinstatement or reissuance of Memberships; and (B) all cumulative net operating income of the Club through the Turnover Date; and

(iv) be responsible for operating deficits.

(b) the sole and exclusive right:

(i) to receive and retain all proceeds from the initial sale of all Authorized Equity Memberships and Non-equity Memberships at the prices and terms determined in its sole discretion and to record or cause the Club to record a mortgage, deed of trust, or similar security instrument against the Club Facilities securing such right; and

(ii) from and after the Turnover Date, to appoint one member of the Board until the initial sale of all Authorized Equity Memberships and Non-equity Memberships to persons other than the Sponsor or affiliates of the Sponsor.

(c) the right to use the Club Facilities as described in the section of this Offering Plan entitled "**Sponsor's Right to Use the Club Facilities:**" and

(d) the right, until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, to:

(i) create additional classifications and categories of Membership, provided that the total number of Authorized Equity Memberships is not exceeded, and to establish, modify and waive the eligibility requirements for any Membership classification or category, subject to the terms of the Bylaws;

(ii) consent or withhold consent, in its sole discretion, to any proposed amendment to the Club's Articles of Incorporation, the Bylaws or the Club Rules;

(iii) establish and thereafter increase or decrease the Membership Contribution or Initiation Contribution (if any) to be charged by the Club for all Memberships;

(iv) designate if, when, and to whom all Memberships shall be issued subject to the provisions of the Bylaws;

(v) establish criteria and procedures for selection for Membership in the Club, to establish and modify waiting list priorities, and to approve all candidates for Membership;

(vi) consent or withhold consent, in its sole discretion, to any change in the number, classes, categories or privileges of Memberships which may be issued in the Club and any additions or modifications to the Club Facilities;

(vii) amend this Offering Circular and the forms of Candidate Profile and Membership Agreements to be used in offering Memberships in the Club, provided that any amendment shall not be inconsistent with the Transfer Agreement, the Bylaws, or Club Rules unless they are also amended, subject to the approval requirements, if any, set forth in or otherwise applicable to those documents;

(viii) to cause the Club to maintain and operate the Club Facilities in the same manner as existed at the Turnover Date;

(ix) use the Club Facilities, logos, images and intellectual property to promote the sale of Memberships; and

(x) to cause the Club to enforce its rights with respect to all Members, including under the Club's Articles and Bylaws, the Membership Agreements and the Club Rules.

In addition to the foregoing, the Sponsor may discount, finance or waive the Membership Contribution or Initiation Contribution of any Memberships sold during the period that the Sponsor has the right to establish the offering price.

## **SPONSOR'S RIGHT TO USE CLUB FACILITIES**

Until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, the Sponsor and its designees shall have the right to use any or all of the Club Facilities, in connection with the marketing and sale of Memberships in the Club, and in connection with the other business activities of the Sponsor and its affiliates, upon such terms and conditions as the Sponsor may determine from time to time. Such right shall include, without limitation:

- the right to permit employees and designees of the Sponsor and its affiliates, and their guests, to use and enjoy the Club Facilities and participate in Member activities and events;
- the right to hold promotional, charity, community and other special events at the Club Facilities; and
- the right to use photographs of the Club Facilities and to promote the Club and the sale of Memberships in advertisements and promotional materials.

The Sponsor's designees may include, without limitation, persons who are employees or agents of the Club, the Sponsor, or the Sponsor's affiliates, prospective purchasers of Memberships in the Club, and persons who are involved in special events held at the Club. Until the Turnover Date, such use shall be without charge. After the Turnover Date, the Club may require payment of the same use fees charged accompanied guests of Members for use of the Club Facilities other than guest fees.

## *CLUB MANAGEMENT AND OPERATION*

### **BOARD OF DIRECTORS**

The property, business and affairs of the Club shall be managed and controlled by its Board of Directors in accordance with the Club's Bylaws and the Transfer Agreement, subject to the right of the Board to delegate responsibility for day-to-day management to a general manager. Among other things, the Board of Directors shall have the power:

(a) to select and remove all the officers, agents and employees of the Club, including a general manager, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation of the Club, or the Bylaws and fix their compensation;

(b) to authorize the issuance of Memberships and to prescribe the procedures and terms under which such Memberships shall be issued, subject to the provisions of the Bylaws and the Sponsor's rights under the Transfer Agreement;

(c) to borrow money and incur indebtedness for the purposes of the Club, including working capital, subject to the limitations set forth in the Ground Lease and the Bylaws, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds to secure debt, mortgages, pledges, hypothecations or other evidence of debt and securities therefor;

(d) to acquire, sell, dispose of, lease, or pledge personal property, and to manage, control, operate, maintain, repair, replace and improve the Club Facilities, subject to the limitations on capital expenditures set forth in the Bylaws and any limitations set forth in the Ground Lease. No encumbrance shall be placed on the real property subject to the Ground Lease without the express written consent of the landlord identified in the Ground Lease or its successors or assigns;

(e) to prescribe rules and regulations for the governance of the Club, for use of the Club Facilities by Members, their families, visitors, and guests, for the conduct of Members and their families and guests, for the admission of Members, and for such other matters as the Board of Directors may deem necessary or appropriate ("**Club Rules**"), to the extent not inconsistent with applicable law, the Club's Articles of Incorporation, or the Bylaws, and subject to the limitations set forth

in the Bylaws (a copy of the Club Rules in effect on the date of this Offering Plan is attached as Exhibit C to this Offering Plan, but such Club Rules are subject to amendment in accordance with the Bylaws);

(f) to enter into contracts and agreements with any person or entity for goods or services or for other purposes, including, but not limited to, access and use of the Club Facilities by third-party commercial operators and/or use and access by the Club's Members of the facilities of third-party commercial operators;

(g) to determine and enforce disciplinary measures for any violation of the Bylaws or the Club Rules; and

(h) to fix the Membership Contribution and Initiation Contribution, as applicable, and dues of each class and category of Membership and other charges and fees as authorized under the Bylaws, subject to the rights of the Sponsor pursuant to the Transfer Agreement.

The Board of Directors shall consist of such number of persons as the Board shall from time-to-time fix by resolution. Until the Turnover Date, directors need not be Members of the Club. Thereafter, only Equity Members of the Club shall be eligible for election to the Board. Each of the directors shall hold office until his or her successor shall have been duly elected and qualified or until the director shall resign or shall have been removed.

As described in the section of this Offering Plan entitled "**THE CLUB AND CLUB FACILITIES – Relationship with Sponsor.**" prior to the Turnover Date, the Sponsor shall be entitled to appoint all of the members to the Board of Directors and, after the Turnover Date, the Sponsor shall be entitled to appoint one such member. All other members of the Board of Directors are elected by the Members. The Board of Directors will annually elect all officers of the Club.

#### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

The Club's Bylaws provide generally for indemnification of its officers and directors against liability for acts performed on behalf of the Club to the full extent permitted by applicable law. In addition, the Club's Bylaws provide that members of the Club's Board of Directors shall not be personally liable for the debts of the Club. The Club's Bylaws provide for the acquisition of insurance for the benefit of persons identified therein insuring them against any liability asserted against or incurred by any of them in such capacity and claims arising out of each such person's status as a director, officer, manager or employee of the Club, whether or not the Club would have the power or obligation to indemnify them against such liability.

#### **OPERATION OF CLUB BY SPONSOR**

The Sponsor will have voting control of the Club and the Club's Board of Directors until the Turnover Date, and thereby will indirectly control (a) the establishment of Club Rules; (b) hiring, engaging and terminating personnel, agents and independent contractors; and (c) in general, the governance, management, and operation of the Club, in addition to those matters which it has the right to control directly pursuant to the Transfer Agreement, as provided in the section of this Offering Circular entitled "**THE CLUB AND CLUB FACILITIES - Relationship with Sponsor.**"

The Sponsor has selected a general manager to operate the Club. The general manager is responsible for all day-to-day management of the Club including administration, accounting, staffing, establishing operating policies, and maintaining and operating the Club Facilities. Prior to the Turnover Date, the Sponsor will be responsible for all costs of construction and operation of the Club and there will be no assessment of the Members, except as may otherwise be authorized pursuant to the Bylaws.

#### **OPERATION OF CLUB BY BOARD OF DIRECTORS**

Pursuant to the Transfer Agreement, the Club is obligated to operate and maintain the Club Facilities after the Turnover Date as a first-class club in a manner consistent with the operation and maintenance of the Club Facilities by the Sponsor

prior to the Turnover Date, unless the Sponsor, in its sole discretion, approves or consents to deviation from such standard. In exercising such discretion, the Sponsor shall act in good faith. Such operation and maintenance shall include, without limitation, the requirements as to repair or reconstruction of any Club Facilities which are destroyed or damaged, without regard to the adequacy of insurance to fund the costs.

In addition, the Club shall not amend this Offering Circular or any of the attached exhibits, including the Bylaws and the Club Rules, or sell, transfer, or pledge the Club Facilities, or take any other action which the Sponsor determines to adversely affect the sale of Memberships without the prior written consent of Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor.

The Transfer Agreement reserves other rights to the Sponsor with respect to operation of the Club and the Club Facilities after the Turnover Date, as described in the section of this Offering Plan entitled "**THE CLUB AND CLUB FACILITIES - Relationship with Sponsor.**"

#### **CLUB OPERATING BUDGETS**

The Sponsor has prepared projected annual operating budgets for the Club through the fiscal year 2024 (the "**Club Operating Budgets**"), a copy of which is attached as Exhibit F. Pursuant to the Transfer Agreement, the Sponsor shall be responsible for operating deficits prior to the Turnover Date and shall be entitled to any net operating cash flow of the Club earned prior to the Turnover Date.

The calculation of the revenues and expenses contained in the Club Operating Budgets are based upon certain material assumptions which may not hold true and may be adversely impacted by unanticipated events. Therefore, the actual amounts and results achieved by the Club may vary substantially from the budget projections and significant dues increases may be necessary in future years to avoid a deficit. See "**RISK FACTORS AND OTHER IMPORTANT CONSIDERATIONS - Club Operating Budgets.**"

#### **RESERVE FUNDING**

**The Club Operating Budgets do not include any amount to fund reserves for capital repairs and replacements of the Club Facilities.** The Board may, but shall have no duty to, provide for reserve funding prior to the Turnover Date. After the Turnover Date, the Board may elect to fund reserves in any manner it chooses. Such reserves are not for the purpose of funding operating expenses.

### *MEMBERSHIP RIGHTS, PRIVILEGES AND OBLIGATIONS*

Following is a brief summary of the current classifications and categories of Membership in the Club. The Bylaws contain a more detailed description of the rights, privileges and obligations of each Membership category. The Sponsor reserves the right to modify or create additional classes or categories of Membership until the sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor and to establish the eligibility requirements, privileges and obligations of each. Thereafter, the Board shall have such right, subject to the consent of the Sponsor as described in the section of this Offering Plan entitled "**THE CLUB AND CLUB FACILITIES - Relationship with Sponsor**" above.

#### **DESCRIPTION OF MEMBERSHIPS**

The Club is authorized to issue Equity and Non-equity Memberships, subject to the right of the Sponsor and the Board to create additional classifications and categories of Membership as set forth in the Bylaws.

There is currently one category of Equity Membership authorized in the Club. After the Turnover Date, Equity Members shall be entitled to one vote per Equity Membership held with respect to any matter on which the Equity Members are entitled to vote pursuant to the Articles and the Bylaws. Equity Members are subject to assessment after the Turnover Date as provided in the Bylaws. Equity Memberships are not subject to recall by the Club.

Other than LCP Members, Equity Memberships may be issued only to those individuals invited to join by the Club. Equity Membership entitles the Member and his or her Authorized Users of the Membership to use all of the Club Facilities during operating hours and subject to the Club Rules and payment of such dues and charges as the Board may establish from time to time.

Non-equity Memberships are non-proprietary, non-voting, non-assessable Memberships. There is currently one category of Non-equity Membership authorized in the Club – Honorary. In its sole discretion, the Club, with the consent of the Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, may establish additional Non-equity Memberships.

***Honorary Memberships.*** The Club may issue up to 10 Non-equity Honorary Memberships to individuals as the Sponsor may designate. Such Honorary Members may use and enjoy, during operating hours, the Club Facilities generally available for use by Equity Members, subject to the Club Rules. Honorary Members will not be required to pay a Membership Contribution, dues, or operating or capital assessments, but will be required to pay individual charges for food and beverages, merchandise and services. The Club may not rescind, amend, or terminate the rights of an Honorary Member without the Sponsor's consent nor shall the Club reissue an Honorary Membership upon termination or resignation by an Honorary Member. The Sponsor may recall and reissue any Honorary Membership in its sole discretion until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor. Honorary Members have no right to any payment upon termination of their Memberships.

***Sponsor Membership.*** The Sponsor holds the sole Sponsor Membership, which entitles the Sponsor, or persons designated by or affiliated with the Sponsor, and their accompanied guests, to use all of the Club Facilities in connection with the marketing and sale of Memberships, on such terms and conditions as the Sponsor may determine. The Sponsor Membership entitles the Sponsor to exercise all of the rights and privileges specifically granted to the Sponsor pursuant to the Bylaws, and pursuant to the Transfer Agreement. Prior to the Turnover Date, the Sponsor Member shall hold all of the Voting Power of the Club on all matters except as otherwise specifically provided in the Bylaws. After the Turnover Date, the Sponsor Member shall have only such voting or approval rights as are specifically granted to the Sponsor in the Bylaws and the Transfer Agreement. The Sponsor Membership shall not be subject to payment of any Membership Contribution, nor shall it be subject to payment of any dues, assessments or other charges but may continue to use the Club Facilities as described in the section of this Offering Circular entitled "**THE CLUB AND CLUB FACILITIES - Sponsor's Rights to Use Club Facilities**" above.

***Additional Classes and Categories of Membership.*** Until the sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, the Sponsor reserves the right to create additional classes and categories of Membership in the Club, and to establish the eligibility requirements and privileges of each new class or category of Membership created, if it determines, in its sole discretion, that doing so is appropriate in order to establish a sufficient Membership base to provide for the economic viability of the Club; provided that the total number of Authorized Equity Memberships is not exceeded. Thereafter, the Board shall have right to create additional classes and categories as set forth in the Bylaws; provided that the total number of Authorized Equity Memberships is not exceeded.

## **ISSUANCE OF MEMBERSHIPS**

An LCP Member holding a membership under the Membership Policies who elects to acquire an Equity Membership shall be issued an Equity Membership, if available, upon the execution of a Membership Agreement and upon the payment of the Membership Contribution. Prior to February 1, 2024, the Membership Contribution being charged to such individual shall

be \$10,000 less a credit for the non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies, which, until such date, shall be equal to \$3,500 regardless of the amount actually paid. Between February 1, 2024 and March 30, 2024, the Membership Contribution for an LCP Member to acquire an Equity Membership shall be \$10,000 with no credit given for any non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies. Beginning April 1, 2024, the Membership Contribution for an Equity Membership issued to an LCP Member shall be equal to the amount being charged to non-LCP Members and shall be subject to approval and availability. The amount of the credit for the non-refundable initiation fee paid to Club Operator under the Membership Policies set forth above, if any, plus the additional amount paid for the Equity Membership shall be deemed to be the member's total Membership Contribution for the Membership issued to such member for purposes of determining the refund amount upon resignation and repurchase as set forth in the Bylaws.

The Membership Contribution for an Equity Membership issued to an individual on the membership purchase waiting list to become LCP Members between January 2, 2024 and March 31, 2024 shall be equal to \$10,000. Beginning April 1, 2024, the Membership Contribution to obtain an Equity Membership shall be equal to the amount being charged to non-LCP Members and shall be subject to approval and availability.

Each Membership shall be issued in the name of one candidate. Memberships may not be issued in joint names and, if the Membership has voting privileges, only one vote may be exercised per Membership.

#### **EXERCISE OF MEMBERSHIP PRIVILEGES**

Privileges of membership do not start and cannot be exercised until after the Conversion Date. Except as otherwise provided in the Club's Bylaws, a Member's spouse, if married, or if unmarried, another adult permanently residing in the household of a Member, whom the Member designates in writing to the Club to enjoy the use privileges of the Membership ("**Designated Adult**"), and the dependent children of each under the age of 23 who either reside with the Member or attend college on a full-time basis (collectively, the "**Authorized Users**") shall be entitled to the same use privileges as the Member, provided that such privileges may be restricted as to time of access and may be subject to age and ability qualifications, as the Board of Directors determines from time to time.

**A Member may not change the Designated Adult for a Membership more than once in any 12-month period. Only the named Member shall be eligible to exercise the voting rights of the Membership and to serve on the Board of Directors or committees appointed by the Board.**

#### **GUEST PRIVILEGES**

All Members and Authorized Users are entitled to limited guest privileges in accordance with the following, subject to payment of applicable guest fees and subject to the right of the Board to limit, deny, or revoke guest privileges of any Member (other than Sponsor) or of all Members, at any time in its sole discretion:

(a) There are currently no limitations on the number of times a Member may have a guest on the Club Facilities; however, this right is subject to change in the Club's sole discretion;

(b) Subject to the Club's right to increase and decrease, the combined number of guests that Members and their Authorized Users may have using the Club Facilities at any one time is limited to five individuals;

(c) The Club reserves the right to limit the number of times an individual may be a guest in any 12-month period; and

(d) All guests must be accompanied by either the Member or any Authorized User when using any of the Club Facilities unless approved by the Club.



## NONTRANSFERABILITY OF MEMBERSHIPS

**General.** No Membership (other than the Sponsor Membership) is transferable by a Member except to or through the Club as provided in the Bylaws, and any attempted transfer of a Membership by a Member, whether by sale, gift, or otherwise (except as expressly provided in the Bylaws), shall be of no force and effect and shall confer no Membership rights or other rights upon any transferee to use the Club Facilities.

**Sale of Member's Homesite.** An Equity Member in good standing who sells or otherwise transfers title to his or her home ("**Homesite**") if, prior to the transfer of title to the Homesite, the purchaser or transferee of requests consideration for Equity Membership by completing, signing and submitting a Candidate Profile and Membership Agreement in the form specified by the Club, along with a check in the amount of the Membership Contribution required to obtain the Equity Membership then being charged by the Club, and is approved for such Membership, the Member may arrange for the Club to repurchase the Membership on the terms set forth in the Bylaws and reissue it to the new owner of the Homesite without regard to any purchase or repurchase waiting list that may exist. **No Member shall commit to transfer, or to arrange for the transfer of, his or her Membership to a purchaser of his or her Homesite in any manner that purports to bind the Club to approve such purchaser for Membership, and any attempt to do so shall be void and of no effect.**

**Death.** Upon the death of a Member, the surviving spouse, if any, of the Member shall have 60 days after the death of the Member to request in writing that the Club transfer the Membership to the surviving spouse. If there is no eligible surviving spouse, or the surviving spouse does not request such transfer within 60 days after the Member's death, the Club shall deem the Membership resigned and the Club shall place such Membership on the waiting list for repurchase.

**Separation or Divorce.** In the event that a Member and his or her spouse are legally separated or divorced, or in the event that a Member and any person identified as the Designated Adult on such Member's Membership cease to maintain the same household, the Member shall retain all rights to such Membership until the Membership is resigned or deemed resigned, unless and until the Club is otherwise ordered by a court of law. In the event of a court order that the Membership be transferred to the Member's former spouse or any other person, the Membership shall be deemed resigned unless the former spouse or former Designated Adult to whom it is required to be transferred is eligible for, applies and is approved for such class and category of Membership pursuant to the procedures set forth in the Bylaws within 60 days after such court order, in which case the Membership shall be reissued in the name of the former spouse or Designated Adult at no charge. Otherwise, the person to whom the court has ordered the Membership to be transferred shall be entitled to any amounts to which the Member would otherwise have been entitled upon resignation, repurchase and reissuance of the Membership (if applicable) pursuant to the Bylaws. Until such time as the Club receives notice of such a court order or agreement, or notice from either spouse relinquishing all rights under the Membership to the other, the spouse named in the Membership Agreement shall remain fully responsible for all Membership Charges payable for use of the Club Facilities on account of such Membership.

## RESIGNATION OF MEMBERSHIPS

Any Member may voluntarily resign the Membership by written notice to the Club of such intention. The Club shall deem a Membership resigned upon the occurrence of any of the following events: (a) the death of the Member unless the Membership is reissued to a surviving spouse as provided in the Bylaws, or the Club's disapproval of such request; (b) expulsion from the Club for cause, including nonpayment of membership fees, dues, or other charges when due; (c) recall of the Membership, if subject to recall; or (d) such other event(s) as may be specifically set forth in the Bylaws. A Member whose Membership is cancelled for failure to pay the required Membership Contribution shall have no rights under the Bylaws.

The effective date of resignation of an Equity Membership shall be the date of repurchase by the Club. The resigning Member shall remain responsible for all dues accruing through the date on which the Club repurchases the Membership. The effective date of a recalled Membership is as stated in the notice of recall.

A Member who has voluntarily resigned his or her Membership by written notice to the Club may not revoke such resignation and reinstate the Membership unless the Club approves such reinstatement, which approval it may grant or withhold in its sole discretion. In such event, the Secretary of the Club shall promptly remove such Member's name from the waiting list for repurchase.

## **REPURCHASE OF MEMBERSHIPS**

***Upon Resignation and Reissuance.*** Within 60 days after the Club's repurchase and reissuance of a resigned Equity Membership, the Club shall pay to the resigned Member 80% of the Membership Contribution received by the Club upon reissuance of the Membership, less any outstanding Membership Charges owed to the Club for use of the Club Facilities on account of the resigned Membership (the 20% differential between the Membership Contribution paid by the new Member and the amount payable to the resigning Member before deduction of any outstanding Membership Charges being considered a non-refundable portion of the Membership Contribution which shall be the property of the Club or the Sponsor, as provided in the Transfer Agreement).

There is no guarantee that a Membership will be repurchased and reissued by the Club, and the Membership Contribution being charged at the time of repurchase may be higher or lower than the Membership Contribution originally paid by the resigned Member. Members are not entitled to receive any amount from the repurchase of their resigned Memberships unless and until the Club is able to resell the resigned Membership. Therefore, the availability and timing of any payment is dependent on the Club's continued ability to attract new Members, and no assurances can be made that any resigned or terminated Membership will be resold, or upon what terms.

The Club shall have no obligation to repurchase any resigned Membership until such time as a candidate for Membership of the same Membership classification and category is extended an invitation to join the Club, executes a Membership Agreement, and submits the required Membership Contribution, and then subject to all other conditions, priorities and repurchase list requirements set forth in the Bylaws.

Upon resignation of an Equity Membership eligible for a refund of the Membership Contribution paid, the resigned Equity Membership eligible to be repurchased will be placed on a waiting list to be repurchased by the Club (unless repurchased and reissued to the resale buyer of the resigned Member's Homesite as described above). Until all Authorized Equity Memberships have initially been sold (*i.e.*, excluding resales) to persons other than the Sponsor or affiliates of the Sponsor, if there are Equity Memberships on the repurchase list, every fourth Equity Membership issued by the Club after receipt of notice of resignation of an Equity Membership on such repurchase list shall be the Equity Membership with the highest priority on such repurchase list (the other three Equity Memberships being issued from the inventory of Equity Memberships that have not yet been initially sold). In the Sponsor's discretion, Equity Memberships may be repurchased from the waiting list more frequently; however, any such repurchase shall not delay the repurchase of Equity Memberships having higher priority on the repurchase list. If the Sponsor repurchases an Equity Membership and there is no approved candidate on the waiting list to acquire such Equity Membership, the Equity Membership may be returned to the inventory of unsold Equity Memberships and no dues, fees, or assessments shall be due for such Membership until it is resold. Memberships will be repurchased and resold on a first resigned, first repurchased basis, except as provided above under the heading, "**Nontransferability of Memberships**").

After repurchase of a resigned Membership and receipt by the resigned Member of the amounts due, such resigned Member no longer shall have any claim as or on behalf of a Member of the Club.

There is no guarantee that a Membership will be repurchased and reissued by the Club, and the Membership Contribution being charged at the time of repurchase may be higher or lower than the Membership Contribution originally paid by the resigned Member. Members are not entitled to receive any amount from the repurchase of their resigned Memberships unless and until the Club is able to resell the resigned Membership. Therefore, the availability and timing of any payment is

dependent on the Club's continued ability to attract new Members, and no assurances can be made that any resigned Membership will be resold, or upon what terms.

#### **WAITING LIST PRIORITIES**

There is a limit on the number of Equity Memberships which may be issued and outstanding at any time and there is no guarantee that an Equity Membership will be available at the time of application. The Bylaws establish all candidates approved for membership who desire to be placed on any waitlist shall be listed on a first approved, first listed basis.

The purchaser of a resigning Member's Homesite who applies to acquire the resigning Member's Equity Membership within the time period specified in the Club's Bylaws and is approved for Membership shall be reissued the resigning Member's Equity Membership without being subject to any waiting list priorities, as provided in the section of this Offering Circular entitled "**MEMBERSHIP RIGHTS, PRIVILEGES AND OBLIGATIONS - Nontransferability of Memberships.**"

The provisions of the priority lists are for the benefit of the Sponsor and may be modified in the sole discretion of the Sponsor.

#### **FEES, DUES AND ASSESSMENTS.**

***Membership Contribution and Initiation Contribution.*** The Membership Contribution and Initiation Contribution to acquire each Membership classification and category is initially established by the Sponsor and may be increased or decreased from time to time in the sole discretion of the Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor and thereafter by the Club's Board of Directors. Subject to the right of the Sponsor to discount or waive the Membership Contribution or Initiation Contribution for certain Memberships as provided in the section of this Offering Circular entitled, "**THE CLUB AND CLUB FACILITIES – Relationship with Sponsor.**" the Membership Contribution or Initiation Contribution to be paid by a candidate shall be the Membership Contribution or Initiation Contribution in effect on the date the candidate is notified of approval and the availability of a Membership in the classification and category applied for, provided that the candidate accepts such Membership within 15 days after receipt of such notification. The Membership Contribution or Initiation Contribution to acquire a Membership is due in full at the time of application unless the Sponsor or Club otherwise agrees in the Membership Agreement signed by the Member and the Sponsor or the Club.

***Dues.*** Except as otherwise provided herein, in the Bylaws, the Transfer Agreement, or in a Member's Membership Agreement, the Club may levy dues for operation and use of the Club Facilities on all categories of Membership and may establish different dues for each category of Membership.

Annual dues for are set forth in the Schedule of Dues, Fees and Charges attached as Exhibit E to this Offering Circular.

Dues are subject to change from time to time. Unless otherwise determined, dues are payable annually in advance on or before April 1 of each year. New Members shall pay prorated dues commencing on the first day of the month in which they become Members. No dues or assessments shall be payable on account of authorized but unsold Memberships held in the Club's or the Sponsor's inventory or which have not been initially sold or issued at the direction of Sponsor.

The Sponsor may discount or waive the dues otherwise payable for any Membership, as specified in the Member's Membership Agreement. If the period of any such dues waiver for a Membership extends beyond the Turnover Date, the Sponsor shall pay to the Club, as they become due and payable, the dues that would otherwise be payable on account of such Membership for the period between the Turnover Date and the end of the dues waiver period. Upon resignation and the Club's repurchase of any Membership with a dues waiver prior to the end of the dues waiver period, the dues waiver shall terminate.

***Other Fees and Charges.*** The Bylaws and Club Rules authorize the Club to charge, in addition to the Membership Contribution and Initiation Contribution paid to acquire the Membership, administrative and guest fees and other fees for specific items and services, the initial rates for which are set forth in the Schedule of Dues, Fees and Charges attached to this Offering Circular as Exhibit E to use the Club Facilities. The rates for all Membership dues, fees and other charges are subject to change at any time in the Sponsor's discretion until the Turnover Date and thereafter in the discretion of the Board of Directors subject to Sponsors rights set forth in this Offering Circular, the Bylaws and the Transfer Agreement. Members are responsible for all charges incurred by the authorized users of their Membership and their guests.

***Assessments.*** Prior to the Turnover Date, Members will not be subject to any assessment. After the Turnover Date, there will be no assessments for capital expenditures unless approved by a majority of the votes entitled to be cast by Equity Members, except that assessments required to pay for unbudgeted repairs, maintenance, or replacements shall not require Member approval so long as the amount of any such assessment charged to any Member in any 12-month period does not exceed one-third of the dues for the class of Membership held by such Member. All other assessments for capital expenditures after the Turnover Date shall be voted on by and assessed equally among all Equity Members.

After the Turnover Date, there will be no assessments for operating deficits unless approved by a majority of the votes entitled to be cast by Equity Members, except that assessments required to pay for operating deficits shall not require Member approval so long as the amount of any such assessment charged to any Member in any 12-month period does not exceed one-third of the dues for the class and category of Membership held by such Member. All other assessments for other operating deficits after the Turnover Date shall be voted on by and assessed equally among all Equity Members.

***Delinquencies.*** All financial obligations of the Members shall be paid promptly upon becoming due. A Member who fails to pay the amounts due in a timely fashion will be subject to penalties and late charges, as well as interest on the past due amounts, and may have all Membership privileges suspended and, if necessary, be expelled as provided in the Club's Bylaws.

***Discipline of Members.*** In addition to discipline for delinquent fees, dues, and indebtedness, the Board of Directors may expel, suspend the voting rights and use privileges of, or otherwise discipline a Member or the Member's family or guests for any conviction of a felony, or conviction of a misdemeanor involving moral turpitude; or for any conduct which, in the opinion of the Board of Directors, is in violation of the Bylaws or Club Rules or is detrimental to the interests, welfare, safety, harmony, or good reputation of the Club or its Members. Suspension does not terminate a Membership and a suspended Member shall continue to be liable for all Membership dues, fees and charges accruing during the period of suspension. A Member who is expelled shall be deemed to have resigned his or her Membership and the Membership shall be placed on the waiting list to be repurchased by the Club in accordance with the Club's Bylaws but shall remain responsible for all dues accruing through the date on which the Club repurchases the Membership.

***Rights Upon Dissolution of Club.*** Upon sale or dissolution of the Club, after satisfaction of all obligations or after adequate provision for their satisfaction has been made, the remaining assets of the Club, if any, shall be distributed among the Equity Members in good standing in the same proportion as the amount that each would be entitled to receive upon the Club's repurchase of their Membership bears to the total amount that would be payable by the Club upon repurchase of all Equity Memberships in good standing if the Membership Contribution then being charged were equal to the Membership Contribution last paid by a new Member for a Membership in that classification and category.

## *SELECTION FOR MEMBERSHIP*

### **SUITABILITY REQUIREMENTS**

Application and selection for Membership in the Club (other than Memberships issued to LCP Members) is governed by procedures established pursuant to the Bylaws and the Transfer Agreement. All applications for Membership are subject to the approval of the Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or

affiliates of the Sponsor, and thereafter by the Club's Board of Directors or a committee appointed by the Board, such approval to be granted or withheld in the sole discretion of the Sponsor or Board, as applicable, provided that applications shall be accepted and consideration given for Membership in the Club without regard to race, religion, creed, color, sex, national origin or physical disability.

#### **APPROVAL PROCEDURES**

Any eligible individual, other than an LCP Member which holds a membership under the Membership Policies prior to the Conversion Date, who is invited to apply for Membership in the Club may do so by completing and executing a Candidate Profile and Membership Agreement on such forms as are provided concurrently with this Offering Circular and submitting them to the Club along with the Membership Contribution or Initiation Contribution (or portion thereof that is then due and payable), if applicable, for the classification and category of Membership desired. For reference, forms of these documents have been included as Exhibit D to this Offering Circular. After review of the completed Candidate Profile and Membership Agreement, the Club will notify the candidate in writing of approval or nonapproval for Membership.

#### **PAYMENT FOR MEMBERSHIPS**

***Equity Memberships.*** The Membership Contribution for Equity Membership is payable in full at the time of application for Equity Membership, unless otherwise agreed by the Club, and will be fully refunded if the candidate is not approved for Membership or a Membership is not then available.

