

## PROJECT LABOR AGREEMENT

### RECITALS

A. This Project Labor Agreement (“Agreement”) is entered into by the owner of the Project, Windemere BLC Land Company LLC, a California limited liability company (“BLC”), whose members are LEN-OBS Windemere LLC, a Delaware limited liability company (“LEN-OBS”), Brookfield Bay Area Holdings LLC, a Delaware limited liability company (“Brookfield”), and Centex Homes, a Nevada general partnership (“Centex”), and U.A. Local No. 159 of the Plumbers and Steamfitters Union, AFL-CIO (“Union”). As of the date hereof, LEN-OBS, Brookfield and Centex each owns an equal one-third interest in BLC, and each holds an option to purchase portions of the Project, and each intends to construct and sell residential units on portions of the Project after exercising its option.

B. Primary Employer represents and warrants that it is fully authorized to enter into this Agreement and that LEN-OBS, as the managing member of BLC, is authorized to execute this Agreement on its behalf.

C. Primary Employer agrees to require, by contract, that its general contractors, contractors or subcontractors comply with the requirements of this Agreement.

D. The Windemere Project is located at a particular site consisting of approximately 2320 acres in southern Contra Costa County east of San Ramon (“Project”). The Project consists of an estimated 5170 dwelling units and various commercial mixed-use and civic units on approximately 1061 acres, and approximately 1259 acres of open space.

E. It is understood and agreed by and between the parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public entities possessing lawful approval authority over the Project and that this Agreement applies to the Project as it is finally approved by such entities.

### I. DEFINITIONS

The following definitions apply in this Agreement;

A. “Union” means U.A. Local No. 159 of the Plumbers and Steamfitters Union, AFL-CIO or its successor.

B. “Primary Employer” means BLC.

C. “Employer” means any general contractor, contractor or subcontractor, including the Primary Employer, directly performing Plumbing Work on the Project.

D. “Contractor” means Primary Employer or any general contractor, contractor or subcontractor who contracts or subcontracts for Plumbing Work on the Project.

E. "Commercial Package" means the then current wage and benefit package provided for in the Union's collective bargaining agreement or any modifications or amendments thereto covering work performed on structures to be used for office, retail or other commercial purposes. The Commercial Package is found in the Union's Master Labor Agreement with the Residential Plumbing and Mechanical Contractors of Northern California ("Master Labor Agreement").

F. A "Phase" means housing constructed in the Project which is based upon a model complex shown more or less simultaneously.

G. A "Release" means a group of homes within a Phase which is subject to a single subcontract for Plumbing Work.

H. "Special Residential Package" means a collective bargaining agreement which provides a total wage and benefit package for Plumbing Work to be performed on this Project that is 75% or less of the total wage and benefit package contained in the Commercial Package.

I. "Union Subcontractor" means a subcontractor whose employees are represented by the Union.

J. "Plumbing Work" means all plumbing and plumbing related work that occurs on the Project within finished lots and work on pump stations or treatment facilities for water supply or sanitary sewage. Installation of irrigation equipment is not included in Plumbing Work, as defined in this Agreement.

## II. PARTIES

A. Primary Employer is a limited liability company formed for purposes which include developing the land that comprises the Project; and currently intends to sell, convey or otherwise transfer or assign its interest in portions of the Project to each of its members, LEN-OBS, Brookfield and Centex, who in turn intend to construct and sell residential units on such portions of the Project. Primary Employer controls the site at which the Project will be constructed. Primary Employer or its designated construction manager or its members possesses, or will possess prior to the commencement of construction, a valid California General Contractor's license. Primary Employer reserves the right to directly perform construction on the Project with its own employees. Subject to the provisions of this Agreement and the Master Labor Agreement, Primary Employer shall retain the right to control and coordinate all project construction work by determining work scheduling, including uniform start times, the necessity for and the times of shift work, by directly enforcing any drug or alcohol abuse policy which is agreed to by any contractor or subcontractor and the Union, and otherwise directly removing any employee whether employed directly or by any contractor or subcontractor for breach of reasonable rules promulgated by Primary Employer governing conduct on the job. Primary Employer shall have the right upon receipt of the written complaint of any employee to order corrective action necessary to maintain reasonable and lawful standards for workplace health and safety. Primary Employer, or its designated construction manager, or its members, shall act to coordinate and participate in prejob conferences and mark-up meetings, and, at its option, participate in the resolution of any grievances. If and only during such times, if any, that

Primary Employer does not directly hire construction craft employees performing Plumbing Work, Primary Employer will serve as a joint employer of the highest tier contractor who directly hires construction craft employees performing Plumbing Work.

