

EXECUTION COPY

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Government Code Section 6103

RECORDING REQUIRED BY
AND WHEN RECORDED MAIL TO:

City of Inglewood
One Manchester Blvd.
Inglewood, CA 90301
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

**ARENA SITE USE AGREEMENT
(CITY PARCELS)**

THIS ARENA SITE USE AGREEMENT (CITY PARCELS) (this "**Agreement**") is entered into as of this day of _____, (the "**Effective Date**") by and among the CITY OF INGLEWOOD, a municipal corporation (the "**City**"), and MURPHY'S BOWL LLC, a Delaware limited liability company ("**Developer**"). The City and Developer and their respective transferees, successors in interest, and assigns are hereinafter collectively referred to as the "**Parties**" and singularly as "**Party**."

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2020 (the "**DDA**"), which provides, in part, for Developer's purchase from the City certain real property, including, but not limited to, that certain real property located in the City of Inglewood, County of Los Angeles, and State of California more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Subject Property**");

B. On or about the date hereof, Developer shall acquire the Subject Property from the City in accordance with the DDA.

C. Pursuant to the terms of the DDA, Developer has agreed to restrict the use of the Subject Property for a period of twenty (20) years. In order to restrict the use of the Subject Property to the uses set forth in the DDA, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the following mutual promises, conditions, and covenants, the Parties agree as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS AND EXHIBITS.** The preamble, the recitals and all defined terms set forth in both are incorporated into this Agreement as if set forth herein in full. In addition, each of the exhibits attached hereto are expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include the exhibits hereto.

2. **USE OF THE SUBJECT PROPERTY.**

2.1 **USE OF THE SUBJECT PROPERTY.** During the Term (as defined in Section [REF _Ref37340597 \r \h * MERGEFORMAT] below) of this Agreement, Developer, on behalf of its successors, assigns, and each successor in interest to Developer's interest in the Subject Property or any part thereof, hereby covenants and agrees that Developer shall not use or operate the Subject Property for any use other than uses consistent with the following uses specified in the DDA:

Use as an arena suitable for sports, entertainment and civic events and activities related thereto, including other uses reasonably related to or incidental to such arena uses, including, without limitation, restaurant, food service and retail uses, philanthropic activities, ancillary and administrative office uses, concourse area uses, practice and training facilities, a sports medicine clinic and parking uses (individually and collectively, the "**Permitted Use**"). *[Conform to final "Arena Use" definition in the DDA as necessary]*

Notwithstanding anything to the contrary, nothing in this Agreement shall require Developer to use, operate, or develop the Subject Property.

2.2 **CHANGE IN USE OF THE SUBJECT PROPERTY.** If Developer seeks to modify the use of the Subject Property to another use other than the Permitted Use, Developer may request that the City modify the Permitted Use by providing written notice to the City including the proposed use modifications (the "**Proposed Use**"), and requesting that the City approve such Proposed Use. The City may elect, in its sole discretion, to approve or disapprove the Proposed Use, and if the City approves the Proposed Use, then the Parties shall enter into an amendment to this Agreement to amend the Permitted Uses to authorize, as a Permitted Use, the use or uses specified in the Proposed Use.

3. **TERM.** The term of this Agreement shall be twenty (20) years from the Effective Date (the "**Term**"). Upon the Developer's request following the expiration of the Term, the City will deliver to Developer such documents as are reasonably necessary to terminate and remove this Agreement from title to the Subject Property within ten (10) business days after the date that the City receives such request.

4. **DEFAULT.** It shall be an event of default under this Agreement if Developer uses or operates the Subject Property for any use other than uses consistent with the Permitted Use (each

such use, an "**Unpermitted Use**") and Developer fails to cease such Unpermitted Use within thirty (30) days after receipt of notice to cure from the City to Developer specifying the Unpermitted Use and the default at issue (a "**Default Notice**"), or if cure cannot be accomplished within thirty (30) days, to commence to cure such failure within thirty (30) days and thereafter diligently prosecute such cure within a reasonable time. Developer shall have the opportunity to appear before the City Council at a public hearing prior to the exercise of any of City's rights or remedies under this Agreement with respect to an event of default.

5. **REMEDIES.** Upon the occurrence of any event of default set forth in Section [REF _Ref37257014 \r \h * MERGEFORMAT] above which is not cured by Developer within the applicable cure period provided therein, the City may file an action seeking specific performance of Developer's obligations under Section [REF _Ref37324438 \r \h] or prohibitory injunction with respect to the Unpermitted Use specified in the Default Notice.