***Non-equity Memberships.*** In the event additional Non-Equity Memberships are authorized and issued, the Initiation Contribution for a Non-equity Membership is payable in full at the time of application for the Membership, unless otherwise agreed by the Club, and will be fully refunded if the candidate is not approved for Membership or a Membership is not then available.

#### **COMMENCEMENT OF MEMBERSHIP PRIVILEGES**

A prospective Member who has been extended an invitation to become a Member (other than a Member issued a Membership prior to the Conversion Date) shall be entitled to the privileges of such Membership only upon the fulfillment of each of the following: (a) approval for Membership; (b) payment in full of the Membership Contribution or Initiation Contribution for the applicable category of Membership, except as the Sponsor may otherwise agree, (c) availability of a Membership in the desired category, and (d) or the satisfaction of any other conditions which may be imposed from time to time by the Sponsor or Club. The Club and the Sponsor reserve the right to return any candidate's funds and rescind the approval of his or her application if the candidate fails to satisfy any such condition of Membership.

If a Member's Membership Agreement permits the Membership Contribution to be paid in installments, at the sole discretion of Sponsor or Club, as applicable, the Member may enjoy the privileges of such Membership only so long as all installments of the Membership Contribution are paid in a timely manner. If the Member fails to pay any installment on or before the due date thereof, the Club or the Sponsor may, in their sole discretion, cancel the Membership Agreement, rescind the Membership, and refund that portion of the Membership Contribution paid, if any, in which event all rights of the Member under the cancelled Membership shall cease or deem the Membership resigned. In the event the Membership is rescinded, the cancelled Membership shall be returned to the inventory of unsold Memberships held by the Sponsor or the Club, as applicable, and treated as if it had never been sold. Notwithstanding anything to the contrary in these Bylaws, the Member shall have no right to a hearing prior to cancellation of the Membership Agreement nor shall the Member have any right to have the Membership repurchased pursuant to the Bylaws. In the alternative, at the sole discretion of the Sponsor or Club, as applicable, if the Member fails to pay any installment on or before the due date thereof, the Club or the Sponsor may deem the Membership resigned and placed on the repurchase waiting list to be repurchased by the Club in accordance with the Club's Bylaws. In such event, the Membership shall be placed at the bottom of the waiting list until the required

Membership Contribution has been paid in full. The Member shall remain responsible for all dues accruing through the date on which the Club repurchases the Membership.

Membership indicia, including identification cards, shall not evidence Membership in the Club until the satisfaction of the conditions for Membership and only to the extent the Member thereafter remains in good standing with the Club.

### *RISK FACTORS AND OTHER IMPORTANT CONSIDERATIONS*

The purchase of a Membership described in this Offering Circular involves risks. Before acquiring a Membership, all prospective Members should consider, among other things, the risk factors and other important considerations discussed in this section.

#### **CERTAIN RISKS RELATED TO PROPERTY**

The Club is subject to all of the risks incident to the ownership and/or tenant under the Ground Lease of improved real property. These risks include: (a) the uncertainty of cash flow to meet fixed obligations; (b) possible adverse changes in general or local economic conditions, and possible adverse changes in neighborhood or area property values, interest rates, operating expenses, governmental regulations and fiscal policies, and governmental fees and changes associated with the acquisition and ownership of real property; (c) losses that are uninsurable or not economically insurable; (d) energy shortages and governmental policies adopted in response thereto; and (e) other factors beyond the control of the Club or the Sponsor. In the event the Club Facilities are adversely affected by any of these risks or as a result of other matters incident to the ownership and/or tenant under the Ground Lease of real property, the Club and the value of the Memberships may be adversely affected.

#### **DUES INCREASES; LIABILITY FOR POST-TRANSFER OPERATING DEFICITS**

At any time that the Membership dues are deemed inadequate to cover operating costs or for any other reason, the Sponsor (prior to the Turnover Date), in its sole discretion, or the Club's Board of Directors (after the Turnover Date), in its sole discretion, may charge Members additional dues, or add or increase other charges, in an amount to be determined by the Sponsor (prior to the Turnover Date) or the Club's Board of Directors (after the Turnover Date). Accordingly, the Membership dues and other charges are subject to change at any time. After the Turnover Date, any operating deficits will be the sole responsibility of the Club and the Members and the Club may levy assessments on Members to cover shortfalls or otherwise for purposes related to the affairs, business, or improvements of the Club.

#### **RIGHT OF CLUB TO IMPOSE ASSESSMENTS ON MEMBERS**

The Club Operating Budgets currently have no provision for reserve funds for capital expenditures to repair or replace Club Facilities and neither the Board nor the Sponsor have any obligation to set aside reserve funds on behalf of the Club for capital expenditures to repair or replace Club Facilities. Therefore, replacement or major repair of the Club Facilities may require a dues increase, establishment of reserves or sinking funds, borrowing, and/or assessment of Members under the Bylaws. In accordance with the Bylaws, the Club may impose capital assessments on Members for the purpose of making capital improvements or the establishment of a sinking fund or for other purposes upon the affirmative vote of the majority of the votes of the Members entitled to be cast on the issue.

#### **CONTROL OF THE CLUB BY SPONSOR**

Pursuant to the Club's Bylaws and the Transfer Agreement, until the Turnover Date, the Club's Board of Directors will be appointed by the Sponsor. In addition, the Sponsor will control all aspects of the Club's governance and operation, including admission of Members and use of the Club Facilities. The terms of the Transfer Agreement which provide that the Sponsor

will control the Club prior to the Turnover Date were dictated by the Sponsor and are not the result of arm's length negotiation between representatives of the Club and representatives of the Sponsor. The Club was not represented by separate legal counsel in connection with the drafting of the Transfer Agreement, the Bylaws, or any other matters.

#### **CHANGE OF RULES AND REGULATIONS**

The Club Rules may be changed at any time by the Board of Directors without prior notice to, or approval of, the Members, except for certain kinds of changes to the Club Rules which require Membership approval, as set forth in the Bylaws. Therefore, utilization of the Club Facilities and the level of service provided may change from time to time.

#### **POSSIBLE IMPACT OF ENVIRONMENTAL ISSUES**

Maintenance of the Club Facilities required various chemicals which must be handled and stored in compliance with strict state and federal regulations.

#### **CLUB OPERATING BUDGET**

The calculation of the revenues and expenses contained in the Club Operating Budgets were prepared by the Sponsor. Certain material assumptions were made by the Sponsor as a basis for the projections and some of these assumptions may not materialize and unanticipated events and circumstances may occur. Therefore, the actual amounts and results achieved by the Club may vary substantially from the budget projections. No representation is made that the current dues levels established in the operating budget will be sufficient to operate the Club in the future. If Membership sales do not occur as projected, significant dues increases could be necessary to avoid operating deficits. Subsequent to the Turnover Date, the Club will be responsible for satisfying all operating deficits and paying all costs of operation regardless of whether the budgeted or actual revenues of the Club are sufficient to meet operating expenses. If operating deficits exist after the Turnover Date, Members may incur potentially significant dues increases or assessment charges.

#### **NO TRANSFER, PLEDGE, OR SALE OF MEMBERSHIPS BY MEMBERS**

Memberships may not be pledged or hypothecated and are not transferable by a Member in any manner except to secure purchase money financing for the Membership as provided in the Bylaws and, in the event that the lender acquires title to the Membership pursuant to its remedies under the loan documents, the Membership shall be deemed resigned. Any attempted transfer, whether by way of sale, gift, or otherwise, shall be of no force or effect; however, the Club may reissue a Membership to a direct descendent of a deceased Member and a Member may arrange to have his or her Membership repurchased by the Club, if eligible for repurchase, and reissued to the purchaser of the Member's Homesite, as provided in the section of this Offering Circular entitled, "**MEMBERSHIP RIGHTS, PRIVILEGES AND OBLIGATIONS - Nontransferability of Memberships**". Certain payments may be available upon resignation and the Club's repurchase and resale of an Equity Membership.

#### **OFFERING OF MEMBERSHIPS**

Memberships are being offered exclusively for the purpose of permitting Members to obtain the right to recreational and social use of the Club Facilities upon the payment of dues and other charges. Memberships are nontransferable and terminate upon resignation, expulsion from Membership in the Club, or upon the death of the Member, except as otherwise provided in the Bylaws. In accordance with the Club's Bylaws, Members will be entitled to certain payments with respect to their Membership upon termination only upon resale of the Membership by the Club at a resale price established by the Club, and thus the availability, timing and amount of any payment is dependent on the Club's ability to attract new Members. Further, the Club has been organized as a nonprofit corporation and does not anticipate distribution of gains, profits, or dividends to any Members. **MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT AND**

**NO PERSON ACQUIRING A MEMBERSHIP SHOULD EXPECT TO DERIVE ANY ECONOMIC BENEFIT FROM THE PURCHASE OF A MEMBERSHIP.**

**PRICING OF MEMBERSHIPS**

The Membership Contributions for the Memberships offered hereby are not based on projected earnings of the Club, nor do they reflect current market values of the assets owned or to be acquired by the Club. As the sale of Memberships proceed, such Memberships may be offered for a higher or lower offering price than offered hereby.

**TAX STATUS OF THE CLUB**

The Club has not received and does not presently intend to apply for a ruling from the Internal Revenue Service that the Club will be treated as a social club described in Section 501(c)(7) of the Internal Revenue Code of 1986, as amended (the "Code"). In the absence of such a ruling, there can be no assurance that the Club will be deemed to be a tax-exempt social club for federal income tax purposes. In the event that the Club does not qualify for tax exempt status, the receipt of Membership fees and dues, Member charges and other receipts may result in taxable income to the Club with a corresponding federal income tax liability.

Under Section 277 of the Code, a social club or other Membership organization which is operated primarily to furnish goods or services to members, and which is not exempt from taxation, may deduct for Federal income tax purposes ordinary and necessary business expenses attributable to goods and services furnished to its members only to the extent of income derived from its members. Thus, under Section 277, receipt of income by the Club from non-Members cannot be offset by expenses or other losses incurred with respect to Members. Instead, it can only be offset by ordinary and necessary expenses incurred with respect to non-Members. Thus, income received by the Club from non-Members could result in Federal income tax liability even if the Club operated at a deficit overall.

**CONFLICT OF INTEREST**

The Sponsor will own, operate, and maintain the Club Facilities until the Transfer Date. Furthermore, continuing after the Transfer Date, the Sponsor will continue to hold title to the land on which the Club Facilities are constructed as only a leasehold interest of 50-year Ground Lease is being transferred to the Club. In addition, by virtue of its Sponsor Membership status, the Sponsor will have voting control of the Club and the Club's Board of Directors until the Turnover Date. As a result of its voting control of the Club and the Club's Board of Directors, the Sponsor will owe the Club a fiduciary duty. Such duty may conflict with the best interests of the Sponsor.

576601\Equity Conversion\Offering Circular\Offering Circular - Lake Claire Swim Club - Final Draft - 110123.docx



**EXHIBIT A**

**ARTICLES AND BYLAWS**

**STATE OF GEORGIA**  
**Secretary of State**  
**Corporations Division**  
**313 West Tower**  
**2 Martin Luther King, Jr. Dr.**  
**Atlanta, Georgia 30334-1530**

**CERTIFICATE OF INCORPORATION**

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

**Lake Claire Swim Club, Inc.**  
a Domestic Nonprofit Corporation

has been duly incorporated under the laws of the State of Georgia on **10/25/2023** by the filing of articles of incorporation in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on **10/30/2023**.



*Brad Raffensperger*

Brad Raffensperger  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
LAKE CLAIRE SWIM CLUB, INC.**

The undersigned Incorporator hereby submits these Articles of Incorporation for the purpose of forming Lake Claire Swim Club, Inc. (the "Corporation") as a nonprofit corporation under Georgia law.

**Article 1. Name.** The name of the corporation is Lake Claire Swim Club, Inc.

**Article 2. Nonprofit Corporation; Purposes.** The Corporation is organized pursuant to the provisions of the Georgia Nonprofit Corporation Code, as amended (the "**Nonprofit Code**"). The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law. By way of explanation and not limitation, the Corporation is formed for the specific purposes of acquiring, owning and operating a private pool club and related facilities exclusively for the pleasure and recreation of its members and their guests and to provide an entity for the furtherance of the interests of its members.

**Article 3. Principal Office.** The initial principal office of the Corporation is located at 3300 Marjan Drive, Atlanta, Georgia 30340.

**Article 4. Definitions.** All capitalized terms used herein that are not defined shall have the same meaning as set forth in the Corporation's bylaws ("**Bylaws**").

**Article 5. Duration.** The Corporation shall have perpetual duration.

**Article 6. Powers.** The Corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members.

(a) In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Bylaws, may be exercised by its board of directors ("**Board**"):

(i) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Georgia in effect from time to time; and

(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles of Incorporation and the Bylaws.

(b) Notwithstanding any of the above statements of purposes and powers, the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this Corporation.

**Article 7. Membership.** The Corporation shall be a membership corporation without certificates or shares of stock. The Corporation initially shall have classes of membership with the rights and privileges of which (including voting rights) shall be specified in the Bylaws.

**Article 8. Board of Directors.** The business and affairs of the Corporation shall be conducted, managed, and controlled by a Board. The initial Board shall consist of the following three individuals:

Mitchel C. Jaffe – 3300 Marjan Drive, Atlanta, Georgia 30340

Kimberley Bennett - 3300 Marjan Drive, Atlanta, Georgia 30340

Stosh Bennett - 3300 Marjan Drive, Atlanta, Georgia 30340

The number, qualification, method of selection, removal, and filling of vacancies, and the term of office of directors shall be as set forth in the Bylaws. The Board may delegate its operating authority to such legal entities, individuals, and committees as it, in its discretion, may determine.

**Article 9. Liability and Indemnification of Directors.** The liability of directors to the Corporation or its members for monetary damages for breach of duty or care or other duty as a director shall be eliminated or limited to the fullest extent allowed under the Nonprofit Code. Such limitation of liability shall not limit the personal liability of a director for:

- (a) the amount of a financial benefit received by a director to which the director is/was not entitled;
- (b) any acts or omissions not in good faith or which involve intentional misconduct or knowing violations of the law; or
- (c) any transaction from which the director received an improper personal benefit.

No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. To the extent consistent with the Nonprofit Code, as it exists on the date hereof or as it may hereafter be amended, the Corporation shall indemnify its officers and directors as required by the Declaration and the Bylaws.

**Article 10. Dissolution.** The Corporation may be dissolved only upon a resolution duly adopted by its Board and approved by the affirmative vote of members entitled to cast not less than two-thirds (2/3) of the total eligible votes in the Corporation. In addition, the written consent of the "**Sponsor**," as such term is defined in the Bylaws, shall be required so long as Sponsor has the right to consent to amendments to the Bylaws. Notwithstanding the preceding, Sponsor may solely dissolve the Corporation in the event that Sponsor exercises its rights under the Bylaws to terminate the issuance of memberships.

**Article 11. Merger and Consolidation.** The Corporation may merge or consolidate only upon a resolution duly adopted by its Board and the affirmative vote of members entitled to cast not less than two-thirds (2/3) of the total eligible votes in the Corporation. In addition, the written consent of the Sponsor shall be required so long as Sponsor has the right to consent to amendments to the Bylaws.

**Article 12. Amendments.** These Articles may be amended solely by the Board for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity. Otherwise, these Articles may be amended only upon a resolution duly adopted by the Board and approved by the affirmative vote of members entitled to cast more than 50% of the total eligible votes in the Corporation. In addition, the written consent of the Sponsor shall be required so long as Sponsor has the right to consent to amendments to the Bylaws.


For any amendment proposed to be adopted by the members at a membership meeting, the meeting notice shall state that the purpose, or one of the purposes of the meeting, is to consider the proposed amendment. The notice must also contain or be accompanied by a copy or a summary of the proposed amendment. If the proposed amendment is submitted for the members' approval by written consent or ballot in lieu of a meeting, the material soliciting member approval shall contain or be accompanied by a copy or a summary of the proposed amendment.

**Article 13. Registered Agent and Office.** The initial registered office of the Corporation is at 3300 Marjan Drive, Atlanta, DeKalb County, Georgia 30340, and the initial registered agent at such address is Kimberley C. Bennett.

**Article 14. Incorporator.** The name and address of the incorporator are as follows:

Federico A. Boyd  
Hyatt & Stubblefield, P.C.  
1979 Lakeside Parkway, Suite 250  
Atlanta, Georgia 30084

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this October 25, 2023.

  
\_\_\_\_\_  
Federico A. Boyd, incorporator

Hyatt & Stubblefield, P.C.  
1979 Lakeside Parkway, Suite 250  
Atlanta, Georgia 30084(404) 659-6600



Secretary of State

OFFICE OF SECRETARY OF STATE  
CORPORATIONS DIVISION  
2 Martin Luther King Jr. Dr. SE  
Suite 313 West Tower  
Atlanta, Georgia 30334  
(404) 656-2817  
sos.ga.gov

\*Electronically Filed\*  
Secretary of State  
Filing Date: 10/25/2023 1:09:06 PM

TRANSMITTAL INFORMATION FORM  
GEORGIA PROFIT, NONPROFIT OR PROFESSIONAL CORPORATION

Primary Email Address: **fboyd@hspclegal.com**

1. Entity Type (check one only)  Profit Corporation  Nonprofit Corporation  Professional Corporation  Benefit Corporation

Corporate Name Reservation Number (if one has been obtained; if articles are being filed without prior reservation, leave this line blank)

**Lake Claire Swim Club, Inc.**

Corporate Name (List exactly as it appears in articles.)

2. **Federico A. Boyd**

Name of Person Filing Articles of Incorporation

**1979 Lakeside Parkway , Suite 250**

Address

**Atlanta**

City

**GA**

State

**30084**

Zip Code

3. **3300 Marjan Drive**

Principal Office Mailing Address of Profit/Non Profit Corporation (Unlike registered office address, this may be a post office box.)

**Atlanta**

City

**GA**

State

**30340**

Zip Code

4. **Kimberley Bennett**

Name of Registered Agent in Georgia

**3300 Marjan Drive**

Registered Office Street Address in Georgia (Post office box or mail drop not acceptable for registered office address.)

**Atlanta**

City

**Dekalb**

County

**GA**

State

**30340**

Zip Code

**kimberley.bennett@anthem.com**

Registered Agent's Email Address

5. Name and Address of Each Incorporator

**Federico A. Boyd**

Incorporator

**1979 Lakeside Parkway , Suite 250**

Address

**Atlanta**

City

**GA**

State

**30084**

Zip Code

6. ANNUAL REGISTRATION AGREEMENT

- n Georgia corporations incorporated between January 1 – October 1 must file its annual registration with the Secretary of State within 90 days after the date its articles of incorporation are filed with the Secretary of State.
- n Georgia corporations incorporated between October 2 – December 31 must file its annual registration with the Secretary of State between January 1 and April 1 of the next year succeeding the calendar year of its incorporation.

7. Submitted with this filing is a filing fee of \$100.00 payable to "Secretary of State". Filing fees are non-refundable. I certify that a Notice of Incorporation or Notice of Intent to Incorporate with a publication fee of \$40.00 has been or will be mailed or delivered to the official organ of the county where the initial registered office of the corporation is to be located. (The clerk of superior court can advise you of the official organ in a particular county.) I understand that this Transmittal Information Form is included as part of my filing, and the information on this form will be entered in the Secretary of State business entity database. I certify that the above information is true and correct to the best of my knowledge.

**Federico A. Boyd**

Signature of Authorized Person

*Lake Claire Swim Club, Inc.*  
Bylaws

*As of November 1, 2023*

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# *Lake Claire Swim Club, Inc.*

## Bylaws

### Article I

#### Name, Principal Office, and Definitions

##### 1.1. Name and Purpose.

Lake Claire Swim Club, Inc., is organized for the primary purpose of acquiring, owning and operating a recreational club and related facilities exclusively for the pleasure and recreation of its Members and their guests and to provide an entity for the furtherance of the interests of its Members.

Memberships issued in accordance with the Membership Policies, as defined below, which established the existing right to use the Club Facilities, as defined below, issued to individuals ("LCP Members") will, on or after the "Conversion Date," as defined below, be converted to an Equity Membership as set forth in these Bylaws.

##### 1.2. Principal Office.

The principal office of the "Club," as defined below, shall be located at 3300 Marjan Drive, Atlanta, Georgia 30340. The Club may have such other offices, either within or outside the State of Georgia, as the Board of Directors may deem appropriate.

##### 1.3. Definitions.

The words used in these Bylaws generally shall have their normal, commonly understood definitions. Capitalized terms shall have the meanings set forth below, unless the context indicates otherwise:

"Articles" means the Articles of Incorporation of the Club filed with the Georgia Secretary of State, as they may be amended.

"Authorized Equity Memberships" means the maximum number of Equity Memberships that the Club is authorized to issue as set forth in Section 2.4.

"Authorized User" means a person authorized to enjoy the use privileges of a particular Membership.

"Board" or "Board of Directors" means the board of directors of the Club, selected as provided in Article IV.

"Bylaws" means these Bylaws of the Club, as they may be amended.

"Candidate Profile" means the form that a prospective Member completes and submits to the Club pursuant to Section 2.5 in order to be considered for Membership.

"Club" means Lake Claire Swim Club, Inc., a Georgia nonprofit corporation.

"Club Facilities" means all land, buildings, facilities and amenities owned or to be owned and operated by the Club for the use and benefit of its Members. The Club Facilities to be owned by the Club include:

- Swimming pool with diving board and "kiddies' area";

- Men's and women's locker room facilities;
- Guard shack, pump room, storage room;
- Lifeguard towers;
- Gazebos; and
- Miscellaneous pool maintenance facilities.

The Club Facilities to which the Club holds access and use rights for the benefit of the Members that are not owned by the Club include:

- A 50-year ground lease which terminates on December 31, 2074, on which the Club Facilities are constructed ("**Ground Lease**"). Fee simple title to the land subject to the Ground Lease shall remain with Sponsor, its successors-in-title and assigns.

The number, size, scope, and nature of the Club Facilities are subject to change in the sole discretion of the Sponsor until the Turnover Date.

"Club Rules" means such rules and regulations governing operation of the Club, use of the Club Facilities, and conduct of the Members, as may be adopted and amended from time to time by the Sponsor prior to the Turnover Date or the Board of Directors after the Turnover Date.

"Conversion" means the conversion of the memberships in the existing non-equity, right to use Lake Claire Pool established by the Membership Policies of Lake Claire Pool ("Membership Policies") into Memberships in the Club upon election by the current holders of memberships issued under the Membership Policies.

"Conversion Date" means April 1, 2024.

"Designated Adult" means the Member's spouse, if married, or if unmarried, another adult permanently residing in the household of a Member, whom the Member designates in writing to the Club to enjoy the use privileges of the Membership.

"General Manager" means a general manager employed by the Board of Directors to oversee the day-to-day operations and management of the Club and the Club Facilities.

"Homesite" means a Member's home.

"Initiation Contribution" means the purchase price paid by a Member for a specific Non-equity Membership in the Club. In addition to payment of the Initiation Contribution, Member must pay all Membership Charges to access and utilize the Club Facilities.

"Majority" means more than 50% of the total eligible number of votes, Members, or other group, as the context may indicate.

"Member" means an individual holding a Membership in the Club and, unless otherwise specified, refers to any Member, regardless of the class or category of Membership held.

"Membership" means such memberships in the Club as are authorized from time to time pursuant to Article II, and more specifically to the bundle of rights and privileges granted to each Member, which varies according to the classification and category of the Membership. Unless otherwise specifically provided in these Bylaws, when the term is used in its collective sense it shall refer to all Members of the Club in whose name Memberships are issued and outstanding at a particular time.

"Membership Agreement" means the membership agreement that a prospective Member executes and submits to the Club upon being invited to become a Member of the Club.

"Membership Charges" means all dues, assessments and other charges payable to the Club by any Member for access and utilization of the Club Facilities in addition to the Membership Contribution and Initiation Contribution paid to acquire a Membership.

"Membership Contribution" means the purchase price paid by a Member for an Equity Membership in the Club. In addition to payment of the Membership Contribution, Member must pay all Membership Charges to access and utilize the Club Facilities.

"Offering Circular" means the Offering Circular for Lake Claire Swim Club, Inc. and all exhibits thereto, as it may be amended.

"Sponsor" or "Sponsor Member" means Lake Claire Swim Club, LLC, a Georgia limited liability company, or any successor, assign or successor in interest that is specifically designated as the Sponsor hereunder in a written instrument executed by the person then holding the rights of the Sponsor.

"Transfer Agreement" means that certain Agreement for Transfer of Assets entered into between the Sponsor and the Club providing for construction and transfer of the Club Facilities to the Club.

"Transfer Date" means that date when the Sponsor transfers the ownership or rights to use particular Club Facilities to the Club pursuant to the terms of the Ground Lease and the Transfer Agreement on or after the Conversion Date and prior to the Turnover Date.

"Turnover Date" means that date not more than 180 days after the first of the following to occur:

- the initial issuance to third parties of three hundred seventy-five (375) Equity Memberships; or
- the Sponsor's election at any time after the initial issuance to third parties of three hundred (300) Equity Memberships, provided the Club has achieved a positive cash flow.

"Voting Power" means the vote of the Sponsor Membership until the Turnover Date, and thereafter, it means the total votes of Equity Members in good standing entitled to be cast on a matter requiring approval of the Equity Members.

## **Article II** **Membership**

### 2.1. Issuance of Memberships.

The Club shall issue each Membership in the name of the candidate approved for Membership pursuant to Section 2.5. A Membership shall only be issued in the name of one individual who qualifies, applies and has been approved for Membership. Memberships may not be issued in joint names and, if the Membership has voting privileges, only one vote may be exercised per Membership.

In determining whether or not the "initial sale of all Authorized Equity Memberships" has occurred, as such phrase is used throughout these Bylaws, an Equity Membership shall not be deemed to have been initially sold unless and until the Member issued such Equity Membership has paid a Membership Contribution and is entitled to receive a refund of such amounts paid in accordance with Section 2.8 of these Bylaws.

2.2. Membership Classifications.

(a) Equity and Non-equity Memberships. The Club is authorized to issue Equity and Non-equity Memberships, subject to the right of the Sponsor and the Board to create additional classifications and categories of Membership as set forth in these Bylaws, as follows:

(i) Equity Memberships. Equity Memberships are proprietary Memberships with voting rights and are assessable except as otherwise specifically provided in these Bylaws. After the Turnover Date, Equity Members shall be entitled to one vote per Equity Membership held with respect to any matter on which the Equity Members are entitled to vote pursuant to the Articles and these Bylaws. Equity Members are subject to assessment after the Turnover Date as provided in Article VIII. Equity Memberships are not subject to recall by the Club. Within 60 days of the Club's repurchase of a resigned Equity Membership, the resigned Member is entitled to receive the amount specified in Section 2.8(d). There is currently one category of Equity Membership authorized in the Club.

Equity Membership entitles the Member and his or her Authorized Users of the Membership to use all of the Club Facilities during operating hours and subject to the Club Rules and payment of such dues and charges as the Board may establish from time to time in addition to the Membership Contribution paid to acquire the Membership as may be established from time to time. Other than LCP Members electing to purchase an Equity Membership prior to February 1, 2024, Equity Memberships may be issued only to those individuals invited to join by the Club.

(ii) Non-equity Memberships. Non-equity Memberships are non-proprietary, non-voting, non-assessable Memberships. There is currently one category of Non-equity Membership - Honorary. The Club may issue up to 10 Non-equity Honorary Memberships to individuals as the Sponsor may designate. Such Honorary Members may use and enjoy, during operating hours, the Club Facilities generally available for use by Equity Members, subject to the Club Rules. Honorary Members will not be required to pay a Membership Contribution or Initiation Contribution, dues, or operating or capital assessments, but will be required to pay individual charges for food and beverages, merchandise and services. The Club may not rescind, amend, or terminate the rights of an Honorary Member without the Sponsor's consent nor shall the Club reissue an Honorary Membership upon termination or resignation by the Honorary Member. The Sponsor may recall and reissue any Honorary Membership in its sole discretion until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor. Honorary Members have no right to any payment upon termination of their Memberships.

(b) Sponsor Membership. In addition to the Equity and Non-equity Memberships authorized above, the Sponsor, or any successor in interest to the Sponsor to whom the Sponsor assigns its Sponsor Membership, shall be the sole Sponsor Member. The Sponsor Membership entitles the Sponsor and its designees to use all of the Club Facilities in connection with the marketing and sale of Memberships, on such terms and conditions as the Sponsor may determine. The Sponsor Membership entitles the Sponsor to exercise all of the rights and privileges specifically granted to the Sponsor pursuant to Article VIII and elsewhere in these Bylaws, and pursuant to the Transfer Agreement.

Prior to the Turnover Date, the Sponsor Member shall hold all of the Voting Power of the Club on all matters except as otherwise specifically provided in these Bylaws. After the Turnover Date, the Sponsor Member shall have only such voting or approval rights as are specifically granted to the Sponsor in these Bylaws and the Transfer Agreement. The Sponsor Membership shall not be subject to payment of any Membership Contribution, nor shall it be subject to payment of any dues, assessments or other charges but may continue to use the Club Facilities as described in these Bylaws and the Transfer Agreement.

(c) Additional Classifications and Categories. Until the initial sale of all Authorized Equity Memberships to persons other than Sponsor or affiliates of the Sponsor, the Sponsor reserves the right to create additional classes and categories of Membership in the Club, and to establish the eligibility requirements and privileges of each new class or category of Membership created, if it determines, in its sole discretion, that doing so is appropriate in order to establish a sufficient membership base to provide for the economic viability of the Club. Thereafter, the Board of Directors may create additional categories of Membership by amending these Bylaws in accordance with Section 10.10. In its sole discretion, the Club, with the consent of the Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, may establish additional Non-equity Memberships. Within a Membership classification, the Sponsor and the Board may establish different dues categories based on the Member's permanent residence or other factors and/or as set forth in a Member's Membership Agreement. Notwithstanding the right to create additional classes and categories, at no time may the total number of Authorized Equity Memberships be exceeded except upon amendment of these Bylaws by the affirmative vote of not less than 75% of the total Voting Power of the Equity Members and the consent of the Sponsor, if required pursuant to Section 10.10(b).

### 2.3. Exercise of Membership Privileges.

(a) Authorized Users. The following persons ("Authorized Users") shall be authorized to enjoy the use privileges of a Membership, subject to the right of the Board of Directors to restrict the time of access and impose age and ability qualifications for use of the Club Facilities by Authorized Users: the Member, the Member's spouse, if married, or if unmarried, another adult permanently residing in the household of a Member, whom the Member designates in writing to the Club to enjoy the use privileges of the Membership ("Designated Adult"), and the dependent children of each under the age of 23 who either reside with the Member or attend college on a full-time basis.

A Member may not change the Designated Adult for a Membership more than once in any 12-month period. Only the named Member shall be eligible to exercise the voting rights of an Equity Membership and to serve on the Board or committees appointed by the Board.

(b) Guests. All Members are entitled to limited guest privileges in accordance with the following, subject to payment of applicable guest fees and subject to the right of the Board to limit, deny, or revoke guest privileges of any Member (other than Sponsor) or of all Members, at any time in its sole discretion:

(i) There are currently no limitations on the number of times a Member may have a guest on the Club Facilities; however, this right is subject to change in the Club's sole discretion;

(ii) Subject to the Club's right to increase and decrease, the combined number of guests that Members and their Authorized Users may have using the Club Facilities at any one time is limited to five individuals;

(iii) The Club reserves the right to limit the number of times an individual may be a guest in any 12-month period; and

(iv) All guests must be accompanied by either the Member or any Authorized User at least 18 years of age when using any of the Club Facilities unless approved by the Club.

The sponsoring Member shall be responsible for all guest fees and charges, unless paid by the guest at the time such charges are incurred.