B. The Union is a local building and construction trade union, whose members customarily perform Plumbing Work. It has collective bargaining agreements with numerous employers in the Contra Costa County area.

### III. PURPOSE

A. A large labor pool represented by the Union will be required to execute the work involved in the Project. Primary Employer wishes, and it is the purpose of this Agreement, to ensure that a sufficient supply of skilled craft workers are available at the Project, and that all Plumbing Work and related work performed by the members of the Union on this Project shall proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions.

B. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions for the Plumbing Work and to protect the Project against strikes and lockouts and other interference with the process of the work.

C. In the interest of the future of the construction industry in the local area, of which the Union is a vital part, and to maintain the most efficient and competitive posture possible, the Union pledges to work and cooperate in the construction of the Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement.

#### IV. SCOPE OF AGREEMENT

A. This Agreement is specifically limited to this Project, and is further limited to the Plumbing Work to be performed on this Project. This Agreement shall have no force or effect with respect to the members of BLC and their respective affiliated and/or related entities, except with respect to Plumbing Work at the Project performed by or at the request of such members, affiliates or related entities.

B. The provisions of this Agreement supersede any contrary provisions in the Master Labor Agreement. Notwithstanding any provisions of the Master Labor Agreement, Primary Employer's obligations are limited to this Project.

#### V. UNION RECOGNITION

A. Employers who sign the Agreement to be Bound agree to recognize the Union as the sole and exclusive bargaining representative of the construction employees they hire to perform Plumbing Work on this Project, and further agree to recognize the traditional and customary craft jurisdiction of the Union. Such Employers agree to be bound by the provisions of the Union's Master Labor Agreement as modified or amended from time to time with respect to those employees except as the provisions of this Agreement supersede the Master Labor Agreement; provided, however, that the Employers, with respect to any work performed by those employees, shall receive the benefit of the Favored Nation Clause set forth in Paragraph 158 (or its successor) of the Master Labor Agreement.

B. By signing the Agreement to be Bound, Employers also agree that, to the extent the Master Labor Agreement requires them to do so, Employers shall (i) make contributions to the applicable Union benefit plans, (ii) be bound by the trust fund agreements, and any amendments thereto which govern those plans, and (iii) accept as their representatives in the administration of those plans the duly-designated employer trustees of those plans.

#### VI. SUBCONTRACTING

A. Contractor agrees that it shall not subcontract Plumbing Work to be performed at the Project except pursuant to this Article. This Article covers only the subcontracting of Plumbing Work to be performed at the Project. This Agreement does not apply to the subcontracting of any other aspect of the work to be performed at the Project, nor does it apply to any work other than work done on this Project.

B. Contractor agrees under both the Primary Subcontracting Provision and the Alternative Subcontracting Provisions to provide all subcontractors from whom, in Contractor's discretion, bids are solicited for Plumbing Work at the Project, with identical bid specifications and procedures for responding to said solicitation.

C. In order that Contractor may notify Union Subcontractors when bids are being requested, the Union agrees that it will provide Contractor upon request with the roster of Union Subcontractors. Contractor shall have discretion to determine which of the Union

Subcontractors on the roster are to receive any particular solicitation for a bid, provided that at least three Union Subcontractors designated by the Union receive such solicitation.

