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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
(PRIVATE PARCELS)**

THIS ARENA SITE USE AGREEMENT (PRIVATE 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 _____, _____, the City Council held a duly noticed hearing to consider the adoption of resolutions of necessity authorizing the acquisition by eminent domain of certain real property interests located in the City of Inglewood, County of Los Angeles, and State of California, including, but not limited to, the Subject Property. After independent review and consideration of the evidence before the City Council, including written evidence and oral testimony, the City Council adopted Resolution of Necessity _____, Resolution of Necessity _____, and Resolution of Necessity _____ (collectively, the "**Resolutions of Necessity**").

C. In accordance with California Code of Civil Procedure Section 1230 et seq., as the same may be enacted, adopted or amended from time to time, or any other similar or successor law (the "**Applicable Eminent Domain Law**"), the Resolution of Necessity sets forth a statement of the public use for which the Subject Property is to be taken.

D. The City [acquired the Subject Property pursuant to Final Orders of Condemnation][**OR**][acquired possession of the Subject Property through Orders of Prejudgment Possession (as defined in the DDA)] in accordance with the DDA, the Resolutions of Necessity, and Applicable Eminent Domain Law.

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

F. In order to restrict the use of the Subject Property to the public use set forth in the Resolutions of Necessity in accordance with 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 public uses specified in the Resolutions of Necessity:

2.1.1 [Insert public use stated in the Resolutions of Necessity]¶ and

2.1.2 []¶

(individually and collectively, the "**Permitted Use**").

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**¶

2.2.1 If and only if Developer seeks to modify the use of the Subject Property to another public use for which, under the Applicable Eminent Domain Law, the City could exercise the power of eminent domain, 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 adopt a new resolution of necessity (or amend the existing Resolutions of Necessity) determining that the Proposed Use is a public use that supports the City's exercise of eminent domain in accordance with the Applicable Eminent Domain Law. The City may elect, in its sole discretion, to approve or disapprove an amendment to the original Resolutions of Necessity or adopting a new resolution of necessity (the "**Modified Resolution of Necessity**"). If the City, in the exercise of its sole and absolute discretion, adopts a Modified Resolution of Necessity in accordance with the Applicable Eminent Domain Law, 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 Modified Resolution of Necessity.

2.2.2 The restrictions contained in this Agreement, including but not limited to Section [REF _Ref38202380 \r \h * MERGEFORMAT] above restricting use of the Subject Property to the Permitted Uses, are imposed on the Subject Property in the provisions of the Applicable Eminent Domain Law as of the date hereof, including but not limited to California Code of Civil Procedure Section 1245.245. Accordingly, notwithstanding Section [REF _Ref38202380 \r \h * MERGEFORMAT] above, if the Applicable Eminent Domain Law is modified such that broader or greater flexibility in the use of the Subject Property is permitted under such law, then the Permitted Use is Section [REF _Ref38202380 \r \h * MERGEFORMAT] above shall automatically be modified to incorporate such broader use or greater flexibility in the use of the Subject Property. **[Discuss.]**

3. **TERM**¶ The term of this Agreement shall be in perpetuity (the "**Term**"). Notwithstanding the foregoing, in the event that the City exercises its right of reverter and takes possession of the Subject Property pursuant to Section [REF _Ref37256904 \r \h * MERGEFORMAT] below, this Agreement shall automatically terminate on the date that the City reverts in the City fee title to the Subject Property. Upon the City's request following any such termination, Developer will deliver to the City 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 Developer 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 exercise all or any of the following remedies:

5.1 **INJUNCTION**¶ 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.

5.2 **RIGHT OF REVERTER**¶ Upon the occurrence of any event of default set forth in Section [REF _Ref37257014 \r \h * MERGEFORMAT] above which is not cured within the applicable cure period after receipt of notice thereof from the City to Developer, if (i) the City provides a second (2nd) notice of default to Developer within thirty (30) days after the date of the Default Notice specifying the Unpermitted Use and the default at issue (the "**Second Default Notice**", and (ii) Developer fails to cease such Unpermitted Use within the later of (a) six (6) months after the date of the Second Default Notice, and (b) thirty (30) days after the expiration of the applicable cure period (the "**Second Cure Period**"), then the City shall have the right at its option, which must be exercised, if at all, prior to the cure, to reenter and take possession of the Subject Property with all improvements thereon, and to terminate and revest in the City fee title to the Subject Property subject to the terms of this Section [REF _Ref37256904 \r \h] and Applicable Eminent Domain Law.

5.2.1 The right to reenter, repossess, terminate and revest, and the provisions below regarding the application of proceeds, shall be subject to and be limited by and shall not defeat, render invalid, or limit:¶

- (a) Any Security Interest (as defined below) permitted by this Agreement; or¶
- (b) Any rights or interests provided for the protection of the holders of such Security Interests.¶

5.2.2 Subject to the rights of holders of the beneficial interests under Security Interests as stated in this Section [REF _Ref37256904 \r \h] and in Section [REF _Ref37333893 \r \h] and Section [REF _Ref37333890 \r \h] below, in the event title to the Subject Property or any part thereof is revested in the City as provided in this Section [REF _Ref37256904 \r \h], the City shall, pursuant to its responsibilities under state law, including but not limited to Applicable Eminent Domain Law, use its diligent and good faith efforts to resell the Subject Property or such part thereof as soon and in such manner as the City shall find feasible and consistent with the objectives of such law. Upon such resale of the Subject Property and satisfaction of obligations owed to the holder of any Security Interest authorized by this Agreement, the proceeds thereof shall be applied:¶

- (a) First to reimburse the City for all substantiated costs and expenses incurred by the City, including but not limited to, salaries to personnel engaged in such action, in collection with the recapture, management, and resale of the Subject Property or part thereof (but less any income derived by the City from the Subject Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges, if any and if applicable, with respect to the Subject Property or part thereof

during the period of ownership thereof by the City (or, in the event the Subject Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City, then such taxes, assessments, or charges, as would have been payable if the Subject Property were not so exempt); and any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its transferees, successors in interest, or assigns¶

- (b) Second, any balance remaining after such reimbursements shall be paid to Developer.

5.2.3 To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted in favor of the City, the party for whose benefit it is created. This right is to be interpreted in light of the fact that City conveyed the Subject Property to the Developer for the public benefit and the public uses specified in the Resolutions of Necessity (as the same may be amended or modified from time to time) and not for speculation in undeveloped or developed land¶

5.3 **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 a Modified Resolution of Necessity in accordance with Section [REF _Ref37324930 \r \h] above, then the Second Cure Period provided in Section [REF _Ref37256904 \r \h] above shall be tolled until the earlier of (i) the date that the City, in its sole discretion, elects to no longer pursue a Modified Resolution of Necessity including the Unpermitted Use specified in the Default Notice, or (ii) the date that the City Council disapproves the Modified Resolution of Necessity including the Unpermitted Use specified in the Default Notice; provided, however, if the City Council approves the Modified Resolution of Necessity including the Unpermitted Use specified in the Default Notice, 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] above for such Unpermitted Use.

5.4 **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 remedies in in Section 5 above, then the City shall not have the right to exercise its remedies in 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: Kane, Ballmer & Berkman
(and shall not constitute 515 S. Figueroa Street, Suite 1850
notice to the City) Los Angeles, California 90071
Attention: Royce K. Jones

Developer: Murphy's Bowl LLC
PO Box 1558
Bellevue, WA 98009-1558
Attention: Brandt A. Vaughan

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"

"DEVELOPER"

CITY OF INGLEWOOD

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.
--

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]