2.4. Limitation on Number of Memberships.

Except as otherwise set forth in these Bylaws, the Club is currently authorized to issue a maximum of 400 Equity Memberships ("Authorized Equity Memberships").

The number of Non-equity Memberships which may be issued shall be limited to the number set forth in Section 2.2 except as may be increased or established in accordance with these Bylaws.

2.5. Selection and Admission of Members.

(a) Invitation for Membership. All LCP Members holding a membership issued pursuant to the Membership Policies who elect to acquire an Equity Membership prior to February 1, 2024, as evidenced by the submission of a Candidate Profile, Membership Agreement and the required Membership Contribution shall be issued an Equity Membership on the Conversion Date.

All candidates for Membership, other than LCP Members electing to acquire an Equity Membership prior to February 1, 2024, are subject to approval and acceptance by the Sponsor until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor. Thereafter, all candidates for Membership are subject to approval and acceptance by the Club's Board of Directors or any membership committee that the Board may appoint. As long as the Sponsor has approval authority, it may change, establish, or waive the eligibility and suitability requirements for any Membership classification or category. Such approval may be granted or withheld in the sole discretion of the Sponsor or the Board, as applicable.

The Club or the Sponsor will conduct such inquiry, review and consideration of each candidate as it deems appropriate and may consider information other than the information provided in the Candidate Profile, including, personal references, credit or character reports, and prior or other club references. In any event, however, candidates shall be considered without regard to race, religion, creed, color, gender, national origin or physical disability.

(b) Notification. If a candidate is approved for Membership and Membership in the desired classification and category is then available, the Club shall notify the candidate in writing and extend an invitation to Membership. The candidate shall have not less than 15 days from the date of such notice to execute and submit a Membership Agreement, in such form as the Club may specify, along with a confirmation that either an automated clearing house transfer (ACH) or a credit card payment for the Membership Contribution required to obtain the desired classification and category of Membership or such portion thereof as may be required under the terms of the Membership Agreement.

If a candidate is approved for Membership but Membership in the desired classification and category is not then available, the Club shall so notify the candidate and shall give the candidate an opportunity to request that he or she be placed on a waiting list pursuant to subsection (c) below. Such request shall be accompanied by a waiting list deposit in such amount as the Board may specify from time to time.

If a candidate's request for consideration for Membership is not acted upon favorably, the Club shall so notify the candidate. The Club shall not be required to provide any details or specify any reason for such decision.

(c) Waiting List to Acquire Membership. Upon the issuance of all available Memberships in a class or category, the Board shall establish a waiting list. The waiting list shall be maintained on a first approved, first listed basis (based on the date of the Club's written notice to the candidate of the candidate's approval for Membership). At such time as a Membership becomes available, the Club shall notify the candidate with the highest position on the waiting list of such availability.

A candidate on the waiting list shall have 15 days after receiving written notice that a Membership has become available to accept such Membership by submitting to the Club the difference between the waiting list deposit submitted pursuant to subsection (b) above and the full Membership Contribution or Initiation Contribution, as applicable, required for Membership as stated in the notice. If the candidate fails to submit such payment within the allotted time, the candidate shall be removed from the waiting list and the Club shall refund the waiting list deposit paid. However, the Board, upon consideration of the facts and circumstances relative to the candidate's failure to accept the Membership within the allotted time, may, in its sole discretion, extend the period during which the candidate may accept the Membership, or may permit the Member to pass on the opportunity to acquire such Membership at that time and go to the end of such waiting list. Any candidate on the waiting list may request that the Club remove the candidate's name from the waiting list at any time and, in such event, the Club shall refund the waiting list deposit paid by such candidate within 10 business days after receipt of such request.

(d) Right to Terminate Issuance of Memberships. In the event a total of no less than 200 LCP Members and other candidates for Membership have submitted a Candidate Profile, Membership Agreement, paid the required Membership Contribution and, other than LCP Members electing to acquire an Equity Membership prior to February 1, 2024, have been approved and accepted by the Sponsor prior to March 1, 2024, Sponsor, in its sole and absolute discretion, prior to the Conversion Date, may terminate the Transfer Agreement and the sale of the Club Facilities to the Club contemplated by the Transfer Agreement and may terminate the Offering Circular and any and all documents and exhibits thereto by providing notice to all such individuals prior to the Conversion Date. In such event, Sponsor shall refund all Membership Contributions paid, less any credit given for the non-refundable initiation fee paid to Club Operator to obtain the membership under the Membership Policies. All executed Membership Agreements shall be deemed cancelled as if never been sold or issued and no candidate shall have the right to a hearing prior to cancellation of the Membership Agreement nor shall any candidate have any right to have the Membership repurchased pursuant to these Bylaws. In such event, the Membership Policies shall remain effective, the Club Facilities shall be operated in accordance with the provisions thereof and the LCP Memberships shall continue in effect.

## 2.6. Commencement of Membership Privileges; Evidence of Membership.

Privileges of membership do not start and cannot be exercised until after the Conversion Date. A prospective Member who has been extended an invitation to become a Member (other than LCP Members electing to acquire an Equity Membership prior to the Conversion Date) shall be entitled to the privileges of such Membership only upon (a) satisfaction of all eligibility requirements for such Membership including approval by the Club, (b) execution of a Membership Agreement for such Membership by the prospective Member and by the Club, and (c) payment in full of the required Membership Contribution or Initiation Contribution, as applicable. The Club and the Sponsor reserve the right to return any prospective Member's funds and withdraw an invitation to join the Club if the prospective Member fails to satisfy any such condition of Membership.



The Club may issue Membership indicia, including identification cards; however, any such indicia shall not evidence Membership in the Club until the satisfaction of the conditions for Membership and then only to the extent the Member thereafter remains in good standing with the Club.

If a Member's Membership Agreement permits the Membership Contribution to be paid in installments, at the sole discretion of Sponsor or Club, as applicable, the Member may enjoy the privileges of such Membership only so long as all installments of the Membership Contribution are paid in a timely manner. If the Member fails to pay any installment on or before the due date thereof, the Club or the Sponsor may, in their sole discretion, cancel the Membership Agreement, rescind the Membership, and refund that portion of the Membership Contribution paid, if any, in which event all rights of the Member under the cancelled Membership shall cease. In the event the Membership is rescinded, the cancelled Membership shall be returned to the inventory of unsold Memberships held by the Sponsor or the Club, as applicable, and treated as if it had never been sold. Notwithstanding anything to the contrary in these Bylaws, the Member shall have no right to a hearing prior to cancellation of the Membership Agreement nor shall the Member have any right to have the Membership repurchased pursuant to Section 2.8. In the alternative, at the sole discretion of the Sponsor or Club, as applicable, if the Member fails to pay any installment on or before the due date thereof, the Sponsor or Club may deem the Membership resigned and placed on the repurchase waiting list to be repurchased by the Club in accordance with the Club's Bylaws. In such event, the Membership shall be placed at the bottom of the waiting list until the required Membership Contribution has been paid in full. The Member shall remain responsible for all dues accruing through the date on which the Club repurchases the Membership.

Upon termination of a Membership for any reason, the Secretary of the Club may cancel the former Member's Membership cards issued in connection with such Membership.

#### 2.7. Restrictions on Transfer of Memberships.

(a) General Rule of Nontransferability. No Membership other than the Sponsor Membership may be pledged, assigned, hypothecated, encumbered or otherwise transferred to anyone other than the Club, by sale, gift, or otherwise, voluntarily or involuntarily, except as provided in these Bylaws. The Club shall transfer all unsold Memberships to the Sponsor upon the Sponsor's request as provided in the Transfer Agreement, and the Sponsor shall be entitled to transfer such Memberships initially.

Any other attempted transfer of a Membership by a Member, whether by sale, gift, or otherwise (except as may be expressly provided in the Bylaws upon the death of a Member), shall be of no force and effect and shall confer no Membership rights or other rights upon any transferee to use the Club Facilities. No Member, other than the Sponsor, may advertise for sale or otherwise offer to transfer or assign a Membership in the Club.

(b) Death of a Member. Upon the death of a Member, the surviving spouse, if any, of the Member shall have 60 days after the death of the Member to request in writing that the Club transfer the Membership to the surviving spouse. If there is no surviving spouse, or the surviving spouse does not request such transfer within 60 days after the Member's death, the Club shall deem the Membership resigned. If the Membership is an Equity Membership, the Club shall place such Membership on the waiting list for repurchase pursuant to Section 2.8.

(c) Separation or Divorce. In the event that a Member and his or her spouse are legally separated or divorced, or in the event that a Member and any person identified as the Designated Adult on such Member's Membership cease to maintain the same household, the Member shall retain all rights to such Membership until the Membership is resigned or deemed resigned, unless and until the Club is otherwise ordered by a court of law. In the event of a court order that the Membership be transferred to the Member's former spouse or the Member's Designated Adult, the Membership shall be deemed resigned unless the former spouse or former Designated Adult to whom it is required to be transferred is eligible for, applies and is approved for such class and category of

Membership pursuant to the procedures set forth in Section 2.5 within 60 days after such court order, in which case the Membership shall be reissued in the name of the former spouse or Designated Adult at no charge. Otherwise, the person to whom the court has ordered the Membership to be transferred shall be entitled to any amounts to which the Member would otherwise have been entitled upon resignation, repurchase and reissuance of the Membership (if applicable) pursuant to Section 2.8 of the Bylaws. Until such time as the Club receives notice of such a court order or agreement, or notice from either spouse relinquishing all rights under the Membership to the other, the spouse named in the Membership Agreement shall remain fully responsible for all Membership Charges payable for use of the Club Facilities on account of such Membership.

(e) Resale of Member's Homesite. An Equity Member in good standing who sells or otherwise transfers the Member's Homesite if, prior to the transfer of title to the Homesite, the purchaser or transferee requests consideration for an Equity Membership by completing, signing and submitting a Candidate Profile and Membership Agreement in the form specified by the Club, along with a confirmation that either an automated clearing house transfer (ACH) or a credit card payment in the amount of the Membership Contribution required to obtain the Equity Membership then being charged by the Club is submitted, and is approved for such Membership, the Member may arrange for the Club to repurchase the Membership on the terms set forth in the Bylaws and reissue it to the new owner of the Homesite without regard to any purchase or repurchase waiting list that may exist. **No Member shall commit to transfer, or to arrange for the transfer of, his or her Equity Membership to a purchaser of his or her Homesite in any manner that purports to bind the Club to approve such purchaser for Membership, and any attempt to do so shall be void and of no effect.**

#### 2.8. Resignation and Repurchase of Memberships.

(a) Resignation. Any Member may voluntarily resign the Membership by written notice to the Secretary of the Club of such intention. The Club shall deem a Membership resigned upon the occurrence of any of the following events: (i) the death of the Member, unless the Membership is reissued to a surviving spouse as provided in Section 2.7(b), or the Club's disapproval of such request; (ii) expulsion from the Club for cause (see Section 4.21), including nonpayment of Membership Contribution, Initiation Contribution or Membership Charges, including dues or other charges when due; (iii) recall of the Membership, if subject to recall; or (iv) such other event(s) as may be specifically set forth in these Bylaws. A Member whose Membership is cancelled pursuant to Section 2.6 for failure to pay the required Membership Contribution shall have no rights under this Section 2.8.

(b) Effective Date of Resignation. The effective date of resignation of an Equity Memberships shall be the date of repurchase by the Club, as described below. The resigning Member shall remain responsible for all dues accruing through the date on which the Club repurchases the Membership. The effective date of recalled Membership is as stated in the notice of recall.

A Member who has voluntarily resigned his or her Membership by written notice to the Club may not revoke such resignation and reinstate the Membership unless the Club approves such reinstatement, which approval it may grant or withhold in its sole discretion. In such event, the Secretary of the Club shall promptly remove such Member's name from the waiting list for repurchase.

(c) Repurchase of Resigned Memberships. Although Memberships are not transferable to third parties, a Member who resigns his or her Membership will be eligible to have the Membership repurchased and reissued by the Club, subject to certain conditions set forth in these Bylaws. Upon resignation, the resigned Membership will be placed on a repurchase list to be repurchased by the Club as provided below. Memberships shall be placed on the repurchase list in the order that the Club receives notice of resignation (*i.e.*, first resigned, first repurchased except as otherwise set forth in these Bylaws).

The Club shall have no obligation to repurchase any resigned Membership until such time as a candidate for Membership of the same Membership classification and category is extended an invitation to join the Club, executes a Membership Agreement, and submits the required Membership Contribution, and then subject to all other conditions, priorities and repurchase list requirements set forth in these Bylaws. Until all Authorized Equity Memberships have initially been sold (i.e., excluding resales) to persons other than the Sponsor or affiliates of the Sponsor, if there are Equity Memberships on the repurchase list, every fourth Equity Membership issued by the Club after receipt of notice of resignation of an Equity Membership on such repurchase list shall be the Equity Membership with the highest priority on such repurchase list (the other three Equity Memberships being issued from the inventory of Equity Memberships that have not yet been initially sold). In the Sponsor's discretion, Equity Memberships may be repurchased from the waiting list more frequently; however, any such repurchase shall not delay the repurchase of Equity Memberships having higher priority on the repurchase list. If the Sponsor repurchases an Equity Membership and there is no approved candidate on the waiting list to acquire such Equity Membership, the Equity Membership may be returned to the inventory of unsold Equity Memberships and no dues, fees, or assessments shall be due for such Membership until it is resold.

(d) Repurchase Price. Within 60 days after the Club's repurchase and reissuance of a resigned Equity Membership, the Club shall pay to the resigned Member 80% of the Membership Contribution received by the Club upon reissuance of the Membership, less any outstanding Membership Charges owed to the Club or use of the Club Facilities on account of the resigned Membership (the 20% differential between the Membership Contribution paid by the new Member and the amount payable to the resigning Member before deduction of any outstanding Membership Charges being considered a non-refundable portion of the Membership Contribution which shall be the property of the Club or the Sponsor, as provided in the Transfer Agreement).

There is no guarantee that a Membership will be repurchased and reissued by the Club, and the Membership Contribution being charged at the time of repurchase may be higher or lower than the Membership Contribution originally paid by the resigned Member. Members are not entitled to receive any amount from the repurchase of their resigned Memberships unless and until the Club is able to resell the resigned Membership. Therefore, the availability and timing of any payment is dependent on the Club's continued ability to attract new Members, and no assurances can be made that any terminated Membership will be resold, or upon what terms.

After repurchase of a resigned or terminated Membership and receipt by the resigned Member of the amounts due, such resigned Member no longer shall have any claim as or on behalf of a Member of the Club.

#### 2.9. Repurchase of Recalled Membership.

Within 60 days after the Club's recall of a Membership which paid an Initiation Contribution, the recalled Member will be entitled to 100% of the Initiation Contribution actually paid by the recalled Member. All amounts payable to a recalled Member shall be reduced by the amount of any outstanding Initiation Contribution or Membership Charges owed to the Club or the Sponsor for use of the Club Facilities on account of the recalled Membership.

#### 2.10. Rights of Members Upon Sale or Dissolution.

The Club has been formed as a nonprofit corporation under the law of the State of Georgia and does not contemplate the distribution of gains, profits, or dividends to any of its Members. However, upon the sale or dissolution or winding up of the Club, after satisfaction of all obligations or after adequate provision for such satisfaction has been made, the remaining assets of the Club, if any, shall be distributed among the Equity Members in good standing at the time of dissolution in the same proportion as the amount that each would be entitled to receive upon the Club's repurchase of their Membership bears to the total amount that would be payable by the Club upon repurchase of all Equity Memberships in good standing if the Membership Contribution

then being charged were equal to the Membership Contribution last paid by a new Member for a Membership unless an alternative plan of distribution is approved by Equity Members holding a Majority of the votes. In the event of sale or dissolution of the Club, fee simple title to the land subject to the Ground Lease shall remain with Sponsor, its successors-in-title and assigns.

If the Club has elected to be tax exempt and has received all applicable rulings or determinations from governmental agencies required for establishing such tax-exempt status, any such distribution shall be made only to the extent that it does not adversely affect the tax-exempt status of the Club.

2.11. No Discrimination.

Except as specifically authorized in these Bylaws or the Club Rules, the Club shall not discriminate among Members within a particular class and category of Membership for any reason. By way of example and not limitation, the Club shall not give any Member preference over any other Members of the same class and category with respect to use of the Club Facilities, the right to make reservations, or other similar matters.

**Article III**  
**Membership: Meetings, Quorum, Voting, Proxies**

3.1. Place of Meetings.

Meetings of the Club shall be held at the Club Facilities or at such other place within Dekalb County, Georgia, as the Board may designate. The Board may, pursuant to the Georgia Nonprofit Corporation Code, as amended (the "Nonprofit Code"), permit any annual, regular, or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

3.2. Annual Meetings.

The annual meetings of Members shall be held on a date and time in the months of September, October or November at a location or through a communications method designated by the Board and at a time set by the Board. At the annual meeting, directors shall be elected (if applicable) as provided in these Bylaws, reports of the affairs of the Club shall be considered, and such other business may be transacted which is within the power of the Members as conferred by the laws of the State of Georgia, the Articles, or these Bylaws. The first meeting of the Club, whether a regular or special meeting, shall be held within one year from the Conversion Date.

3.3. Special Meetings.

The President or a Majority of Board may call special meetings. In addition, it shall be the duty of the President to call a special meeting upon a valid petition signed by Members representing at least 25% of the total Voting Power. A "valid petition" shall be one which is in writing and specifies with particularity the matters to be placed before the Members for action, which shall be limited to those matters which are properly voted on by the Members under the Articles, these Bylaws and Georgia law. If the Club fails to give notice of a special meeting within 30 days after receipt of a valid petition from Members satisfying the requirements above, then the Members who signed the petition may call such meeting by giving notice to the Members in accordance with Section 3.4 and 10.8.

3.4. Notice of Meetings.

At least 21 days before any annual or regularly scheduled meeting of the Membership and at least seven days in advance of any special meeting of the Membership, the President, the Secretary, or the officers or other

persons calling the meeting shall post such notice conspicuously on the Club Facilities and shall also shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including a description of the general nature of any proposed amendment to the Bylaws, any proposal to remove a director, and any other matter specifically required by the Nonprofit Code. In addition, the meeting notice shall provide notice of a matter a Member intends to raise at the meeting, provided the President or Secretary receives a written request to do so from a person or persons entitled to call a special meeting at least 10 days before the meeting notice is sent. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 3.10 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.8.

The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Members. If action is proposed to be taken on any of the following matters, the meeting notice must state the general nature of the proposal or any Member action taken on such items shall be invalid:

- (a) Removing a director from office without cause;
- (b) Filling vacancies on the Board of Directors under those circumstances where a vote of the Members is required pursuant to Section 4.5, below;
- (c) Amending the Articles, these Bylaws, or the Club Rules in any manner requiring approval of the Voting Members;
- (d) Approving any contract or transaction between the Club and one or more of its Directors, or between the Club and any corporation, firm or association in which one or more of its Directors has a material financial interest;
- (e) Voting on any assessment requiring Member approval pursuant to Article VIII; or
- (f) Voting upon any proposal to voluntarily dissolve the Club.

### 3.5. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive notice of any meeting of the Members, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote. A Member participating through a communications method designated by the Board by which all persons participating in the meeting may hear each other during the meeting shall be considered to be present at the meeting.

### 3.6. Adjournment of Meetings.

If any meeting of the Membership cannot be held because a quorum is not present, a Majority of the Voting Power who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than

30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. However, any matter put to a vote must be approved by the same number of votes as would have been required for action to be taken on the matter if a quorum were still present.

### 3.7. Voting.

Only those Members holding Memberships which are specifically granted voting rights pursuant to Section 2.2 shall be entitled to vote on any matter requiring a vote of such Membership. No votes shall be cast for unsold Memberships held by the Club. Except as otherwise specified in the Articles or these Bylaws, the votes of Members entitled to cast a Majority of the Voting Power represented in person, by proxy, or by ballot, assuming a quorum exists, shall decide matters put to a vote of the Membership. Until the Turnover Date, the entire Voting Power of the Membership shall be vested in the Sponsor Member, except as otherwise specifically provided in these Bylaws.

### 3.8. Proxies.

Members may vote by proxy, subject to the limitations of Georgia law and subject to the requirements of this Section. Every proxy shall be in writing specifying the Membership for which it is given, signed by the Member or the Member's duly authorized attorney-in-fact, dated, and filed with the Secretary of the Club prior to the meeting for which it is to be effective. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, the Club shall deem both invalid.

Every proxy shall be revocable and shall automatically cease upon the effective date of the resignation of any Membership for which it was given; upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or 11 months from the date of the proxy, unless the proxy specifies a shorter period.

### 3.9. Quorum.

Except as otherwise provided in these Bylaws, a quorum shall be established by the presence of Members or their proxies, or written ballots signed by Members, or any combination of Members, proxies and ballots, representing at least 30% of the total Voting Power. If a quorum is not obtained at the first attempt to convene a meeting, the quorum requirement for any subsequent attempt to convene such meeting shall be reduced to 20% of the total Voting Power.

### 3.10. Conduct of Meetings.

The President shall preside over all meetings of the Club, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

The Club may hold Membership meetings and/or allow Members or their proxies to participate in any Membership meeting by means of remote communication, including, but not limited to, conference telephone, video conference, or other electronic communications system permits each person participating in the meeting to read or hear the proceedings of the meeting substantially concurrently with their occurrence. If voting is to take place at the meeting, the Club must implement measures to verify that every Member and proxy voting at the meeting by means of remote communication is sufficiently identified, and the Club shall keep a record of any vote(s) cast by remote communication. A Member or proxy holder who participates in a meeting by the means described in this section, whether the meeting is held at a designated physical place or solely by means of remote communication, is deemed to be present in person at the meeting.

### 3.11. Action by Written Ballot.

Except in the case where a meeting is specifically required, the approval of Members may be obtained by ballot without a meeting if the Club delivers a ballot in writing or by electronic transmission to every Member entitled to vote on the matter. The ballot form for obtaining any such Member approval shall: (a) set forth each proposed action; and (b) provide an opportunity to vote for or withhold a vote for each candidate in any election of directors; and (c) provide an opportunity to vote for or against each proposed action other than an election of directors. In addition, the ballot form or the solicitation for votes by ballot shall: (d) indicate the number of responses needed to meet the quorum requirement; (e) state the percentage of approvals necessary to approve each matter other than election of directors; (f) specify the time by which a ballot must be received by the Club in order to be counted; and (g) identify the address or method by which completed ballots may be transmitted to the Club.

Approval by ballot pursuant to this Section is valid only when: (h) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting of the Members; and (i) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Once submitted to the Club, a ballot may not be revoked.

### 3.12. Action Without a Meeting.

In addition to the above procedures, any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, in accordance with the following procedures. Approval of the Members may be obtained if the action is approved by the written consent of Members representing at least a Majority of the Voting Power, unless the Bylaws or the Nonprofit Code require(s) a greater number of votes for a specific action; provided, if the action requires approval from only certain Members, the approval required shall be at least a Majority of the Voting Power allocated to Members within the category eligible to participate in the vote. Member approval must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by the requisite number of Members, and delivered to the Secretary for filing with the Club's records. No Member consent shall be valid unless (a) the consenting Member has been furnished the same material that would have been required to be sent to Members in a notice of a Membership meeting at which the proposed action would have been submitted to a vote of the Members, or (b) the consent contains an express waiver of the right to receive the material otherwise required to be furnished.

The Board may set a record date for determining the identity of those Members entitled to take action without a meeting by written consent, which shall not be earlier than the 70th day before the first Member signs a consent. Unless the Board fixes an alternative record date for determining those Members entitled to take action by written consent, the record date shall be the date the first Member signs a consent. Written notice of approval by written consent shall be given to all Members who did not sign a consent, and Member approval pursuant to

this Section shall be effective 10 days after such written notice is given; provided, if all Members sign a consent, Member approval shall be effective immediately upon receipt by the Club of all consents.

3.13. Record Dates for Notice and Voting.

The Board of Directors shall be entitled to fix, in advance, a record date for purposes of determining the right of Members to notice, voting and other entitlements. The voting rights of any Member who is not in good standing as of the record date established for any meeting or written ballot pursuant to these Bylaws shall be suspended. To be in "good standing" a Member must be current in the payment of all Membership Charges and not be subject to any suspension of Membership privileges as a result of disciplinary action conducted in accordance with Section 4.21.

**Article IV**

**Board of Directors: Composition, Meetings, Powers**

A. Composition and Selection.

4.1. Governing Body.

A Board of Directors, each of whom shall have one equal vote, shall govern the affairs of the Club. Only those Equity Members in good standing which are at least 21 years old are eligible for election to the Board.

4.2. Number and Qualifications of Directors.

(a) Number. The Board shall consist of three to five directors, as provided below. The initial Board shall consist of three directors as identified in the Articles of Incorporation. Thereafter, the Board of Directors shall consist of such number of persons as set forth below.

(b) Directors Appointed by Sponsor. Until the Turnover Date, the Sponsor shall be entitled to appoint, remove and replace, all of the members of the Board of Directors in its sole discretion. Such directors may, but need not, be Equity Members.

(c) Directors Elected by Members. Not later than 30 days after the Turnover Date, the Board shall call a meeting of the Equity Members for the purpose of permitting the Equity Members to elect new directors to the Board. Commencing with such election, the Board shall consist of five directors, four of whom shall be elected by the Equity Members in good standing, and the Sponsor, until the initial sale of all Authorized Equity Memberships and Non-equity Memberships to persons other than the Sponsor or affiliates of the Sponsor, shall be entitled to appoint one member of the Board of Directors. After the Sponsor no longer has rights to appoint a member of the Board of Directors, the Equity Members shall be entitled to elect the final member of the Board of Directors. The Board of Directors will annually elect all officers of the Club.

4.3. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by votes of Equity Members. The Board shall establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

The Board also may appoint a Nominating Committee to nominate candidates for election to the Board. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board, and three or



more Equity Members. The Board shall appoint any Nominating Committee at least 30 days prior to the annual meeting and the Board shall announce such appointment in the notice of each election.

The Nominating Committee may nominate as many candidates for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate the candidate's qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Equity Member may cast one vote by use of a written ballot per Equity Membership held by such Member for each position to be filled on the Board. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve no more than two consecutive terms (regardless of length) and thereafter may not be nominated for or elected until at least two years after their second elected term has expired; provided, however, an Equity Member who has served two consecutive elected terms may be nominated and elected for subsequent elected terms if no other eligible person is nominated.

#### 4.4. Election and Term of Office.

Unless the Turnover Date coincides with the annual meeting of the Members, the four directors to be elected by the Equity Members pursuant to Section 4.2(c) shall be elected at such time to serve until the first annual meeting of the Members following the Turnover Date. At the first annual meeting after the Turnover Date, or if the election held pursuant to Section 4.2(c) coincides with the annual meeting, the four directors elected by the Equity Members shall allocate terms among themselves so that two Equity Members directors shall serve for a term of one year and two Equity Member directors shall serve for a term of two years.

At or coincident with (if by written ballot) each annual meeting thereafter, successors shall be elected, for a term of two years, to fill the positions being vacated by those directors whose terms are expiring. If any such annual meeting is not held, or the election does not take place at or coincident with the annual meeting, the directors may be elected by written ballot or at any special meeting of Members held for that purpose. The newly elected directors shall assume their positions at the close of the meeting (or election, if by written ballot without a meeting) at which the director is elected.

The Sponsor may, at any time and in its sole discretion, remove or replace any director that it has appointed. At the first annual meeting following termination of the Sponsor's right to appoint a director, the director appointed by the Sponsor shall resign and the Equity Members shall be entitled to elect a successor to serve a term of two years.

#### 4.5. Removal of Directors and Vacancies.

Any director elected by the Equity Members may be removed, with or without cause, by a Majority of the Voting Power cast by Equity Members. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Equity Members to fill the vacancy for the remainder of the term of such director.

Upon receipt of a valid petition in accordance with Section 3.3, the Board shall call a special meeting of the Members for the purpose of voting on the recall of such director or directors as are named in the petition. The petition must disclose the names of those Members who have initiated the recall and state the principal reasons why a recall is being sought. Directors may be removed with or without cause by the affirmative vote of at least a

Majority of the Voting Power of the Equity Members. Except as otherwise provided herein or by law, the Board of Directors shall have the sole discretion to establish the procedures to be followed in the conduct of the recall election. If a Member-initiated recall is successful, the Board shall instruct the Nominating Committee to make nominations for candidates to fill the vacancy or vacancies resulting from the recall and a special election of directors shall be conducted as soon thereafter as reasonably possible.

A director who ceases to be an Equity Member of the Club shall be deemed to have resigned as a director on the effective date of the termination of such director's Equity Membership. Any director elected by the Equity Members who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent in the payment of any Membership Charges, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor director to fill the vacancy until the next annual meeting, at which time eligible Equity Members may elect a successor for the remainder of the term. In the event of a vacancy on the Board of Directors arising for any reason other than removal of a director by action of the Members, the remaining directors may appoint a successor to serve for the balance of the term of his or her predecessor in office. Whenever a director is removed from office by action of the Members, the Board shall call a special meeting at which the Members shall be entitled to elect a successor.

This Section shall not apply to directors appointed by the Sponsor. The Sponsor shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by the Sponsor.

B. Meetings.

4.6. Organizational Meetings

The first meeting of the Board following each annual meeting of the Membership shall be held within 10 days thereafter at such time as the Board shall fix. Such meetings shall be held at the Club Facilities.

4.7. Regular Meetings.

Regular meetings of the Board may be held at such time as a Majority of the directors shall determine, but the Board shall meet at least once during each quarter of the fiscal year. Such meetings shall be held at the Club Facilities. The President or the Secretary shall give notice of the time and place of a regular meeting to each director at least four days prior to the meeting, except that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

4.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or, if he or she shall be absent or is unable or refuses or neglects to act, by any two directors. All Directors shall be notified of the time, place and purpose of each special meeting upon five days prior notice by first-class mail or 72 hours' notice delivered in person or by any reliable means of telecommunication.

4.9. Notice and Waiver of Notice.

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either

before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall be deemed waived by any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

4.10. Electronic Participation in Meetings.

Members of the Board or any committee that the Board may establish may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment, provided that all persons participating in the meeting can hear each other.

A meeting of the Board, or of any committee designated by the Board, may be held by means of a "virtual" or remote electronic communications system, including telephone or videoconference, but only if: (a) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (b) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

4.11. Quorum of Board of Directors; Voting.

At all meetings of the Board, a Majority of the directors, including the director appointed by Sponsor, if any, shall constitute a quorum for the transaction of business. The votes of a Majority of the directors present at a meeting at which a quorum is present shall be necessary to take any action, except as otherwise specifically provided by law, the Articles of Incorporation or in these Bylaws. The directors present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum. However, any matter put to a vote must be approved by the same number of votes as would have been required for action to be taken on the matter if a quorum were still present. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice. Notwithstanding the foregoing, in the event a quorum of directors cannot readily be assembled because of some catastrophic event, those directors and officers who participate in any Board meeting pursuant to Section 14-3-303 of the Nonprofit Code shall constitute a quorum, and any such emergency Board shall have such powers as authorized under Section 14-3-303 of the Nonprofit Code.

Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 4.15. A director who is present at a Board meeting is presumed to have assented to any action approved at such meeting unless: (a) the director objects at the beginning of the meeting (or promptly upon arrival) to the holding or the meeting or transacting business at the meeting; (b) the director votes against the action or abstains from voting on the action because the director claims a conflict of interest, and such dissent or abstention is entered in the meeting minutes; or (c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Club immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

4.12. Compensation.

Directors shall not receive a salary or any compensation from the Club for acting as such whatsoever, but shall be entitled to be reimbursed for all expenses reasonably incurred in performing any duties pursuant to these Bylaws. The Board may require presentation of invoices, receipts or other bona fide evidence of payment as a condition for reimbursement of expenses. Nothing in this Section shall prohibit the Club from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Club in a capacity other than as a director pursuant to a contract or agreement with the Club, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the other directors.