D. Primary Subcontracting Provision.

1. Provided that three (3) or more Union Subcontractors submit a bid for residential Plumbing Work, the subcontract shall be awarded to one of the Union Subcontractors, even if a lower bid is submitted by another subcontractor, unless Contractor elects, in its sole discretion, to reject all such bids and award the work in accordance with Paragraph VI(D)(2) below.

2. If Contractor elects not to award the work under Paragraph VI(D)(1), above, the work shall be awarded to any subcontractor of Contractor's choice who has executed an Agreement To Be Bound.

3. In the event less than three Union Subcontractors submit bids, Contractor shall have the right to award the subcontract to any bidder of its choice.

4. The Primary Subcontracting Provision shall remain in affect for a period commencing upon execution of this Agreement and ending on the fifth anniversary of the commencement of construction on the first subcontract for Plumbing Work on the first Release in the Project. For a thirty-day period annually thereafter, the Primary Employer may elect to be subject to the Alternative Subcontracting Provisions of this Agreement for a one year period by delivering a written notice to the Union to that effect. Failure to elect the Alternative Subcontracting Provisions in a timely manner requires all Contractors to adhere to the Primary Subcontracting Provision set forth above.

E. Alternative Subcontracting Provisions. The Alternative Subcontracting Provisions are as follows:

1. If three or more Union Subcontractors submit bids for residential Plumbing Work in connection with the Project, and if a Special Residential Package is in effect between the Union and each of those Union Subcontractors, Contractor will award the work to one of those Union Subcontractors even if a lower bid has been submitted by another subcontractor, unless Contractor elects, in its sole discretion, to reject all such bids and award the work in accordance with Paragraph VI(E)(4) below.

2. If three or more Union Subcontractors submit bids for residential Plumbing work, but none of them has a Special Residential Package in effect with the Union, Contractor will award the work to any one of the Union Subcontractors that: (1) has a total wage and benefit package in effect between the Union and that Union Subcontractor that is no greater than 85% of the Commercial Package, and (2) has submitted a bid that does not exceed by more than five-percent (5%) the lowest bid, otherwise acceptable to Contractor, submitted by all other subcontractors submitting bids for the work, including non-union subcontractors ("5% Bid Range").

a. If no bid from a Union Subcontractor is within the 5% Bid Range, Contractor will provide notice of that fact within 48 hours of the deadline for bid receipt to each Union subcontractor who submitted a bid. Contractor will not award bids on such work for 10 days from the deadline for receipt of bids. If within such 10 day period, any Union Subcontractor which previously bid and submits a new bid within the 5% Bid Range, Contractor shall award such work to that Union Subcontractor.

b. If each of the bids received from Union Subcontractors exceeds the 5% Bid Range after the rebidding process set forth above, Contractor may award the work to the bidder of Contractor's choice.

3. If bids were submitted by fewer than three Union Subcontractors on any Plumbing Work, and if the Union has a Special Residential Package at the time that bids are submitted, the work may be awarded to any subcontractor provided that such subcontractor executes the Agreement To Be Bound. If bids were submitted by fewer than three Union Subcontractors on any Plumbing Work, and if the Union does not have a Special Residential Package, then Contractor shall have the right to award the subcontract to any bidder of its choice.

4. If three or more Union Subcontractors submit bids on any Plumbing Work, and Contractor elects not to award the work under Paragraph VI(E)(1) above, the work shall be awarded to any subcontractor of Contractor's choice who has executed the Agreement To Be Bound.

5. If Plumbing Work on the first Release in a Phase is awarded to a Union Subcontractor, all the Plumbing Work on subsequent Releases within such Phase shall be awarded to a Union Subcontractor, provided that the total wage and benefit package paid during such subsequent Release is not greater than the wage and benefit package paid during the first such Release.

F. If, pursuant to Section 158 (or its successor) of the Master Labor Agreement, the Union approves a Special Project Agreement which applies cumulatively to more than 50 units within a residential subdivision, the Union shall promptly give notice to the Primary Employer of such Special Project Agreement. The Union Subcontractors bidding on the Project shall have the benefit of the terms and conditions of such Special Project Agreement to bid on any Release for which bids are solicited within 90 days of approval of such Special Project Agreement so long as the number of homes within the Release does not exceed the number of homes subject to the Special Project Agreement by five homes. The Parties acknowledge that upon execution of this Agreement, the Primary Employer will be added to the B.I.D.S. roster and will receive notice of all Special Project Agreements.