5.1 **REQUEST FOR CHANGE IN USE.** The Parties agree that, notwithstanding anything to the contrary provided herein, upon receipt of a Default Notice, Developer may request that the City modify the Permitted Use in accordance with Section [REF _Ref37324930 \r \h] above, including in the Proposed Use the Unpermitted Use specified in the Default Notice. If Developer submits such request to the City within thirty (30) days following Developer's receipt of the Default Notice, then the Developer shall have an additional thirty (30) days beyond the expiration of the applicable cure period to cure such default. In addition, if the City elects to pursue an amendment to the DDA or this Agreement to modify the Permitted Use to include the Unpermitted Use in accordance with Section [REF _Ref37324930 \r \h * MERGEFORMAT] above, then the applicable cure period shall be tolled until the date that the City, in its sole discretion, elects to no longer pursue an amendment to the DDA or this Agreement to modify the Permitted Use; provided, however, if the City elects to modify the Permitted Use to include the Unpermitted Use specified in the Default Notice (whether pursuant to an amendment to the DDA or an amendment to this Agreement, as applicable), then the event of default with respect to such Unpermitted Use shall be deemed cured, and the City shall not have the right to exercise its remedy in Section [REF _Ref37256904 \r \h * MERGEFORMAT] above for such Unpermitted Use.

5.2 **REMEDIES EXCLUSIVE.** The remedies set forth in this Section [REF _Ref37324280 \r \h] constitute the sole and exclusive remedy for any breach of this Agreement. The Parties have determined that monetary damages are an inappropriate remedy for any default under this Agreement. Each Party waives any provision of law to the extent that it would limit or restrict the agreements contained in this Section [REF _Ref37324280 \r \h].

6. **MORTGAGES.** Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, and any other reasonable method of security instruments are permitted to be placed upon the Subject Property. Mortgages, deeds of trust, or other reasonable security instruments securing financing with respect to the Subject Property are each referred to herein as a "Security Interest". The words "mortgage" and "deed of trust" as used in this Agreement shall include all other appropriate modes of financing real estate acquisition, construction and land development. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any Security Interest; provided, however, that any subsequent owner of the

Subject Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise (unless such owner's title was acquired by sale from the City in accordance with Section [REF _Ref37256904 \r \h] above). The City shall afford any holder of the beneficial interest under such Security Interest (the "**Mortgagee**") the mortgagee protections provided for in this Section [REF _Ref37333893 \r \h].

6.1 MORTGAGEE OBLIGATIONS. A Mortgagee not in legal possession of the Subject Property or any portion thereof shall not be subject to the obligations or liabilities of Developer under this Agreement. A Mortgagee in legal possession of the Subject Property or portion thereof shall only be entitled to use the Subject Property in accordance with this Agreement if Mortgagee fully complies with the terms of this Agreement.

6.2 NOTICE OF DEFAULT AND RIGHT TO CURE. Whenever the City pursuant to its rights set forth in Section [REF _Ref37257014 \r \h] and Section [REF _Ref37324280 \r \h] above delivers any notice or demand to Developer with respect to the occurrence of any event of default, the City shall at the same time deliver to each Mortgagee a copy of such notice or demand. After receipt of such notice, each such Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within the same cure period afforded to Developer hereunder plus ninety (90) days, to cure or remedy or commence to cure or remedy any such default or breach affecting the Subject Property which is subject to the Security Interest held by such Mortgagee and to add the cost thereof to the security interest debt and the lien on its security interest; provided, however, if cure cannot be accomplished within such 90-day period, such Mortgagee shall have the right to commence to cure such failure within such 90-day period and thereafter diligently prosecute such cure within a reasonable time. If such default shall be a default which can only be remedied or cured by such Mortgagee upon obtaining possession of the property or other asset subject to the Security Interest, and such Mortgagee has elected to remedy or cure such default, such Mortgagee shall seek to obtain possession of the applicable property or other asset with diligence and continuity through foreclosure, deed in lieu of foreclosure or such other procedure as the Mortgagee may elect, and such Mortgagee, or such successor-in-interest to Developer who acquires the Subject Property by way of such foreclosure, deed in lieu of foreclosure or such other procedure, shall remedy or cure such default within one hundred eighty (180) days after obtaining possession; provided, however, if cure cannot be accomplished within such 180-day period, such Mortgagee or successor-in-interest shall have the right to commence to cure such failure within such 180-day period and thereafter diligently prosecute such cure within a reasonable time. In addition, in the event that, due to a default by Developer under the applicable Security Interest, a Mortgagee seeks to obtain possession of the applicable property or other asset with diligence and continuity through foreclosure, deed in lieu of foreclosure or such other procedure as the Mortgagee may elect at any time prior to the date that the City has the right to exercise its remedy in in Section 5 above, then the City shall not have the right to exercise its remedy in Section 5 above until the date that is six (6) months following the date that the Mortgagee or such other successor-in-interest acquires possession or title to the Subject Property.

7. LIENS. Nothing contained herein shall be deemed to prohibit Developer from contesting the validity or the amounts of any encumbrance, lien, levy or attachment imposed upon the Subject Property, nor to limit the remedies available to Developer with respect thereto.