4.13. Conduct of Meetings.

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

4.14. Notice to Members; Open Meetings.

Except in an emergency, the Board shall post notice of Board meetings at least 48 hours in advance of the meeting at a conspicuous place within the Club Facilities that the Board establishes for the posting of notices relating to the Club. Subject to the provisions of Section 4.15, all meetings of the Board shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be given permission to speak. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

4.15. Action Without a Formal Meeting.

Any action of the Board of Directors may be taken without a meeting if written consent, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote at a meeting.

C. Powers and Duties.

4.16. Powers.

The Board of Directors shall have all of the powers and duties necessary for the administration of the Club's affairs and for the performance of all responsibilities and the exercise of all rights of the Club as set forth in the Articles and these Bylaws, and as provided by law. In all cases, the Board may act without a vote of the Membership except as to those matters which the Articles, these Bylaws, or Georgia law require to be approved by the Equity Members or the Membership generally. Subject to the rights of the Sponsor under Article IX and other provisions of these Bylaws and the Transfer Agreement, the Board's powers shall include, without limitation, the power:

(a) to select, retain, fix the compensation of, and remove or discharge the officers, agents and employees of the Club, including a General Manager, to require from them such security or fidelity bonds as the Board deems appropriate, and to prescribe such powers and duties for them as are consistent with law, with the Articles of Incorporation and these Bylaws;

(b) to authorize the issuance of Memberships, to prescribe the procedures and terms under which Memberships shall be issued, subject to the provisions of the Bylaws and the Sponsor's rights under the Transfer Agreement, and to amend the Offering Circular to reflect the same;

(c) to manage, control, operate, maintain, repair, replace and improve the Club Facilities subject to the limitations set forth in the Ground Lease; provided, any capital expenditure after the Turnover Date that would cause the total capital expenditures by the Club in a fiscal year to exceed ten thousand dollars (\$10,000) shall require approval of a Majority of the total Voting Power;

(d) to borrow money and incur indebtedness for the purposes of the Club, including working capital, subject to the limitations set forth in the Ground Lease and these Bylaws and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds to secure debt, mortgages, pledges, hypothecations or other evidences of debt and securities therefor; provided, any borrowing that would cause the total outstanding debt of the Club to exceed twenty thousand dollars (\$20,000) shall require approval of a Majority of the total Voting Power;

(e) to acquire, sell, dispose, lease or pledge personal property. No encumbrance shall be placed on the real property subject to the Ground Lease without the express written consent of the landlord identified in the Ground Lease or its successors or assigns;

(f) to prescribe rules and regulations for the governance of the Club, for use of the Club Facilities by families, visitors, and guests, for the conduct of Members and their families and guests, for the admission of Members, and for such other matters as the Board of Directors may deem necessary or appropriate to the extent not inconsistent with applicable law, the Club's Articles of Incorporation, and these Bylaws;

(g) to determine and enforce disciplinary measures for any violation of the Bylaws or the Club Rules;

(h) to fix the Membership Contribution and Initiation Contribution, as applicable, and dues of each class and category of Membership and other charges and fees as authorized under the Bylaws, subject to the rights of the Sponsor pursuant to the Transfer Agreement;

(i) to appoint various committees in connection with the management or operation of the Club;

(j) to issue, suspend, cancel, and transfer Memberships, and the Membership cards, if any, evidencing the same;

(k) to enter into contracts and agreements with any person or entity for goods or services or for other purposes, including, but not limited to, access and use of the Club Facilities by third-party commercial operators and/or use and access by the Club's Members of the facilities of third-party commercial operators; and

(l) to take any other action and perform any other act which the Board deems necessary or appropriate consistent with the Club's purposes as stated in the Articles and the Bylaws.

#### 4.17. Duties.

Subject to the rights of the Sponsor and other provisions of these Bylaws and the Transfer Agreement, the duties of the Board shall include, without limitation:

(a) conducting, managing and controlling the affairs and business of the Club;

(b) managing, controlling, operating, maintaining, repairing, replacing, and improving the Club Facilities as a first-class club in a manner consistent with the operation and maintenance of the Club Facilities by the Sponsor prior to the Turnover Date, unless the Sponsor, in its sole discretion, approves or consents to deviation from such standard;

(c) preparing and adopting an annual budget and fixing and collecting Membership Charges pursuant thereto;

(d) opening accounts on behalf of the Club with banks and similar financial institutions and designating the signatories for such accounts;

(e) obtaining and carrying property, liability, and other insurance as required by law or as the Board deems appropriate and filing claims thereunder as appropriate;

(f) paying the cost of all services rendered to the Club;

(g) keeping books with detailed accounts of the receipts and expenditures of the Club;

(h) making available to any Equity Member current copies such books, records, and financial statements of the Club as provided in Section 10.4; and

(i) indemnifying a director, officer or committee member, or former director, officer or committee member of the Club or the Sponsor to the extent Georgia law, the Articles of Incorporation or these Bylaws require such indemnification.

#### 4.18. Management.

The Board of Directors may employ for the Club a General Manager at such compensation as the Board may establish, to perform such duties and services as Board shall authorize. The Board may delegate such powers as are necessary to perform the General Manager's assigned duties, but shall not delegate policymaking authority.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the General Manager, if any, which might arise between meetings of the Board.

#### 4.19. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accounting and controls shall conform to generally accepted accounting principles;

(b) cash accounts of the Club shall not be commingled with any other accounts;

(c) no person shall accept for himself any remuneration from vendors, independent contractors, or others providing goods or services to the Club, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Club;

(d) any financial or other interest which the General Manager may have in any firm providing goods or services to the Club shall be disclosed promptly to the Board of Directors;

(e) commencing at the end of the quarter in which the first Membership is sold, financial reports shall be prepared for the Club at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format on a quarterly basis;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Members who are delinquent in paying Membership Charges at the time of the report and describing the status of any action to collect such Membership Charges which remain delinquent (any Membership Charge or installment thereof shall be considered to be delinquent 30 days following the date of the statement unless otherwise specified by Board resolution); and

(f) an annual report consisting of at least the following shall be made available to all Equity Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of cash flows for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

#### 4.20. Borrowing.

The Club shall have the power to borrow money prior to the Turnover Date provided that, as of the Turnover Date, the outstanding balance of all loans secured by the Club Facilities shall be no more than the value of net realizable receivables, inventories and supplies on hand plus any prepayments under contracts or leases for the benefit of the Club. After the Turnover Date, the Club shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval, in the same manner as required for assessments in Section 8.2, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Club for that fiscal year.

#### 4.21. Enforcement.

(a) Sanctions. The Club may levy such sanctions as it deems appropriate against any Member, Authorized User, or guest for cause. Such sanctions include, without limitation, reprimands, fines, reimbursement of expenses incurred and suspension or termination of Membership privileges or expulsion from the Club. "Cause" may include, without limitation (i) falsifying any information provided to the Club, (ii) nonpayment of any sums due to the Club (including charges incurred by the Member, the Member's Authorized Users, or guests) for a period of 60 days or longer after such sums were billed to the Member, (iii) conviction of a felony or misdemeanor involving moral turpitude, (iv) permitting the use of a Membership card or other Membership information by someone other than the person to whom it was issued, (v) conduct unbecoming a Member, (vi) failure to accompany a guest when required when using Club Facilities, (vii) abuse of Club personnel, (viii) instituting litigation against the Club, the Sponsor or any affiliate of Sponsor, or (ix) acts (in or on the Club Facilities) by a Member, an Authorized User, or guests which the Board determines to be detrimental to the best interests of the Club, including, without limitation, conduct violating the Club Rules or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its Members.

Notwithstanding the right of the Board to expel a Member, or other Authorized User for conduct described in this Section, Members who are delinquent in the payment of financial obligations to the Club shall first be suspended pursuant to Section 8.3. Suspension does not terminate a Membership, and a suspended Member shall continue to be liable for Membership Charges accruing during the period of suspension.

(b) Notice and Hearing. Except as provided below, before the Club levies any sanction it shall provide the Member or Authorized User against whom the sanction is to be levied with written notice and an opportunity for a hearing before the Board or its designee.

Any Member or officer of the Club or the General Manger may present charges against an allegedly offending Member or Authorized User. The charges, including a summary of facts upon which they are based, shall be stated in writing and presented to the Board of Directors, or to a committee designated by the Board to receive such charges. If a committee is appointed by the Board of Directors to receive such charges, the committee shall determine whether disciplinary action against the Member or Authorized User charged should be recommended to the Board of Directors. If the committee recommends no action, no further action shall be taken.

If such committee recommends action or if, in the Board of Directors' judgment, the charges are sufficient to warrant further inquiry, the Board of Directors shall call for a hearing on the charges and notify the Member or Authorized User charged by first-class or certified mail of such hearing, not less than 15 days prior thereto, including with such notice a statement of the charges giving rise to the disciplinary action or the reasons for possible expulsion, suspension or other discipline, together with a concise summary of the facts upon which they are based.

Disciplinary hearings shall be held before the Board or a committee appointed by the Board of Directors. The Member or Authorized User may, not less than five days before the effective date of the expulsion, suspension, or other discipline (and the notice shall so instruct the Member or Authorized User), file with the Secretary of the Club a written statement, under oath, setting forth any and all of his or her defenses to such charges. The Member or Authorized User may not thereafter raise any defenses not clearly set forth in such statement, and if he or she fails to file any such statement within such time the Member or Authorized User shall be deemed to have waived his or her right to any hearing, all defenses and all objections to any penalty imposed with respect to the charges. Upon filing such statement within such time, the Member or Authorized User shall be entitled to attend the hearing, with or without counsel, and present evidence and arguments within the scope of such statement in the Member or Authorized User's behalf. Evidence and arguments in support of the charges may also be heard.

Suspension or expulsion of a Member shall automatically operate to suspend or terminate, respectively, the rights and privileges of the Member's Authorized Users, and guests. Suspension or expulsion of any of the Member's Authorized User shall not affect the rights and privileges of the Member.

The expulsion of a Member shall be treated as a resignation of the Membership. Any Member whose Membership privileges have been suspended shall remain responsible for all Membership Charges during the period of suspension.

A Member whose Membership is terminated pursuant to Section 2.6 for failure to pay the required Membership Contribution in full shall have no right to notice or a hearing under this Section prior to such termination.

(c) Appeal. Following a hearing before a designee of the Board, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the Club must receive written notice of appeal within 10 days after the hearing date.



(d) No Liability. Neither the Club nor any of its officers or directors shall have any liability whatever to any Member or Authorized User affected by any disciplinary proceedings under these Bylaws.

## **Article V** **Officers**

### 5.1. Officers.

The officers of the Club shall be a President, Vice President, Secretary, and Treasurer. The Board of Directors shall elect the President and Secretary from among the Members of the Board; other officers may, but need not be, members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices, except the offices of President and Secretary.

### 5.2. Election and Term of Office.

The Board shall elect the officers of the Club at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

### 5.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment removal will serve the best interests of the Club, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

### 5.4. Powers and Duties.

The officers of the Club shall each have such powers and duties as generally pertain to their respective offices, as well as such other powers and duties as the Board may specify. The President shall be the chief executive officer of the Club. The Treasurer shall be the chief financial officer and shall have primary responsibility for the preparation of the budget but may delegate all or part of the preparation and notification duties to a finance committee, the General Manager, or both.

### 5.5. Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. An officer who ceases to be an Equity Member of the Club shall be deemed to have resigned as an officer on the effective date of the termination of such officer's Equity Membership.

### 5.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Club shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

5.7. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 4.12.

**Article VI**  
**Committees**

6.1. General.

In addition to the Nominating Committee, the Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

6.2. Membership Committee.

The Board may appoint a Membership Committee to act in an advisory capacity to the Board or the Sponsor regarding review, evaluation, approval, or rejection of any application for Membership and to serve such other Membership-related purposes and functions as the Board may determine from time to time.

6.3. Advisory Committee.

The Board may, but shall not be required to, appoint a committee to serve in an advisory capacity to the Board regarding matters of Club management and operations and to perform such duties as the Board may delegate to it from time to time. Such committee, if appointed, shall have no authority to bind the Board or the Club. The members of any advisory committee may, but need not be, Members of the Club. The Board may appoint, and may remove and replace, the members of any such committee in its sole and absolute discretion and may determine the number and term of office of members of such committee in its sole discretion.

**Article VII**  
**Membership Contribution and Initiation Contribution**

Sponsor has the right to set and change the Membership Contribution and Initiation Contribution to acquire each Membership classification and category in its sole discretion until after the initial sale of all Authorized Equity Memberships and Non-Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor. Thereafter, the Club's Board of Directors shall have such right. The Membership Contribution or Initiation Contribution to be paid by a candidate for Membership shall be the Membership Contribution or Initiation Contribution in effect on the date the candidate executes his or her Membership Agreement, provided that the candidate has been extended an invitation to join the Club, a Membership is available, and the candidate accepts such Membership within 15 days after receipt of Club's invitation to become a Member. Except as may otherwise be provided in the Member's Membership Agreement, the Membership Contribution or Initiation Contribution, as applicable, for Membership is due in full at the time the Membership Agreement is executed.

**Article VIII**  
**Membership Charges**

8.1. Periodic Dues and Fees.

(a) Establishment of Dues and Fee Structure. In addition to the Membership Contribution and Initiation Contribution paid to acquire a Membership, the Sponsor, prior to the Turnover Date, or the Board of Directors, after the Turnover Date, shall have the right to set and change the dues and other charges payable by the Members for operation and use of the Club Facilities, subject to the limitations set forth in these Bylaws. The

Sponsor and the Board of Directors, as applicable, may establish different levels of dues for each classification and category of Membership. The Sponsor, prior to the Turnover Date, or the Board of Directors, after the Turnover Date, reserve the right to create dues classifications and categories and to combine or eliminate dues classifications and categories in their sole and absolute discretion. No dues or assessments shall be payable for Memberships which the Club holds in inventory or which have not been initially sold or issued at the direction of Sponsor.

(b) Commencement of Dues Payment. All dues are annual dues and unless otherwise determined are payable annually in advance on or before April 1 of each year, and shall be prorated for any partial year in which dues commence. After the Turnover Date, the Board may permit dues to be paid in monthly, quarterly or semi-annual installments. The dues payable for each Membership classification and category shall be as set forth on a schedule available from the Club. New Members shall pay prorated dues commencing on the first day of the month in which they become Members.

## 8.2. Assessments.

Prior to the Turnover Date, there shall be no assessment of the Members. After the Turnover Date, the Club may assess Equity Members, subject to the following:

(a) Any assessment for capital improvements shall be subject to the approval of Equity Members holding a Majority of the Voting Power in good standing that will be subject to such assessment, except that assessments required to pay for unbudgeted repairs, maintenance, or replacements shall not require Member approval so long as the amount of any such assessment charged to any Member in any 12-month period does not exceed one-third of the dues for the class of Membership held by such Member. Except as otherwise specifically set forth in these Bylaws, Non-equity Members shall have no right to vote on, and shall not be subject to, any assessment for capital improvements.

(b) Any assessment for operating deficits shall not require the approval of Equity Members so long as the amount of any such assessment charged to any Member in any 12-month period does not exceed one-third of the dues for the class of Membership held by such Member. Any such assessments which exceed such threshold shall require the approval of Equity Members holding a Majority of the Voting Power in good standing that will be subject to such assessment. Except as otherwise specifically set forth in these Bylaws, Non-equity Members shall have no right to vote on, and shall not be subject to, any assessment for operating deficits or unbudgeted repairs, maintenance or replacements.

All Members entitled to vote on a particular assessment shall have one equal weighted vote per qualifying Membership held. Assessments for items other than capital expenditures shall be assessed among the Members in the same ratio as the monthly dues payable by each.

## 8.3. Delinquencies.

Unless the Board provides otherwise by resolution, the Club shall mail to each Member, on a monthly basis, an itemized statement of the Membership Charges payable by the Member. Any Member failing to pay the full amount due within 30 days after the date of such statement shall be considered delinquent. The Club may impose a reasonable late charge on all delinquent accounts in such amount as the Board of Directors may determine.

The Club shall send written notice to any delinquent Member specifying the amount of any late charge imposed on the Member's account. If the Club does not receive payment of the full amount due within 30 days after such notice, the Club may post, at a conspicuous place in the Club Facilities, the name of the Member and the

amount due to the Club. In addition, the Club may suspend the delinquent Member's credit privileges. If the Member does not pay such indebtedness in full within 60 days after such notice of delinquency, the Board of Directors may suspend the use privileges of the delinquent Member and the Member's Authorized Users. The Board shall not reinstate a suspended Member's privileges until the Member has paid all Membership Charges, including those accruing during the period of suspension, plus late charges, any attorneys' fees which the Club incurred with respect to the deficiency, and interest on the total amount due calculated at the lesser of 15% per annum, or the maximum rate permitted by law, from the date first due and payable.

If any Member is suspended pursuant to this Section and fails to pay all Membership Charges and reinstate the Member's Membership within 30 days of such suspension, the Board may commence proceedings to terminate the Member's Membership pursuant to Section 4.21 upon written notification sent by certified mail to the delinquent Member. The Club may sue any Member to recover a money judgment for unpaid Membership Charges, without waiving any other rights.

The Board of Directors may authorize the institution of legal action by the Club for the collection of Membership Charges owed by a Member. If the Board of Directors retains legal counsel to collect any such amount, the Club shall be entitled to recover from the Member, in addition to all delinquent sums, late charges and interest calculated as provided above, and its reasonable costs, expenses and attorneys' fees incurred in attempting to collect and in collecting such amount, whether or not legal action is in fact instituted.

Notwithstanding the above, failure to pay the required Membership Contribution for any classification and category of Membership in full as required by the Membership Agreement shall entitle the Sponsor or the Club to cancel the Membership Agreement and rescind the Membership as provided in Section 2.6, without regard to the procedures set forth in this Section and the former Member shall have no right to reinstate such Membership.

## Article IX

### Rights of Sponsor; Restrictions on Club

#### 9.1. Rights of Sponsor.

As more particularly described in the Transfer Agreement, the Sponsor has committed to fund the costs of constructing the Club Facilities and to convey a leasehold interest to the land (the Ground Lease) upon which the Club Facilities are located, together with the Club Facilities, to the Club not later than the Transfer Date. **Sponsor, its successors-in-title and assigns shall retain fee simple title to the land subject to the Ground Lease.** Prior to the Turnover Date, the Sponsor has committed to fund all cumulative net operating deficits of the Club (as defined in the Transfer Agreement). As consideration for those commitments and undertakings, which will confer substantial benefit and financial stability to the Club, the Sponsor has certain rights and privileges which are set forth in the Transfer Agreement. The rights of the Sponsor set forth in the Transfer Agreement are incorporated by this reference.

#### 9.2. Restrictions on Club.

Neither the Club nor the Membership shall, without the prior written consent of the Sponsor, which consent may be withheld in the Sponsor's sole and absolute discretion:

(a) modify any provision of the Bylaws, the Club Rules, the Offering Circular, the Candidate Profile, or the Membership Agreement in a manner which is inconsistent with the rights reserved to the Sponsor under the Transfer Agreement or the Bylaws;

(b) sell, transfer, or pledge the Club Facilities; or

(c) take any other action which, in the Sponsor's sole and absolute opinion, adversely affects the ability to sell Memberships.

**Article X**  
**Miscellaneous**

10.1. Fiscal Year.

The fiscal year of the Club shall be the calendar year, unless the Board establishes a different fiscal year by resolution.

10.2. Parliamentary Rules.

Except as the Board may otherwise provide by resolution, Robert's Rules of Order (current edition) shall govern the conduct of Club proceedings when not in conflict with Georgia law, the Articles, or these Bylaws.

10.3. Conflicts.

If there are conflicts among the provisions of Georgia law, the Articles, these Bylaws, the Transfer Agreement and the Offering Circular, the provisions of Georgia law, the Transfer Agreement, the Articles, these Bylaws, and the Offering Circular (in that order) shall prevail.

10.4. Books and Records.

(a) Inspection by Members. The Board shall make the following available for inspection and copying by any Equity Member or the duly appointed representative of an Equity Member at any reasonable time and for a purpose reasonably related to such person's interest in the Membership: Offering Circular, Bylaws, and Articles, including any amendments, the Club Rules, the Membership roster, books of account, and the minutes of meetings of the Members, the Board, and committees, subject to the imposition of reasonable restrictions on the confidentiality, use, or distribution of such information. The Board shall provide for such inspection to take place at the office of the Club or at such other place in reasonable proximity to the Club Facilities as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Officers and Directors. Every officer and director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Club and the physical properties owned or controlled by the Club for purposes related to such director's duties as a director, but not for any other purpose or in any manner that would violate any duty to the Club or any law. The right of inspection by a director includes the right to make a copy of relevant documents at the Club's expense.

10.5. Taxes.

The Club shall charge to each Member and each Member shall pay any tax or assessment which the United States Government, the State of Georgia, or any political subdivision thereof, or any other governmental agency, may impose on any Membership Charge paid or payable by the Member to the Club. The Club, the Sponsor, and their agents and employees are not authorized to give legal or tax advice. Each Member shall be responsible for obtaining any legal or tax advice that the Member feels necessary or appropriate to ensure compliance with the law.

10.6. Club's Remedies Nonexclusive.

The remedies that these Bylaws afford to the Club with respect to Members shall be cumulative and nonexclusive. The Club may, in addition to pursuing any internal remedies, pursue any legal remedies that it may have without making any election of remedies.

10.7. Severability.

Should any court having jurisdiction hold any clause, provision or part of these Bylaws to be void or voidable, the remaining provisions shall nevertheless remain in full force and effect.

10.8. Notices.

Except as these Bylaws may otherwise provide, all notices, demands, bills, statements, or other communications required hereunder shall be in writing and shall be deemed to have been duly given as of the date delivered, if personally delivered or, if mailed, on the third business day following the date of deposit with the United States Postal Service, first class postage prepaid, by private carrier, or by electronic transmission as further described below:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the residence of such Member;

(b) if to the Club, the Board, or the General Manager, at the principal office of the Club or the General Manager or at such other address as the Club shall designate by notice to the Members in accordance with this Section; or

(c) if to the Sponsor, at Sponsor's principal address as it appears on the Secretary of State's records, or at such other address as Sponsor has designated by notice to the Club in accordance with this Section 10.8.

Notices and other communications that are required to be in writing may be given by electronic transmission (as described in below), if the recipient has consented to receipt of electronic communications and designated an information processing system (such as email address, fax number, or other electronic messaging system) for receipt of such electronic communications. The transmission of an electronic notice or other electronic communication shall be valid if properly addressed to the electronic communication system designated by the recipient and the communication or information transmitted is in an electronic form as described below.

Notice sent in accordance with this Section shall be deemed to have been duly given and effective:

(d) if sent by United States mail, five days after deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(e) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(f) if sent by facsimile, electronic mail, or other electronic communication system, upon transmission, as evidenced by a printed or electronic record confirming transmission.

However, notice shall not be given by electronic transmission to a Member after the Club has been unable to deliver two consecutive notices by electronic transmission to that Member, or after the inability to so deliver the notices to the Member becomes known to the Secretary or any other person responsible for the giving of the notice.

For purposes of the Bylaws, the phrases "electronic transmission" and "electronically transmitted" mean any form of technology having electrical, digital, magnetic, wireless, optical, electromatic, or similar capabilities, that creates a record that may be retained, retrieved, and reviewed by the recipient thereof and that may be directly reproduced in paper form by the recipient through an automated process. Email and fax transmissions are currently commonly accepted modes of electronic transmission capable of retention, retrieval, and reproduction on paper, but other electronic systems and information processing systems may exist or be developed in the future. Any such future technologies that satisfy the requirements of the Nonprofit Code may be used for notices under the Bylaws without the need to amend these Bylaws.

Except as otherwise provided by Georgia law, whenever these Bylaws require or refer to the signature of a Member, the Club, or a director or officer of the Club, the signature of such person may be a manual, facsimile, conformed, or electronic signature. Any electronic transmission by a Member to the Club shall be deemed to be written, signed, and dated by the Member, provided that such electronic transmission sets forth or is delivered with information from which the Club can determine: (g) that the electronic transmission was transmitted by the Member; and (h) the date on which the Member transmitted such electronic transmission, which transmission date shall be deemed to be the date on which the Member signed such consent, request, demand, or notice, unless otherwise provided in the electronic communication.

#### 10.9. Indemnification.

(a) To the fullest extent permitted by law, the Club shall indemnify, defend, protect and hold harmless each director, officer, manager, and employee of the Club, from and against any expenses, judgments, fines, settlement, and other amounts actually and reasonably incurred in connection with any threatened, pending or completed action or proceeding, whether criminal or civil, administrative or investigative (a "Proceeding"), arising out of any such person's failure in his or her official capacity to exercise due care regarding the management or operation of the Club, unless the act or omission involves intentional misconduct, fraud, or knowing violation of the law. The Club shall advance to such person's expenses incurred in defending any Proceeding prior to the final disposition thereof to the fullest extent and in the manner permitted by applicable law.

(b) The Board of Directors shall cause the Club to purchase and maintain insurance, in such amounts as the Board deems appropriate, for the benefit of those persons identified in subsection (a), insuring them against any liability asserted against or incurred by any of them in such capacity and claims arising out of each such person's status as a director, officer, manager or employee of the Club, whether or not the Club would have the power or obligation to indemnify them against such liability.

10.10. Amendment.

(a) Approval by Equity Members. Except as otherwise specifically provided in these Bylaws, these Bylaws may be amended:

(i) prior to the issuance of the first Equity Membership, by the Sponsor Member in its sole and absolute discretion;

(ii) after the issuance of the first Equity Membership but prior to the Turnover Date, upon a resolution duly adopted by the Board of Directors and the consent of the Sponsor;

(iii) after the Turnover Date, upon a resolution duly adopted by the Board of Directors and the affirmative vote of not less than 50% of the total Voting Power of the Equity Members and the consent of the Sponsor, if required pursuant to Section 10.10(b); and

(iv) otherwise as specifically authorized in these Bylaws or the Transfer Agreement.

(b) Approval by Sponsor. The Club shall not amend these Bylaws or the Articles without the consent of Sponsor until after the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor. Furthermore, the Club shall not make any change in the number, classes, categories, or privileges of Membership without the prior written consent of the Sponsor until after the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or affiliates of the Sponsor.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon adoption. Any procedural challenge to an amendment must be made within six months of its adoption or it shall be presumed that such amendment was validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

10.11 Membership List.

The Membership's mailing list shall be private and confidential. It shall not be made available to any Member, or published, except for official Club purposes and pursuant to Section 14-3-720 of the Nonprofit Code; it being the intention of this provision to prohibit the circularizing of the Membership list for private purposes. Any Member duly nominated for or seeking election to the Board of Directors, shall be entitled to the use of such list for campaign purposes provided any such circularization is done by the Club staff and is paid for by such person or persons and not the Club. No Member shall make use or disclose to others for use the Membership roster or mailing list for the purpose of making mass or general mailings for business or commercial purposes.

10.12 Corporate Seal.

The corporate seal of the Club shall be circular in form and shall bear the words "Lake Claire Swim Club, Inc." and the date of the Club's formation. The corporate seal shall be in the possession of the Secretary and be affixed by him to all documents relating to the official acts of the Club, as authorized by the Board of Directors.



**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Lake Claire Swim Club, Inc., a Georgia nonprofit corporation;

That the foregoing Bylaws constitute the Bylaws of the corporation, as duly adopted by unanimous written consent in lieu of a meeting of the Board of Directors thereof on the 1<sup>st</sup> day of November, 2023.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1<sup>st</sup> day of November, 2023.

*Kimberley C Bennett*  
\_\_\_\_\_  
Secretary

**EXHIBIT B**

**AGREEMENT FOR TRANSFER OF ASSETS**

**AGREEMENT FOR TRANSFER OF  
ASSETS  
BY AND BETWEEN  
LAKE CLAIRE POOL, LLC  
AND  
LAKE CLAIRE SWIM CLUB, INC.**

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# AGREEMENT FOR TRANSFER OF ASSETS

THIS AGREEMENT FOR THE TRANSFER OF ASSETS ("**Agreement**") is entered into as of the November 1, 2023, by and between Lake Claire Pool, LLC, a Georgia limited liability company (the "**Sponsor**"), and Lake Claire Swim Club, Inc., a Georgia nonprofit corporation (the "**Club**").

## RECITALS

A. The Sponsor is the owner of the real property and improvements described on Exhibit "A" ("**Property**") located in Dekalb County, Georgia.

B. The Sponsor currently operates Lake Claire Pool ("**Lake Claire Pool**") as the "Club Operator," a "right to use" non-equity membership club, with each membership constituting a revocable license to use certain facilities located or to be located within the Property according to the terms and provisions of those certain Membership Policies of Lake Claire Pool (the "**Membership Policies**"), an agreement with each member of Lake Claire Pool ("**LCP Members**"), and the rules and regulations and policies issued from time to time by the Sponsor.

C. As Club Operator, Sponsor is exercising its reserved right under the Membership Policies to sell or otherwise transfer all or any portion of the "Club Facilities," as defined below, to a third party at any time upon such terms and conditions as the Club Operator determines appropriate in its sole and absolute discretion.

D. The Club is a recreational and social equity club organized by Sponsor to acquire, own and operate various recreational and social facilities for the pleasure and recreation of its members and their guests.

D. The Club desires to acquire the Club Facilities from the Sponsor and convert Lake Claire Pool from a nonequity club to an equity club and the Sponsor desires to convey the Club Facilities to the Club, at such time and on such terms and conditions as are specified in this Agreement, including, without limitation, the assumption by the Club of certain obligations related to those assets.

In consideration of the foregoing recitals and the covenants and agreements contained herein, the parties agree as follows.

## ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement shall be defined as set forth in the above Recitals, in the text of this Agreement, and as follows:

"**Affiliate(s)**" means members, partners, managers, principals, officers, directors, employees, agents, representatives of a referenced entity or any person controlling, controlled by or under common control with such entity.

"**Authorized Equity Memberships**" means the maximum number of Equity Memberships that the Club is authorized to issue as set forth in the Bylaws.

"**Board**" means the board of directors of the Club.

"**Bylaws**" means the Bylaws of Lake Claire Swim Club, Inc., a Georgia nonprofit corporation, as may be amended from time to time.

**"Club Facilities"** shall mean all buildings, facilities and amenities owned, to be owned and/or operated by the Club for the use and benefit of its members. The Club Facilities to be owned by the Club include:

- Swimming pool with diving board and "kiddies' area";
- Men's and women's locker room facilities;
- Guard shack, pump room, storage room;
- Lifeguard towers;
- Gazebos; and
- Miscellaneous pool maintenance facilities.

The Club Facilities to which the Club will hold access and use rights for the benefit of the members that will not be owned by the Club include:

- A 50-year ground lease which terminates on December 31, 2074, on which the Club Facilities are constructed ("Ground Lease").

The number, size, scope, and nature of the Club Facilities are subject to change in the sole discretion of the Sponsor until the Turnover Date.

**"Conversion Date"** means April 1, 2024.

**"Encumbrances"** shall mean all easements, rights of way, dedications, agreements, restrictions, reservations, covenants, leases, licenses, use rights, agreements, plats, encroachments, zoning, dedications, liens, claims and encumbrances, whether or not of record, affecting the Club Facilities.

**"Homesite"** means a home owned by a member of the Club.

**"Membership Materials"** shall mean the offering circular and other materials for the offering of memberships in the Club, including the Bylaws, the Rules, an application or similar document designed to obtain information on prospective purchasers and a membership agreement for execution by persons selected for membership, as such materials may be amended from time to time.

**"Rules"** means such rules and regulations governing operation of the Club, use of the Club Facilities, and conduct of the members, as may be adopted and amended from time to time by the Sponsor prior to the Turnover Date or the Board of Directors after the Turnover Date.