G. Notwithstanding any other provision of this Agreement, but subject to Paragraph G(1), all Plumbing Work on improvements or structures other than housing shall be awarded to Union Subcontractors for a period commencing upon execution of this Agreement and ending ten years after completion of construction of the first non-residential structure (excluding pump stations or treatment facilities) with a construction cost greater than \$2,500,000.

1. If Contractor elects not to award the work under Paragraph G above, the work shall be awarded to any subcontractor of Contractor's choice who has executed an Agreement To Be Bound.

2. After the expiration of such period, Contractor will award such work to a Union Subcontractor if one or more of the bids received from the Union Subcontractors does not exceed ten percent (10%) of the lowest bid, otherwise acceptable to Contractor, received from all subcontractors, including non-union subcontractors ("10% Bid Range").

a. If no bid from a Union Subcontractor is within the 10% Bid Range, Contractor will provide notice of that fact within 48 hours of the deadline for bid receipt to each Union Subcontractor who submitted a bid. Contractor will not award bids on such work for 10 days from the deadline for receipt of bids. If within such 10-day period, any Union Subcontractor which previously bid submits a new bid within the 10% Bid Range, Contractor shall award such work to a Union Subcontractor.

b. If each of the bids received from Union Subcontractors exceeds the Bid Range after the rebidding process set forth above, Contractor may award the work to the bidder of Contractor's choice.

H. If, pursuant to Section 158 (or its successor) of the Master Labor Agreement, the Union approves a Special Project Agreement which applies to a commercial structure of 100,000 square feet or more, the Union shall promptly give notice to the Primary Employer of such Special Project Agreement. The Union Subcontractors bidding on the Project shall have the benefit of the terms and conditions of such Special Project Agreement to bid on any commercial structure for which bids are solicited within 90 days of approval of such special Project Agreement so long as the square footage of such commercial structure does not exceed 110,000 square feet.

## VII. STRIKES AND LOCKOUTS

A. During the life of this Agreement, the Union, its agents, its representatives and its employees agree that it shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, sympathy strike, picketing or other work stoppage of any nature whatsoever for any cause whatsoever or any other type of interference of any kind, coercive or otherwise, with respect to this Project; and it is expressly agreed that any such action is a violation of this Agreement. In the event of a violation of this provision, any Contractor or other Employer or Union Subcontractor shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any such action on the part of the Union, and/or any of its agents, representatives or employees.

B. Notwithstanding the provisions of Paragraph VII(A) above, it is agreed that the Union retains the right to withhold the services of its members from a particular Union Subcontractor or other Employer who fails to make timely payments to the Union's benefit plans, or fails to timely pay its weekly payroll, in accordance with its agreements with the Union; provided, however, that in the event the Union or any of its members withholds their services

from such Union Subcontractor, Contractor shall have the right to replace the Subcontractor with any Union Subcontractor or other contractor who executes the Agreement To Be Bound.

C. In the event that any applicable labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, the Union shall continue to provide employees to the Employers and the Union Subcontractors working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Plumbing Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new Master Labor Agreement provides for wage or benefit increases, then any Employer or any Union Subcontractor shall pay to its employees who performed Plumbing Work at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such wage and benefit increases established by the new Master Labor Agreement for such work performed.

### VIII. SUCCESSORS

A. This Agreement shall be binding upon Primary Employer and its successors, assigns or transferees, whether such succession, assignment or transfer is by operation of law or otherwise, of all or part of Primary Employer's interest as it pertains to the Project, or of all or part of Primary Employer's interest in the real property upon which the Project (or a portion thereof) is to be constructed; provided, however, that an individual or entity who purchases up to a maximum of ten (10) lots, either singly or in a group, developed or undeveloped, so long as the cumulative total of such transfers does not exceed 15% of the total residential lots approved for development, shall not be regarded as a successor, assignee or transferee for purposes of this Article. In no case shall this Article apply to a retail purchaser of a developed lot, either as to the initial purchase of that lot, any subsequent work in connection with that lot, or any subsequent resale of that lot.