8. **BINDING ON SUCCESSORS; AGREEMENT RUNS WITH THE LAND.** Except as otherwise expressly provided for in this Agreement, upon the Effective Date, all of the provisions, agreements, rights, terms, powers, standards, covenants, and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, transferees, successors in interest and assignees. Upon recording of this Agreement with respect to each portion of the Subject Property, all of the provisions of this Agreement shall be binding on all other persons acquiring the Subject Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable law, including Section 1468 of the California Civil Code.

9. **EXCUSE FOR NONPERFORMANCE.** Notwithstanding any provision of this Agreement to the contrary, Developer and the City shall be excused from performing any obligation or undertaking provided in this Agreement in the event of, and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by, a(n) act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, condemnation, requisition, applicable law, litigation, orders of governmental, civil, military or naval authority, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform (a "**Permitted Delay**").

10. **THIRD PARTY BENEFICIARIES.** This Agreement is made and entered into for the sole protection and benefit of Developer and the City and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement. There is no third party beneficiary to this Agreement and nothing contained herein shall be construed as giving any person third party beneficiary status.

11. **SEVERABILITY.** Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; *provided, however,* if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement (with respect to the portions of the Subject Property in which such Party has an interest) from and after such determination.

12. **WAIVER.** Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. The Party for whose benefit a covenant or commitment is provided may waive its rights pursuant to that commitment or covenant, provided that no waiver by a Party of a default shall be effective or binding upon such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take any action

with respect to such default. No express written waiver of any default shall affect any other default, or cover any other period of time, other than any default and/or period of time specified in such express waiver.

13. **APPLICABLE LAW AND VENUE.** This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California. Any lawsuit or legal proceeding arising hereunder shall be heard in the United States District Court for the Central District if in federal court or the Los Angeles County Superior Court if in California Superior Court.

14. **NOTICES.** Any notice to either Party required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	City of Inglewood One Manchester Boulevard Inglewood, California 90301 Attention: City Manager
with a copy to:	Office of the City Attorney One Manchester Boulevard Inglewood, California 90301 Attention: City Attorney
with a copy to: (and shall not constitute notice to the City)	Kane, Ballmer & Berkman 515 S. Figueroa Street, Suite 1850 Los Angeles, California 90071 Attention: Royce K. Jones
Developer:	Murphy's Bowl LLC PO Box 1558 Bellevue, WA 98009-1558 Attention: Brandt A. Vaughan
with a copy to: (and shall not constitute notice to Developer)	Hellsell Fetterman, LLP 1001 Fourth Avenue, Suite 4200 Seattle, WA 98154 Attention: Mark Rising
with a copy to: (and shall not constitute notice to Developer)	The owner of Subject Property per property tax records at the time such notice is provided

Any Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) business days prior to the date such change is affected. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

15. **FORM OF AGREEMENT; RECORDATION; EXHIBITS.** The City shall cause this Agreement, any amendment hereto, and any termination of any parts or provisions hereof, to be recorded, at Developer's expense, with the County Recorder for Los Angeles County within ten (10) days of the effective date thereof. Any amendment or termination of this Agreement to be recorded that affects less than all of the Subject Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original.

16. **FURTHER ASSURANCES.** Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

17. **ENTIRE AGREEMENT.** This written Agreement, including the exhibits attached hereto, contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Agreement.

18. **CONSTRUCTION OF AGREEMENT.** The provisions of this Agreement and the exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each section and subsection are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. Unless otherwise specified, whenever in this Agreement reference is made to any Section, or any defined term, such reference shall be deemed to refer to the section or defined term of this Agreement. Exhibits to this Agreement shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words "including," "such as," or words of similar import when following any general term, statement, or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to," or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter. This Agreement has been reviewed and revised by legal counsel for Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

19. **SIGNATURE PAGES**. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages in counterparts which, when attached to this Agreement, shall constitute this as one complete Agreement.
20. **TIME**. Time is of the essence of this Agreement and of each and every term and condition hereof.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City of Inglewood, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attested to by its City Clerk under the authority of Ordinance No. _____, adopted by the City Council of the City of Inglewood on the ____ day of _____, ____, and Developer has caused this Agreement to be executed.

"CITY"

CITY OF INGLEWOOD

"DEVELOPER"

MURPHY'S BOWL LLC,
a Delaware Limited liability company

By: _____
James T. Butts, Jr.
Mayor

Name:
Title:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Kenneth R. Campos
City Attorney

By: _____
Kenneth R. Campos

APPROVED:

KANE BALLMER & BERKMAN
Special City Counsel

By: _____
Royce K. Jones

MB Draft 4/29/20
Preliminary – For Negotiation Purposes

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

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

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

WITNESS my hand and official seal.

Signature _____

MB Draft 4/29/20
Preliminary – For Negotiation Purposes

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Legal Description of Subject Property

[To be inserted prior to execution]