**"Sponsor"** means Lake Claire Pool, LLC, a Georgia limited liability company, or any successor or assign.

**"Transfer Date"** means that date when the Sponsor transfers the ownership or rights to use particular Club Facilities to the Club pursuant to the terms of the Ground Lease and this Agreement on or after the Conversion Date and prior to the Turnover Date. If the Sponsor transfers portions of the Club Facilities to the Club at different times, any reference to the Transfer Date shall refer to the date upon which the applicable portion of the Club Facilities is transferred.

**"Turnover Date"** means the date which is not more than 180 days after the first of the following to occur:

- the initial issuance to third parties of three hundred seventy-five (375) Equity Memberships; or
- the Sponsor's election at any time after the initial issuance to third parties of three hundred (300) Equity Memberships, provided the Club has achieved a positive cash flow.

**ARTICLE II**  
**CONVEYANCE OF CLUB FACILITIES**

2.1 Conveyance.

Subject to the terms and conditions of this Agreement and the Membership Materials, assumption by the Club of all obligations related to the Club Facilities, and the Encumbrances, and in consideration for the mutual covenants contained herein, the Sponsor shall transfer or assign and/or convey to the Club on or before the Turnover Date the following property, all to be described more particularly in the discretion of the Sponsor:

- (a) the Club Facilities;
- (b) the Ground Lease;
- (c) all furniture and furnishings, equipment, fixtures, vehicles, machinery, inventories, supplies and other items of personal property owned and transferable by the Sponsor, which are located on or in the Club Facilities and used in connection with the operation of the Club Facilities (collectively, the "FFE"), to be specifically identified by the Sponsor. All such FFE shall be identified in substantially the form attached as Exhibit "D" to this Transfer Agreement ("Bill of Sale"). To the extent that an Affiliate of the Sponsor owns such property, the Sponsor shall cause the Affiliate to convey to the Club all of the Affiliate's right, title, and interest in such property on or before the Turnover Date;
- (d) any and all leases or financing agreements held by the Sponsor or an Affiliate of Sponsor on maintenance equipment and general office systems used in connection with the Club Facilities;
- (e) all rights, powers, privileges, duties and obligations of the Sponsor or an Affiliate of Sponsor pursuant to operating contracts and agreements (including, without limitation, leases of machinery and equipment) relating to the operation or maintenance of the Club Facilities;
- (f) all assignable licenses or permits in the name of the Sponsor or an Affiliate of Sponsor relating to the operation or maintenance of the Club Facilities;
- (g) an amount equal to (i) all dues paid by members prior to the Turnover Date prorated from the Turnover Date until September 1 of such year of the Turnover Date; less (ii) all amounts prepaid by Sponsor for service and equipment contracts or agreements which provide a benefit to the Club after the Turnover Date. Club shall treat such amounts as "prepaid" items and will be solely responsible for their administration and shall credit such dues and credits to the appropriate members; and
- (h) such rights and interests in any additional facilities provided or constructed by the Sponsor as the Sponsor shall determine in its sole discretion.

With respect to the conveyance of access and use rights, the Sponsor may, in its sole discretion, elect to convey fee title to the applicable portion of the Club Facilities or convey easements or other use rights therein.

## 2.2 Modifications to Club Facilities.

Until the Turnover Date, the Sponsor may make alterations and modifications to any facilities and improvements constructed on the Property, and/or may provide additional facilities and improvements not specifically contemplated hereby which, upon conveyance to the Club, shall become a part of the Club Facilities.

## 2.3 Condition of Title; Title Policy.

(a) The Sponsor shall transfer title to the improvements constituting the Club Facilities subject to the Encumbrances, and, specifically, subject to (i) any zoning or other regulation or limitation imposed by governmental authorities; (ii) taxes and assessments not delinquent (including without limitation any and all bonds or assessments imposed on the Property); and (iii) all covenants, conditions, rights, easements, dedications, agreements, licenses, restrictions, rights-of-way and other matters of record affecting title to the Club Facilities as granted, imposed or suffered to be placed upon the Club Facilities by the Sponsor in connection with the development of the Club Facilities, which individually or in the aggregate do not render title to the Club Facilities. Title to the real property on which the Club Facilities are located will remain with Sponsor and its successors-in-title and assigns. Except as provided herein, the Sponsor shall transfer the Club Facilities free and clear of all monetary liens and encumbrances except (iv) any lease obligations relating to maintenance equipment and general office systems; (v) a working capital loan to Sponsor which, as of the Turnover Date, shall secure no more than the value of net realizable receivables, inventories and supplies on hand plus any prepayments under contracts or leases for the benefit of the Club, if any; and (vi) a mortgage, deed to secure debt, collateral security agreement or similar instrument securing the Sponsor's right to sums payable pursuant to this Agreement, including, without limitation, the proceeds from the initial sale of all unissued Authorized Equity Memberships and Non-Equity Memberships (as such term is defined in the Bylaws) to persons other than to Sponsor or Affiliates of the Sponsor and to receive and retain all membership dues, fees and other charges due from or incurred by the members including the proceeds from the resale of all memberships and all reinstatement fees and reissuance fees due for reinstatement or reissuance of memberships until the Turnover Date; provided, however, any outstanding obligations of members as of the Turnover Date shall be paid to Sponsor regardless of the date of collection. The Club shall assume and fulfill all obligations under any leases, operating contracts, licenses and permits relating to the operation or maintenance of the property transferred.

(b) Upon entering into the Ground Lease, the Sponsor shall arrange for issuance of a leasehold title insurance policy for the real property portions of such Club Facilities on behalf of and at the expense of the Club in such amount as the Sponsor determines appropriate in the exercise of its reasonable discretion.

## 2.4 Expenses and Prorations.

The Sponsor shall pay all transfer and recording fees and expenses related to transfer of the Club Facilities to the Club. The Sponsor and the Club shall prorate between themselves, as of 12:01 a.m. on the Transfer Date, all utilities, real property taxes and assessments assessed against the Club Facilities, and other pro-ratable expenses and fees. No assessment for work not yet performed shall be payable by the Sponsor.

## 2.5 Property Transferred "As Is"; Disclaimer of Warranties.

THE CLUB FACILITIES WHICH THE CLUB IS TO ACQUIRE PURSUANT TO THIS AGREEMENT ARE TO BE TRANSFERRED AND ACCEPTED "WHERE IS, AS IS," AND WITHOUT RECOURSE. THE SPONSOR MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION: REPRESENTATIONS OR WARRANTIES OF (A) MERCHANTABILITY, HABITABILITY, OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE; (B) THE EXTENT, DESIGN, CONDITION, DATE OF COMPLETION, CONSTRUCTION, ACCURACY, COMPLETENESS,



LOCATION, USEFUL LIFE, QUALITY, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO PROJECTED USE, OF THE CLUB FACILITIES OR THE MATERIALS, FURNISHINGS OR EQUIPMENT USED THEREIN, OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATION OF THE CLUB FACILITIES; (C) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS, RADON, ENDANGERED SPECIES OR OTHER ENVIRONMENTAL CONDITIONS OR HAZARDS; (D) THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF THE CLUB OR CLUB FACILITIES; OR (E) THE SUFFICIENCY OR ADEQUACY OF ANY ASSETS CONVEYED HEREBY TO OPERATE THE CLUB FACILITIES OR ANY OF THE CLUB FACILITIES. NEITHER THE CLUB NOR ITS MEMBERS SHALL MAKE ANY CLAIM RELATING TO ANY OF THE FOREGOING FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM.

2.6 Termination of Conveyance of Club Facilities and Sale of Memberships.

In the event a total of no less than 200 LCP Members and other candidates for membership have submitted an application or similar document designed to obtain information on prospective purchasers, a membership agreement for execution by persons selected for membership and paid the required purchase price for the membership and, other than LCP Members electing to acquire a membership prior to February 1, 2024, have been approved and accepted by the Sponsor prior to March 1, 2024, Sponsor, in its sole and absolute discretion, prior to the Conversion Date, may terminate this Transfer Agreement and the sale of the Club Facilities to the Club contemplated by this Transfer Agreement and the Membership Materials and may terminate the Membership Materials and all exhibits attached thereto by providing notice to all such individuals prior to the Conversion Date. In such event, Sponsor shall refund all amounts paid for the memberships, less any credit given, and are referred hereinafter as Former Equity Members. All executed Membership Materials shall be deemed cancelled as if the Former Equity Memberships had never been sold or issued and no Former Equity Member shall have any rights under the Membership Materials, including, but not limited to, a hearing prior to cancellation of the Membership Materials or the right to have the Former Equity Membership repurchased in accordance with the Membership Materials.

**ARTICLE III**  
**CONSIDERATION FOR TRANSFER**

3.1 Rights and Certain Obligations of Sponsor.

In consideration for the Sponsor's commitments under this Transfer Agreement, the Sponsor shall have:

- (a) The sole and exclusive right until the Turnover Date:
  - (i) to appoint all of the members of the Club's Board of Directors;
  - (ii) to initially establish and thereafter increase or decrease the amount of all periodic dues, fees and other charges payable by the Club's members, including any separate charges to be made by the Club for individual services to members;
  - (iii) to receive and retain (A) all membership dues, fees and other charges due or incurred by members through the Turnover Date including the proceeds from the resale of all memberships and all reinstatement fees and reissuance fees due for reinstatement or reissuance of memberships; and (B) all cumulative net operating income of the Club through the Turnover Date; and
  - (iv) be responsible for operating deficits.
- (b) The sole and exclusive right:

(i) to receive and retain all proceeds from the initial sale of Authorized Equity Memberships and Non-Equity Membership at the prices and terms determined in its sole discretion and to record or cause the Club to record a mortgage, deed of trust, or similar security instrument against the Club Facilities securing such right; and

(ii) from and after the Turnover Date, to appoint one member of the Board until the initial sale of all Authorized Equity Memberships and Non-Equity Memberships to persons other than to Sponsor or Affiliates of the Sponsor.

(c) The right, until the initial sale of all Authorized Equity Memberships to persons other than the Sponsor or Affiliates of the Sponsor, to:

(i) to create additional classifications and categories of membership, provided that the total number of Authorized Equity Memberships is not exceeded, and to establish, modify and waive the eligibility requirements for any membership classification or category, subject to the terms of the Bylaws;

(ii) to consent or withhold consent, in its sole discretion, to any proposed amendment to the Club's Articles of Incorporation, Bylaws and Membership Materials;

(iii) establish and thereafter increase or decrease the purchase price to be charged for all memberships;

(iv) designate if, when and to whom all memberships will be issued subject to the provisions of the Bylaws;

(v) establish criteria and procedures for selection for membership in the Club, to establish and modify waiting list priorities, and to approve all candidates for membership;

(vi) to consent or withhold consent, in its sole discretion, to any change in the number, classes, categories, or privileges of memberships which the Club may issue, and any additions or modifications to the Club Facilities;

(vii) adopt amend and distribute any offering materials for the offering of memberships in the Club and the forms of applications and membership agreements to be used in offering memberships in the Club, provided that any amendment shall not be inconsistent with this Agreement, the Bylaws, or Membership Materials unless they are also amended, subject to the approval requirements, if any, set forth in or otherwise applicable to those documents;

(viii) to cause the Club to maintain and operate the Club Facilities in the same manner as existed at the Turnover Date;

(ix) use the Club Facilities, logos, images and intellectual property to promote the sale of memberships; and

(x) to cause the Club to enforce its rights with respect to all members, including under the Club's Articles and Bylaws, the membership agreements, the Rules, and any covenants and restrictions.

### 3.2 Sponsor's Right to Use Club Facilities.

Until the initial sale of all Authorized Equity Memberships to persons other than to Sponsor or Affiliates of the Sponsor, the Sponsor and its designees shall have the right to use any or all of the Club Facilities in connection with the marketing and sale of memberships in the Club, and in connection with the

other business activities of the Sponsor or an Affiliate of Sponsor, upon such terms and conditions as the Sponsor may determine from time to time. Such right shall include, without limitation:

- (a) the right to permit employees and designees of the Sponsor and an Affiliate of Sponsor, and their guests, to use and enjoy the Club Facilities and participate in member activities and events;
- (b) the right to hold promotional, charity, community and other special events at the Club Facilities; and
- (c) the right to use photographs of the Club Facilities and to promote the Club and the sale of memberships and property in advertisements and promotional materials.

The Sponsor's designees may include, without limitation, persons who are employees or agents of the Club, the Sponsor, an Affiliate of Sponsor, prospective purchasers of memberships in the Club, and persons who are involved in special events held at the Club. Until the Turnover Date, such use shall be without charge. After the Turnover Date, the Club may require payment of the same use fees charged accompanied guests of members for use of the Club Facilities other than guest fees.

### 3.3 Restrictions on Club.

Until the initial sale of all Authorized Equity Memberships to persons other than to Sponsor or Affiliates of the Sponsor, the Club or its Affiliates, shall not, without the prior written consent of the Sponsor, which consent Sponsor may withhold in its sole and absolute discretion:

- (a) amend the Club's Articles of Incorporation, Bylaws, the Rules, or the Membership Materials referenced in Section 5.1(b) of this Agreement, or otherwise modify the number, classes, or categories of membership in the Club;
- (b) sell, transfer, pledge or place any Encumbrances upon the Club Facilities; or
- (c) take any other action which in the Sponsor's sole and absolute opinion adversely affects the Club's ability to sell memberships or operation of the Property.

## **ARTICLE IV** **USE, MANAGEMENT, AND OPERATION OF CLUB** **AND CLUB FACILITIES**

### 4.1 Lease of Property and License to Use Club Name and Logo.

The Sponsor and the Club shall execute the Ground Lease in substantially the form attached as Exhibit "B" to this Transfer Agreement ("**Ground Lease**"), by which the Sponsor shall grant to the Club and the members of the Club the right to use the Club Facilities prior to the Transfer Date of the other Club Facilities. The Sponsor and the Club shall also execute a license agreement in substantially the form attached as Exhibit "C" to this Agreement ("**License Agreement**"), by which the Sponsor shall grant to the Club a nonexclusive license to use, among other things, the name "Lake Claire Pool," "Lake Claire Swim Club" and associated logos.

### 4.2. Management and Operation by Sponsor.

Prior to the Transfer Date, the Sponsor shall have complete and absolute discretion in managing and operating the Club Facilities subject to the rights of members set forth in the Bylaws. After the Transfer Date, the Sponsor shall indirectly control the management and operation of the Club Facilities until the Turnover Date by virtue of its right to appoint the Club's Board, as provided in Section 4.3. The Sponsor shall hold a Sponsor Membership in the Club entitling the Sponsor to exercise all of the voting power of the Club until the Turnover Date on all matters except as otherwise specifically provided in the

Club's Bylaws. In addition, the Sponsor Membership shall entitle the Sponsor to exercise all of the rights and privileges specifically granted to the Sponsor under the Club's Bylaws and this Agreement.

At any time that the Sponsor directly or indirectly controls the management and operation of the Club and Club Facilities, it shall have the right to retain or appoint a managing agent or general manager to be responsible for all day-to-day management of the Club and the Club Facilities. After the Turnover Date, the Club shall not terminate or cancel any contract for management of the Club unless at least 75% of the members of the Club's Board approve such termination or cancellation.

#### 4.3. Board of Directors.

The Sponsor shall have the sole and exclusive right to determine the number of, and appoint, remove and replace, all the members of the Club's Board in its sole discretion until the Turnover Date.

After the Turnover Date, the Sponsor shall have the right to appoint one member of the Board, and the sole right to remove and replace such members, until the initial sale of all Authorized Equity Memberships and Non-Equity Memberships to persons other than the Sponsor or Affiliates of the Sponsor.

#### 4.4 Operating Income and Expenses.

The Sponsor shall fund all cumulative net operating deficits of the Club prior to the Turnover Date and shall be entitled to all operating income of the Club prior to the Turnover Date. There shall be no assessment of the Club's members for operating deficits or capital expenditures prior to the Turnover Date.

For purposes of this Agreement, "**operating deficits**" shall mean, for each fiscal year of the Club or part thereof, the amount by which (a) all costs and expenses of the Club (excluding reserves for capital repairs and replacements, which the Sponsor has no obligation to fund, depreciation expense and amortization expense,) determined in accordance with generally accepted accounting principles applied consistently from year to year, exceeds (b) the revenues of the Club determined in accordance with generally accepted accounting principles applied consistently from year to year. The term "**operating income**" shall mean, for each fiscal year of the Club or part thereof, the amount by which (a) the revenues of the Club, determined in accordance with generally accepted accounting principles applied consistently from year to year, exceeds (b) all costs and expenses of the Club (excluding reserves for capital repairs and replacements, which the Sponsor has no obligation to fund, depreciation expense and amortization expense) determined in accordance with generally accepted accounting principles applied consistently from year to year.

#### 4.5 Maintenance and Operation by Club.

As additional consideration to the Sponsor for the transfer of the Club Facilities to the Club, the Club shall have the obligation to operate and maintain the Club as a first-class club in a manner consistent with the operation and maintenance of the Club Facilities by the Sponsor prior to the Turnover Date, unless the Sponsor, in its sole discretion, approves or consents to deviation from such standard. In exercising such discretion, the Sponsor shall act in good faith. Such operation and maintenance shall include, without limitation, the following specific requirements and limitations:

(a) The Club shall repair or rebuild any destroyed or damaged Club Facilities as soon as possible after such damage or destruction occurs to the same or better condition as existed prior to the damage or destruction, whether or not there exists adequate insurance to fund the costs of such repair or reconstruction.

(b) The Club shall not engage in any activities or conduct any functions, or permit its members or guests to engage in any activities or conduct any functions at the Club Facilities which interfere with the use and enjoyment of adjacent property by the owners and occupants thereof, including,

without limitation, conducting or permitting parties or events which exceed reasonable and customary noise levels, or using speaker systems or spot lights which cause an unreasonable level of noise or light to spill over onto adjacent property. The Club shall regulate the use of the Club Facilities so as to minimize any adverse impact on adjacent property or the use and enjoyment of such property.

#### 4.6 Insurance.

Until the Transfer Date, the Sponsor shall insure the Club Facilities at all times against loss or damage by fire and other risks ordinarily included in "extended coverage" protection. Such insurance shall be in amounts sufficient (prior to application of a reasonable deductible) to permit full restoration of damaged Club Facilities to their condition immediately prior to the occurrence of the damage. The cost of such insurance shall be a Club operating expense. However, in the event of any insured loss prior to the Transfer Date, the proceeds of such insurance shall be payable to the Sponsor for use in reconstructing or restoring the damaged Club Facilities. Any excess insurance proceeds the Sponsor receives shall be the sole property of the Sponsor.

After the Transfer Date, and for so long as the Sponsor or an Affiliate of Sponsor or assigns have any rights under this Agreement, the Club shall obtain and maintain at its expense property insurance on the Club Facilities with the same coverages and in the same amount as required of the Sponsor prior to the Transfer Date. In addition, commencing on the date that the Club Facilities or any portion thereof are available for use by members, the Club shall at all times maintain reasonable amounts of comprehensive public liability coverage insuring against liability for injury to persons and loss or damage to property occurring in or about the Club Facilities.

#### 4.7 Equipment.

Until the Turnover Date, the Sponsor may purchase or lease, in its own name or in the name of the Club, such machinery, furniture, furnishings, equipment, vehicles, and other items ("**Equipment**") as it deems necessary for the proper operation and maintenance of the Club Facilities.

#### 4.8. Taxes and Assessments.

Except as may otherwise be set forth in the Ground Lease during the term thereof, the Sponsor shall pay all taxes and assessments levied on the Club Facilities and the Equipment prior to the date on which the Sponsor transfers such portion of the Club Facilities or such Equipment to the Club. The Sponsor shall be entitled to all tax credits and deductions, including investment tax credits and deductions for depreciation, applicable to such portion of the Club Facilities or such Equipment for the period prior to the date on which the Sponsor transfers it to the Club. The Club shall be responsible for all such taxes and assessments, and shall be entitled to claim all such credits and deductions, for the period after the Transfer Date. The Club shall pay the Club's income, franchise, and property taxes and all other taxes which the Club may be required to pay by reason of the Club's separate operations and existence and shall be entitled to take all tax credits and deductions related thereto.

### **ARTICLE V** **SALE OF MEMBERSHIPS**

Until the initial sale of all Authorized Equity Memberships to persons other than to Sponsor or Affiliates of the Sponsor, the Club shall, subject to the Bylaws, the Membership Materials, and the rights of the Sponsor, have the right to:

(a) sell, issue, repurchase and reissue the memberships authorized by the Club's Bylaws only to such persons as the Sponsor may select or approve for admission to membership in the Club, and in accordance with such terms and conditions and payment of such purchase price or other fees as the Sponsor may establish from time to time;

(b) establish, determine and waive the eligibility requirements for any membership classification and category, subject to the terms of the Bylaws, and may elect to restrict the offering and sale of any membership classification or category to such persons as the Sponsor determines, in its sole discretion;

(c) discount or waive all or part of the required purchase price or other fee for any membership in its discretion, to permit such amounts to be paid in installments, and to finance, or cause the Club to offer financing for the purchase of memberships on such terms and conditions as the Sponsor deems appropriate in its sole discretion.

(d) adopt, amend, revise, replace and supplement, and distribute to prospective purchasers of memberships in the Club the Membership Materials, provided, any amendment shall not be inconsistent with this Transfer Agreement or the Bylaws unless such documents also are amended, subject to the approval requirements, if any, set forth in such documents.

(e) establish procedures and criteria for selection for membership in the Club and establish, modify and suspend priorities on any waiting list to acquire memberships in the Club. The Club shall not repeal, amend, or modify such waiting list priorities without the Sponsor's consent and, following the Turnover Date, the Club shall not discriminate against prospective members who would otherwise qualify for these priority lists, nor enact any amendments to the Bylaws or Membership Materials which would in any way have the effect of preventing persons who would qualify for such priority lists from realizing the benefits of such priority lists or be inconsistent with any of the rights granted to or retained by the Sponsor under this Transfer Agreement.

**ARTICLE VI**  
**MISCELLANEOUS PROVISIONS**

6.1 Notices.

All notices or other communications to be given under this Agreement shall be in writing and shall be deemed delivered when hand delivered to the intended recipient, when delivered by confirmed electronic mail or on the third business day after being deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, and addressed to the intended recipient at the address set forth below or such other address as such party may have specified most recently by written notice.

If to the Sponsor:	Lake Claire Pool, LLC 3300 Marjan Drive Atlanta, Georgia 30340
Attention:	Mitchel C. Jaffe, mitchj@prepatl.com Stosh Bennett, stoshbennett@gmail.com

If to the Club:	Lake Claire Swim Club, Inc. 3300 Marjan Drive Atlanta, Georgia 30340
Attention:	Mitchel C. Jaffe, mitchj@prepatl.com Stosh Bennett, stoshbennett@gmail.com

6.2 Governing Law.

This Agreement shall be governed by the laws of the State of Georgia applicable to agreements made and to be performed wholly within the State of Georgia, excluding the laws pertaining to conflicts or choice of laws.

### 6.3 Entire Agreement; Conflicts.

This Agreement, together with the Club's Articles of Incorporation, Bylaws, and the Membership Materials described in herein, constitute the complete and exclusive statement of the matters addressed herein. In the event of any conflict or inconsistency between or among the foregoing documents, this Agreement shall control. No extrinsic evidence may be introduced in any judicial proceeding involving this Agreement to contradict any matter specifically addressed in this Agreement.

### 6.4 Modifications, Amendments, Waivers and Extensions.

This Agreement may not be modified or supplemented, nor shall any obligation hereunder be waived or the time for performance be extended, except by a written instrument signed by both parties. Waiver or failure to enforce any provision of this Agreement in one instance shall not constitute a waiver of the right to enforce any other breach or any other provision of this Agreement. If either party grants an extension of time for performance of any obligation hereunder, such extension shall not, by implication, extend the time for performance of any other obligation.

### 6.5 Titles and Headings.

Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

### 6.6 Further Assurances.

Each party agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the matters and transactions contemplated by this Agreement.

### 6.7 Successors and Assigns.

The Club shall not assign their rights, duties or obligations hereunder without the prior written consent of the Sponsor, except as provided herein. The Sponsor may assign or delegate its rights, duties and obligations under this Agreement without the Club's consent. Subject to the foregoing sentence, this Agreement shall be binding upon each of the parties, their successors and permitted assigns.

### 6.8 Severability.

The parties agree that if any court of law or equity holds any part of this Agreement to be void, voidable, incapable of being construed, or otherwise unenforceable, the remaining provisions shall remain in full force and effect, unless such construction would operate as an undue hardship on either party or constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

### 6.9 Force Majeure.

In the event that any action by a governmental authority, any act of nature, or any other event not reasonably within the control of the Sponsor or an Affiliate of Sponsor, prevents or delays, in whole or in part, the performance of any obligation hereunder by the Sponsor or an Affiliate of Sponsor, the Club shall excuse, discharge and release the Sponsor from performance, without liability of any kind, to the extent that its performance is so prevented or delayed.

### 6.10 Third Parties.

Nothing in this Agreement, whether express or implied, shall confer any rights or remedies to any persons or entities other than the parties hereto and their respective legal representatives, successors and

permitted assigns. No party shall be a third party beneficiary to this Agreement, including, without limitation, members of the Club.

#### 6.11 Indemnification.

(a) The Sponsor shall indemnify, defend and hold harmless, and advance expenses to, the Club and its officers, directors, employees, and agents, with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, and attorneys' fees and disbursements (including those incident to any settlement or appeal), that any of them shall incur or suffer, which arise from or relate to the ownership, operation or management of the Club Facilities prior to the Transfer Date.

(b) The Club shall indemnify, defend and hold harmless, and advance expenses to, the Sponsor and an Affiliate of Sponsor with respect to any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, and attorneys' fees and disbursements (including those incident to any settlement or appeal), that any of them shall incur or suffer, which arise from or relate to the ownership, operation or management of the Club Facilities after the Transfer Date.

#### 6.12 No Restraint on Competition.

The Club acknowledge that the Sponsor or an Affiliate of Sponsor may construct, operate, manage, and otherwise be involved in other business activities in Dekalb County, Georgia, and elsewhere. There is no understanding or agreement, express or implied, between the parties that would prevent or restrict the Sponsor or an Affiliate of Sponsor from engaging in such activities.

#### 6.13 Remedies.

Each of the parties acknowledges that the other will be irreparably damaged (and damages at law would be an inadequate remedy) if this Transfer Agreement is not specifically enforced. In the event of a breach or threatened breach by any party of any provision of this Transfer Agreement, the other party shall be entitled, in addition to all other rights or remedies available at law or in equity, to seek injunctive relief without being required to show any actual damage or to post any bond or other security.

If any party brings any legal action or other proceeding for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all other expenses which such party reasonably incurred in connection with such action or proceeding, even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to any settlement or appeal), in addition to any other relief to which such party may be entitled.

Except as specifically set forth herein, no remedy for which this Transfer Agreement provides shall be exclusive of any other remedy available under this Transfer Agreement or at law or in equity. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

#### 6.14 Survival.

All covenants, agreements, representations and warranties made in this Agreement or in any other writing by either party shall survive the execution and delivery of this Agreement and the consummation of the transactions described in this Agreement.



6.15 Counterparts.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**SPONSOR:**

Lake Claire Pool, LLC, a Georgia limited liability company

By: Charles S Bennett  
Name: Charles S Bennett  
Its: Managing Member, Lake Claire Pool, LLC

**CLUB:**

corporation  
Lake Claire Swim Club, Inc., a Georgia nonprofit

By: Mitchel C Jaffe  
Name: Mitchel C Jaffe  
Its: President, Lake Claire Swim Club, Inc.

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**EXHIBIT "A"**  
**Legal Description of Club Facilities**

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 211, 15th District, DeKalb County, Georgia, being the pool tract as shown on the survey titled "Re-plat of Lake Claire Pool Property" made by Christopher E. Moore, GRLS No. 2828, dated April 28, 2022, and recorded in Plat Book 305, Page 120, DeKalb County, Georgia records and being more particularly described as follows:

Beginning at a point at the intersection of the Northern Right-of-Way of Dekalb Avenue (Right-of-Way Varies) and the Eastern Right-of-Way of Hampton Terrace (40' Right-of-Way), said point being the **POINT OF BEGINNING**; thence following said Right-of-Way of Hampton Terrace, North 09 degrees 13 minutes 41 seconds East, a distance of 129.04 feet to a point; thence leaving the Eastern Right-of-Way of Hampton Terrace, South 80 degrees 26 minutes 52 seconds East, a distance of 73.48 feet to a point; thence South 81 degrees 14 minutes 28 seconds East, a distance of 61.72 feet to a point; thence South 00 degrees 34 minutes 51 seconds East, a distance of 56.23 feet to a point; thence South 88 degrees 56 minutes 46 seconds East, a distance of 6.37 feet to a point; thence South 04 degrees 49 minutes 25 seconds West, a distance of 69.74 feet to a point on the Northern Right-of-Way of Dekalb Avenue; thence continuing along said Right-of-Way, along an arc of a curve to the right, an arc length of 58.97 feet, having a radius of 977.38 feet, being subtended by a chord bearing of North 83 degrees 54 minutes 42 seconds West, a chord distance of 58.96 feet to a point; thence continuing along said Right-of-Way, North 82 degrees 00 minutes 25 seconds West, a distance of 97.55 feet to a point, said point being the **POINT OF BEGINNING**.

Said tract containing 0.43 acres or 18,768 square feet.

**EXHIBIT "B"**  
**Ground Lease**

## **GROUND LEASE**

THIS GROUND LEASE (hereinafter referred to as the "Lease"), is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **LAKE CLAIRE POOL, LLC**, a Georgia limited liability company (hereinafter referred to as "Landlord"), and **LAKE CLAIRE SWIM CLUB, INC.**, a Georgia nonprofit corporation (hereinafter referred to as "Tenant").

### **RECITALS**

A. Landlord is the owner of certain real property located in DeKalb County, Georgia, containing approximately 0.43 acres, having the addresses of 1900 DeKalb Avenue, Atlanta, Georgia 30309, and which property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference. The property referred to in Exhibit "A" together with all improvements located thereon and all appurtenances, easements and rights associated therewith is hereinafter called the "Premises."

B. Landlord desires to lease the Premises to Tenant and Tenant desires to Lease the Premises from Landlord.

### **ARTICLE 1**

#### **PREMISES**

Section 1. Landlord, for and in consideration of the sum of Ten and No/100ths Dollars (\$10.00) the rent, covenants, agreements and conditions hereinafter stated to be kept and performed by Tenant, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby lease and demise the Premises to the Tenant for the term and upon the conditions set forth herein.

Section 2. Tenant agrees that Tenant is leasing the Premises "AS IS," and, except as expressly provided for herein, Landlord makes no warranties, express or implied, as to the fitness, merchantability, use or condition of the premises. Except as expressly provided for herein, Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to (A) the condition of the Premises, including, but not limited to, the soil and subsurface conditions thereof; (B) the ability to use the Premises for any particular purpose; and (C) access to or from the Premises.

### **ARTICLE 2**

#### **TERM**

The term of the Lease shall commence on \_\_\_\_\_, 20\_\_ (the "Commencement Date") and continue until the date that is fifty (50) years after the Commencement Date (the "Expiration Date"). Landlord and Tenant may execute a "short form" of Lease in a form reasonably satisfactory to Landlord and Tenant's title insurer (the "Short Form Lease") for recording purposes which shall include the Commencement Date and the expiration date of the term. In no event shall the Short Form Lease set forth the rental or other charges payable by Tenant to Landlord under this Lease, and the Short Form Lease shall expressly state that it is executed pursuant to the terms contained in the Lease and is not intended to vary the terms and conditions of this Lease. In the event that Landlord or Tenant shall immediately terminate and cancel this Lease pursuant to the provisions contained herein for any reason other than Landlord's breach,

Tenant shall prepare, execute and deliver to Landlord a Release and Cancellation of the Short Form Lease within ten (10) days of the termination. If Tenant has not delivered the Release and Cancellation of the Short Form Lease, or refuses to do so, then Landlord, as Tenant's attorney-in-fact, may execute such Release and Cancellation of the Short Form Lease on Tenant's behalf. Tenant acknowledges that the power of attorney granted hereunder is coupled with an interest in real property and may not be revoked.