B. No provisions, terms, or obligations herein shall be affected, modified, altered or changed in any respect whatsoever by any consolidation, merger, sale or other transfer or assignment, or change in the legal status, ownership, or management of Primary Employer.

C. Primary Employer agrees to obtain from each and every successor, assignee and/or transferee (as those terms are defined in subparagraph A of this Article, above), as a condition of any sale, conveyance, consolidation, merger or other transfer or assignment of all or part of Primary Employer's interest in the Project or in the real property on which the Project (or a portion thereof) is to be constructed, the written agreement of such successor, assignee and/or transferee that the terms of this Agreement shall continue in effect and bind such successor, assignee and/or transferee. Such agreement shall be evidenced by execution by the successor, assignee and/or transferee of a Succession Agreement in the form of Attachment B ("Succession Agreement"). If Primary Employer secures such written Succession Agreement, Primary Employer shall have no further liability to Union or any of its members for any breach or alleged breach of this Agreement by said successor, assignee or transferee, and the union and its members will look exclusively to the successor, assignee or transferee for compliance with this Agreement and for any remedy for its breach or alleged breach. Primary Employer's liability



shall end on the earlier of: (1) the date of execution of the Succession Agreement, or (2) the closing date of the transaction which results in the succession, assignment or transfer.

D. Primary Employer agrees that in the event it reasonably appears to the Union that a breach of this Article is threatened or may be anticipated, the Union shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any sale, conveyance, consolidation, merger, transfer or assignment of all or a part of Primary Employer's interest in the Project or in the real property on which the Project (or a portion thereof) is to be constructed, until such time as the provisions of this Article are complied with or until any disputes about the interpretation of this Agreement are resolved.

E. Primary Employer currently intends to sell, convey or otherwise transfer or assign its interest in portions of the Project to each of its members, LEN-OBS, Brookfield and Centex, who in turn intend to construct and sell residential units on such portions of the Project. Primary Employer agrees to obtain from each of its members, LEN-OBS, Brookfield and Centex, as a condition of any such sale, conveyance or other transfer or assignment, the Succession Agreement defined in Paragraph C of this Article.

#### IX. LIQUIDATED DAMAGES AND ATTORNEYS FEES

A. The Parties agree that in the event of a breach by Primary Employer of its obligation under this Agreement requiring Plumbing Work to be performed by members of the Union or of a breach by Primary Employer of its obligation to obtain a written agreement under Paragraph VIII(C), actual damages would be unreasonably difficult or impossible to calculate. As a result, the parties agree that in the event of a breach by Primary Employer of any obligation, compliance with which would have resulted in performance of Plumbing Work by members of the Union, the union shall be entitled to liquidated damages from Primary Employer which equal the difference between the hourly wage rate and benefits pursuant to the Master Labor Agreement and the wages and benefits actually paid for such work times the number of hours of work which were performed by persons other than the members of the Union.

B. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys fees and costs.

#### X. TERM OF AGREEMENT

This Agreement shall commence on the date indicated below as the date of execution, and shall continue in effect until completion of all Plumbing Work on the Project.

ATTACHMENT A

WINDEMERE BLC LAND COMPANY LLC PROJECT  
CONTRA COSTA COUNTY, CALIFORNIA

AGREEMENT TO BE BOUND

The undersigned, as a General Contractor, Subcontractor or other Contractor ("CONTRACTOR") on the Windemere BLC Land Company LLC Project located in Contra Costa County, California (hereafter "PROJECT"), for and in consideration of the award to it of a contract to perform work on said PROJECT ("CONTRACT"), and in further consideration of the mutual promises made in the "Project Labor Agreement" for the Project, (hereafter "AGREEMENT"), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound for the term of such Contract by the terms and conditions of the AGREEMENT, together with any and all amendments and supplements now existing or which are later made thereto.
- (2) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (3) Agrees to secure from any CONTRACTOR(S) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Name of Prime Contractor or  
Higher Level Subcontractor)