### ARTICLE 3

#### RENT

Section 1. Rent under this Lease for the first lease year shall be in the amount of SIXTY THOUSAND and 00/100ths Dollars (\$60,000.00) per year, which shall be payable monthly, in advance, on or before the 1<sup>st</sup> day of each month in the amount of FIVE THOUSAND and 00/100ths Dollars (\$5,000.00) each month ("Rent") to Landlord by wire transfer or ACH or at such place as Landlord shall designate in writing from time to time, in lawful money of the United States. On each anniversary of the Commencement Date, Rent shall increase by three percent (3.0%) as compared to Rent for the immediately preceding lease year.

Section 2. In addition to Rent, Tenant shall pay, as additional rent (hereinafter referred to as "Additional Rent") during the Term any and all other sums and charges required to be paid by Tenant pursuant to this Lease, whether designated as additional rent or not, and such sums and charges shall be collectible when due as Additional Rent as provided herein and shall be subject to all provisions of this Lease as to default in the payment of rent.

### ARTICLE 4

#### TAXES

In addition to the Rent provided for herein, Tenant agrees to pay directly to the taxing authority additional payments as follows:

Section 1. Tenant shall be responsible for all real property taxes and general assessments, special assessments, excises, levies, fees and charges (and any tax, assessment, excise, levy, municipal service fee, fee or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority on or against, or otherwise with respect to, the Premises or any part thereof or any personal property used in connection with the Premises ("Real Estate Taxes"). "Real Estate Taxes" shall not include net income or inheritance taxes of Landlord, unless levied or assessed against Landlord in whole or in part in lieu of, as a substitute for, or as an addition to any Real Estate Taxes which may be levied or assessed against the Premises by any lawful authority for each calendar year or portion thereof commencing on the Commencement Date and ending upon the termination date of this Lease. Said Real Estate Taxes are to be prorated for any partial Lease Year occurring during the period in which the taxing authority assesses Real Estate Taxes.

Section 2. Tenant shall pay all Real Estate Taxes during the Term hereof annually or semiannually, but no more frequently than Landlord is required to make payment. Upon receipt of all tax bills and assessment attributed to any calendar year during the Term, Landlord shall furnish Tenant with a written statement of the actual amount of the Real Estate Taxes for such year or part thereof, together with legible copies of such tax bills and assessments, and Tenant shall pay such actual amount within thirty (30) days of such statement from Landlord, but no more than ten (10) days prior to the date Landlord is required to pay said Real Estate Taxes. A copy of a tax bill or assessment submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Real Estate Taxes levied or assessed against the property to which such bill relates.

Section 3. Tenant may contest any Real Estate Taxes against the Premises at its sole cost and expense and attempt to obtain a reduction in the assessed valuation of the Premises for the purpose of reducing any such tax assessment. Upon the request of Tenant, but without any expense or liability to Landlord, Landlord shall reasonably cooperate with Tenant and execute any document which may be reasonably necessary and proper for any proceeding. If a tax reduction is obtained, there shall be a subsequent reduction in Tenant's total Real Estate Taxes for such year, and any excess payments by Tenant shall be refunded by Landlord, without interest, when all refunds to which Landlord is entitled from the taxing authority with respect to such year have been received by Landlord less Landlord's reasonable costs to obtain same. In the event Landlord desires to contest any Real Estate Taxes, Tenant agrees to cooperate with Landlord and execute any document which may be reasonably necessary and proper for any proceeding, at no cost to Tenant. In no event shall Tenant allow a lien for unpaid Real Estate Taxes to be filed against the Premises and remain outstanding for more than fifteen (15) days after Tenant receives notice of same from either Landlord or the taxing authority.

## ARTICLE 5

### USE AND IMPROVEMENTS

Section 1. The Premises may be utilized and occupied as an Equity Membership Club and it must comply with applicable laws, rules and regulations and applicable private restrictions.

Section 2. It is the intent of this Lease that Tenant shall pay or arrange to have paid any and all costs and charges pertaining to the Premises, including, without limitation, the development, maintenance, repair and replacement of the Premises, to the effect that Landlord shall not be obligated to expend any funds or incur any liabilities in developing, constructing, operating or maintaining the Premises. Tenant's obligations with respect to specific costs and charges are set forth hereafter. If necessary, Tenant shall, at its sole cost and expense, obtain all necessary permits and approvals and install all meters, wires, conduits, transformers, and other equipment required for supplying such utility services to the Premises. Landlord shall have no responsibility and shall bear no cost with respect to such installation, maintenance or repair of such lines. Tenant shall be solely responsible for all communications, disputes and expenses that might arise from any neighborhood or Homeowners Associations.

Section 3. Tenant shall repair or construct, as necessary, any and all improvements made to the Premises in a good and workmanlike manner and in compliance with the applicable ordinances, statutes, rules and regulations of all city, county, political subdivisions or other governmental authority having jurisdiction to regulate or supervise the building or the specifications, design, engineering, construction and improvements and in compliance with all private restrictions, declarations, easements and other title exceptions. Landlord

shall have the right to inspect, or cause an inspection of, the Premises and construction to ensure Tenant's compliance with this section.

Section 4. Landlord agrees, within ten (10) business days after written request by Tenant, to use its best efforts to execute and deliver, at no expense to Landlord, during the term of this Lease, easements required for any utility easements on, over or under the Premises, which Tenant may deem necessary or desirable in order to obtain water, electricity, heat, gas, telephone and other utility services which Tenant may reasonably deem necessary in connection with the improvements or the use of the Premises. Notwithstanding the foregoing, such easements shall be subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed.

## ARTICLE 6

### INSURANCE ON FACILITIES

Section 1. During the term of this Lease, the Tenant shall keep, or cause to be kept, at its expense, all improvements (the "Facilities") located upon the Premises insured on the so-called "all risk" form in an amount equal to not less than one hundred percent (100%) of the replacement cost thereof. Tenant shall cause the Landlord to be named as an additional insured on any and all applicable insurance policies required hereunder. Tenant agrees to furnish evidence pursuant to Landlord's requests from time to time that the required insurance is in full force.

Section 2. Insurance. Suitable policies of insurance against fire and other hazards in accordance with applicable requirements of this Agreement and all requirements as follows;

(A) Flood and Earthquake Insurance: If the flood determination performed by lender shows that the real property securing the referenced loan is located in a Special Flood Hazard Area according to the Federal Emergency Management Agency, flood insurance will be required under the National Flood Insurance Program (NFIP) prior to closing in the amount required by lender.

In addition to the flood insurance required under the NFIP, Landlord requires that buildings located in a special flood hazard area be insured through private placement insurance in the amount required by Landlord.

(B) Loss of Earnings and Rents Insurance: Insurance against loss of earnings and rents in an amount sufficient (in the Landlord's opinion) to cover not less than twelve (12) months' lost earnings and rents either as an endorsement to the insurance required or under a separate policy.

(C) Workers Compensation Insurance: Workers Compensation insurance covering all employees of Tenant, or any contractor employed to run or maintain the facility to the extent required by statutory law in Georgia. The policy shall also provide Employer's Liability coverage for:

Bodily Injury by Accident - \$500,000 Each Accident

Bodily Injury by Disease - \$500,000 Policy Limit

Bodily Injury by Disease - \$500,000 Each Employee

In the event of any construction on the Premises, Tenant shall require or shall cause its general contractor to require evidence of Workers Compensation coverage from each and every subcontractor in form and limits acceptable to the Landlord.

(D) Liability Insurance

Commercial General Liability: A Commercial General Liability insurance policy, including contractual liability, with limits of liability for bodily injury and property damage of at least One Million and No/100ths Dollars (\$1,000,000.00) per occurrence and Three Million and No/100ths (\$3,000,000.00) annual aggregate, with Landlord as an additional insured.

AUTOMOBILE LIABILITY: An Automobile Liability insurance policy with limits of liability for bodily injury and property damage of at least One Million and No/100ths Dollars (\$1,000,000.00) per accident.

UMBRELLA LIABILITY: Umbrella Liability insurance in the minimum amount of Five Million and No/100ths Dollars (\$5,000,000.00) for each occurrence and aggregate combined single limit for all liability.

(E) Such other insurance on the Premises or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Landlord against other insurable casualties which at the time are commonly insured against in the case of properties of similar character and location, due regard being given to the type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor

Section 3. All insurance provided for in this Article or other Articles of this Lease shall be effected under valid and enforceable policies issued by insurers of recognized responsibility (being not less than A+ rated) licensed to do business in the State of Georgia. Not less than thirty (30) days prior to the expiration dates of the policies theretofore furnished pursuant to this Article 6, originals of the renewal policies for such insurance shall be delivered by Tenant to Landlord, except that the Tenant may, in lieu of delivering the originals of the policies, deliver to Landlord certificates of such insurance. Within fifteen (15) days after the premium of each such policy shall become due and payable, and the amount thereof determined, Tenant shall furnish Landlord evidence satisfactory to Landlord of such payment by Tenant. All policies of insurance and certificates issued with respect thereto shall contain an endorsement which provides that the insurance will not be canceled, altered or amended without the Landlord first having received thirty (30) days prior written notice.

## ARTICLE 7

### DAMAGE AND DESTRUCTION

In the event of damage or destruction of the Premises, Tenant shall either (i) repair or restore the damaged or destroyed Facilities, to the extent of insurance proceeds actually received; or (ii) demolish and remove the damaged Facilities and grade the affected area to a flat grade, to the extent of insurance proceeds actually received.



## ARTICLE 8

### CONDITION AND REPAIR; ALTERATIONS

Section 1. At the termination or expiration of this Lease, the Tenant shall surrender possession of the Premises and any improvements thereon, as may be altered by Tenant in accordance with the terms and conditions of this Lease, subject to ordinary wear and tear, depreciation, casualty and condemnation, except as otherwise set forth in the Lease.

Section 2. Tenant shall, throughout the term of this Lease, conform to and obey all rules, ordinances, restrictions, declarations, reciprocal easement agreements and laws affecting the said Premises.

Section 3. At all times during the Term, Tenant shall, at its sole expense, keep the Premises, including, without limitation, the Facilities and any other improvements constructed thereon, in good order, condition and repair, ordinary wear and tear excepted. Tenant, at its sole expense, shall make or cause to be made all repairs, renewals and replacements to the Premises, the Facilities and any other improvements thereon, including, without limitation, those structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, which are required by law or applicable private restrictions. Tenant may remove, demolish or alter any of the Facilities and any other improvements, or further improve the Facilities or other improvements, without the consent of Landlord so long as in Tenant's reasonable discretion such could reasonably be expected to increase the value of the Premises. Any and all repairs shall be made at least equal in quality and class to the original work, or to a lesser standard only with the prior written consent of Landlord. Tenant shall be entitled to file for and obtain all permits and governmental approvals and entitlements necessary in connection with any demolition and/or improvements, including rezoning the property, if necessary, obtaining special use permits, if necessary, obtaining a land disturbance permit, obtaining variances, if necessary, obtaining plat approvals, if necessary, and subdividing and/or recombining the Premises, if necessary. Landlord, at no expense to Landlord, agrees to cooperate with the Tenant in obtaining all such permits and governmental approvals and entitlements, including, without limitation, signing all necessary applications and attending all necessary meetings.

## ARTICLE 9

### PAYMENT FOR UTILITIES, LICENSE, FEES AND PERSONAL PROPERTY TAXES

Section 1. Tenant shall pay or have paid before the same become delinquent all charges for utilities, licenses, taxes or impositions upon the Premises which, if not paid, could create a lien upon Landlord's fee simple title.

## ARTICLE 10

### COVENANT TO HOLD HARMLESS

Section 1. Except for the gross negligence or intentional acts of Landlord, its agents, employees, licensees, guests or invitees, Tenant agrees to indemnify and hold harmless Landlord against and from any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the Tenant's leasehold interest in the Premises, conduct or management of the business

conducted in the Premises, or from the condition of the Premises, or from any work or thing done by Tenant or its agents or employees in or about the Premises and will further indemnify and save Landlord harmless against and from any and all claims arising during the term of this Lease from any breach or default on the part of Tenant to be performed pursuant to the terms of this Lease, or arising from any act of negligence of Tenant, or any of its agents or employees in or about the Premises and from and against all costs, counsel fees, expenses and liabilities reasonably and actually incurred in or about any such claim or action or proceeding brought thereon. Tenant shall not suffer or give cause for the filing of any liens against the Premises, except for liens which arise because of bona fide disputes between the Tenant and any contractor or subcontractor, in which case said liens shall be bonded off within thirty (30) days of filing. Tenant shall indemnify and hold Landlord harmless from any costs, expenses, claims, or losses, including counsel fees resulting from the filing of a lien arising by, through or under Tenant. The provisions of this Section shall not apply to damage, injury or death resulting wholly or in part from the affirmative acts or gross negligence of Landlord, its agents, employees and assigns.

Section 2. Landlord shall have no liability for any loss or damage to personal property or equipment of Tenant or third persons, upon or used in connection with the Facilities irrespective of the source of such loss or damage, other than the gross negligence or intentional acts of Landlord, its agents, employees, licensees, guests or invitees.

Section 3. Tenant shall not commit or suffer to be committed, by act or omission, any waste or nuisance in or upon the Premises or Facilities. Tenant, at its sole cost and expense, shall comply with all covenants, conditions and restrictions pertaining to the Premises and all laws, statutes, ordinances, rules and regulations of any governmental or provisional authority, whether presently in existence or adopted in the future. Tenant shall pay when due any fines or charges which may be levied by governmental entity or other agency for violation of laws, orders, rules, regulations, ordinances, and requirements by Tenant, its employees, agents, licensees, guests or invitees on the Premises in connection with the operation of the Facilities.

## **ARTICLE 11**

### **CONDEMNATION AND EMINENT DOMAIN**

Section 1. In the event the entire premises shall be taken by condemnation or right of eminent domain, this Lease shall automatically terminate as of the day possession shall be taken by the taking authority and Landlord and Tenant shall be released from any further liability hereunder. In the event only a portion of the Premises shall be taken by condemnation or right of eminent domain and the portion taken renders the balance of the Premises unusable for the purpose of this Lease, either Landlord or Tenant shall be entitled to terminate this Lease, such termination to become effective as of the day possession of the Premises shall be taken, provided notice of such termination is given within thirty (30) days after the date of notice of such taking. If, in such case, this Lease is not terminated, Tenant agrees to restore the Premises, with reasonable speed, to an architectural unit as nearly like its condition prior to such taking shall be practicable. If during and/or after the work of restoration, Tenant shall be deprived of the use of all or any portion of the Premises, a proportionate adjustment in the Rent and Additional Rent shall be made corresponding to the time during which the portion of the Premises of which Tenant is so deprived.

Section 2. All damages awarded in connection with the taking of the Premises, whether allowed as compensation for diminution in value to the leasehold, the fee of the Premises or otherwise, shall belong to

Landlord. Notwithstanding the foregoing, Tenant shall be entitled to make a separate claim to the condemning authority for damage to merchandise, fixtures, improvements, if any, removal and reinstallation costs, loss of business or similar costs and moving expenses, so long as such claims do not result in any diminution of value or reduction of Landlord's award.

Section 3. Notwithstanding anything to the contrary provided in this Lease, Landlord may terminate this Lease with no further liability to Tenant whatsoever in the event that: (a) fifty percent (50%) or more of the total square feet of the Premises is taken by condemnation or right of eminent domain; or (b) following any taking of the Premises by condemnation or right of eminent domain, Landlord's mortgagee, if any, elects to require Landlord to make advance payments upon or for any indebtedness secured by a mortgage on the Premises or any portion thereof.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

Section 1. Landlord hereby represents and warrants to Tenant that as of the effective date of this Lease:

(A) Landlord has good and marketable fee simple title to the Premises, subject only to the matters of record in the real estate records of DeKalb County, Georgia (the "Permitted Encumbrances").

(B) Landlord has full right and is duly authorized to enter into and consummate this Lease for its full term.

(C) Landlord has no actual knowledge of any environmental contamination, nor has Landlord received notice from any local or federal governmental body of any environmental contamination of the Real Property.

Section 2. Tenant represents and warrants to Landlord that as of the effective date of this Lease:

(A) Tenant is a nonprofit corporation duly formed, validly existing and in good standing under the laws of the State of Georgia.

(B) Tenant is bound by the actions and execution and delivery hereof by the authorized signatory who has executed this Lease for and on behalf of Tenant, and Tenant has all requisite authority and power to enter into this Lease and to consummate the transactions contemplated herein.

(C) Tenant has the adequate financial resources or is able to obtain such necessary financial resources to carry out the duties and obligations set forth herein. Tenant is solvent, has not made a general assignment for the benefit of any creditors, has not admitted in writing its inability to pay its debts as they become due, nor has Tenant filed, nor does it contemplate the filing of any bankruptcy, reorganization arrangement, insolvency or liquidation proceedings, or any other proceedings for the relief of debtors in general, nor has any such proceeding been instituted by or

against Tenant, nor any such proceeding, to the best of Tenant's knowledge, threatened or contemplated. The transactions contemplated herein will not render Tenant insolvent.

(D) The execution and delivery of this Lease, the execution and delivery of any documents or instruments necessary to carry out the transactions contemplated herein and the performance of Tenant of Tenant's duties and obligations hereunder and all other acts necessary and appropriate for the full consummation of the transaction contemplated herein, are not in violation of any contract, agreement or other instrument to which Tenant is a party.

## ARTICLE 13

### ASSIGNMENT/SUBLEASE

Section 1. Landlord shall be entitled to assign this Lease to any purchaser of the Premises at any time, without the consent of Tenant. Except as expressly set forth herein, Tenant shall not, without at least thirty (30) days' prior written notice to Landlord and the prior written consent of Landlord in each instance, directly or indirectly, voluntarily or involuntarily, by operation of law, merger, consolidation, reorganization or otherwise, mortgage, hypothecate, pledge, encumber, sell, transfer or assign this Lease, in whole or in part, nor shall Tenant sublease any or all of the Premises, nor permit the use or occupation of all or any portion of the Premises by any party, (all of the foregoing being collectively referred to as an "Assignment"). Such notice shall be accompanied by a copy of any and all documents, instruments or agreements pertaining to such transaction. Landlord's consent may be granted or denied in its sole and absolute discretion, including, without limitation, satisfaction of the following requirements: (a) Tenant shall not be released from any obligations or liabilities hereunder as a result of any such Assignment; (b) Tenant shall not be in default hereunder at the time it requests Landlord's consent or on the effective date of any such Assignment; (c) Tenant shall have provided Landlord with such information including, but not limited to, the name, identity, business reputation, retail experience and creditworthiness of the proposed assignee as Landlord may require, and shall, in its sole and absolute discretion be satisfied therewith; and (d) assignee shall deliver to Landlord a written agreement whereby it assumes all of the obligations and liabilities of Tenant under this Lease. Any proposed assignee or subtenant must be of the same or substantially similar net worth of Tenant. Any Assignment or attempted Assignment without the Landlord's consent shall be null and void, and ineffective to transfer any rights or interest to the assignee thereof, and such Assignment or attempted Assignment shall be in breach of this Lease.

Section 2. Any sale, transfer, or series of sales or transfers which in the aggregate, amount to a majority of Tenant's voting stock, general partner interest, limited partner interest, membership interest, or other ownership interest ("Interest") as applicable, shall constitute an Assignment hereunder. Moreover, for the purposes hereof, the transfer of any Interest of Tenant or any Interest of any entity which, directly or indirectly, controls Tenant, which results in a change in the direct or indirect voting control of Tenant shall be deemed an Assignment governed hereby.

Section 3. If Tenant desires to assign this Lease, Tenant shall promptly reimburse Landlord for any and all actual and reasonable costs, including but not limited to attorneys' or accountants' fees, Landlord incurs in connection with its review and/or approval of such Assignment.

Section 4. Any consent by Landlord under this Article 13, and any other act or acts of Landlord or its agents, shall not be deemed to constitute consent to any subsequent Assignment or attempted

Assignment. If a sublease is approved by Landlord in accordance with this Article, Landlord agrees that it will recognize in writing any subtenant and enter into a non-disturbance agreement with any tenant requested by Landlord both in a form reasonably acceptable to Landlord; provided that the term of such tenant's lease does not extend (including any options to renew) beyond the Term of this Lease. No consent by Landlord to any assignment of this Lease or of Tenant's interest under this Lease or in the Premises, or any part thereof, or to any sublease shall not be effective unless and until there the Tenant and the proposed assignee deliver to Landlord a written agreement in a form acceptable to Landlord, executed by Tenant and the proposed assignee or subtenant, as the case may be.

Section 5. In the event any person or entity becomes an assignee of this Lease by operation of law, or otherwise, which is outside the control of Tenant, such person or entity shall be bound by and liable upon all terms, covenants, provisions and conditions contained in this Lease during the Term, whether or not of the nature of covenants ordinarily running with land, but neither Tenant nor any subsequent tenant whose interest is assigned or divested shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord.

## ARTICLE 14

### REMEDIES FOR DEFAULT

Section 1. Tenant Default. The occurrence of any of the following acts, events or conditions, shall constitute events of default whereby Landlord shall have the rights set forth below:

(A) The Rent, Additional Rent or any other sum of money payable under this Lease is not paid when due and such failure shall continue for fifteen (15) days of written notice of such failure of payment; *provided, however,* such notice and such cure period shall be required to be provided by Landlord and shall be accorded to Tenant, if necessary, no more than two (2) times during any twelve (12) consecutive month period of the Term, and an event of default shall be deemed to have immediately occurred upon the third (3<sup>rd</sup>) failure by Tenant to make timely payment as aforesaid within any twelve (12) consecutive month period of the Term.

(B) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder if such failure or refusal shall continue without correction for a period of thirty (30) consecutive days from and after notice thereof from Landlord to Tenant; *provided, however* if any such default is of such a nature making it unreasonable to cure in said thirty (30) days period and Tenant, in good faith, commences to fulfill or perform same within said thirty (30) day period and thereafter, in good faith and with diligence and continuity, proceeds with such cure until the completion thereof, Tenant shall not be in default. Notwithstanding the foregoing, if such default continues for a period of ninety (90) days from Landlord's initial notice for such default, Tenant shall be in default.

(C) Tenant is adjudicated as bankrupt by a court having proper jurisdiction.

(D) If a permanent receiver is appointed for Tenant's property, including Tenant's interest in the Premises, and such receiver is not removed within sixty (60) days after notice from Landlord to Tenant requesting such removal.

(E) If Tenant takes advantage of any debtor relief proceedings under any present or future law whereby Rent or any part thereof is, or is proposed to be, reduced or payment thereof is deferred, whether voluntary or involuntary.

(F) The sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or in any sublease of the Premises without the full compliance with any and all requirements set forth herein, unless otherwise set forth in this Lease.

Section 2. Remedies. Landlord may, at its option elect to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted by law or by this Lease:

(A) Landlord may, at its option, with or without terminating this Lease, may re-enter the Premises and perform, correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy or abide by any term, condition, covenant, agreement or obligation of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all costs and expenses incurred by Landlord in such action. All sums so expended shall accrue default interest from the date of demand to the date of payment at the rate of fifteen percent (15%) per annum.

(B) Declare immediately due and payable, and in addition to all rent and other charges due and unpaid as of the date of the event of default, liquidated damages for all Rent and other charges which would be payable for the remainder of that calendar year and the subsequent calendar year after the event of default. Landlord and Tenant agree that such damages would be difficult or impossible to estimate accurately and that it is their intent to provide herein for liquidated damages in such event. As a reasonable pre-estimate of Landlord's probable loss, the parties agree that Landlord shall be entitled to the stipulated rent for the balance of the calendar year and the subsequent calendar year.

(C) Landlord, with or without terminating this Lease, may immediately or any time thereafter demand in writing that Tenant vacate the Premises and thereupon Tenant shall vacate the Premises and remove therefrom all property belonging to or place on the Premises of Tenant within five (5) business days of receipt of such notice from Landlord, whereupon Landlord shall have the right to reenter and take possession of the Premises. Any such demand, reentry and taking possession of the Premises by Landlord shall not itself constitute an acceptance by Landlord or a surrender under this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(D) Landlord, with or without terminating this Lease, may reenter the Premises and remove therefrom Tenant and all property belonging to or placed on the Premises by Tenant. Any such reentry and removal by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(E) Landlord may bring suit against Tenant for the performance of any non-monetary covenant or obligation of Tenant or seek injunctive or other equitable relief with respect to any such default. In addition, Landlord shall be entitled to sue for and recover any actual damages incurred by

Landlord as a result of any non-monetary default and pursuit of any of the other remedies provided for herein shall not preclude Landlord's pursuit of any such claim for actual damages.

(F) Landlord may immediately or at any time thereafter terminate this Lease, and this Lease shall be deemed to have been terminated upon receipt by Tenant of written notice of such termination. Upon such termination, Landlord shall have the right to sue for and recover from Tenant any and all damages Landlord may suffer by reason of such termination, all arrearages in Rent, Additional Rent or other costs set forth under this Lease, the cost (including, without limitation, actual and reasonable court costs and attorneys' fees) of recovering possession of the Premises, and the cost of any alteration, redecoration or repair to the Premises, the Facilities and any other improvements thereon which is reasonably necessary or proper to prepare the same for reletting. Tenant shall immediately surrender and deliver the Premises to Landlord upon any such termination. If Tenant fails to do so, Landlord shall have the right to recover possession by summary proceedings or otherwise. Notwithstanding the foregoing, Landlord may not terminate this Lease for any action or event of default that is out of the Tenant's reasonable control.

Section 3. Upon the expiration of the Term of this Lease by reason of the happening of any of the events hereinabove described in any prior section of this Article, or in the event of the termination of this Lease by unlawful detainer proceedings or under any provision of law now or at any time hereafter in force, by reason of or based upon or arising out of a default under or breach of this Lease on the part of Tenant, or upon Landlord recovering possession of the Premises in the manner of any of the circumstances hereinbefore mentioned, or in any other manner whatsoever by reason of a default under or breach of this Lease on the part of Tenant, Landlord may at Landlord's option, at any time, and from time to time, relet the Premises or any part or parts thereof for the account of Tenant or otherwise, and receive and collect the rents therefor, applying the same first to the payment of such expenses as Landlord may have incurred in recovering possession of the Premises, including legal expense and reasonable attorney's fees actually incurred, and for putting the same into good order or condition or preparing for re-rental, and expenses, commission and charges paid, assumed or incurred by Landlord in and about the reletting of the Premises, and then to the fulfillment of the covenants of Tenant hereunder. Any such reletting herein provided for may be for the remainder of the term of this Lease or for a longer or shorter period. Notwithstanding anything herein to the contrary, Landlord shall not have the right to accelerate the rent and other amounts payable hereunder.

Section 4. If the Landlord shall for any reason or cause recover or come into possession of said Premises before the date hereinbefore fixed for the expiration of the term hereof, the Landlord shall have the right at its option to take over any and all subleases and sublettings of the Premises or any part or any parts thereof and all agreements by the Tenant for the maintenance thereof or supplies thereto, and at the Landlord's option to have and succeed to all the risks and privileges of said subleases, sublettings or agreements or such of them as it may elect to take over and assume, and the Tenant upon any such default by the Tenant or recovery of possession by the Landlord hereby expressly assigns and transfers to the Landlord such of the subleases, sublettings and agreements as said Landlord may elect to take over and assume as may exist and be in force and effect at the time of said default and recovery of possession; and the Tenant hereby further expressly covenants that Tenant will, upon request of the Landlord, execute, acknowledge and deliver to the Landlord such further instruments as may be necessary or desirable to vest in the Landlord the then existing subleases and sublettings of said Premises or any part thereof and the agreement then in force, as above specified. Landlord further agrees to attorn and recognize the rights of all bona fide subtenants who are not in default as long as said leases have not been directly or indirectly made by Tenant while Tenant knows of the

existence of any default or in anticipation by Tenant of any default and provided such subtenants have agreed to attorn to and perform for Landlord.

Section 5. The terms "enter", "entry", or "re-entry" as used in this lease are not restricted to their technical legal meaning.

## ARTICLE 15

### NOTICES

Section 1. Any notices required or permitted to be given under the terms of this Lease shall be considered properly made if (i) delivered personally; (ii) sent via recognized, overnight courier service (e.g., Federal Express, DHL, Airborne Express, etc.); (iii) sent via electronic mail, provided that such electronic mail is followed within twenty-four (24) hours by a hard copy of such notice transmitted in the manner set forth in item (ii) above; or (iv) sent via certified mail, return receipt requested, postage prepaid, to the parties as indicated below:

LANDLORD: **LAKE CLAIRE POOL, LLC**  
3300 Marjan Drive  
Atlanta, Georgia 30340  
Attention: Mitchel C. Jaffe, mitchj@prepatl.com  
Stosh Bennett, stoshbennett@gmail.com

WITH A COPY TO: Schulten Ward Turner & Weiss, LLP  
260 Peachtree Street NW  
Suite 2700  
Atlanta, Georgia 30303  
Attn: Aimee LaTourette  
Email: a.latourette@swtwlaw.com

TENANT: **LAKE CLAIRE SWIM CLUB, INC.**  
3300 Marjan Drive  
Atlanta, Georgia 30340  
Attention: Mitchel C. Jaffe, mitchj@prepatl.com  
Stosh Bennett, stoshbennett@gmail.com

Section 2. Each party may, from time to time, by notice as herein provided, designate a different address to which notice to it shall be sent, which designation shall be effective three (3) days after given. Notices shall be deemed given upon delivery of such notice or refusal to accept delivery.

## ARTICLE 16

### DEPRECIATION



Landlord acknowledges and agrees that Tenant is entitled to claim all depreciation with respect to the Facilities and any other improvements located on the Premises and Landlord shall make no claim for depreciation in connection with such improvements.

## **ARTICLE 17**

### **BROKERS**

Section 1. All negotiations relative to this Lease and the leasing of the Premises contemplated by and provided for in this Lease have been conducted by and between Landlord and Tenant without the intervention of any person or other party as agent or broker.

Section 2. Landlord and Tenant warrant and represent to each other that there are and will be no broker's commissions or fees payable in connection with this Lease or the leasing of the Premises by reason of their respective dealings, negotiations or communications. Landlord and Tenant shall, and do each hereby indemnify, defend and hold harmless each of the others from and against the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Lease or the leasing of the Premises.

## **ARTICLE 18**

### **WAIVER**

None of the covenants, terms or conditions of this Lease shall be in any manner altered, waived, modified, changed or abandoned, except by the written agreement of Landlord and Tenant duly signed and delivered. One (1) or more waivers of any covenant or condition by any party shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition by said party. The consent or approval by the Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed a consent or approval to or of any subsequent similar act by Tenant. The receipt by Landlord of any Rent or Additional Rent required to be paid by Tenant hereunder with knowledge of any event of Default by Tenant shall not be nor deemed to be a waiver of such event of Default.

## **ARTICLE 19**

### **ESTOPPEL CERTIFICATES**

At any time and from time to time, Tenant or Landlord, as the case may be, shall within ten (10) days after written request by the other, execute, acknowledge and deliver to the requesting party a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (b) the Commencement Date and the Expiration Date, and the date, if any, to which all Rent and other sums payable hereunder have been paid; (c) the amount of Rent currently payable monthly; (d) that no notice has been received by the certifying party of any default by the certifying party hereunder which has not been cured, except as to defaults specified in such certificate; (e) that, to the actual knowledge of the certifying party, the requesting party is not in default under this Lease, except as to defaults specified in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may

be relied upon by the requesting party and any actual or prospective purchaser, tenant or mortgage lender of the Premises or any part thereof.

## ARTICLE 20

### **BINDING ON SUCCESSORS AND ASSIGNS**

Section 1. This Lease shall inure to the benefit of and be binding upon the parties hereto and also to their successors and assigns, as fully and to the same extent as though specifically mentioned in each instance.

Section 2. Any holding over after the expiration of said term or any renewal thereof shall only be with the consent of the Landlord and shall be construed to be a tenancy from year to year and shall otherwise be under the terms and conditions herein specified insofar as applicable.

## ARTICLE 21

### **MORTGAGE OF LEASEHOLD**

Section 1. Tenant's Right to Encumber. Tenant may, at any time after delivering notice thereof to Landlord, encumber all or any portion of its interest in this Lease and the leasehold estate of Tenant in the Premises by a Leasehold Mortgage provided that each Leasehold Mortgage complies with the terms and provisions of this Article 21. Each Leasehold Mortgage shall be subject and subordinate to all rights and interests of Landlord under this Lease, shall be a lien or security title on Tenant's interest in and to this Lease and the leasehold estate created hereby, and shall not be a lien or security title on Landlord's fee interest in the Premises or any reversionary interest in the Facilities located thereon. The Leasehold Mortgagee shall not acquire by virtue of a Leasehold Mortgage any greater rights to the Premises than Tenant has under this Lease.

Section 2. Obligations. Tenant covenants and agrees to:

- (A) deliver to Landlord a copy of all documents evidencing any Leasehold Mortgage; and
- (B) deliver to Landlord all notices of default received by Tenant from the Leasehold Mortgagee promptly following receipt by Tenant.

Section 3. Rights of Leasehold Mortgagee. A Leasehold Mortgagee may enforce its rights under its Leasehold Mortgage and acquire title to the leasehold estate of Tenant in the Premises in any lawful manner. On foreclosure under the Leasehold Mortgage, a Leasehold Mortgagee may take possession of the Premises; subject, however, to the terms of this Lease.

Section 4. Tenant Default.

(A) Provided that Landlord has been provided with written notice of the Leasehold Mortgagee's address, Landlord shall deliver to each Leasehold Mortgagee a copy of each notice of default given by Landlord to Tenant simultaneous with any notice of default given to Tenant, addressed to each Leasehold Mortgagee at its address given to Landlord. No notice of Tenant's default under this Lease shall be deemed to have been given unless and until a copy thereof has been

delivered to any Leasehold Mortgagee.

(B) If a Leasehold Mortgage exists, Landlord agrees that it will not (i) accept the surrender of the Premises by Tenant prior to the expiration or termination of this Lease, or (ii) consent to the modification of any term of this Lease or the termination of this Lease, without the prior written consent of the Leasehold Mortgagee, in each instance.

(C) Provided that Landlord has been provided with written notice of the Leasehold Mortgagee's address, after the expiration of all applicable notice and grace periods under this Lease with respect to any default by Tenant (a "Default"), Landlord shall give written notice to the Leasehold Mortgagee (the "Mortgagee Notice") of the failure of Tenant to cure a Default. The Mortgagee Notice shall be sent by certified mail, return receipt requested or by a nationally recognized commercial overnight delivery service to the address set forth in writing to Landlord by the Leasehold Mortgagee. Landlord shall not terminate this Lease by reason of any Default until a reasonable period of time shall have elapsed following the receipt by the Leasehold Mortgagee of the Mortgagee Notice, during which period the Leasehold Mortgagee shall have the right, but shall not be obligated, to remedy the Default. Landlord agrees to accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(D) A reasonable period of time shall be thirty (30) days if a Default can be remedied during a thirty (30) day period, or, if a Default cannot be remedied during a thirty (30) day period, then such period of time as is necessary to remedy a Default, provided that the Leasehold Mortgagee has commenced to cure the Default within such thirty (30) day period and continues to diligently prosecute the cure to completion.

(E) The time for the Leasehold Mortgagee to cure a Default that reasonably requires the Leasehold Mortgagee be in possession of the Premises, or the time for a Leasehold Mortgagee to obtain Tenant's interest under this Lease in order to elect to enter into a new lease with Landlord as provided in Paragraph 21.4.F. hereof, shall be deemed extended to include the period of time required by a Leasehold Mortgagee to obtain possession of the Premises or obtain Tenant's interest under this Lease by foreclosure or otherwise with due diligence; provided, however, that (i) a Leasehold Mortgagee shall have delivered to Landlord its written commitment to cure all outstanding Defaults which the Leasehold Mortgagee (in its reasonable discretion) requires possession of the Premises to cure; and (ii) during such period, all other obligations of Tenant under this Lease are being duly performed to the extent that the Leasehold Mortgagee can do so.

(F) If this Lease is terminated for any reason, including, but not limited to, a termination following a Leasehold Mortgagee's failure to cure a Default or the rejection or disaffirmance of this Lease pursuant to bankruptcy laws or other laws affecting creditors' rights, Landlord agrees to enter into a new lease of the Premises with the Leasehold Mortgagee, or any party designated by the Leasehold Mortgagee within thirty (30) days after the request of the Leasehold Mortgagee. The new lease shall be effective as of the date of termination, rejection or disaffirmance of this Lease and shall be on the same terms and provisions contained in this Lease, including the amount of rent and other sums required to be paid by Tenant hereunder. In order to obtain a new lease, a Leasehold Mortgagee shall request from Landlord the new lease within thirty (30) days after the Leasehold Mortgagee is notified of the effective date of termination, rejection or disaffirmance of the Lease, as

the case may be. In addition, prior to the new lease becoming effective, the Leasehold Mortgagee must cure all Defaults under the Lease that can be cured by the payment of money and pay to Landlord all rent and other sums that would have been due and payable by Tenant under this Lease but for the rejection, disaffirmance or termination. If the Leasehold Mortgagee or the party so designated by the Leasehold Mortgage shall have entered into a new lease with Landlord pursuant thereto, any existing Default under this Lease that cannot be cured by the payment of money shall be deemed cured but the performance of the new Tenant's obligations under the new lease shall not be deemed waived by Landlord. Landlord shall make reasonable efforts for any new lease made pursuant hereto to be senior and superior to any other encumbrances on the Premises except those encumbrances existing as of the date of this Lease. A Leasehold Mortgagee's rights hereunder are in addition to and not limited to, its right to cure under Paragraph 21.4.C., hereof. The provisions of this Paragraph 21.4.F. are a separate and independent contract made by Landlord and each Leasehold Mortgagee. From the effective date of termination, rejection or disaffirmance of this Lease to the date of execution and delivery of a new lease or the expiration of the period during which a Leasehold Mortgagee may make a request, the Leasehold Mortgagee may, on payment of any rent and any other sums as may be due from Tenant, use and enjoy the leasehold estate created by this Lease, subject to the terms of this Lease, without hindrance by Landlord.

(G) The provisions of this Section 21.4 are for the benefit of each Leasehold Mortgagee and may be relied upon and shall be enforceable by each Leasehold Mortgagee. Neither a Leasehold Mortgagee nor any other holder or owner of the indebtedness secured by a Leasehold Mortgage or otherwise shall be liable on the covenants, agreements or obligations of Tenant contained in this Lease, unless and until the Leasehold Mortgagee acquires the interest of Tenant under this Lease.

Section 5. Definitions. The terms hereinafter set forth shall, for all purposes of this Lease, be defined as follows:

(A) The term "Leasehold Mortgage" shall mean and refer to any encumbrance of this Lease and the interest of Tenant hereunder (or of a sublease of all or any portion of the Premises and the interest of the subtenant thereunder) as security for any indebtedness Tenant (or any subtenant and its successors and assigns), may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument.

(B) The term "Leasehold Mortgagee" shall mean and refer to holder or holders of the indebtedness secured by a Leasehold Mortgage.

## ARTICLE 22

### OWNERSHIP OF BUILDINGS AND FACILITIES

The Facilities heretofore or hereafter erected and constructed on the Premises shall, so long as the Lease is in full force and effect, belong to Tenant, subject to the other provisions of this Lease. Upon the expiration or upon any termination of this Lease, provided that Tenant is not in default hereunder, any unattached equipment or trade fixtures placed on the Premises by Tenant may be removed by the Tenant within thirty (30) days after such expiration or termination. Tenant, its agents or assigns shall repair any incidental damage caused by the removal of such unattached equipment or trade fixtures. All Facilities, at the expiration or termination of the Lease, shall be the sole property of the Landlord and shall be left by

Tenant on the Premises in the same condition as required to be maintained by Tenant during the term of this Lease, normal wear and tear excepted. Anything left on the Premises for a period of thirty (30) days after the expiration of this term of the Lease shall be conclusively deemed to be the property of the Landlord.

**ARTICLE 23**

**QUIET ENJOYMENT**

Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein stipulated to be performed by Tenant, Tenant shall, at all times during the continuance hereof, have peaceable and quiet enjoyment and possession of the Premises without any matter of let or hinderance from Landlord or any person or persons claiming by, through or under Landlord, subject to the terms and provisions of this Lease.

Notwithstanding anything contained herein to the contrary, Tenant hereby acknowledges that Landlord may have certain rights under this Lease as it relates to the redevelopment of the Premises and such rights include the right to enter and inspect the Premises. Landlord hereby agrees to use commercially reasonable efforts to limit disruption to Tenant's redevelopment and operation within the Premises; provided, however, Tenant acknowledges that there may be some disruption as a result of such Landlord rights under this Lease.

Notwithstanding anything contained herein to the contrary, Landlord reserves the following rights, exercisable without notice and without liability to Tenant and without causing and eviction (constructive or actual) or giving rise to any claim for setoff or abatement of rent:

- (A) To change the Facilities's or Premise's name or street address;
- (B) To grant to anyone the exclusive right to conduct any business or render any service in or to the Facilities, provided such exclusive right does not exclude Tenant from the use expressly permitted in this Lease;
- (C) To retain and use, in the appropriate instances, keys to any and all doors into and within the Premises;
- (D) To install signs on or around the Premises.

**ARTICLE 24**

**ACCESS TO PREMISES**

Upon reasonable prior notice, but in no event less than twenty-four (24) hours (except in the case of an emergency), Landlord and its agents, servants, employees and representatives may enter upon the Premises during normal business hours for purposes of: (i) examination and inspection; (ii) to show the Premises to prospective purchasers or investors; or (iii) to perform maintenance and repair obligations imposed upon Landlord by this Lease, or as Landlord may deem necessary and proper for the safety,

improvement or preservation of the Premises. Landlord covenants that it will not unreasonably interfere with a subtenant's business conducted on the Premises. Should Landlord unreasonably interfere with a subtenant's business by such entry, then Landlord shall indemnify and hold Tenant harmless for any and all reasonable claims by a subtenant. Landlord shall retain keys to any and all doors into and within the Premises. Tenant shall not change or add locks, nor shall Tenant take any action or cause any action to limit Landlord's access to the Premises without the prior written consent of Landlord.

**ARTICLE 25**

**ENTIRE AGREEMENT**

This Lease contains the entire agreement between the parties hereto and no term or provisions hereof may be changed, waived, discharged or terminated unless the same be in writing, executed by both parties hereto.

**ARTICLE 26**

**PARTIAL INVALIDITY**

If any provision of the Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be enforced to the fullest extent permitted by law.

**ARTICLE 27**

**ARTICLE HEADINGS**

The article headings contained herein are inserted only for convenience of reference and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular Articles to which they refer.

**ARTICLE 28**

**ENVIRONMENTAL MATTERS**

Intentionally Omitted

**ARTICLE 29**

**MISCELLANEOUS**

Section 1. Applicable Law. This Lease shall be construed and enforced in accordance with the law of the state of Georgia, without regard to its choice of law provisions.

Section 2. Memorandum of Lease. The parties agree that the undersigned will enter into a Memorandum of Lease for recording purposes describing the Premises, term, and such other matters as

Tenant may reasonably request or as shall be appropriate and shall record the Short Form Lease in the Fulton County, Georgia records.

Section 3. Attorneys' Fees. In the event of litigation to enforce the terms of this Lease, the substantially prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees actually incurred from the substantially non-prevailing party.

Section 4. Binding on Successors. This agreement shall bind Landlord and Tenant, and the heirs, assigns, administrators, legal representatives, executors or successors as the case may be, of Landlord and Tenant.

Section 5. Time is of the Essence. It is understood and agreed by the parties hereto that time is of the essence as to this Lease, and this applies to all terms and conditions contained herein.

Section 6. Cumulative Rights. The rights of Landlord and Tenant under this Lease shall be cumulative, and failure on the part of either party to exercise promptly any rights given to it hereunder shall not operate to forfeit any of the said rights.

Section 7. No Agency or Partnership. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating a relationship of principal and agent or partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor the act of the parties herein shall be deemed to create any relationship between the parties other than the relationship of Landlord and Tenant.

Section 8. Hazardous Wastes. In addition to, and not in limitation of any other provision of this Lease, Tenant shall not generate, store, use, treat or dispose of, nor allow, suffer or permit the generation, use, treatment or disposal of any "hazardous waste" or "hazardous substances" (as those terms are defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended ("RCRA") or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C §§ 9601 et seq. as amended ("CERCLA"), and any rules and regulations now or hereafter promulgated under either of such acts) or any pollutant or other contaminant on, in, from or about the Premises or Facilities which hazardous material is prohibited or controlled by any federal, state or local law, ordinance, rule or regulation now or hereafter in effect. Tenant shall and hereby does indemnify and hold Landlord harmless from and against any and all loss, damages, expenses, fees, claims, costs and liabilities (including, but not limited to, attorneys' fees and costs of litigation) arising out of or in any manner related to the "release" or "threatened release" of, and for any clean-up responsibility imposed upon Landlord under any federal, state or local law, ordinance, rule or regulation now or hereafter in effect, with respect to any "hazardous waste" or "hazardous substance" (as those terms are defined in RCRA and CERCLA, and any rules and regulations now or hereafter promulgated thereunder), or any pollutant, or other contaminant on, in, from or about the Premises, Facilities or any portion or portions thereof, which release or threatened release arises out of or is in any manner related to Tenant's use or occupancy of the Premises. Landlord shall have the right, but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or take such other actions it may deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following the receipt of any notice from any person or entity, including, without limitation, the Environmental Protection Agency) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; provided, however, Landlord agrees that, except in the case of an emergency,

Landlord shall take any such action only after written notice to Tenant of the alleged existence of Hazardous Substances, and, in the event Landlord is claiming indemnity by Tenant pursuant to the terms hereof, should Tenant fail, within a reasonable period of time following receipt of such notice, to commence or fail to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All actual and reasonable costs and expenses Landlord incurs in the exercise of any such rights, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand. The provisions of this Section shall survive the termination of this Lease.

Section 9.      ADA Compliance. Tenant represents and warrants that any subsequent alterations of additions made by or on behalf of Tenant to the Premises shall conform to the requirements of the Americans with Disabilities Act (“ADA”), of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101 et seq., as amended from time to time, and the regulations promulgated pursuant thereto. Tenant shall reimburse Landlord for any and all expenditures (including, but not limited to, capital expenses, attorneys’ fees and litigation costs) incurred by Landlord to bring the Premises into compliance with the ADA. Tenant hereby indemnifies and holds harmless Landlord from and against any and all claims, damages, suits, liabilities, and attorneys’ fees asserted against or suffered by Landlord in any way relating to or arising from, in whole or in part, an actual or asserted claim that the Premises, or any portion thereof, is in violation of the ADA or the regulations promulgated pursuant there.

Section 10.      Parking. Tenant shall have the right to use, in common with any other tenants, if any, the parking facilities of the Premises and/or Facilities as designated from time to time by Landlord. Tenant shall not park or permit to be parked any inoperative or abandoned vehicles or equipment on any portion of the Premises. If any abandoned or improperly parked vehicles are discovered by Landlord to exist anywhere on the Premises, Landlord shall have the right to remove same from the Premises in accordance with the terms of O.C.G.A. § 40-11-0, et seq. In such instance, Tenant shall promptly reimburse Landlord for any and all actual and reasonable costs incurred with such vehicle’s removal. Landlord specifically reserves the right to change the size, configuration, design, layout, location and all other aspects of the parking area or facilities at their sole discretion. Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant, from time to time, close-off or restrict access to, or relocate or otherwise alter any or all such parking areas or facilities without the consent of Tenant; *provided, however*, that any such restriction, relocation or other alteration of such parking area or facility shall not unreasonably interfere with Tenant’s rights, duties and obligations as it relates to the Facilities without the prior written consent of the Tenant, which shall not be unreasonably withheld, delayed or conditioned in any manner.

Section 11.      Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 12.      Force Majeure. Both parties hereunder shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary items, covenants and conditions of this Lease when prevented from doing so by a cause or causes beyond their reasonable control, which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, inability to obtain any material or services after a good faith effort to procure such materials or services, and acts of God.



Section 13. Waiver of Jury Trial. The parties hereto shall, and hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matters whatsoever arising out of, or in any way relating to, this Lease, the relationship of Landlord and Tenant, Tenant's use of the Premises, or any claim of injury or damage arising out of the Premises or Facilities.

## ARTICLE 29

### LANDLORD COOPERATION AND COMPLIANCE

Section 1. Landlord shall cooperate with Tenant to permit Tenant to comply with the requirements of any mortgage loan secured by the Premises, applicable legal requirements and applicable private restrictions. Landlord shall maintain its status and its solvency and shall neither take, nor omit to take, any action which would cause a default or breach of any mortgage loan secured by the Premises. Landlord shall not let any lien or judgment, due to Landlord's actions, attach to Landlord's fee interest in the Premises.

Section 2. Landlord shall cooperate with Tenant to permit Tenant to comply with the requirements of any sublease or subtenant of the Premises, including, without limitation, entering into a recognition agreement in a form reasonably acceptable to such subtenant.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this Ground Lease to be executed as of the day and year first above written.

**LANDLORD:**

**LAKE CLAIRE POOL, LLC,**  
a Georgia limited liability company

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

**TENANT:**

**LAKE CLAIRE SWIM CLUB, INC.,**  
a Georgia nonprofit corporation

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

(Corporate Seal)

FOODM

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PREMISES

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 211, 15th District, DeKalb County, Georgia, being the pool tract as shown on the survey titled "Re-plat of Lake Claire Pool Property" made by Christopher E. Moore, GRLS No. 2828, dated April 28, 2022, and recorded in Plat Book 305, Page 120, DeKalb County, Georgia records and being more particularly described as follows:

Beginning at a point at the intersection of the Northern Right-of-Way of Dekalb Avenue (Right-of-Way Varies) and the Eastern Right-of-Way of Hampton Terrace (40' Right-of-Way), said point being the **POINT OF BEGINNING**; thence following said Right-of-Way of Hampton Terrace, North 09 degrees 13 minutes 41 seconds East, a distance of 129.04 feet to a point; thence leaving the Eastern Right-of-Way of Hampton Terrace, South 80 degrees 26 minutes 52 seconds East, a distance of 73.48 feet to a point; thence South 81 degrees 14 minutes 28 seconds East, a distance of 61.72 feet to a point; thence South 00 degrees 34 minutes 51 seconds East, a distance of 56.23 feet to a point; thence South 88 degrees 56 minutes 46 seconds East, a distance of 6.37 feet to a point; thence South 04 degrees 49 minutes 25 seconds West, a distance of 69.74 feet to a point on the Northern Right-of-Way of Dekalb Avenue; thence continuing along said Right-of-Way, along an arc of a curve to the right, an arc length of 58.97 feet, having a radius of 977.38 feet, being subtended by a chord bearing of North 83 degrees 54 minutes 42 seconds West, a chord distance of 58.96 feet to a point; thence continuing along said Right-of-Way, North 82 degrees 00 minutes 25 seconds West, a distance of 97.55 feet to a point, said point being the **POINT OF BEGINNING**.

Said tract containing 0.43 acres or 18,768 square feet.

FOOT

**EXHIBIT "C"**  
**License Agreement**

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**License Agreement**") is made and entered into by and between LAKE CLAIRE POOL, LLC, a Georgia limited liability company, its successors and assigns ("**Sponsor**"), and LAKE CLAIRE SWIM CLUB, INC., a Georgia nonprofit corporation, its successors and assigns ("**Club**") to be effective as of \_\_\_\_\_ (the "**Effective Date**").

### RECITALS

A. Club is a recreation and social equity club organized to acquire, own and operate certain recreational and social facilities for the enjoyment of its members and their guests.

B. Club has entered into an Agreement for Transfer of Assets with Sponsor ("**Transfer Agreement**") by which the Sponsor has agreed to construct and convey to Club various recreational and social facilities ("**Club Facilities**") on property located in Dekalb County, Georgia.

C. Sponsor and Club desire to provide for Club's use of a logo associated with the Club and any graphics, fonts, or typefaces designated from time to time by Sponsor (together, the "**Logo**") and the name "Lake Claire Pool" or "Lake Claire Swim Club" (collectively, the "**Name**") in connection with the sale of memberships in the Club and operation of the Club Facilities.

### STATEMENT OF AGREEMENT

In consideration of the foregoing and the mutual promises herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Recitals. The statements contained in the Recitals are true and are incorporated herein.
2. Grant of Non-Exclusive License. Sponsor hereby grants to Club, upon the terms and conditions set forth in this License Agreement, a non-exclusive, non-transferable license to its right, if any, to use the Logo and the Name in conjunction with the operation of the Club Facilities, the promotion of the Club and the sale of memberships entitling persons to use the Club Facilities. Sponsor authorizes Club to use the Logo and the Name solely and only in the aforementioned manner and Club has no right to utilize the Logo or the Name for any other purpose or at any other location. This license does not extend to any other Logo or Name which Sponsor may own. Club may not alter or use any variation of the Logo or use any other logo owned by Sponsor, alone or in conjunction with its use of the Logo, without the prior written consent of Sponsor.

Notwithstanding the above, no representation is made by Sponsor that it has registered the Logo or the Name in any manner, has investigated the availability of the Logo or Name for registration, or has rights to use the Logo or the Name. Club acknowledges and agrees that Sponsor's rights to use the Logo and Name and, as such, Club's rights pursuant to this License Agreement, may be subject to challenge by third parties contending rights to and ownership of the Logo and/or the Name.

Sponsor shall have the right to inspect and approve any use of the Logo or the Name prior to their use or dissemination for any purpose, including, without limitation, advertisements, brochures, labels, signage, printed materials, electronic media, and any other use or publication.

Nothing in this License Agreement shall be construed to prevent Sponsor's use of the name "Lake Claire Pool," "Lake Claire Swim Club" or the Logo or any similar logo. Sponsor's use may include, without limitation, use

of the Logo, and the name "Lake Claire Pool" or "Lake Claire Swim Club" for any purpose whatsoever. Sponsor shall be entitled to such use at no charge.

3. Ownership of Logo and Name. Club acknowledges Sponsor's rights in the Logo and Name and the great value of the goodwill associated with the Logo and Name and agrees that it will do nothing inconsistent with such rights. In connection with the use of the Logo and Name, Club shall not in any manner represent that it has any ownership in the same or any registration thereof and agrees that nothing in this License Agreement shall give Club any right, title or interest in the Logo or Name other than the right to use the Logo and Name in accordance with this License Agreement and Club shall take no action inconsistent with Sponsor's ownership or right to use the Logo and Name.

Sponsor makes no representation or warranty with respect to the Logo or Name, including without limitation, that their use does not infringe any other person's right, that Sponsor has any right to the exclusive use of the Logo or Name, or that other service or trade marks, trade names, logos, or designs do not infringe the Logo and Name. Sponsor shall be under no obligation to defend against infringement by any third party or to protect the Logo or Name. Club is licensing the Logo and Name "as is, where is" and agrees to indemnify and hold Sponsor harmless from any loss, cost damage or expense, including legal fees and expenses, arising out of any third party claims that Club's use of the Logo and Name infringes any other trademark, service mark, trade name or any property right whatsoever.

4. Infringement Proceedings. Club agrees not to engage in any conduct which infringes the Logo or Name or constitutes unfair competition with Sponsor by means of the use of the Logo or Name. Further, Club agrees to notify Sponsor of any unauthorized use of the Logo or the Name by others, as soon as it comes to Club's attention. Sponsor shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the Logo and/or Name.

5. Term. This License Agreement shall continue in full force and effect unless and until terminated in accordance with the provisions hereof. Notwithstanding the above, this License Agreement shall automatically terminate in the event of termination of the Transfer Agreement prior to consummation of the transfer of title to the Club Facilities to Club.

6. Default. If either Sponsor or Club shall breach any of the terms or conditions of this License Agreement, and such failure or breach is not cured within 30 days after giving written notice thereof, the other party shall have the right to terminate this License Agreement, without prejudice to their right of compensation for losses and damages.

7. Effect of Termination. Upon termination of this License Agreement, all rights and privileges granted to Club shall immediately terminate and Club agrees to immediately discontinue all uses of the Logo and the Name. Club further agrees to destroy all printed materials bearing the Logo or the Name and agrees that all rights in the Logo and the Name and the goodwill connected therewith shall remain the property of Sponsor. Club also agrees to make no further reference to the Logo or the Name in connection with Club's business or advertising and agrees that it will at no future time adopt or use, without Sponsor's prior written consent, a logo which is likely to be similar to or confused with the Logo.

8. Royalty. The license granted herein shall be royalty-free.

9. Insolvency. This License Agreement shall automatically terminate in the event of any affirmative act of insolvency by Club or if Club makes any assignment for the benefit of creditors, or upon the appointment of any receiver or trustee to take possession of the properties of Club, or upon the winding-up, sale, consolidation, merger of Club or any sequestration by governmental authority of Club.

10. No Assignment, Subcontract or Sublicensee. This License Agreement and all rights and duties hereunder are personal to Club and shall not be assigned, mortgaged, sublicensed or otherwise encumbered or transferred by Club or by operation of law, without the prior written consent of Sponsor, which consent may be withheld by Sponsor in its sole discretion. Club shall not grant a license any other person or entity to use the Logo or the Name. Should Club enter into any license for the use of the Logo or the Name or assign, mortgage, sublicense, encumber or transfer this License Agreement, Sponsor may terminate this License Agreement upon 10 days' written notice to Club. Sponsor may freely assign any or all of its rights or obligations hereunder, or both, in whole or in part, to any party.

11. Indemnification. Club hereby agrees to indemnify Sponsor and will undertake to hold it harmless against and reimburse it for any claims, suits, damages, costs or attorneys' fees (including those incident to pre-trial, trial and appellate activities) brought against or incurred by Sponsor arising out of any acts or omissions by Club which are unjustifiably attributed to Sponsor as a result of Club's use of the Logo or the Name. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by Sponsor's attorneys.

12. Notice. All notices or other communications to be given under this License Agreement shall be in writing and shall be deemed delivered when hand delivered to the intended recipient or on the third business day after being deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, and addressed to the intended recipient at the address set forth below or such other address as such party may have specified most recently by written notice.

If to the Sponsor:

Lake Claire Pool, LLC

Attention:

3300 Marjan Drive  
Atlanta, Georgia 30340  
Mitchel C. Jaffe, mitchj@prepatl.com  
Stosh Bennett, stoshbennett@gmail.com

If to the Club:

Lake Claire Swim Club, Inc.

Attention:

3300 Marjan Drive  
Atlanta, Georgia 30340  
Mitchel C. Jaffe, mitchj@prepatl.com  
Stosh Bennett, stoshbennett@gmail.com

Each party hereto shall have the right, by giving not less than five (5) days' prior written notice to the other parties hereto, to change any address of such party for the purpose of notices under this Article.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

**Sponsor:** LAKE CLAIRE POOL, LLC, a Georgia limited liability company

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

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

Its: \_\_\_\_\_

**Club:** LAKE CLAIRE SWIM CLUB, INC., a Georgia nonprofit corporation

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

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

Its: \_\_\_\_\_

FORM



**EXHIBIT "D"**  
**Bill of Sale**

**BILL OF SALE**

THIS BILL OF SALE is made and delivered by Lake Claire Pool, LLC, a Georgia limited liability company (“**Seller**”), and is delivered to Lake Claire Swim Club, Inc., a Georgia nonprofit corporation (“**Purchaser**”).

For ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, assigns, conveys, and delivers to Purchaser without warranty all right, title and interest in and to the following:

The “Purchased Assets” identified in that certain *Schedule of Assets* dated the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, which is attached hereto as **Exhibit 1**.

The parties agree to use all necessary efforts to take, or cause to be taken, all actions necessary or appropriate to convey, transfer and deliver the Purchased Assets to Purchaser free from encumbrances.

This Bill of Sale shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the parties and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, this Bill of Sale has been executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

**SELLER:**

Lake Claire Pool, LLC

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

Its: \_\_\_\_\_

**PURCHASER:**

Lake Claire Swim Club, Inc.

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

Its: \_\_\_\_\_

EXHIBIT C

CLUB RULES

# **Lake Claire Swim Club, Inc.**

## RULES

Effective Date November 1, 2023

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# LAKE CLAIRE SWIM CLUB, INC.

## RULES

*Lake Claire Swim Club, Inc., a Georgia nonprofit corporation ("**Club**"), has established the following rules ("**Rules**") to govern the use of the facilities known as the Lake Claire Pool ("**Club Facilities**") and to promote the health, safety, and enjoyment of all persons using the Club Facilities. The Club may, in its sole discretion, amend these Rules from time to time. These Rules shall apply to all persons using the Club Facilities, whether a member, authorized user, or guest. Capitalized terms used in these Rules shall be defined as set forth in the Bylaws of Lake Claire Swim Club, Inc. ("**Bylaws**"). The Club's executive director or manager shall be the representative of the Club for purposes of implementing and enforcing these Rules.*

### 1. MEMBERSHIP ADMINISTRATION

#### 1.1. Access or Identification Cards.

The Club may issue access or identification cards to each member and authorized user of the Club Facilities and may require such cards to be carried while using the Club Facilities. Such cards, if issued, may be used only by the person to whom it is issued. If the card is lost or stolen, the member should notify the Club immediately. The Club may charge a card replacement fee to cover its cost in replacing a lost or stolen card.

#### 1.2. Notices.

Each member shall give the Club written notice of the member's mailing address for the purpose of receiving communications.

### 2. GUEST POLICIES

#### 2.1. Guest Registration and Fees.

Members are responsible for registering their guests, obtaining guest passes, and paying applicable guest fees prior to allowing their guests to use the Club Facilities. The sponsoring member shall be responsible for paying guest fees in such amount as the Club may establish from time to time, which fees may vary according to the type of guest pass issued.

#### 2.2. Day Guests.

(a) A member may sponsor a maximum of five day guests for use of the Club Facilities at a time, unless otherwise approved by the Club. The Club may limit the number of day guests a member may sponsor during specific time periods and periods of high use of the Club Facilities. Day guests must be accompanied by the member or another authorized user of the member's membership when using the Club Facilities. The Club reserves the right to limit the number of days in any membership year that a member may sponsor day guests and the number of time that any person may use the Club Facilities as a day guest.

(b) No person, who resides within the Atlanta metropolitan area may use the Club Facilities as a day guest more than three (3) days in any 12-month period, whether sponsored by one or more members.

(c) The Club reserves the right to limit the number of day guest passes which it issues during busy periods and peak hours of use.

2.3. Identification.

Guests shall carry their guest passes at all times when using the Club Facilities. The Club reserves the right to request picture identification from guests at any time while on the Club Facilities.

2.4. Conduct.

All guests are expected to comply with these Rules and all other policies established by the Club. Any guest who, in the reasonable determination of the Club, is not in compliance, or whose conduct is disruptive, abusive, or otherwise inconsistent with the standard of conduct expected from members, may be asked to surrender his or her guest pass and leave the Club Facilities. The sponsoring member shall be responsible for the conduct of his or her guests while on the Club Facilities.