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

**ATTACHMENT B**

**WINDEMERE BLC LAND COMPANY LLC PROJECT  
CONTRA COSTA COUNTY, CALIFORNIA**

**SUCCESSION AGREEMENT**

WHEREAS, Windemere BLC Land Company LLC (“WINDEMERE”) has entered into a Project Labor Agreement (“AGREEMENT”) with U.A. Local 159 of the Plumbers and Steamfitters Union, AFL-CIO (“UNION”), covering Plumbing Work to be performed at the Windemere BLC Land Company LLC Project (“PROJECT”) located in Contra Costa County, California, and

WHEREAS, the AGREEMENT requires WINDEMERE to obtain from each and every “successor, assignee and/or transferee” (as those terms are defined in Paragraph VII A of the AGREEMENT) a written Succession Agreement providing that the terms of the AGREEMENT shall continue in effect and bind such successor, assignee or transferee,

NOW, THEREFORE, it is hereby agreed as follows;

1. \_\_\_\_\_ (“Successor”) is a successor, assignee or transferee of Windemere (as those terms are defined in Paragraph VIII A of the AGREEMENT) with respect to that portion of the Project described in Exhibit 1, which is attached hereto and incorporated herein by reference;
2. Successor has reviewed the AGREEMENT; fully understands the legal obligations it will assume if it executes this Succession Agreement; and agrees that there are no impediments which would prevent it from fully and completely complying with the provisions of the AGREEMENT
3. For valuable consideration received from WINDEMERE, Successor hereby agrees, with respect to that portion of the Project described in Exhibit, 1, to be fully bound by all provisions of the AGREEMENT that apply to WINDEMERE together with any and all amendments and supplements now existing or which are later made thereto, for the full term of the AGREEMENT; and
4. Based upon the representations set forth above, the UNION hereby enters into this Succession Agreement with Successor and thereby accepts it as a party to the AGREEMENT.

WINDEMERE BLC LAND COMPANY LLC PROJECT  
CONTRA COSTA COUNTY, CALIFORNIA

SUCCESSION AGREEMENT (Portion of Lot 20)

WHEREAS, Windemere BLC Land Company LLC (“WINDEMERE”) has entered into a Project Labor Agreement (“AGREEMENT”) with U.A. Local 159 of the Plumbers and Steamfitters Union, AFL-CIO (“UNION”), covering Plumbing Work to be performed at the Windemere BLC Land Company LLC Project (“PROJECT”) located in Contra Costa County, California, and

WHEREAS, the AGREEMENT requires WINDEMERE to obtain from each and every “successor, assignee and/or transferee” (as those terms are defined in Paragraph VII A of the AGREEMENT) a written Succession Agreement providing that the terms of the AGREEMENT shall continue in effect and bind such successor, assignee or transferee,

NOW, THEREFORE, it is hereby agreed as follows;

1. CONTRA COSTA COMMUNITY COLLEGE DISTRICT, a California Community College District (“Successor”) is a successor, assignee or transferee of Windemere (as those terms are defined in Paragraph VIII A of the AGREEMENT) with respect to that portion of the Project described in Exhibit 1, which is attached hereto and incorporated herein by reference;
2. Successor has reviewed the AGREEMENT; fully understands the legal obligations it will assume if it executes this Succession Agreement; and agrees that there are no impediments which would prevent it from fully and completely complying with the provisions of the AGREEMENT;
3. For valuable consideration received from WINDEMERE, Successor hereby agrees, with respect to that portion of the Project described in Exhibit 1, to be fully bound by all provisions of the AGREEMENT that apply to WINDEMERE together with any and all amendments and supplements now existing or which are later made thereto, for the full term of the AGREEMENT; and
4. Based upon the representations set forth above, the UNION hereby enters into this Succession Agreement with Successor and thereby accepts it as a party to the AGREEMENT.