2.5. Babysitter and Nanny Passes.

Members desiring to hire a babysitter or nanny to care for their children while using the Club Facilities must purchase a babysitter or nanny pass from Club. Prior to any babysitter or nanny using such pass, member shall register the babysitter or nanny with Club. Only those babysitters or nannies registered with Club shall entitled to use the pass and must present the pass when entering the Club Facilities. A babysitter or nanny may only access the Club Facilities with such pass while accompanying the member's children.

### 3. GENERAL CLUB POLICIES

3.1. Hours of Operation.

Unless otherwise determined by Club in its sole discretion, the Club Facilities shall be open for operation and use annually between the Saturday preceding Memorial Day and shall be closed the Tuesday following Labor Day. Within such period, the Club Facilities shall be open on such days and during the hours as the Club may establish and change from time to time, subject to the Club's right to close all or portions of the Club Facilities as it deems necessary for scheduled maintenance and repairs, events, and during inclement weather and in anticipation of storm events. Standard operating hours for general use shall be 11 a.m. to 8 p.m. unless otherwise posted. The Club Facilities shall be available between 6 a.m. to 11 a.m. for swimming laps, swimming lessons provided by authorized instructors, use by authorized organized swim teams, for other purposes authorized by Club. No person is permitted on the Club Facilities during any times the Club Facilities are closed.

Club may close the Club Facilities due to inclement weather or in the anticipation of storm events.

3.2. Advertisements and Solicitations.

(a) No person shall post or circulate commercial advertisements on the Club Facilities or engage in any solicitation or sales activity on or from the Club Facilities without the Club's prior written approval.

(b) No person shall originate, solicit, circulate, or post flyers or petitions anywhere on the Club Facilities without the Club's prior written approval.

(c) No person shall publish or distribute any roster or list of the members or contact information for members, nor use members' phone numbers, mailing addresses, or email addresses for purposes of solicitation or sales.

3.3. Personnel and Operations.

(a) No person other than the Club and its designees shall supervise, give direction to, or reprimand employees. Verbal or physical abuse or harassment of employees will not be tolerated. Any employee not rendering courteous and prompt service should be reported to the Club immediately.

(b) No person shall send any employee off of the Club Facilities for any reason, request special favors or special services from employees, without the permission of the Club.

(c) Club and its designees are responsible for enforcing all rules and regulations regarding the Club Facilities. Club and its designees are authorized to issue warnings and temporarily suspend use of the Club Facilities, including, removal of individuals from the Club Facilities. Further suspension of privileges, and termination of membership, shall be in accordance with the Bylaws.

(d) Club may issue additional rules and regulations for the day to day operations of the Club Facilities

3.4. Complaints.

To facilitate the proper management of the Club Facilities, all complaints, criticisms or suggestions of any kind relating to any operations should be in writing, signed, and addressed and delivered to the Club.

**4. USE OF CLUB FACILITIES**

4.1. Children.

(a) Children under 14 years of age are not allowed at the Club Facilities unless accompanied and supervised by an adult, except as the Club may expressly authorize.

(b) Any person who brings a child under the age of 19 onto the Club Facilities is responsible for the child's conduct and safety while using the Club Facilities.

4.2. Beverages and Food.

(a) Other than those provided by Club, if any, barbecue grills and other cooking appliances are not permitted on the Club Facilities.



(b) No food or beverages are permitted in the pool or on the pool deck within five feet (5') of the pool edge.

(c) Bottles, drinking glasses, and other glass containers are not permitted in the Club Facilities.

(d) Each person using the Club Facilities is responsible for properly disposing of his or her food and beverage containers and other trash in receptacles provided for that purpose.

4.3. Attire.

(a) Street clothing, or a shirt or appropriate swimsuit coverup, and shoes (sandals or "flip flops" are acceptable) shall be worn when entering and exiting the Club Facilities.

(b) All persons using the pool shall wear proper swimwear (*i.e.*, swim suits made and intended to be worn while swimming). Cutoffs, denim, and bermuda shorts are not considered appropriate swim wear.

(c) Nude and topless sunbathing is not permitted on the Club Facilities.

4.4. Animals.

Pets (other than recognized service animals) are not permitted on the Club Facilities.

4.5. Property.

No person shall remove any property or furniture from the Club Facilities, or move furniture or other property from the area in which it belongs without the Club's express permission.

4.6. Parking.

Limited parking is provided in designated parking areas, subject to availability, on a first come, first served basis. No vehicles shall be parked in areas within the Southerland neighborhood other than designated parking spaces or in a manner which blocks entry or exit by other vehicles. Violators may be towed at the vehicle owner's expense. Parking is currently available at the entrance to the Club Facilities and within the Southerland neighborhood in designated parking spaces. Members shall obey all street parking restrictions.

4.7. Smoking.

Smoking is not permitted on the Club Facilities.

4.8. Fireworks.

Fireworks are not permitted on the Club Facilities.

4.9. Weapons.

No firearms or other weapons of any kind are permitted on the Club Facilities.

4.10. Entertainment.

(a) No performance by entertainers is permitted anywhere on the Club Facilities without the Club's express permission.

(b) Radios, CD players, and other sound devices may be used at the Club Facilities only if used with headphones or earphones.

4.11. Lockers and Changing Rooms.

(a) Clothing and personal items shall not be left unattended in the toilet, shower or changing areas. All such items must be stored in lockers or kept with the owner when not in use.

(b) A limited number of lockers are made available on a first-come, first-served basis for day use only while present at the Club Facilities. Anyone desiring to use a locker must provide their own lock. No personal items shall be left in lockers when the owner leaves the Club Facilities. Locks left on lockers at the end of the day will be cut off and all items remaining in the locker shall be thrown away.

(c) Valuables should not be placed in lockers. The Club shall not be responsible for any loss or theft of items stored in lockers. Each person using a locker assumes all risk of loss of any items stored in the locker.

4.12. Parties.

Members desiring to sponsor parties on the Club Facilities must request and register their event with Club at least 14 days in advance of the event and in accordance with the procedures established by Club. Club may establish the procedures, fees and other requirements in its sole discretion which may be changed from time to time

4.13. Liability; Assumption of Risk.

(a) Each member, authorized user, and guest shall be responsible for their own personal safety and the security of their property while using the Club Facilities. Each person using the Club Facilities acknowledges that the Club Facilities are accessible by unauthorized persons from adjoining areas and that the Club does not guarantee or insure that such access will not occur. The Club shall have no liability for any loss or injury by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) Each member, authorized user, and guest, by use of the Club Facilities, acknowledges that the nature of the pool, showers, changing rooms, and other Club Facilities poses inherent dangers, including slipping, falling, and drowning, and assumes all risks associated with the use of the Club Facilities, whether or not inherent, and agrees to release the Club and its members, officers, employees, agents, and affiliates from, and indemnify them against, any and all losses, expenses, liens, claims, demands, and causes of action of every kind and character for death, personal injury, property damage or any other liability, damages, fines, or penalties, including costs, attorneys' fees and settlements, whether or not based on the acts or omissions of the Club or its employees or agents, resulting from, arising out of or in any way connected with the use of the Club Facilities, except to the extent that the same are the direct result of the sole negligence, gross negligence, or willful misconduct of the Club, its employees, or its agents acting within the scope of their assigned duties.

(c) Each member, authorized user, and guest, by use of the Club Facilities:

(i) assumes sole responsibility for their personal property and acknowledges that the Club shall not be responsible for any loss or damage to any personal property which any such persons may use or store on the Club Facilities, whether in lockers or elsewhere; and

(ii) acknowledges and understands that he or she shall be liable for any property damage or personal injury resulting from his or her conduct or actions, or the conduct or actions of the member, member's authorized users and guests.

## 5. POOL RULES

**USE OF THE POOL IS AT A PERSONS OWN RISK  
LIFEGUARDS WILL ONLY BE ON DUTY BETWEEN 11 A.M. AND 8 P.M.  
LIFEGUARDS WILL NOT MONITOR THE KIDDIE AREA OF THE POOL**

### 5.1. Pool Area.

(a) Bicycles, skate boards, and play balls of any type are not permitted in the pool area.

(b) Running and noisy or hazardous activity will not be permitted in the pool area. Pushing, dunking and dangerous games are not permitted. The throwing of balls, frisbees, wet clothing, or other things is not permitted at any time in the pool area.

(c) Children under 14 years of age are not allowed in the pool area unless accompanied and supervised by a responsible adult who is at least 19 years of age.

(d) All persons using the Club's pool chairs or beach chairs must cover the furniture with a beach towel before use, in order to protect the furniture from body oils, sweat, and lotions.

(e) Persons who leave the pool area for more than 30 minutes must relinquish all lounges, chairs, and tables by removing all towels and personal belongings. Reserving chairs for persons not present at the pool is prohibited.

(f) Lifesaving and pool cleaning equipment are to be used only for their intended purposes.

(g) All persons using the pool area are urged to cooperate in keeping the area clean by properly disposing of towels, cans, trash, etc.

(h) Changing clothes or changing diapers is not permitted in the pool area. Changing of clothes or diapers shall be done in the changing rooms.

### 5.2. Pool Use.

(a) Showers are required before entering the pool to remove all oils and suntan lotions.

(b) Swimming is permitted during hours that the Club Facilities are open unless otherwise posted. The pool is officially closed when a "CLOSED" sign is posted, even if other portions of the Club Facilities remain open and available for use.

(c) Swimming is at the swimmer's own risk. Diving is prohibited except in designated areas.

(d) Any non-swimming children must be accompanied in the water by a person who is at least 19 years of age. All children must be properly dressed in swimming attire at all times.

Children who are not potty trained are only permitted to use the baby pool. Children who are not potty trained are required to wear water tight protective plastic pants and swim diapers under their swimsuits (or similar wear) when entering the baby pool. Children in normal diapers are not allowed in the pool.

(e) Persons with apparent or known infectious conditions, whether the same be a skin disease, sore or inflamed eyes, cough, cold, nasal or ear discharge, or any other type of communicable disease, shall not utilize any of the pool Club Facilities.

(f) Fishing and diving equipment, other than a mask and snorkel, are not to be used in the pool.

(g) Floating lounge chairs, tire inner tubes, air mattresses, and other large floating devices are not permitted. Lifejackets, water wings, and similar personal flotation devices designed for nonswimmers are permitted for use by nonswimmers with proper supervision by a person who is at least 19 years of age. Club may restrict use of these devices at any time.

(h) Use of the baby pool shall be limited to children under five years of age.

(i) Club may designate a pool lane for swimming laps.

**EXHIBIT D**

**FORM OF CANDIDATE PROFILE AND**  
**MEMBERSHIP AGREEMENT**

# Lake Claire Swim Club, Inc.

## Candidate Profile

(Individual)

### PERSONAL

Candidate's Full Name \_\_\_\_\_

Candidate's Social Security Number \_\_\_\_\_  
First Middle Last  
Date of Birth \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Is Candidate married?  Yes  No. If yes, spouse is "Designated Adult" referred to below. If no, Candidate may identify as the "Designated Adult" one other adult 18 years of age or older residing in Candidate's household.

Designated Adult's Full Name \_\_\_\_\_  
First Middle Last

Designated Adult's Social Security Number \_\_\_\_\_ Date of Birth \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Residence Address \_\_\_\_\_  
Street No. Street City State Zip

If less than 2 years at Residence Address shown above, previous address:

\_\_\_\_\_  
Street No. Street City State Zip

Candidate's: Cell Telephone: (\_\_\_\_) \_\_\_\_\_ Business Telephone: (\_\_\_\_) \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Designated Adult's: Cell Telephone: (\_\_\_\_) \_\_\_\_\_ Business Telephone: (\_\_\_\_) \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Please identify all children under 23 years of age of Candidate and Designated Adult:

Name	Sex	Date of Birth	Cell Telephone
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Has Candidate or Designated Adult or any individual identified above ever been convicted of a felony? \_\_\_\_\_  
If so, please explain. \_\_\_\_\_

### BUSINESS

Candidate's Occupation / Nature of Business \_\_\_\_\_

Employer Name \_\_\_\_\_

Business Address \_\_\_\_\_

Business Telephone (\_\_\_\_) \_\_\_\_\_ Years in Present Employment \_\_\_\_\_

If less than 5 years, describe prior employment/business: \_\_\_\_\_

Designated Adult's Occupation / Nature of Business \_\_\_\_\_

Employer Name \_\_\_\_\_

Business Address \_\_\_\_\_

Business Telephone (\_\_\_\_) \_\_\_\_\_ Years in Present Employment \_\_\_\_\_

If less than 5 years, describe prior employment/business: \_\_\_\_\_

## CREDIT RELATIONSHIPS

Name of Mortgage Holder	Account Number	Expiration Date
Address	Telephone	
Name of Credit Card	Account Number	Expiration Date
Issued	Address	
Name of Credit Card	Account Number	Expiration Date
Issued By	Address	

## PERSONAL REFERENCES

Candidate and/or Designated Adult personally know the following members of Lake Claire Swim Club, Inc:

Name	Telephone	Years Known
Name	Telephone	Years Known

## OTHER REFERENCES

Name	Telephone	Years Known
Name	Telephone	Years Known
Name	Telephone	Years Known

## OTHER CLUB MEMBERSHIPS

Name of Club	Nature of Club	Period of Membership
Address	Telephone	
Name of Club	Nature of Club	Period of Membership
Address	Telephone	

## MEMBERSHIP SELECTION

Membership Classification Desired:

- Equity
- Non-equity

## CANDIDATE'S REPRESENTATIONS

By execution below, the undersigned Candidate for membership in Lake Claire Swim Club, Inc., a Georgia nonprofit corporation ("Club"):

(i) represents that the information which the Candidate has provided in this Candidate Profile is complete and correct and may be relied upon by the Club and by Lake Claire Pool, LLC, a Georgia limited liability company ("Sponsor") in determining whether the offer and sale of a Membership to the undersigned satisfies certain requirements and agrees to notify the Club immediately of any material change in any information provided in this Candidate Profile occurring prior to the acceptance of the Candidate for membership;

(ii) agrees to provide such additional information as the Club or the Sponsor may reasonably request to consider Candidate for membership and, understands that if Candidate refuses to provide requested information, the Club and Sponsor may refuse to consider Candidate for membership;

(iii) has read the Lake Claire Swim Club, Inc., Offering Circular dated November 1, 2023 and its exhibits (the "Offering Circular"), including the Club's By-Laws and Rules and the Agreement for Transfer of Assets entered into by and between the Sponsor and the Club, and has had an opportunity to ask questions and seek legal counsel if necessary to understand the contents thereof;

(iv) is purchasing the requested membership for Candidate's own account, solely in contemplation of the recreational and social benefits to be obtained from such membership, and not for investment, resale, or profit.

(v) acknowledges that membership is subject to eligibility and approval;

(vi) agrees that, if accepted for membership, Candidate and all authorized users of the membership will be bound by all provisions contained in the Offering Circular and its exhibits, as they may be amended; and

(vii) understands and acknowledges that transfer of Club memberships is restricted as described in the Club's Bylaws, and that memberships may not be pledged or assigned.

## SELECTION PROCEDURE

Please complete and submit this Candidate Profile to Lake Claire Swim Club, Inc., at 3300 Marjan Drive, Atlanta, Georgia 30340, along with a signed Membership Agreement in the form provided by the Club and confirmation that either an automated clearing house transfer (ACH) or a credit card payment payable to Lake Claire Swim Club, Inc., in U.S. funds in the amount of the applicable membership contribution or initiation contribution, if any, or initial installment thereof payable for such membership, as set forth in the Membership Agreement.

Acceptance for membership is subject to eligibility, approval, and availability of membership in the requested classification. If you are approved for membership and membership is then available, the Club will execute the Membership Agreement indicating its acceptance and will issue a membership certificate in the desired class. Otherwise, any amounts paid will be returned.

By submitting this Candidate Profile, the Candidate and Designated Adult, if any, represent that the above information is true and correct and authorize the Club and its agents to conduct such inquiry into the Candidate and Designated Adult's qualifications for membership as they deem appropriate, including contacting credit reporting agencies and other clubs identified above, and authorize those persons and entities identified above to furnish such information as they may request for such purpose.

\_\_\_\_\_  
Signature of Candidate

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Spouse or other Designated Adult

\_\_\_\_\_  
Date

[Note: If Candidate is married, the signatures of the Candidate and the Candidate's spouse are required.]

**SUBMISSION OF THIS CANDIDATE PROFILE DOES NOT CONSTITUTE ACCEPTANCE OF THE CANDIDATE FOR MEMBERSHIP IN THE CLUB. A CANDIDATE IS ACCEPTED FOR MEMBERSHIP ONLY UPON WRITTEN ACCEPTANCE OF THE MEMBERSHIP AGREEMENT BY THE CLUB OR THE SPONSOR, AS APPLICABLE. IN THE EVENT THE CANDIDATE IS NOT ACCEPTED FOR MEMBERSHIP, THE INITIAL PAYMENT DEPOSITED WITH THE CLUB WILL BE RETURNED.**

**A CANDIDATE SHALL BECOME A MEMBER OF THE CLUB AND ENJOY THE PRIVILEGES OF MEMBERSHIP ONLY UPON THE FULFILLMENT OF EACH OF THE FOLLOWING: (I) APPROVAL FOR MEMBERSHIP; (II) AVAILABILITY OF MEMBERSHIP IN THE DESIRED CLASS; (III) SATISFACTION OF ANY OTHER CONDITIONS WHICH MAY BE ESTABLISHED FROM TIME TO TIME BY THE SPONSOR OR THE CLUB; (IV) RECEIPT BY THE SPONSOR OF PAYMENT IN FULL OF THE APPLICABLE MEMBERSHIP CONTRIBUTION, UNLESS CLUB OR SPONSOR OTHERWISE AGREE.**

### FOR CLUB USE ONLY:

<p>APPROVED BY SPONSOR THIS ___ DAY OF _____, 20__</p> <p>Lake Claire Pool, LLC, a Georgia limited liability company</p> <p>By: _____ Name: _____ Its: _____</p>	<p>APPROVED BY CLUB THIS ___ DAY OF _____, 20__</p> <p>Lake Claire Swim Club, Inc., a Georgia nonprofit corporation</p> <p>By: _____ Name: _____ Its: _____</p>
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3300 Marjan Drive, Atlanta, Georgia 30340



# *Lake Claire Swim Club, Inc.*

## Membership Agreement

THIS MEMBERSHIP AGREEMENT ("**Agreement**") is entered into by and between LAKE CLAIRE SWIM CLUB, INC., a Georgia nonprofit corporation ("**Club**"), and the undersigned member ("**Member**").

### BACKGROUND STATEMENT

The Club has been organized to acquire, own and operate recreational and social facilities (the "**Club Facilities**") located or to be located in Dekalb County, Georgia for the pleasure and recreation of its members and their guests. Member has requested consideration for membership in the Club and has submitted to Club a Candidate Profile setting forth information about Member for Club's review and consideration ("**Candidate Profile**").

In reliance upon the representations made in the Candidate Profile, and in consideration of Member's payment of the applicable Membership Contribution or Initiation Contribution and Membership Charges described below and the mutual covenants set forth in this Agreement, upon acceptance of this Agreement as evidenced by its execution below, the Club grants to Member, and Member accepts from the Club, membership in Lake Claire Swim Club, Inc., on the following terms and conditions:

### TERMS AND CONDITIONS

- Type of Membership.** Club hereby grants to Member a membership of the classification and category, if any, specified on Exhibit A attached to this Agreement ("**Membership**"). The Membership shall afford to Member the rights and privileges of such membership classification and category, if specified, as set forth in the Bylaws of Lake Claire Swim Club, Inc., as they may be amended. ("**Bylaws**").
- Term of Membership.** The Membership shall commence on the date of execution of this Membership Agreement by Member and by the Club, and payment in full of the Membership Contribution or Initiation Contribution, if any, set forth on Exhibit A. If Exhibit "A" provides for payment of the Membership Contribution or Initiation Contribution in installments, Member shall be entitled to enjoy the use privileges of Membership so long as all installments are paid in a timely manner; however, the Club and the Sponsor reserve the right to terminate this Agreement and cancel the Membership by written notice to Member if Member fails to pay any installment when due or fails to satisfy any other condition of membership. Otherwise, the Membership shall continue in effect until resigned or otherwise terminated as provided in the Bylaws. If the Club or Sponsor cancels this Agreement for failure to pay any installment of the Membership Contribution or Initiation Contribution in a timely manner, Member shall forfeit all monies paid on account of the Membership and all rights under the Bylaws with respect to such Membership and shall have no right to a hearing or opportunity to reinstate the Membership.
- Membership Contribution or Initiation Contribution.** Member acknowledges that the Membership Contribution or Initiation Contribution, as applicable, shall be due and payable in full upon execution this Membership Agreement or as otherwise set forth on Exhibit A to this Membership Agreement.
- Membership Charges.** Member acknowledges that membership is subject to payment of periodic dues and such other fees and charges as the Club may establish pursuant to the Bylaws (collectively, "**Membership Charges**"), all of which are subject to change from time to time. Member agrees to be responsible for all charges incurred by Member's authorized users and guests in their use of the Club Facilities.

Member agrees to pay all Membership Charges on or before the due date thereof. Member understands that delinquency in paying any amounts due may result in suspension or termination of membership privileges.

and expulsion as a member. Member further agrees that if he or she is delinquent in paying any amounts due, the Club shall be entitled to recover from Member late charges and interest as authorized in the Bylaws and Club Rules, and all costs and expenses which the Club reasonably incurs in attempting to collect the past due amounts, including attorneys' fees and court costs, whether or not suit is filed.

5. **Receipt of Club Documents.** By execution below, Member acknowledges receipt of the Offering Circular for Lake Claire Swim Club, Inc., and the exhibits attached thereto, including the Bylaws and the Rules currently in effect, and agrees to be bound by and comply fully with the terms and provisions of such documents, as they may be amended (the "**Membership Documents**"), and to be responsible for compliance by Member's authorized users and guests. Member acknowledges that he or she has had the opportunity to review the Membership Documents and to seek professional advice to assist in evaluating the merits and risks of acquiring a membership. Member has made the decision to acquire a membership without reliance upon any information or representations other than as set forth in the Membership Documents.

6. **Assumption of Risks and Indemnification.**

(a) In consideration of the membership and as a condition of the membership, Member agrees to all risks associated with the use of the Club Facilities and agrees to release the Club and Lake Claire Swim Club, LLC, a Georgia limited liability company (the "**Sponsor**") from and indemnify the Club and the Sponsor against any and all losses, expenses, liens, claims, demands, and causes of action of every kind and character for death, personal injury, property damage or any other liability, damages, fines, or penalties, including costs, attorneys' fees and settlements, whether or not based on the acts or omissions of the Club or the Sponsor, resulting from, arising out of or in any way connected with the use of the Club Facilities by Member, Member's authorized users and guests, except to the extent that the same are the direct result of the gross negligence or willful misconduct of the Club or the Sponsor or their employees. As used in this paragraph, "Club" shall include the Club and its members, and the heirs, successors, assigns, officers, directors and employees of the Club and its members, and all persons, corporations, partnerships, and other entities with which it is or may in the future become affiliated. Also, as used in this paragraph, "Sponsor" shall include the members of Sponsor and the heirs, successors, assigns, officers, directors and employees of Sponsor or its members, and all persons, corporations, partnerships, and other entities with which it is or may in the future become affiliated. This paragraph shall survive the termination of this Agreement with respect to any property damage, personal injury, or death occurring prior to such termination.

(b) Member, as a condition of the membership, and Member's authorized users and guests, as a condition of invitation to use the Club Facilities, assume sole responsibility for their personal property. Member acknowledges and understands that the Club and the Sponsor shall not be responsible for any loss or damage to any personal property which Member or Member's authorized users or guests, may use or store on the Club premises, whether in lockers or elsewhere. Member also acknowledges and understands that he or she shall be liable for any property damage or personal injury occurring on the Club premises, or at any activity or function which the Club operates, organizes, arranges, or sponsors, whether or not on the Club premises, which Member or Member's authorized users or guests, may cause. If Member arranges or sponsors any activity or function on the Club premises, Member shall be responsible for any such damage or injury even if Member did not cause such damage or injury. Member agrees that the Club may charge the cost of any such damage to his or her club charge account or designated credit card.

7. **Transfer and Assignment of Membership.** Member acknowledges that the membership conferred hereunder may not be pledged or assigned and is not transferable, unless and except as otherwise specifically set forth in the Bylaws.

8. **Reliance on Representations.** Member acknowledges that, in extending an invitation to Member and accepting Member for membership in the Club, the Club and the Sponsor are relying on Member's warranties and representations in the Candidate Profile and in this Agreement to ensure compliance with state and federal laws

applicable to the offering of memberships and other matters. Therefore, Member agrees to indemnify the Club and the Sponsor and all of Sponsor's affiliates, including their agents, employees, officers, directors and other controlling persons thereof, from any liability, damage, claim, loss or expense arising from a misstatement or omission in such warranties or representations.

9. **Governing Law.** This Membership Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia without reference to choice of law provisions.

10. **Additional Terms and Conditions.** Additional terms and conditions applicable to Member and the membership issued hereunder are set forth on Exhibit A to this Membership Agreement and incorporated by this reference.

MEMBER ACKNOWLEDGES THAT HE OR SHE IS ACQUIRING A MEMBERSHIP FOR THE SOLE PURPOSE OF OBTAINING SOCIAL BENEFITS AND RECREATIONAL USE OF THE CLUB FACILITIES AND NOT AS AN INVESTMENT OR WITH ANY EXPECTATION OF MAKING A PROFIT FROM THE OWNERSHIP OR FUTURE TRANSFER OF THE MEMBERSHIP.

**This Membership Agreement shall not be binding upon the Club unless and until the approved and accepted on behalf of the Club and Sponsor as evidenced by their signatures below.**

IN WITNESS WHEREOF, the Club and Member have caused this Agreement to be executed on their behalf as of the date of acceptance by the Club set forth below ("**Effective Date**").

**CLUB:**

Lake Claire Swim Club, Inc., a Georgia nonprofit corporation

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name of Spouse, if married)

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED BY SPONSOR:**

Lake Claire Pool, LLC, a Georgia limited liability company

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

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

**Additional Terms and Conditions**

The following additional terms and conditions shall be added to and shall be a part of that Membership Agreement between Lake Claire Swim Club, Inc., and the undersigned Member and shall control over any inconsistent provisions in such Agreement or in the Bylaws or Club Rules:

1. **Membership Classification.** The Membership granted hereunder shall be an Equity Membership.
2. **Membership Contribution; Dues and Assessments.** The purchase price ("**Membership Contribution**") payable for the membership pursuant to Paragraph 3 of the Membership Agreement is Ten Thousand Dollars (\$10,000). Member has previously paid a non-refundable initiation fee to Sponsor pursuant to the Membership Policies of Lake Claire Pool. Irrespective of the amount paid, a credit of Three Thousand Five Hundred Dollars (\$3,500) shall be applied towards the Membership Contribution described above.

The balance of the Membership Contribution has been paid in full concurrent with the execution of this Agreement. Club acknowledges receipt, but such receipt is subject to collection. Member shall be responsible for the payment of dues and the Membership is subject to assessment as set forth in the Bylaws. Member acknowledges that if Member fails to pay all dues, assessments and other charges incurred on account of the Membership and otherwise keep the Membership in good standing, the Club may suspend or levy other sanctions against the Member as set forth in the Bylaws. The Membership is not subject to recall by the Club.

3. **Amount Due on Repurchase.** In the event of Member's resignation or other termination of the Membership granted hereunder and the Club's repurchase of the Membership pursuant to the Bylaws, the Club shall pay to Member the amount described in the Club's Bylaws which shall be based on the full Membership Contribution set forth in paragraph 2 above without taking into consideration any credit given. The Club shall be entitled to deduct from the amount otherwise payable upon repurchase all outstanding Membership Charges, dues, and other charges owed to the Club or the Sponsor on account of the resigned Membership at the time of repurchase.
4. **Right to Terminate Offering and Membership.** By executing below, Member acknowledges that Sponsor has the sole and absolute discretion to terminate the offering of all Equity Memberships prior to the Conversion Date by giving notice to all Members. In such event, this Agreement shall be deemed cancelled and the Equity Membership shall be treated as if never sold or issued. Member shall not have the right to a hearing prior to cancellation of this Agreement nor shall Member have any right to have the Membership repurchased pursuant to the Bylaws. Within 30 days of such notice of cancellation, Sponsor shall return Member's Membership Contribution set forth in Paragraph 2 above less the \$3,500 credit given for the previously paid non-refundable initiation fee previously paid to Sponsor.

5. **Special Stipulations.**

**CLUB:**

Lake Claire Swim Club, Inc., a Georgia nonprofit corporation

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

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name of Spouse, if married)

Date: \_\_\_\_\_

FORM

**Exhibit E**

**SCHEDULE OF FEES DUES AND CHARGES**

**Lake Claire Swim Club  
Schedule of Membership Fees, Dues, and Other Charges  
As of November 1, 2023**

**Annual Dues** (payable in one sum on or before April 1 of each year)

Equity Membership	\$785.00
Late Dues Fee	\$50.00

**Other Fees and Charges**

Guest Fee - per guest	\$5.00
Party Rental	\$100.00
Party Cleaning Deposit (refundable)	\$100.00
Key Card Replacement	\$75.00

All fees, dues and other charges are subject to change from time to time. Additional fees may be instituted, in the sole and absolute discretion of the Sponsor or the Club's Board of Directors, as provided in the Club's Bylaws. All dues, fees and charges are subject to applicable taxes.

**EXHIBIT F**

**PROJECTED OPERATING BUDGET**

**First Year Operating Budget Profit and Loss**  
**Lake Claire Swim Club, Inc.**

<b>Income</b>	
Keycard Replacement Fee	750.00
Membership Dues Income	314,000.00
Pool Party Fee	1,200.00
Waitlist Fee	0.00
<b>Total Income</b>	<b>\$ 315,950.00</b>
<b>Gross Profit</b>	<b>\$ 315,950.00</b>
<b>Expenses</b>	
<b>Bank Service Charges</b>	
PayPal Fees	400.00
QuickBooks Payments Fees	8,000.00
<b>Total Bank Service Charges</b>	<b>\$ 8,400.00</b>
<b>Employee Benefits</b>	
Payroll Processing Fees	400.00
Payroll Taxes	1,700.00
<b>Total Employee Benefits</b>	<b>\$ 2,100.00</b>
Insurance	6,250.00
Landscaping	1,400.00
Licenses and Permits	1,500.00
Pool Management Fees	80,500.00
Pool Management Fees Other	19,800.00
<b>Total Pool Management Fees</b>	<b>\$ 100,300.00</b>
Postage and Delivery	50.00
<b>Professional Fees</b>	
Accounting	10,000.00
Legal Fees	6,000.00
<b>Total Professional Fees</b>	<b>16,000.00</b>
Rent	60,000.00
<b>Repairs &amp; Maintenance</b>	
Janitorial	4,000.00
Leasehold Repairs	27,690.00
Pool Repairs	5,000.00
<b>Total Repairs &amp; Maintenance</b>	<b>\$ 36,690.00</b>
Salaries	25,000.00
Access System Security	1,000.00
<b>Supplies</b>	
Office	1,500.00
Pool	10,000.00
<b>Total Supplies</b>	<b>\$ 11,500.00</b>
<b>Taxes</b>	
Property Taxes	8,000.00
<b>Total Taxes</b>	<b>\$ 8,000.00</b>
Telephone	4,000.00
<b>Utilities</b>	
Dumpster	1,200.00
Gas and Electric	7,000.00
Water	3,500.00
<b>Total Utilities</b>	<b>\$ 11,700.00</b>
Website/Hosting	600.00
<b>Total Expenses</b>	<b>\$ 294,490.00</b>
<b>Net Operating Income</b>	<b>\$ 21,460.00</b>
<b>Other Expenses (replacement reserves)</b>	<b>-18,000.00</b>
Interest Expense	0.00
<b>Total Other Expenses</b>	<b>\$ 0.00</b>
<b>Net Income after reserves</b>	<b>\$ 3,460.00</b>